Court of King's Bench of Alberta

Citation: Construction and General Workers' Union, Local No. 92 v Mikisew Maintenance Limited, 2023 ABKB 506

Date: 20230905
Docket: 2103 09625
Registry: Edmonton

Between:

Construction and General Workers' Union, Local No. 92

Applicants

- and -

Mikisew Maintenance Limited / MM Limited Partnership, Mikisew Fleet Maintenance / MFM Limited Partnership, and Alberta Labour Relations Board

Respondents

Memorandum of Decision
of the
Honourable Justice J.M. Ross

Introduction

[1] This is an application for judicial review of a decision of the Alberta Labour Relations Board (the Board) dismissing a common employer application.

[2] The Respondent companies, Mikisew Maintenance Limited/MM Limited Partnership (MML) and Mikisew Fleet Maintenance/MFM Limited Partnership (MFM) are run by a single

business called the Mikisew Group of Companies (the MGoC). The Applicant, Construction and General Workers' Union, Local No 92 (the Union) has a bargaining relationship with MML, but not with MFM.

[3] Since 2012 MML has employed Union members at the Suncor Base Plant to provide general maintenance labour services under the General Presidents' Maintenance Agreement (GPMA). The GPMA is a collective agreement for maintenance work that is negotiated between a number of unions and employers.

[4] In 2018 MFM started employing non-union members at the Fort Hills Suncor site.

[5] It is the Union's position that MML and MFM are one and the same employer for labour relations purposes, and that the MGoC used MFM, rather than MML, to employ Fort Hills maintenance workers in order to avoid the requirement that MML employ unionized workers.

[6] The Union applied before the Board to have MML and MFM declared to be common employers. On May 4, 2021, the Board dismissed the application because it found that the scope of the MML bargaining unit for which the Union had representational rights did not include maintenance labourer work at Fort Hills (the Decision).

[7] Following the Decision, the Union applied to the Board to reconsider under section 12(4) of the *Labour Relations Code*, RSA 2000, c L-1 (the *Code*). The Board summarily dismissed the reconsideration application on September 30, 2022.

[8] In ***Wilson v Alberta Labour Relations Board***, 2021 ABQB 673, at paras 34-38, this Court held that a reconsideration decision is not relevant to a judicial review application of the Board's underlying decision where the Board dismissed the application and did not order a reconsideration hearing. In those circumstances, the Board's reconsideration decision is simply an exercise of its discretion not to reconsider its decision; it is not a review of the underlying decision's merits. The parties agree that the reconsideration decision is not relevant to this application.

Facts

[9] The Union's bargaining relationship with MML arose in 2011, when MML entered into an adherence agreement (the Adherence Agreement) with the General Presidents' Maintenance Committee (GPMC). The GPMC negotiates GPMAs.

[10] The Adherence Agreement applied to the sites "Syncrude Canada Limited, Mildred Lake Alberta," "Albian Sands Energy Inc., Muskeg River, Alberta," and a further site identified as "Suncor" in a handwritten notation. The Adherence Agreement stated:

> The Employer agrees to be bound by the terms and conditions of The General Presidents' Maintenance Agreement in force at the Albian and Syncrude Sites and as may be amended from time to time for maintenance, repair, renovation, revamp, and upkeep.

[11] Starting in 2012, MML provided general maintenance labour services at the Suncor Base Plant site. MML conducted its work at Base Plant in accordance with the GPMA applicable to that site. The applicable GPMA had been in effect since January 1, 2012 (the 2012 GPMA). Like other GPMAs, the 2012 GPMA was not negotiated exclusively between the Union and MML. However, the Union and MML were listed as signatory parties.

[12] The 2012 GPMA specified that it applied to "Suncor Inc., located at Tar Island, Alberta including Firebag In-Situ Project, Nexen Long Lake Complex, Ft McMurray, Alberta." This description includes the Base Plant where MML performed maintenance labour services. MML labourers at the Base Plant were Union members, as required by the 2012 GPMA.

[13] Fort Hills was not listed as a site in the 2012 GPMA. The Fort Hills site was under construction at the time.

[14] In January 2016 negotiations took place leading to the 2016 GPMA. The negotiation sessions went on for months. Ms. Couture, human resources manager for the MGoC, testified before the Board that she and Mr. Seaward, a site manager for MML, attended for one or two days of the sessions to get an idea of what was being discussed, including overtime rates, statutory holidays and a different compressed work schedule. She did not recall any discussion as to what sites the GPMA applied to.

[15] On March 23, 2016, the Executive Director of the GPMC sent a long list of company and union representatives an email attaching the Terms of Settlement for the renewal of Alberta GPMAs, including the 2016 GPMA applicable to Suncor. The email indicated that employers were authorized to implement the revised terms and conditions on the effective date (April 2, 2016). The Terms of Settlement were applicable to specified sites including "Suncor Inc., Tar Island Alberta including Firebag In-Situ Project and Fort Hills Project."

[16] Ms. Couture testified that she "did nothing" on receiving the March 23rd email, because of other matters pre-occupying the MGoC business. She could not open the Terms of Settlement attachment and she did not pass the email on to anyone else. No one from MML signed.

[17] The 2016 GPMA states:

> This Agreement is entered into this 3rd day of April 2016 by and between the signatory Employer Representatives listed in Appendix "C", (hereinafter referred to as the Company), and those International Unions listed hereunder (hereinafter referred to as the "Unions"), for the purpose of maintenance, repair and renovation work for the following projects:
>
> Suncor Inc., located at Tar Island, Alberta including Firebag In-Situ Project, Fort Hills and Mackay River

[18] Under Appendix C of the 2016 GPMA, MML is listed as a signatory employer to the GPMA at the "Suncor Site located at Tar Island, Alberta including Firebag In-Situ Project and Fort Hills".

[19] There was no evidence that anyone on behalf of MML raised objections to continuing as a signatory employer under the 2016 GPMA. The terms and conditions of the 2016 GPMA were applied by MML at the Suncor Base Plant, including the requirement that MML labourers working under the agreement be Union members.

[20] In the fall of 2016, Suncor issued an RFP for general labour services at Fort Hills. The RFP specified that proponents were to include rate tables for "Non-Union Direct Labour Reimbursable Personnel and Rates."

[21] Mr. Jonah, General Manager of MGoC, responded to the RFP identifying MFM as the proponent. This was done because MFM could provide a lower cost for labour. MML had the most relevant experience for the work, but Mr. Jonah testified that it was a "non-starter" for

MML to bid on Fort Hills, given its labour rates were higher than Suncor was prepared to pay for work at the site: Decision at para 44.

[22] The MFM bid documents were required to provide relevant experience. In response, MFM listed not only fleet services that it was providing at the time, but also work MML was performing at the Suncor Base Plant. Resumes for MML management personnel were provided, and MML's safety statistics were relied on. Mr. Jonah testified that MML's experience was relied on "to show we had the management expertise to manage the scale of the work; our expertise was in MML, that's why we used them": Decision at paras 46-47.

[23] MFM was successful in its bid. The Fort Hills "General Labour Services" work is performed by non-union maintenance labourers and not in accordance with the 2016 GPMA. Mr. Jonah acknowledged that the type of work was "relatively the same" as that performed by MML at the Base Plant: Decision at para 52.

Statutory Conditions

[24] Common employer applications are governed by section 47 of the *Code*, which provides:

> 47(1) On the application of an employer or a trade union affected, when, in the opinion of the Board, associated or related activities or businesses, undertakings or other activities are carried on under common control or direction by or through more than one corporation, partnership, person or association of persons, the Board may declare the corporations, partnerships, persons or associations of persons to be one employer for the purposes of this Act.
>
> (2) If, in an application under subsection (1), the Board considers that activities or businesses, undertakings or other activities are carried on by or through more than one corporation, partnership, person or association of persons in order to avoid a collective bargaining relationship, the Board shall make a declaration under subsection (1) with respect to those corporations, partnerships, persons or associations and the Board may grant any relief, by way of declaration or otherwise, that it considers appropriate, effective as of the date on which the application was made or any subsequent date.
>
> (3) This section does not apply with respect to employers engaged in the construction industry in respect of work in that industry.

[25] The Board identified four statutory conditions that must be met to issue a common employer declaration (at para 63):

- the applicant is an affected employer or trade union;
- the activities are associated or related;
- there is common control or direction; and
- there is more than one entity.

[26] Where these conditions are met, the Board must decide whether the activities have been undertaken to avoid a collective bargaining relationship. Where the Board does not find that the motivation of the employer's actions was to avoid a collective bargaining relationship, it has discretion whether to grand a common employer declaration.

[27] There was agreement that the last three conditions were met. MML and MFM were different legal entities. The Respondents conceded that they were carrying on associated or related activities and that they were under common control or direction.

[28] The Respondents' argument before the Board was that the Union had not established bargaining rights to MML work at Fort Hills. The Board noted that this "core question" of whether a union has bargaining rights is unusual in a common employer application (Decision at para 64). However, the Board agreed that this was a requirement for the Union's application:

> 68 This case turns on determining the scope of the MML bargaining unit for which the Union has representational rights. If those rights do not include the maintenance labourer work at Fort Hills, there is no foundation for the Union's common employer application.

[29] The Applicant submits that the statutory condition in dispute was whether the Union was an "affected" trade union. This turns on whether MML would be bound to the Union's bargaining relationship if it performed the work that MFM performed. The Respondents agree that this is the statutory condition in dispute and submit that the Decision makes it clear that the Board agreed as well. The Union would not be an affected trade union unless its bargaining relationship with MML included representational rights over maintenance labourer work at Fort Hills.

Issue

[30] The parties agree that the applicable standard of review is reasonableness: ***Canada (Minister of Citizenship and Immigration) v Vavilov***, 2019 SCC 65.

[31] The agreed issue on this judicial review is whether the Board made an unreasonable decision in finding that the scope of the Union's bargaining relationship with MML did not include Fort Hills.

Board Decision

[32] The Board summarized the arguments of the parties on the issue of the scope of the Union's bargaining relationship with MML. First, the Union:

> 55 According to the Union, MML never attempted to resile from the GPMA or assert the agreements' geographic scope was in error. MML continued to apply the terms of the 2016 GPMA to its work at the Suncor Base Plant despite not signing it. The 2016 GPMA clearly identifies it applies to Fort Hills. This is not an attempt by the Union to expand its bargaining rights as the GPMA was intended to apply to all Suncor sites, a process that would have started in 2014 when Fort Hills was transitioning from construction to maintenance work and when MML attempted, without success, to secure project maintenance work there.
>
> 56 The Union asserts that in non-certified bargaining relationships it is the scope clause in the collective agreement that defines the boundaries of the relationship… and arguing that here, as there is no certified bargaining unit, the GPMA establishes the scope of the bargaining rights.

> 57 The Union argues MML knew it was bound by the GPMA and it sought to avoid that reality in 2016 by having MFM bid the Fort Hills work at lower rates…

[33] Second, the Employer:

> 59 The Employer argues the Union's bargaining rights arise from MML voluntarily recognizing the Union for maintenance work at the Base Plant and the Union must prove MML gave consent at the outset that those rights could be expanded without further agreement from MML. In the absence of such proof, the Union's case must fail…
>
> 60 The Employer asserts there is no evidence that MML signed the 2016 GPMA or agreed the Union's bargaining rights extended beyond the Base Site… The Union has called no evidence to explain how the 2011 Adherence Agreement or key provisions of the GPMA could be interpreted to extend beyond the Base Plant. Nor has it provided clear and conclusive evidence the Union has been voluntarily recognized for a unit of employees performing maintenance labour work at the Fort Hills site. Voluntary recognition agreements are generally required to be in writing, express an agreement between the parties, be signed by the parties, establish an actual recognition by the employer that the union is an exclusive bargaining agent of its employees, and define the bargaining unit affected…
>
> 61 The Employer argues employers and unions in Alberta are able to define the conditions on which their voluntary recognition relationships can be created and ended and this may include defining the scope of that recognition including to which plant, facility or location it attaches. The evidence in this case however does not reveal there were any discussions let alone clear agreement about Fort Hills or the scope clause for the GPMA in 2016 when maintenance work was being bid on for Fort Hills.

[34] The Board commenced its consideration of the issue with comments regarding the maintenance service industry, and the role of the GPMC in it.

[35] It is open to owners of industrial plants to pursue various options regarding maintenance services. They may employ in-house personnel or they may contract with companies who provide industrial maintenance services. Some of these contractors are signatories to agreements negotiated by the GPMC, some have bargaining relationships with other unions, some have no union representation. The Board referred to comments in the 2013 Alberta Construction Labour Legislation Review Report authored by Andrew C.L. Sims Q.C. (the Sims Report), at page 138, regarding these agreements:

> The GPMC delivers two maintenance agreements, the GPMA for on-going construction maintenance and the NMA for short duration, intermittent maintenance. These are multi-craft collective agreements with all the trades working together under the same terms and conditions although with craft-based rates. To succeed, these agreements have had to achieve two things; no strikes or lockouts that might delay production and a steady supply of skilled labour on an as-needed basis…

> While there are other contractors involved in this work with bargaining relationships with CLAC or other alternative unions, or with no union representation, it remains a part of the industry where the GPMC group remains dominant.
>
> Decision at para 69.

[36] The Board observed that the building trades' portion of the market share for labour was undergoing changes, again referring to the Sims Report, at page 65:

> …while owners once insisted that all on-site work be handled through building trade unionized contractors, that is now far from the case. The market has become more open to the various contractor labour relations arrangements, placing contractors and their union partners if any, under competitive pressure.
>
> Decision, para 70.

[37] The Board further noted that an owner's flexibility in how it meets its maintenance needs is reflected in the GPMA at Article 5.300: "The Unions and the Company understand that the Owner may, at his discretion, choose to perform or directly subcontract for any part or parts of the work necessary in his plant": Decision at para 71.

[38] The Board referred to general comments about GPMAs, including ***Dezentje v Bendfeld***, [1999] Alta LRRB 267, 1999 CarswellAlta 808, 2000 ABQB 267 (rev'd but not on this point and then restored in 2002 ABCA 249):

> 16 The maintenance industry bargaining structure that has emerged in Canada involves the building trade unions forming a type of consortium to negotiate site specific multi-trade collective agreements with those contractors who have maintenance contracts with the owners of major plants.
>
> 17 In order to qualify for a GPC agreement, a contractor must be unionized and have a relationship with a building trade union that participates in the GPC. The contractor must have demonstrated its commitment to unionized work for at least a one-year period…The contractor must apply to the GPC and have a letter of commitment from the project owner.

[39] The Board concluded:

> 78 Considered in this context, when a company becomes bound to a GPMA, the company is voluntarily recognizing both the applicable international union and its associated local(s) that will be supplying the labour as having the representational rights to a unit of the company's employees performing maintenance work that falls under that international union's jurisdiction "at the Owner's plant site". This particular wording does not indicate the bargaining unit applies to all of the owner's project sites, rather it specifies a singular site.

[40] The Board's analysis and conclusion that the Union had not proved that it had representational rights for MML employees performing maintenance work at Fort Hills did not directly reflect the parties' submissions, except for a briefly described alternative ground, in which the Board appeared to adopt the Employer's argument:

> 93 Even if our analysis of these provisions is wrong, there remains no clear, conclusive evidence before the Board the Union has the representational rights it claims. Recognition agreements need to clearly identify the bargaining unit that has been acquired by the union, and in the circumstances before us, mere reliance on the projects listed in the GPMA is insufficient.

[41] Most of the Board's analysis adopted a different approach, relying on provisions of the GPMA relating to Project Agreements:

> 81 …[T]he GPMA is a rather unique collective agreement. This is exemplified by its provisions describing how a GPMA becomes a "Project Agreement for Maintenance by Contract", the name given to the document on its title page.
>
> 82 Starting in the 'Covenants' section (page 3), it states that "the Project Agreement *be made* as follows (emphasis added). We consider this choice of wording significant. While the GPMA is a ready-to-go series of collective agreements for affiliated craft-based maintenance services, it appears that it does not become a "Project Agreement" until a certain process has occurred.
>
> 83 The process is primarily set out in Article 1.000 "Application for Project Agreement", which immediately follows the Covenants section. Under Article 1.100, any company desiring to enter into a "Project Agreement for Maintenance by Contract" must appear before the GPMC "for purposes of review and orientation and present to the committee written evidence of the owner's intent to engage that company in the performance of maintenance services for a minimum period of one full year, subject to the usual termination clauses in such contracts".
>
> …
>
> 86 The GPMAs contain another noteworthy provision. Article 1.300 states that "should a contract for full or year-round supplementary maintenance be terminated during the term of this collective agreement for any projects listed, this collective agreement shall be considered null and void as it applies to that project or projects"…. As with the application process under Article 1.100, this provision appears to indicate a Project Agreement has no life outside of an active, valid commercial contract.

[42] The Board held that just as a Project Agreement begins and ends with a commercial arrangement "adopted not only by the owner and contractor but also the unions that are to provide the labour for the project" (Decision at para 87), so do the Union's representational rights.

> 88 Carefully considered, this does not support the Union's assertion its representational rights are determined by mere reference to the projects listed on a GPMA. Rather, it indicates the representational rights a union acquires under a GPMA are dependent on a process specific to a particular commercial arrangement which, if it passes muster with the GPMC and the affected unions, gives rise to a Project Agreement. This interpretation aligns with how the maintenance industry functions, in particular with respect to an owners' ability to decide if the maintenance work on one of its projects is to be performed by

> contractors affiliated with the building trades or alternative service providers. It also aligns with the phrase in the Recognition clause that indicates the bargaining unit comprises the employees performing maintenance work "at the Owner's plant site". It also provides a traversable pathway for defining the geographic scope of the bargaining unit. For if the representational rights arise pursuant to a multi-party process that, in essence, adopts a commercial maintenance contract, the geographical scope of those rights (if not clearly defined elsewhere) can also arise from that contract, via the parameters of work described in it. After all, it is a Project Agreement for Maintenance *by* Contract" [emphasis added in the Decision].
>
> 89 If we are correct in our analysis, for the Union to prove it has representational rights to the maintenance labourer work being performed at Fort Hill, it must show that the contract MML has with Suncor contemplates the work might be done there.

[43] MML had no contract with Suncor to provide maintenance labourer work at Fort Hill.

[44] The Board concluded that the Union did not have representational rights for employees performing maintenance labour work at Fort Hills. "[T]he geographic scope of the Union's current bargaining rights [was] constrained to the geographic scope of the work MML acquired by contract with Suncor"; in other words, to the Base Plant: Decision at para 92.

Parties' Submissions

The Union

[45] The Union submits that, for it to be an "affected trade union" under the *Code*'s common employer provision, the non-union company must be doing work that would be covered by the Union's bargaining relationship if the unionized company did the work.

[46] The Board's analysis was that MML did not have a bargaining relationship with the Union regarding the Fort Hills work because it did not have a contract to provide maintenance labour services at Fort Hills. The Applicant submits this approach poses the wrong question. It is not a question of whether MML already had a bargaining relationship with the Union arising out of a contract to provide work at Fort Hills, but whether MML would have had a bargaining relationship with the Union if it entered a contract to provide services at Fort Hills. The Board never identified that the key question before it was whether MML would have been bound to the Union's bargaining relationship if it worked at Fort Hills.

[47] The evidence was that the MGoC understood that, if MML performed the work at Fort Hills, that work would be subject to the Union's bargaining relationship. The Union also understood its bargaining relationship with MML covered Fort Hills. The parties' shared understanding that MML would be bound to the Union's bargaining relationship at Fort Hills was consistent with the 2016 GPMA. That agreement specifically stated "MML" was one of the employers that was signatory to the GPMA at "Suncor Site… including… Fort Hills". The Adherence Agreement also indicated MML would be bound to the Union's bargaining relationship at Suncor, and that MML agreed to "be bound" to the terms and conditions of the GPMA in force "and as may be amended".

[48] The Decision did not address the parties' understanding. Nor did it address evidence that the Respondents' rationale for using MFM at Fort Hills was to avoid MML's obligation to pay unionized labour rates.

[49] There are gaps in the Board's analysis of the Adherence Agreement. The Board found that "MML agreed to be bound by the GPMA in force at the Albian and Syncrude sites, and it would appear for an additional area designated as 'Suncor'". The Adherence Agreement in fact stated that MML agreed to be bound to these agreements "as may be amended from time to time". The Board consequently did not provide intelligible reasons for why the Adherence Agreement would not bind MML to the Union's bargaining relationship at Fort Hills, a site covered under the 2016 GPMA.

[50] The Board's analysis of the 2016 GPMA relied heavily on Articles 1.100 and 1.300, which deal with location(s) where a unionized company is actively performing work under a collective agreement at a given time. This is not necessarily the same as the territorial scope of the collective agreement. For example, in ***Canadian Appliance Manufacturing Co v USWA, Locals 3129 & 7921,*** [1978] OLAA No 124 a collective agreement covered all employees in "Metropolitan Toronto", and initially the employer only performed work at two locations in Toronto. The employer subsequently obtained work at two further locations in Toronto, and the collective agreement applied to those additional locations given the agreement's territorial scope. The scope of the Union's bargaining relationship depends on the territorial scope of the collective agreement, not where work is happening at a given time.

[51] The Board did not address another issue raised by the Union, regarding MML's participation in bargaining the 2016 GPMA without objection to including Fort Hills in the scope of the agreement, and MML's subsequent application of the 2016 GPMA to its employees working within the territorial scope of the agreement. This conduct is further evidence that MML accepted that the territorial scope of the agreement included Fort Hills. To hold otherwise, as the Board did, leads to a degree of unpredictability regarding the scope of a collective agreement that is contrary to the policy and practice of the Board, as stated in ***Aptim Services Canada Corp (Re),*** [2021] ALRBD No 52, at para 92-93, citing ***Quality Control Council of Canada, and International Radiography & Inspection Services (1976) Ltd and NDT Management Association, et al,*** [1991] Alta LRBR 141.

The Respondents

[52] The Respondents submit that the Decision is reasonable, read as a whole and in context, considering the facts that:

a. the application did not involve a certified bargaining agent with a clearly defined scope, but a voluntary recognition arising in the specific context to maintenance work at Suncor Base Plant performed in accordance with a GPMA;

b. Fort Hills was not an operating oil sands project when the Adherence Agreement was signed or the 2012 GPMA agreed to;

c. The Adherence Agreement did not state that if Suncor should begin to operate additional plants MML would recognize the Union's bargaining rights at those new plants;

d. The GPMA agreements relied on by the Union contain terms as to the process for a company wishing to become part of a project maintenance agreement by contract; that termination of the contract renders the collective agreement null and void for that project; that recognition of the union is for the owner's "plant site"; and that the scope of the agreement is limited to maintenance work at the "plant site".

e. There was no evidence MML had a commitment from Suncor for maintenance work at Fort Hills or applied to the GPMC for a project maintenance agreement;

f. The onus was on the Union;

g. In the absence of proof MML had agreed that the Union's legally binding representation rights extended to Fort Hills, binding MML to the Union for work at Fort Hills would expand the Union's representation rights, rather than protect existing rights.

[53] The statement by a witness that MGoC did not utilize MML for the Fort Hills bid because of its union labour rates is not an admission that MML was legally obliged to recognize the Union for work at Fort Hills. There are many business reasons why a contractor with existing union relations may seek work only as a unionized contractor, even if legally not bound to do so.

[54] The Board's alternative ground reflects the Respondents' argument before it, that the Union had not proved that MML's voluntary recognition of the Union expanded beyond the Base Plant. The Board agreed that recognition agreements need to clearly identify the bargaining unit that had been acquired by the Union.

Analysis

[55] The agreed standard of review is reasonableness. The Court is to determine whether the decision was justified, transparent and intelligible, and is not untenable considering the relevant factual and legal constraints. Reasonableness is a deferential standard of review, requiring that courts defer to administrative tribunals with "specialized knowledge, as demonstrated by their reasons": ***Vavilov*** at para 93. Decisions need not be perfect or comprehensive, and they must be read holistically. They are unreasonable if the reasons "fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis": ***Vavilov*** at para 103.

[56] The Board determined that the scope of the Union's bargaining relationship with MML was dependent on and limited to the extent of MML's Project Agreement for Suncor Base Plant work. I agree with the Union that this approach confuses the location where a unionized company is actively performing work under a collective agreement at a given time, and the territorial scope of the collective agreement. The scope of the Union's bargaining relationship depends on the territorial scope of the collective agreement, not where work is happening at a given time.

[57] The Board's approach ignores obligations created by the Adherence Agreement and obligations in GPMAs between signatory unions and employers. It creates consequences that are contrary not only to the parties' understanding in this case, but to general understandings regarding how the maintenance industry functions.

[58] MML entered into the Adherence Agreement in 2011, at which time it was not party to a Project Agreement and would not become so until 2012. Under the Adherence Agreement, MML agreed "to be bound by the terms and conditions of The General Presidents' Maintenance Agreement in force at the Albian and Syncrude Sites [and 'Suncor'] and as may be amended from time to time for maintenance, repair, renovation, revamp, and upkeep". The Adherence Agreement set out immediate and ongoing obligations, not obligations that were conditional on MML becoming party to a Project Agreement.

[59] GPMAs are lengthy agreements, and most of their provisions, which relate to conditions of work and wages, have no application outside the scope of a Project Agreement. But GPMAs are also agreements between signatory unions and employers, with a temporal and geographic scope that is different from Project Agreements, and with obligations that are not restricted to Project Agreements.

[60] The 2016 GPMA was entered into "by and between the signatory Employer Representatives listed in Appendix 'C', (hereinafter referred to as the "Company"), and those International Unions listed hereunder (hereinafter referred to as the "Unions"), for the purpose of maintenance, repair and renovation work for the following projects", including "Suncor Inc., located at Tar Island, Alberta including Firebag In-Situ Project, Fort Hills and McKay River)". Appendix C – List of Signatory Employers, states "As at the date of publication the following employers are signatory to the General Presidents Maintenance Agreement at the following sites: Suncor Site located at Tar Island, Alberta including Firebag In-Situ Project and Fort Hills". MML is listed as a signatory employer.

[61] The "Covenants" section of the GPMA states that the Unions and the Company are entering into "an agreement for their mutual benefit", and sets out a number of understandings, including:

> Whereas the Company is engaged in the business of Plant Maintenance and as such has the authority to sell its services, within the scope of Article 6.000 "Definitions", under the terms and conditions of this Agreement without prior knowledge or approval of the Committee-Conversely-the Company has the responsibility of satisfying the conditions of application (continuous and increasing utilization of Contract Maintenance services for specific Owner) and compliance with terms and conditions of the Agreement.

[62] Article 1.100, under the heading "Application for Project Agreement", applies to "any company desiring to enter into a Project Agreement for Maintenance by Contract", not to the list of signatory employers who are described the in the Agreement as the "Company".

[63] Article 3.000 deals with "Recognition". Here the terms specifically relate to the Company:

> 3.100 The bargaining unit under this Agreement shall comprise all employees of the Company, coming under the jurisdiction of the Unions signatory to this Agreement, now employed and employed in the future for maintenance, repair and renovation work at the Owner's plant site.
>
> 3.200 The Company and the Unions:
>
> …

> 3.202 Recognize the Unions as herein duly constituted for the purpose of bargaining collectively and administering this Agreement for the members of their respective Unions…
>
> 3.203 Agree to bargain collectively with the Unions and to be governed by the terms of this Agreement…

[64] Under the Board's approach, the Union's representation rights, and the Company's obligation to comply with the GPMA, arise only when and to the extent that they become parties to a Project Agreement under Article 1.100. The legal effect of the entire GPMA is "dependent" on that process: Decision at para 88. This means that, before a Project Agreement is entered into (or potentially after it has been terminated), the fact that an employer is signatory to a GPMA has no legal effect. An employer could sign a GPMA "for the purpose of maintenance, repair and renovation work" for a defined site, and if it subsequently obtained work at the site, it could proceed without regard to the GPMA.

[65] The Board referred to certain terms in the 2016 GPMA as supportive of its decision but ignored other provisions. For example, it noted "the phrase in the Recognition clause that indicates the bargaining unit comprises the employees performing maintenance work 'at the Owner's plant site'" (Decision at para 88). However, it did not refer to the List of Signatory Employers in Appendix C, which states that MML and other employers "are signatory" to the GPMA "at … Suncor Site located at Tar Island, Alberta including Firebag In-Situ Project and Fort Hills". The Board did not explain why this definition, including Fort Hills, would not inform interpretation of the term "Owner's plant site".

[66] The Board offered no rational chain of analysis for making all obligations under the GPMA subject to Article 1.000. The 2016 GPMA clearly states that the Unions and the signatory employers are parties who are bound by the Agreement. It does not state that the Agreement is conditional on parties entering into a Project Agreement under Article 1.000. Many terms of the GPMA, as a matter of practicality, have no application outside the scope of a Project Agreement. But others, including Article 3.000 regarding recognition of the Union, are not limited by their terms to Project Agreements.

[67] The Board stated that its interpretation aligned "with how the maintenance industry functions": Decision at para 88. But this was not how the Union and the Respondents understood the maintenance industry functioned; the evidence was that they believed that MML would be bound by the GPMA if it obtained work at Fort Hills. The descriptions of GPMAs in the Sims Report and in ***Dezentje v Bendfeld***, cited by the Board, both refer to GPMA employers as union contractors; in other words, contractors who are bound to apply the GPMA to work within its scope.

[68] Additionally, the Decision was based on an irrational chain of analysis. The Board stated that its interpretation aligned with "an owners' ability to decide if the maintenance work on one of its projects is to be performed by contractors affiliated with the building trades or alternative service providers": Decision at para 88. However, that choice is given to the owner, not to contractors. Further, the owner's choice is to choose a contractor affiliated with the building trades or an alternative service provider, not to choose to enter into a non-union contract with a union contractor.

[69] I conclude that the Board's decision that the Union's representation rights arise only under Project Agreements and not directly under the GPMA is unreasonable.

[70] The Respondents rely on the alternative basis for the Decision at para 93:

> Even if our analysis of these provisions is wrong, there remains no clear, conclusive evidence before the Board the Union has the representational rights it claims. Recognition agreements need to clearly identify the bargaining unit that has been acquired by the union, and in the circumstances before us, mere reliance on the projects listed in the GPMA is insufficient.

[71] The Respondents rely on the circumstances they placed before the Board and additional circumstances referred to on this application and submit that the Board's decision to accept their position was reasonable in the circumstances. The problem is that consideration of relevant circumstances is in the Respondents' submissions, not in the Decision. The only submission adopted by the Board is that "recognition agreements need to clearly identify the bargaining unit". There is no indication why the bargaining unit in the 2016 GPMA is not clearly identified or applicable. No reasons are given for rejecting the Union's arguments. The Board is entitled to deference to its "specialized knowledge, as demonstrated by [its] reasons", but that knowledge is not demonstrated in the single paragraph that deals with this ground in the Decision.

[72] I conclude that the alternative ground for the Decision is not justified, transparent and intelligible. On this ground, as well, the Decision is unreasonable.

Conclusion

[73] The Union's application for judicial review is granted. The Decision is overturned, and the Union's common employer application is remitted to a new panel of the Board.

Heard on the 19th day of January, 2023.
Dated at the City of Edmonton, Alberta this 5th day of September, 2023.

J.M. Ross
J.C.K.B.A.

Appearances:

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