JURISDICTION
PRELIMINARY OBJECTION

FINDINGS AND DECISION IN A DISPUTE

BETWEEN: **BLACKWOOD CONTRACTORS LIMITED, BLACK & McDONALD LIMITED, CANADIAN PROCESS SERVICES INC., DAWE'S MECHANICAL 1981 LIMITED, M & M ENGINEERING LIMITED, R. S. ROGERS (1980) LTD., PLUMBING AND PIPEFITTING SECTOR OF THE CONSTRUCTION WORKERS LABOUR RELATIONS ASSOCIATION OF NEWFOUNDLAND AND LABRADOR INC. (CLRA)**

(hereinafter referred to as "the Employers")

AND: **UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 740**

(hereinafter referred to as "the Union")

RE: **MANAGEMENT GRIEVANCE RE RATE STABILIZATION TRUST FUND**

(hereinafter referred to as the "Grievance")

Appearances: For the Union: Edward Shortall, Q.C.

For the Employer: Harold Smith, Q.C.

Arbitrator/Mediator: Dennis Browne, Q.C.

The Arbitration hearing convened at the offices of Browne Fitzgerald Morgan & Avis in St. John's, NL, on August 7, 2009.

NATURE OF THE GRIEVANCE

On July 17, 2009, the solicitors for the Employers wrote to the Minister of Human Resources and Labour Employment stating in part:

> Re: Management Grievance – July 9, 2009
> Blackwood Contractors Ltd., et. al. v.
> Local 740 – Plumbers and Pipefitters
>
> We write in accord with Section 92 of the ***Labour Relations Act,*** 1977 and in particular Section 92(5).
>
> Our clients, Blackwood Contractors Ltd., Black and McDonald Limited, Canadian Process Services Inc., Dawe's Mechanical 1981 Limited, M & M Engineering Limited and R.S. Rogers (1980) Ltd. (the "Contractors"), on or about the 9th day of July, 2009 caused the attached grievance claiming violation of the Collective Agreement, copy attached, and the RSF Agreement referenced in Article 25.07 (copy attached). The Contractors also claim in this grievance that the Local, through its business manager, has improperly interfered with the operation of the Rate Stabilization Fund.
>
> The Union has not indicated their agreement on a single arbitrator within the time constraints in Section 92(5) and the Contractors request the Minister to appoint an arbitrator at the earliest possible time.
>
> The urgency of this request is driven by the potential loss of work and revenue to my clients because of refusal to comply with job targeting and interference with the Trust.
>
> We request the appointment be made immediately as we will require from the arbitrator an order to audit the Rate Stabilization (Trust) Fund in an effort to determine the status of the Fund.

The grievance referenced in the correspondence stated:

MANAGEMENT GRIEVANCE

The employers, Blackwood Contractors Ltd., Black & McDonald Limited, Canadian Process Services Inc., Dawe's Mechanical 1981 Limited, M & M Engineering Limited and R.S. Rogers (1980) Ltd., being members of the Construction Labour Relations Association of Newfoundland and Labrador Inc. (CLRA) and being bound by the Accreditation Order of the Labour Relations Board, hereby grieve the ongoing violation and continuing violation of; the current Collective Agreement between the CLRA together with the Mechanical Contractors Association of Newfoundland and Labrador, et al. and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 740, the RSF Agreement signed the 27th day of October 2006 and the resultant / implied trust arising therefore referenced in Article 25:07 by refusing to pay from the Rate Stabilization Trust Fund the subsidies agreed to be paid out, and/or; maintaining that the Union Local 740 can unilaterally and can continue to unilaterally refuse to target construction projects in the Province:

The employers named above seek full redress including but not limited to:

1. Cease and Desist Order to direct the Local and its Business Manager, Calvin Jones, to refrain from continuing the non-compliance with Article 25:07 of the current Collective Agreement and the RSF Agreement above described.

2. An Order for a complete and detailed accounting of all monies paid into the Rate Stabilization Fund and those funds identified and claimed for payment out of the Rate Stabilization Fund from all contractors during the period the payments commenced under the term of the current Collective Agreement; A reconciliation that all monies actually paid out were paid in accord with generally accepted accounting procedures and principles respecting reconciliation of payments and allowable expenses from the Rate Stabilization Fund; **and** further, an Order that all monies claimed and required to be paid out of the Rate Stabilization Fund but not paid, be paid to the grievors as their interests appear.

3. An Order that the Union is in violation of the Collective Agreement respecting all qualifying construction projects, whether commercial or industrial, when denied wage rate subsidy, with an appropriate order accordingly.

The grievance was signed by Jack Bavis, Chairperson, Plumbing and Pipefitting Sector members: Blackwood Contractors Ltd., Black & McDonald Limited, Canadian Process Services Inc., Dawe's Mechanical 1981) Limited, M & M Engineering Limited, R.S. Rogers (1980) Ltd. The grievance was dated at St. John's on July 8, 2009.

On July 22, 2009 solicitors for the Union wrote the Minister as follows:

> We are solicitors for the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 740 and are writing to comment on the letter to you dated July 17, 2009 by Stewart McKelvey on behalf of their clients, Blackwood Contractors Ltd., et al. The letter in question requests the appointment of an arbitrator pursuant to section 92(5) of the *Labour Relations Act*.
>
> Under section 92(3) of the *Labour Relations Act*, RSNL 1990 the provisions of section 92 for the appointment of an arbitrator by the minister apply "where a dispute or difference arises between the parties to a collective agreement...". The parties to the current collective agreement referenced in the subject grievance are our client and the Construction Labour Relations Association of Newfoundland and Labrador Inc. (CLRA). The contractors named in the subject grievance are bound by the agreement between our client and CLRA but are not "parties" to it. Since CLRA is not a party to the subject grievance it is our position that section 92 of the Act is not engaged and the minister has no jurisdiction to appoint an arbitrator in these circumstances.
>
> We note also that the subject grievance is signed by a person purporting to be the chairperson of "Plumbing and Pipefitting Sector Members". This is not a group which is recognized for collective bargaining purposes and the individual signing in this capacity would have no standing to present or carry a grievance on behalf of others.
>
> We note also that the memorandum of understanding dated October 27, 2006 as referenced in the subject grievance is made between our client and CLRA.
>
> Lastly, the current collective agreement deals with the Rate Stabilization Fund in article 25.08 and not article 25.07 as referenced in the other correspondence. A copy of the article is attached and you will see from this that there is no reference to joint administration of the Rate Stabilization Fund.
>
> For the foregoing reasons it is our client's position that section 92 of the *Labour Relations Act* does not apply in these circumstances.

On July 24, 2009 the President of the Construction Labour Relations Association of Newfoundland and Labrador (the "CLRA") wrote the Minister as follows:

> I write to advise that the grievance of the Plumbing and Pipefitting Sector of the Association dated July 9, 2009, was properly processed and approved by the Plumbing and Pipefitting Sector of the Association which consists of the member

> contractors who are members of the Sector and who are bound by the Collective Agreement with Local 740 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada.
>
> The grievance for technical reasons arising from a 1993 arbitration decision requires that the aggrieved contractors in the Sector initiate the grievance in order to claim the remedies sought. This was done and the processing of the grievance was approved by the CLRA Board in accordance with its procedures.
>
> The Plumbing and Pipefitting Sector of the CLRA is authorized to proceed to file and handle the grievance and to seek full redress from the Union.
>
> The Local 740 communication of July 22, 2009, to you is simply in error.
>
> I confirm that the CLRA is requesting the appointment of an arbitrator through the Sector members of the CLRA
>
> If further clarification is required please advise.

A grievance dated April 17, 2008, and signed on behalf of the CLRA was referenced in the submissions. That grievance stated:

> The Construction Labour Relations Association of Newfoundland and Labrador Inc. (CLRA), an accredited employers' organization, on behalf of its members and contractors bound by the Accreditation Order of the Labour Relations Board hereby grieves the violation and continuing violation of the current Collective Agreement effective March 1, 2006 including the RSF Agreement and Declaration of Trust referenced in Article 25.07 by either, (1) issuing letters dated April 7, 2008 and April 16, 2008 directed to Craig Power of the CLRA claiming that Local 740 can unilaterally and will unilaterally refuse to target construction projects in the Province, and/or; (2) by issuing a letter dated April 16, 2008 purporting to direct the CLRA and its members, subject to the Collective Agreement, to act contrary to the Collective Agreement, and/or; (3) by refusing to pay from the Rate Stabilization Trust Fund the wage subsidies agreed to be paid out, and/or; (4) by generally attempting through such action or threats to effect a wage rate change contrary to Article 5 of the Collective Agreement.
>
> The CLRA seeks full redress including but not limited to:
>
> 1. Cease and Desist Order to direct the Local and its Business Manager, Calvin Jones to ensure compliance with Article 25:07, and Article 5 of the current Collective Agreement.
>
> 2. An Order to a complete and detailed accounting of all monies paid into the Rate Stabilization Fund or identified for the Rate Stabilization Fund from all

contractors since the creation of the Trust Fund and for all monies paid out, reconciled in accord with generally accepted accounting procedures and principles respecting reconciliation and allowable expenses and payments.

3. An Order that the Union is in violation of the Collective Agreement respecting all qualifying construction projects, whether commercial or industrial, when denied wage rate subsidy, with an appropriate order of restitution to each contractor with applicable interest to be paid from the Rate Stabilization Fund.

On August 6, 2009, this Arbitrator was appointed as follows:

> On July 20, 2009 the Minister of Human Resources, Labour and Employment, received a request from Mr. Harold Smith on behalf of Blackwood Contractors Ltd., Black and McDonald Limited, Canadian Process Services Inc., Dawe's Mechanical 1981 Limited, M & M Engineering Limited and R.S. Rogers (1980) Ltd., for the appointment of a single arbitrator, in accordance with section 92 of the *Labour Relations Act*, to deal with a matter between those companies and the United Association of Plumbers and Pipefitters, Local 740.
>
> On the understanding you are available to deal with this matter, the Minister has appointed you sole arbitrator in this case.
>
> Please note Section 92(8) of the *Labour Relations Act* states that: "The decision of the arbitrator shall be made within 48 hours of the time of appointment unless an extension is agreed upon by the parties".
>
> The parties have been notified of your appointment and their responsibility pertaining to your remuneration. I have attached for your information, copies of correspondence relating to the matter.

On August 6, 2009, the parties were notified of my appointment and the hearing convened on Friday, August 7, 2009. At the commencement of the hearing, the parties agreed that the decision of the arbitrator would not be issued in forty-eight hours and the parties agreed to extend the time for making of the decision.

PRELIMINARY OBJECTION

At the commencement of the hearing the Union made a preliminary objection maintaining that the arbitrator was without jurisdiction to hear the grievance.

POSITION OF THE PARTIES

The Union

The Union's preliminary objection stated that this arbitrator had no jurisdiction to hear the grievance and therefore should decline to proceed further. Specifically, the Union submitted that, under the scheme of the Labour Relations Act, R.S.N.L. 1990, c. L-1 (the "Act"), a determination must be made as to the appropriate parties to the Collective Agreement. It was the Union's position that other than a party to the Collective Agreement initiated this grievance.

The Union submitted that the relevant provisions of the Act allow for certification of bargaining agents and the accreditation of employers. This grievance was brought by neither. The Employer signatory to the Collective Agreement was the Construction and Labour Relations Association of Newfoundland and Labrador. That Employer has not brought this grievance.

Only the signatories to the Collective Agreement - those who are accredited or certified to act on behalf of their respective constituency – can initiate a grievance. The language throughout the Act employs the term "parties". Because this grievance was not initiated by one of the parties to the Collective Agreement this matter cannot proceed.

The July 7, 2009, request to the Minister was not from the CLRA but rather a sub-group within the CLRA who employed members of the Union. The sub-group was purporting to bring a grievance which can only come from the CLRA, which is the accredited Employer under the Act. Section 92(3) of the Act stipulates that a dispute which arises has to be between the parties to the Collective Agreement. That is not the case here. A prior grievance was brought by the CLRA itself and not a sub-group.

The Act does not allow individual members of the CLRA to bring grievances. To allow such a procedure would lead to confusion if other than the signatories to the Collective Agreement could bring grievances. The Grievor here was not purporting to represent the CLRA and, certainly, the reference to the Minister did not come from the CLRA. Any remedy given by an arbitrator could not bind the CLRA or indeed any of the members of the CLRA. No remedy therefore can be

provided. In short, the arbitrator's appointment was not made as required under the Act and therefore there is no jurisdiction in this arbitrator to proceed.

The Union provided a number of cases in support of its position, including Re: Calgary Philharmonic Society and American Federation of Musicians (1983) 9 L.A.C. (3d) 324 (Mason); Cherubini Metal Works Ltd. v. United Steelworkers of America, Local 4122 (2008) 172 L.A.C. (4th) 1 (Christie); Re Governing Council of the University of Toronto and Service Employees Union, Loc. 204 (1974) 5 L.A.C. (2d) 304 (Weatherill). The Union also made reference to excerpts from Brown and Beatty's Canadian Labour Arbitration. It was the position of the Union that the grievance cannot proceed and the preliminary objection should be allowed.

The Employer

The Employer's position is that the grievance is properly before the arbitrator and that the preliminary objection as presented by the Union cannot be upheld. The Employer maintains that the Union's interpretation of Section 92 is too simplistic. There is case law, in particular "the Barry decision", on which the Employer relies. The Union would be aware of that decision. The Employer placed the grievance – a dispute - properly before the arbitrator through a ministerial appointment under the Act. The CLRA endorsed the reference to the Minister, as is evident from their July 24, 2009, correspondence. This was all in order. What the Employer is seeking is common in this jurisdiction.

The Employer submitted that this grievance arose out of a dispute as described in Section 92(12) of the Act. There was a difference between the parties. The parties are obligated to follow a grievance procedure to deal with the matter. The arbitrator has jurisdiction to look into this dispute. The Barry decision is clear in reference to that and a review of that decision should be undertaken. Further, a previous grievance put forward by the CLRA was not the same as the grievance in this instance. The language was not the same. The Union's submission on that point is therefore wrong.

The Employer stated that a practical decision to resolve the difference or dispute is envisaged under Section 92(12) of the Act. Here, the Employer is seeking an accounting and is entitled to one under the Collective Agreement.

In short, a remedy is being sought by the Employer and the Minister has the authority to appoint an arbitrator. This is not merely a contractor filing a grievance but an entire sector of the CLRA. The CLRA has a right to bring this grievance through this sector.

The Employer presented a number of cases in support of its position, including the United Association of Journeymen and Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, Local 740, and Newfoundland Processing Limited and United Steelworkers of America, Loc. 9316 (1992) St. J. No. 3683 (S.C.T.D.); and The United Association of Journeymen and Apprentices et al v. United Steelworkers of America, Local 9316 (1993), 108 Nfld. & P.E.I. R. (271) (N.L.C.A.).

It is the position of the Employer that preliminary objection should be overruled and that this grievance should proceed.

CONSIDERATIONS AND REASONS FOR THE DECISION

The Union's preliminary objection is based on jurisdiction. The Union maintains that the Employer launching the grievance is not a party to the Collective Agreement. However, the Employer submits that there is a right for these Employers in the Plumbing and Pipefitting sector of the CLRA to initiate this grievance.

In the submissions, the parties, in my view, correctly focused on the Act and what flows from accreditation. Sack and Poskanzer in Labour Law Terms – A Dictionary of Canadian Labour Law, provide this definition of accreditation:

> **Accreditation: The process by which a labour board grants exclusive bargaining rights to an employer organization so that it may negotiate for a unit or group of employers.**

George W. Adams in Canadian Labour Arbitration at 15.440 describes accreditation in this way:

In order to create a more equitable bargaining structure, many Canadian labour relations statues contemplate the concept of accreditation of employers' organization. "Accreditation" is to employers' organizations what "certification" is to trade unions.

The Act provides relevant definitions, the prerequisites for accreditation, and the results and effects of accreditation. Relevant sections of the Act include:

54. (1) In this Division,

(a) "accredited employers' organization" means an organization of employers that is accredited under this Act as the bargaining agent for a unit of employers in the construction industry;

(b) "construction industry" means the on-site constructing, erecting, altering, decorating, repairing or demolishing of buildings, structures, roads, sewers, water mains, pipe lines, tunnels, shafts, bridges, wharves, piers, canals or other works;

(c) "sector" means the following divisions of the construction industry, namely:

(i) the industrial and commercial division,

(ii) the house building division,

(iii) the sewers, tunnels and water mains division, or

(iv) the road building division,

and includes other divisions of that industry that may be determined by the board;

(d) "unionized employee" means an employee on behalf of whom a trade union or council of trade unions has been certified as bargaining agent under this Act or voluntarily recognized by an employer, where the certification has not been revoked or the bargaining rights have not been terminated; and

(e) "unionized employer" means an employer of unionized employees in the geographic area and sector concerned.

(2) For the purposes of this Division, an employee is, in respect of a sector and area applied for, a person who was on the payroll of an employer in that sector and area for the weekly payroll period immediately preceding the date of the application, or, where, in the opinion of the board, the payroll period is unsatisfactory for 1 or more of the unionized employers in the sector and area applied for, then, the

other weekly payroll period of 1 or more of the employers that the board considers advisable.

Application of sections

57. Sections 58 to 68 apply only to the construction industry.

Accreditation as sole agent

58. Subject to the rules of the board, an employers' organization that claims to represent the unionized employers in a geographic area engaged in a particular sector of the construction industry may make application in a form approved by the board to be accredited as the sole collective agent for all unionized employers in the section of the construction industry in that geographic area.

Representation vote of employers

59. (1) Where an employers' organization referred to in section 58 makes application under that section, the board shall ascertain the number of unionized employers in the geographic area and sector applied for and the number of them who were members of the employers' organization at the time the application was made, and where it considers it desirable to do so, the board may hold a representation vote of employers in that sector.

(2) Where an application is made under section 58, the board

(a) shall determine the geographic area and sector that is appropriate for accreditation;

(b) may designate the whole or a part of the province as an appropriate geographic area; and

(c) may, before accreditation, where it considers it appropriate to do so, include additional employers in or exclude employers from the unit.

(3) An employers' organization that discriminates against a person because of race, religion, creed, sex, martial status, political opinion, colour, or ethnic, national or social origin may not be accredited.

(4) An accredited employers' organization, and a person acting on behalf of an accredited employers' organization, shall not deny membership to an employer for whom it is the bargaining agent for a reason other than refusal or failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the employers' organization as a condition of acquiring or retaining membership in the organization.

Prerequisites of accreditation, etc.

60. (1) Before the board accredits an employers' organization, the board shall satisfy itself that

(a) the employers' organization is a properly constituted organization controlled by its members; and

(b) each of its members has vested appropriate authority in the organization to enable it to discharge the responsibilities of an accredited bargaining agent.

(2) Where the board is of the opinion that appropriate authority has not been vested in the employers' organization, the board may dismiss or postpone disposition of the application to enable employers who are members of the employers' organization to vest in the organization whatever additional or other authority the board considers necessary.

Accreditation

61. (1) Where an application is made under section 58 and the board is satisfied that the employers' organization has met all of the requirements prescribed under this Act and

(a) has as members a majority of the unionized employers in the geographic area and sector applied for; or

(b) has as members

(i) no less than 35% of the unionized employers in the geographic area and sector applied for, and

(ii) those employers who employ a majority of the employees employed by unionized employers in the geographic area and section applied for,

the board may accredit the employers' organization as the sole collective bargaining agent to bargain on behalf of all unionized employers with all trade unions or councils of trade unions in the area and sector determined by the board as an appropriate unit.

(2) Notwithstanding subsection (1), the board shall not accredit an employers' organization to bargain on behalf of an unionized employer engaged in a special project.

Results of accreditation

62. (1) Upon accreditation, all rights, duties and obligations under this Act of employers for whom the accredited employers' organization is or becomes the bargaining agent apply to the accredited employers' organization, and a collective agreement between an employer and a trade union or council of trade unions that is in force at the date of accreditation of an employers' organization does not bar a trade union or council of trade unions from giving notice to the accredited employers' organization to start collective bargaining nor does it bar the accredited employers' organization from giving notice to a trade union or council of trade unions to start collective bargaining.

(2) Notwithstanding subsection 64(1), when, at the time an employers' organization is accredited, a collective agreement between an employer referred to in subsection (1) of this section and a trade union or council of trade unions is in force, that collective agreement terminates and is no longer in force,

(a) where a collective agreement is concluded between the accredited employers' organization and the trade union or council of trade unions, on the date of signing or the date on which the collective agreement comes into force, whichever is later; or

(b) where a collective agreement is not concluded between the accredited employers' organization and the trade union or council or trade unions, on the date on which a strike or lockout is permitted in accordance with this Act.

Addition of employers

63. (1) Where an employers' organization has been accredited and after the date of the accreditation order, a trade union or a council of trade unions is certified for or voluntarily recognized by another employer in the sector and area covered by the accreditation order, the bargaining rights, duties and obligations of that employer, whether he or she becomes a member of the accredited organization or not, are vested in or imposed on the employers' organization and the employer is bound by a collective agreement in effect or subsequently negotiated between the accredited employers' organization and a trade union or council of trade unions in that sector.

(2) Notwithstanding that an employer's membership in an accredited employers' organization is terminated, the accredited employers' organization may exercise all rights and shall discharge all duties and obligations acquired by or imposed on it under this Act on behalf of the employer until the accreditation has been revoked.

Collective agreements

64. (1) A collective agreement entered into between an employers' organization and a trade union, or council of trade unions, is binding upon the employers'

organization, employers whose bargaining rights have been acquired by the employers' organization engaged in the construction industry in the sector and area covered by the accreditation order, the trade union, council of trade unions and employees within the scope of the collective agreement.

(2) A collective agreement shall not be individually negotiated between an employer in the sector and geographic area in respect of which an employers' organization has been accredited and a trade union or council of trade unions, and, where a collective agreement is entered into, it is void.

Settlement by arbitration

92. (1) This section applies only to the construction industry.

(2) Where an employer or employers' organization has entered into a collective agreement, then, notwithstanding anything to the contrary in this Act or in the collective agreement, a dispute or difference between the parties to the collective agreement, including persons bound by the collective agreement, relating to or involving

(a) the interpretation, meaning, application or administration of the collective agreement or a provision of the collective agreement;

(b) a violation or an allegation of a violation of the collective agreement;

(c) working conditions; or

(d) a question whether a matter is arbitrable,

shall be submitted for final settlement to arbitration in accordance with this section in substitution for an arbitration or arbitration procedure provided for in the collective agreement.

(3) Where a dispute or difference arises between the parties to a collective agreement to which this section applies, during the period from the date of its termination to the date the requirements of section 98 have been met, this section applies to the settlement of the dispute or difference.

(4) Where a dispute or difference arises that the parties are unable to resolve on the day on which the dispute or difference arises, the parties to the dispute or difference shall agree by midnight of that day upon the appointment of a single arbitrator to arbitrate the dispute or difference.

(5) Where 1 of the parties advises the minister that a dispute or difference has arisen and that the parties to the dispute or difference have failed to comply with subsection (4) or (12), the minister shall, as soon as possible, appoint an arbitrator.

(6) The minister may, with the written consent of the employer or employers' organization and the bargaining agent representing the employees, appoint a person to be the arbitrator for the purposes of this section for the term of the collective agreement or for a term prescribed in the appointment, and where an appointment is made under this subsection, subsections (4) and (5) do not apply.

(7) The arbitrator appointed under subsection (4), (5) or (6), has the powers conferred on an arbitration board by this Act and, without restricting his or her power and authority, the arbitrator's decision is an order and may require

(a) compliance with the collective agreement in the manner stipulated; and

(b) reinstatement of an employee in the case of a dismissal or suspension instead of dismissal with or without compensation.

(8) The decision of the arbitrator shall be made within 48 hours of the time of appointment unless an extension is agreed upon by the parties.

(9) The parties to the dispute or difference are bound by the decision of the arbitrator from the time the decision is made and shall abide by and carry out a requirement contained in the decision.

(10) An arbitrator appointed under this section who makes a decision in respect of a dispute or difference shall make a report on it and transmit it to the minister and to the parties.

(11) The provisions of this Act relating to an arbitration board apply, with the necessary changes, to and in respect of an arbitrator appointed under subsection (4), (5) or (6).

(12) Where the parties to a dispute or difference agree before midnight of the day on which the dispute or difference arises to invoke a grievance procedure contained in the collective agreement instead of proceeding as required by subsection (4), the parties may so settle the dispute or difference and failing settlement by those means the parties may, notwithstanding anything in this section, proceed to settlement by arbitration under section 86.

(13) For the purposes of this section, "construction industry" means the on-site constructing, erecting, altering, decorating, repairing or demolishing of buildings, structures, roads, sewers, water mains, pipe lines, tunnels, shafts, bridges, wharves, piers, canals or other works.

On October 12, 1976, the Labour Relations Board ordered that the Newfoundland Construction Labour Relations Association (the "CLRA") was accredited to be the sole collective bargaining agent for all unionized employers in the industrial and commercial sector of the construction industry in the province. The CLRA thereby became an accredited employers' organization as defined under Section 54(1)(a) of the Act. Section 62 of the Act states that upon accreditation all employer rights, duties and obligations under the Act, for whom the accredited employers' association is or becomes the bargaining agent, apply to the accredited employers' organization. Section 64(1) of the Act provides that a collective agreement entered into between employers' organization and a trade union or counsel of trade unions is binding upon the employers' organization, employers whose bargaining rights have been acquired by the employers' organization engaged in the construction industry in the sector and area covered by the accreditation order. A bargaining agent, of course, has the legal authority to act as the exclusive representative in matters relating to the negotiation and administration of collective agreements.

The Collective Labour Agreement (2003-2011), which governs in this instance, was entered into between the Construction Labour Relations Association of Newfoundland and Labrador, together with the Mechanical Contractor's Association of Newfoundland and Labrador and other mechanical contractors and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 740. The effective date of the contract was March 1, 2006, and the contract was signed on October 27, 2006, for the Construction Labour Relations Association of Newfoundland and Labrador (CLRA) by its Chairman and by its Vice-President. A Memorandum of Understanding between the Construction Labour Relations Association of Newfoundland and Labrador Inc. and the United Association of Plumbers and Pipefitters, Local 740, on the subject "targeting clause" was executed on October 27, 2006, for the CLRA by its Chairman and by its Vice-President. A Letter of Understanding between CLRA and the Plumbers and Pipefitters, Local 740, appended to the Collective Agreement, was signed for the CLRA by its Chairman and President. A previous Collective Agreement dated October 29, 2000, was also signed for the CLRA by its Chairman and President.

The Collective Agreement, the previous collective agreements and all related documents as referenced above are consistent with the Accreditation Order; all have been executed by the parties

to the Collective Agreement, namely the CLRA and the Union. However, that was not the case in this July 8, 2009, management grievance. The CLRA did not initiate the grievance, but rather the Plumbing and Pipefitting sector employers, who are members of the Construction Labour Relations Association of Newfoundland and Labrador Inc. These employers are of course bound by the Accreditation Order of the Labour Relations Board. However, none of these employers are parties to the Collective Agreement. The management grievance is signed on behalf of these employers by Jack Bavis, Chairperson, Plumbing and Pipefitter Sector members and not by the CLRA. I find, based on the foregoing, that this management grievance is inconsistent with the Accreditation Order, which makes the CLRA the accredited collective bargaining agent. The Accreditation Order does not give bargaining rights to individual employer members or relevant sectors of the CLRA. The Employers who are grieving in this particular instance are covered by the Accreditation Order, but these Employers are not the accredited collective bargaining agent.

Further, the evidence is that subsequent to the sector employers submitting this management grievance for action by the Minister, the President of CLRA wrote the Minister on July 24, 2009, stating that the grievance was properly processed and approved by the Plumbing and Pipefitting sector of the CLRA. The CLRA stated that the Plumbing and Pipefitting sector of the CLRA was authorized to proceed to file and handle the grievance and to seek full redress from the Union. With respect, there is nothing under the Act permitting an accredited sole collective bargaining agent to delegate any of its responsibilities to any sector or any particular employer. The legislature did not see fit to include any such delegation in the relevant sections of the Act which provide for the Accreditation Order. The Accreditation Order is unambiguous; the sole collective bargaining agent is the CLRA.

In summary the Plumbing and Pipefitting Sector employers who initiated this July 8, 2009, management grievance are not signatories to the Collective Agreement and are not the accredited collective bargaining agent. Only the accredited collective bargaining agent, the CLRA, has authority to initiate the grievance and not sector employers who are not a party to the Collective Agreement. In the result, this management grievance is not properly before this arbitrator and the arbitrator is without jurisdiction to hear this matter.

DECISION

In conclusion, having carefully considered the relevant Articles of the Collective Agreement, all of the evidence, the cases submitted and the arbitral jurisprudence as it relates to this matter, I find that the preliminary objection is allowed.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 14th day of December, 2009.

____
Dennis M. Browne, Q.C.
Arbitrator / Mediator