Canadian Labour Congress
Congrès du travail du Canada

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September 17, 2003

By Facsimile

Dave Haggard
President
Industrial, Wood & Allied Workers of Canada
(IWA-Canada)
300-3920 Norland Avenue
Burnaby, BC
V5G 4K7

Dear Brother Haggard :

RE: ID #207/2003, CUPE and IWA-Canada
Allegations of Violations of the CLC Constitution

I enclose for your information a copy of the determination of the Impartial Umpire in the referral by me of the above-mentioned dispute to him for consideration. As you will note, the Umpire has found the Industrial, Wood & Allied Workers of Canada (IWA-Canada) and its Local 1-3567 in violation of Article IV, Section 4 of the CLC Constitution.

I wish to draw your attention to Article IV, Section 8 (b) of the Constitution of the Canadian Labour Congress. Accordingly, would you please advise me, in writing, prior to October 2, 2003 what steps you are taking to come into compliance with the CLC Constitution.

In Solidarity,

Kenneth V. Georgetti,
President

KVG/daa
Encl.

c.c.: CLC Officers & Assistants
J. Darcy, M. MacIsaac

DECISION OF IMPARTIAL UMPIRE
RE: ID #207/2003
Allegations of Violations of the CLC Constitution

CANADIAN UNION OF PUBLIC EMPLOYEES (CUPE)

VS

INDUSTRIAL, WOOD AND ALLIED WORKERS OF CANADA (IWA)

Representing CUPE: **Carol Reardon, Legal Counsel HEU/CUPE**
Judy Darcy, National President CUPE
Chris Allnutt, Secretary-Business Manager HEU/CUPE
Susan Fisher, Director Assigned to Organizing HEU/CUPE
Brenda Jordison, Chair HEU/CUPE 6142
David Tarasoff, Legal Counsel HEU/CUPE
Mary Laplante, Financial Secretary HEU/CUPE
Colleen Fitzpatrick, First V.P. HEU/CUPE

Representing IWA: **Dave Haggard, President**
Scott Lunny, National Staff
Sonny Ghag, President Local 1-3567
Brian Lund, Organizer Local 1-3567

Also present on August 25, 2003 **Larry Brown, Secretary Treasurer NUPGE**
Brooke Sundin, UFCW International V.P. and President UFCW Local 1518

This is a complaint in which CUPE alleges that IWA and its Local 1-3567 have violated Section 4 of Article 4 of the Canadian Labour Congress (CLC) Constitution.

On February 18, 2003 CUPE filed charges with the President of the CLC, pursuant to the CLC Disputes Protocol, alleging that IWA had violated the Protocol and Article 6 of the CLC Constitution.

On February 25, 2003 IWA filed a complaint alleging that Hospital Employees Union (HEU)/CUPE was in violation of Section 3 and Section 5 of Article 4, and Article 6 of the CLC Constitution.

The President issued a decision which did not uphold the CUPE complaint under the Disputes Protocol on March 7, 2003. Throughout this period there have been numerous efforts to find a resolution including meetings and written communications between the leadership of the CLC and the two affiliates. On August 1, 2003 the President of the CLC wrote to Dave Haggard, President of IWA, and Judy Darcy, President of CUPE, indicating that he would refer the matter to an impartial umpire. In this letter the

President indicated that attempts for more than a year had failed to find a resolution to this dispute, he noted that some of the allegations are very serious and expressed concern over long term negative implications for the Health Care Sector and the integrity and solidarity of the labour movement. I was appointed as impartial umpire by letter dated August 11, 2003 "*for the purpose of having discussions and of holding a hearing in regards to allegations by the parties, of violations of the CLC Constitution. A determination is requested in accordance with Article 4 Section 8.*"

Hearings were held in Vancouver on August 25th, 26th and 27th 2003. At the commencement of the hearing I was advised by IWA that it did not wish to proceed with its charges contained in the complaint filed on February 25, 2003. Consequently the only matters before me are those related to CUPE's allegations concerning a violation of Section 4 of Article 4.

On two occasions during the hearings I met with the parties separately to explore the possibility of a negotiated settlement, some progress was made, however, we were unable to resolve all issues necessary for there to be an agreed upon resolution.

Section 4 of Article 4 reads as follows:

"Each affiliate shall respect the established work relationship of every other affiliate. For purposes of this Article an "established work relationship" shall be deemed to exist as to any work of a kind which the members of an organization have customarily performed at a particular plant, office, institution or work site, whether their employer is the plant operator, a contractor, or other employer. No affiliate shall by agreement or collusion with any employer or by exercise of economic pressure, seek to obtain work for its members as to which an established work relationship exists with any other affiliate, except with the consent of such affiliate. Cases involving merger or reorganization of plants or companies under circumstances which eliminate the separate entities of previous bargaining units, will be referred directly to the President."

The HEU has a long history of representing health care employees in British Columbia. There are approximately 45,000 workers covered by the Health Services and Support Facilities Subsector (HSSFS) collective agreement, of these approximately 42,000 are members of HEU. The remainder are represented by nine other unions.

The collective agreement reflects many years of collective bargaining under various structures and contains employment security provisions, including assurances that the employers *"will not contract out bargaining unit work that will result in the layoff of employees within the bargaining unit, during the term of this agreement"*.

The IWA is a union with a long history in Canada, its members work primarily in the forest products industry, however it has members in the Health Care Sector and its right to organize in the Health Care Sector is not in question.
The essential details are, generally speaking, not in dispute.

On January 28, 2002, the Legislature of British Columbia enacted the Health and Social Delivery Improvement Act, Bill 29. The Bill grants extraordinary powers to Health Care Sector employers by excluding health care workers from the protection of certain provisions of the British Columbia Labour Code, including those provisions dealing with successorship and common employer determinations.

In addition Bill 29:

(a) nullifies any provisions in a collective agreement that restrict the right of Health Care Sector employers to contract out work and
(b) provides that, until December 2005, collective agreements must not contain a provision that limits Health Care Sector employers from laying off an employee, and
(c) nullifies employer obligations to participate in a regional process for redeploying and retraining health care workers who are displaced from employment due to restructuring or technological change.

During the period following the enactment of Bill 29, up to and including the present time, employers in the Health Care Sector have engaged in initiatives to contract out work performed by members of HEU covered by the HSSFS collective agreement. These employers include the following:

Renfrew Care Centre
Vancouver Coastal Health Authority
Beacon Hill Villa
Evergreen Baptist Home
Normanna Rest Home
Sunset Lodge

The work is question is laundry and housekeeping and/or food and dietary services. Typically, employees in the affected units are given notice that their work will be contracted out, and that they will be laid off at the time the contractor assumes the responsibility for performing the work. In some cases the employees to be displaced were advised that they could apply for employment with the contractor. In at least one case one or two HEU members were hired, but generally speaking the contractors did not hire HEU members.

During this period it is clear that the contractors have engaged in activities designed to assemble a workforce competent to perform the work, with wages and benefits which permit them to offer cost effective services to the various Health Care Institutions. At the same time their actions appear designed to reduce or eliminate the possibility of employees seeking to negotiate wages and working conditions similar to those enjoyed by the laid off employees.

Early in 2002, approaches were made by representatives of contractors to unions other than the HEU. These approaches offered the prospect of voluntary recognition agreements to a union prepared to enter into collective agreements with terms suitable to

the contractors. There is information that at least two CLC affiliates were approached and declined such offers.

As the various Health Care Institutions began the process of contracting out the work and laying off employees, IWA Local 1-3567 became involved in activities to obtain bargaining rights to represent employees of the contractors. The contractors involved are primarily Compass Canada and Aramark Canada Facilities Services Ltd. Prior to this time IWA had not had collective bargaining relationships with these contractors in British Columbia.

At the Renfrew Care Centre, two subsidiaries of Compass Canada were awarded contracts to provide food and dietary services and laundry and housekeeping. As a result approximately forty-five members of HEU were laid off. Compass hired twenty-four employees to work at the Renfrew site. These newly hired employees were required to attend a meeting at another site. At this meeting Compass management introduced two IWA representatives who asked the new hires to sign IWA membership cards. It would appear that insufficient numbers signed with IWA because in September 2002, the HEU was certified to represent employees of Compass in the food, dietary and laundry services unit at Renfrew.

Collective bargaining between Compass and HEU took place but no collective agreement was reached, and in July 2003 Compass advised HEU that the contract with Renfrew would be terminated as of September 30, 2003. Compass employees, represented by HEU, will be laid off; they have been advised that they will not be offered work at other Compass sites because they signed cards with HEU.

At Vancouver General Hospital, a unit of Vancouver Costal Health Authority, Compass Canada was awarded a contract to provide housekeeping services in certain buildings. The contract commenced on December 9, 2002 and on the same day IWA Local 1-3567 applied to the British Columbia Labour Relations Board (BCLRB) for certification as bargaining agent for a bargaining unit of "*employees of Compass Canada employed in the performance of non-clinical services, as defined in the Health and Social Services Delivery Improvement Act, in the present and future locations operated by the employer within the Vancouver Coastal Health Authority, pursuant to contract(s) between the employer and the Authority*".

The BCLRB held a hearing into the IWA application on December 17, 2002. The HEU applied for and was granted standing in the case despite the fact that both Compass Canada and IWA Local 1-3567 had opposed standing for HEU. At the hearing HEU was made aware that IWA Local 1-3567 had entered into a voluntary recognition agreement with Compass dated December 6, 2002. Local 1-3567 had not indicated that the application was based upon the existence of a voluntary recognition agreement. HEU alleges that the voluntary recognition approach by IWA was inconsistent with previous undertakings that it would seek certification for contractors employees based only on signed membership cards.

The BCLRB ordered Local 1-3567 to provide a copy of the voluntary recognition agreement to other parties to the application. The voluntary recognition agreement is in the form of a multi-page collective agreement.

On January 22, 2003 the HEU filed, with the BCLRB, an unfair labour practice complaint against Compass Canada and Local 1-3567 asserting that these parties were in collusion when the collective agreement was entered into. Also HEU had learned, from a Local 1-3567 written submission to the BCLRB, that Compass had given Local 1-3567 organizers access to its employees. The unfair labour practice complaint was still pending as of August 27, 2003.

On February 27, 2003 Local 1-3567 applied to withdraw the application for certification at Vancouver Coastal Health Authority. IWA states that this came as a result of a meeting between CLC President, Ken Georgetti and IWA President, Dave Haggard, at which it was agreed that the process at Vancouver Coastal Health Authority was a concern and contrary to certain commitments made at a meeting held during the CLC convention.

IWA Local 1-3567 subsequently re-signed the Compass employees at Vancouver Coastal Health Authority and reapplied for certification on or about February 27, 2003. After the second application for certification was made, HEU in March 2003, applied for certification for the same unit of Compass employees by way of a variance application. The variance application requested that the HEU certification for Compass at Renfrew Care Centre be varied to include employees of Compass working at Vancouver Coastal Health Authority. No decision had been made in this case by the BCLRB as of August 27 2003.

At Beacon Hill Villa twenty-three HEU members were laid off after the employer contracted to have Compass Canada perform the work. HEU alleges that Compass management introduced their newly hired employees to IWA representatives at the Beacon Hill site on a number of occasions, and that on January 3, 2003 Sonny Ghag, President of Local 1-3567 told employees at the site that there was a collective agreement in place between Compass and Local 1-3567.

IWA applied for certification at Beacon Hill on January 7, 2003, no decision has been made by the BCLRB in this case as of August 27, 2003.

At Evergreen Baptist Home thirty-three HEU members were laid off and Compass Canada began to provide contract services on or about March 16, 2003. Starting on the first day of the contract, Compass used a passenger van to shuttle employees to the Evergreen site from a meeting place in a supermarket parking lot. It is not disputed that, on the first day of this shuttle, IWA organizers were allowed into the van to talk to the new employees about joining the IWA.

On April 10, 2003 HEU wrote to Dave Haggard, IWA President, to advise that HEU was organizing at Evergreen, and on or about April 15, 2003 HEU applied for a variance of

the Renfrew certificate to include the Compass employees at the Evergreen site. On or about April 17, 2003 Local 1-3567 applied for certification to represent employees at Evergreen. No decision has been rendered by the BCLRB in this matter.

Compass has also entered into contracts to perform work at Normanna Rest Home and Sunset Lodge (Salvation Army), these were also facilities where HEU had bargaining relationships and HEU members were laid off at the time that the Compass contracts commenced. IWA Local 1-3567 signed a collective agreement with Sunset dated July 24, 2003.

The most recent development is one in which Aramark Canada Facilities Services Ltd., has obtained a contract to provide services at Vancouver Coastal Health Authority. A large numbers of HEU members will be laid off on or about October 1, 2003. Aramark is currently hiring employees for this contract and IWA Local 1-3567 has entered into a voluntary recognition collective agreement with Aramark for this unit.

During the period covered by these events, Compass and Aramark have held separate job fairs in Vancouver and Victoria, to recruit employees for the various sites where they have obtained contracts. There is no dispute by IWA that its representatives were on site at the job fairs and they were attempting to sign employees of the contractors as they were hired. IWA states that it reserved a room in the hotels where the job fairs were held.

There are a number of allegations with respect to employer assistance to IWA. These allegations include prospective employees, at the job fairs, being referred to IWA representatives by management, prospective employees being told that it was company policy to have employees join IWA before they were hired, and in another case, successful applicants for employment were told by Compass management that they must report to a location in Burnaby to sign Local 1-3567 membership cards in order to finalize the hiring process.

<u>HEU made extensive argument, including the following, which is for the most part verbatim</u>.

The IWA failed to respect the established work relationship of HEU/CUPE and sought to obtain work covered by established HEU/CUPE work relationships through collusion and/or agreements with employers, namely Compass and Aramark. The phrase "established work relationship" in Section 4 ought to be defined and understood in the following terms:

- An "established work relationship" is clearly something other than, and something broader than, an "existing collective bargaining relationship". The latter are addressed in Article IV, section 3. Since these two distinct terms are used in Article IV, it must be assumed that they mean different things. An established work relationship is not the same as an existing collective bargaining relationship, and may therefore exist and subsist where there is no existing collective bargaining relationship.

- The term "established work relationship" is expressly defined in Article IV, section 4 as existing "....as to any work of a kind which the members of an organization have customarily performed at a particular plant, office, institution or work site, whether their employer is the plant operator, a contractor, or other employer.
- It is apparent that an established work relationship exists independently of the identity of the employer ("...whether their employer is the plant operator, a contractor or other employer"). The relationship described in section 4 is a relationship between the affiliate and work, not between an affiliate and a given employer. This means that an established work relationship will survive a change in the identity of the employer, and this is a key point.
- An established work relationship is a relationship between an affiliate and work that it's members "customarily performed". This phrase suggests a somewhat lasting or continuous performance of the work by members, not tenuous or fleeting performance.
- Each affiliate must "respect" the established work relationships of every other affiliate; and
- affiliates must not seek to obtain work for their members where an established work relationship exists, through collusion with an employer OR by agreement with an employer.
- HEU/CUPE submits that the IWA did not respect those established work relationships and therefore violated Article IV, section 4 by;
- entering into "organizing activities" at those facilities, including on site meetings, telephone calls, meetings on the company bus, and organizing at company job recruitment fairs;
- filing applications for certification for Vancouver Coastal Health Authority (Vancouver General Hospital), Evergreen, and Beacon Hill Villa, which appear to be based upon signed membership cards and not voluntary recognition;
- joining with Compass in objecting to HEU/CUPE variance applications as "inappropriate".
- There is no temporal limit on the prohibition in section 4 against interfering in established work relationships. These relationships do not simply lapse or sever after a specific period of weeks or months or years.

Even if these activities do not amount to collusion, they surely constitute an "agreement" with Compass to obtain work covered by established HEU/CUPE work relationships.

<u>IWA made extensive argument, including the following, most of which is verbatim.</u>

IWA argues that Section 4 is designed to meet circumstances other than those in this case, examples of which might include:

(a) Where an employer has more than one bargaining unit with more than one affiliate union, one of the unions cutting a deal behind closed doors or attempting to do so with then intent of having the employer transfer the other union's work into their bargaining unit.

(b) In a multi-union bargaining unit, conspiring with an employer to effect an amalgamation of bargaining units so that another union loses representational rights.
(c) In a contractor situation, a union conspiring with the contracting employer and/or a contractor to ensure that the incumbent affiliate and the incumbent contractor lose or do not secure a renewal of the contract.
(d) An affiliate capturing work from a contractor represented by another affiliate into its bargaining unit by collusion or economic pressure.

That for there to be a violation of Section 4, the charged affiliate must have taken action to cause the affiliate to lose the work. This did not happen, in this case it was simply a case of the Health Sector employers transferring work to the contractor. Bill 29 made it possible and IWA was not active until after the passage of the Bill.

Furthermore, even if the IWA was not involved, the work would still have been lost by HEU. Also an established work relationship does not last in perpetuity, in fact it was severed by Bill 29 for a number of reasons.

First, the fundamental nature of the work being carried out has been altered. Put another way, the workers for which IWA 1-3567 is seeking representation are performing work under fundamentally different conditions than the former members of the HEU. For example:

(a) The members in question are performing work for a private contractor, not a public employer;
(b) As such, the work and workers in question is substantially more tenuous in that contractors can be replaced and their employees do not maintain employment or union bargaining rights.
(c) The wages and working conditions in the private, service sector are substantially less than those in the public sector.

This final point is evidenced by the wages and working conditions found with these same contractors in other provinces (our experience is with Ontario) as well as the wages and working conditions in other union collective agreements with private service providers in British Columbia.

Section 4 contemplates an ongoing work relationship between the incumbent union and the current employer. In other words, there must be the ability for the complaining affiliate to continue the work relationship but for the alleged violation of the Constitution.

Finally, IWA argues, that it is their view that Section 4 does not establish work relationships that act as a bar to other union's efforts to represent workers performing said work that lasts in perpetuity. However, nowhere in Section 4 is there any mention of a time frame. As such, it flows logically that where an established work relationship exists, it can also be severed.

To uphold the HEU position – that an established work relationship can only be severed by consent of the incumbent affiliate – is to give that affiliate an effective veto over representation of what are otherwise non-union members. This runs counter to many other purposes of the CLC Constitution and cannot be the proper interpretation of Section 4.

The severing of an established work relationship can take place in a number of ways. Some examples would include:

(a) Decertification (it is absurd to suggest that a union has an ongoing work relationship that would serve to preclude another affiliate from representing a group of workers that have decertified).
(b) Cancellation or abandonment of certification under the Labour Code
(c) Agreement of the incumbent affiliate.

IWA asked that I consider the practical ramifications of a finding in favour of HEU. These are as follows:

(a) A ruling in favour of HEU would call into question the legitimate and long-standing practice of signing voluntary recognition agreements. Voluntary recognition is specifically acknowledged in the CLC Constitution and is a practical and sensible approach to securing union representation for workers employed by contractors.
(b) A ruling in favour of HEU would mean that the members that IWA 1-3567 is seeking to represent, would be non-union. A ruling in favour of HEU does not return any laid-off HEU members to employment nor does it result in HEU regaining representation rights for workers performing any of that work. This runs counter to the purposes of the CLC Constitution.
(c) A ruling in favour of HEU would open the door for non-affiliates (e.g. CLAC) to secure representation of the workers in question outside of the House of Labour. Again, this is counter to the purposes of the CLC Constitution.
(d) A ruling in favour of HEU would effectively achieve what the HEU wants and which has no basis under the CLC Constitution – an effective bar on the IWA and other affiliated union from organizing in the health care sector. If the CLC Constitution provided for this under Section 4, or any other section, why was there a need and desire for affiliates to sign the BC Code of Practices For Organizing Successor Employees?

DECISION

I have given careful consideration to the extensive submissions made by the representatives of the affiliates.

It is not immediately clear from the language precisely what was intended in Section 4 of Article 4, and I am not aware of other decisions, by impartial umpires, in which Section 4 has been interpreted. In these less than optimal circumstances an impartial umpire has a

duty to carefully examine the provisions of the Section and the submissions of the affiliates. The threshold question in this case is whether or not there was an established work relationship at the material times. I believe a logical interpretation is as follows.

For there to be an established work relationship within the meaning of Section 4 these conditions must be met.

1. It must be work of a kind which the members of an organization have customarily performed
2. It must have been performed at a particular plant, office, institution or work site
3. There must be an employer/employee relationship, i.e. *"whether their employer is the plant operator, a contractor, or other employer"*.

There is no dispute that HEU members have customarily performed this work, and there is no dispute that the work was performed and continues to be performed at the institutions of the employers. The words *"whether their employer"* means that there must be an employer employing the employees at the time of the actions complained of. Whether or not employees are employees of a particular employer, at the material times, is of course a matter of record.

The first sentence of Section 4 makes it clear that the established work relationship attaches to the affiliate whose members have performed the work, and the second sentence provides that there is deemed to be an established work relationship where there is an employer employing members of the affiliate who have customarily performed the work.

The Collins English Dictionary defines the word "deem" as to "judge or consider". It is reasonable, therefore, to conclude that the drafters of the Constitution intended that an established work relationship would exist only in circumstances where all of the conditions spelled out in the second sentence are present.

One logical conclusion flowing from this interpretation is that when there is no longer an employment relationship, there is also no longer an established work relationship, and obviously there is no employment relationship beyond the time when all employment is terminated for legitimate reasons, or when employees are laid off and the period during which they are eligible for recall to employment has elapsed.

In the instant cases, the original employers, i.e. hospitals and long-term care facilities, are still in existence. They are fully functional and are still requiring the same work to be performed in the same institutions. The fundamental difference is that these employers are paying contractors to perform the work *"customarily performed"* by employees who are now laid-off.

The collective agreement provides for certain rights for employees on lay-off. Section 17.08.03 provides that *"laid off employees shall retain their seniority and perquisites accumulated up to the time of lay –off, for a period of (1) one year and shall be rehired, if*

the employee possesses the capability of performing the duties of the vacant job, on the basis of the last off – first on "

The laid off employees retain their seniority and the original employer is obligated to rehire them before hiring new employees, provided they can perform the available work. This surely means that employees on lay off, with the right to rehire, continue to be employees of record until the right to rehire period has elapsed.

The hospitals and long term care facilities were still the employers of the employees at all material times. It is worth noting that many of the IWA actions complained of occurred while the HEU members were still performing the work, and in all cases the one year right of rehire had not elapsed and there is therefore an employment relationship and an established work relationship.

Accordingly, in the subject cases, an established work relationship exists until a period of one year has elapsed from the date of the lay off of employees.

Having found that an established work relationship exists I now review the Section to determine the types of activity that constitute a violation of the Section.

The drafters of Section 4 included a definition of an established work relationship, and in the third sentence they defined the types of activity that constitute a violation of the Section. The first sentence of Section 4 requires each affiliate to "*respect the established work relationship of every other affiliate*". This sentence is not defined and it follows that it should be read in conjunction with the third sentence, in order to determine what constitutes a failure to respect an established work relationship. Therefore, I believe that where an established work relationship exists, an affiliate has failed to respect that established work relationship where it has by agreement or collusion sought to obtain work for its members. I do not believe Section 4 anticipates or permits a broader interpretation where almost any action could be found to be a failure to respect an established work relationship.

HEU/CUPE advocates this broader interpretation and argues that the Section prohibits, among other things, organizing activities in these circumstances. I believe the Section requires a narrower and more precise interpretation in which making agreements or colluding with employers is in fact the failure to respect an established work relationship. Accordingly, it would not, in my opinion, be a violation for an affiliate to campaign to sign up the employees of a contractor unless the campaign is preceded by activity prohibited in the third sentence of Section 4, i.e. the affiliate has sought to obtain work by agreement or collusion with the contractor.

There is little dispute as to the actions of IWA, in its pursuit of bargaining rights and work for its members, with the affected contractors. The evidence of Sonny Ghag, President of Local 1-3567, is that he would write to the contractors and ask for permission to meet with employees to solicit them to join IWA Local 1-3567. Contractors, in most cases, agreed and as a result IWA Local representatives met with

employees at work sites, attended company job fairs, and in one case were permitted to board a company bus to solicit employees to sign with IWA.

It is clear that there were agreements of various types between IWA and contractors; including agreements to permit IWA to speak to employees at work, agreements to permit IWA admission to and participation in recruitment job fairs, and at least two voluntary recognition agreements with Compass and Aramark at Vancouver Coastal Health Authority. These agreements were made prior to the layoffs and while the original employers were still employing the HEU/CUPE members. These agreements were made with contractors and not with the original employers, however this is not a factor because the Section prohibits *"agreement or collusion with <u>any</u> employer"*.

IWA submits that HEU members did not lose jobs due to any actions by the IWA. Rather it was the existence of Bill 29 that made it possible for employers to contract out the work. A reading of Section 4 indicates that it is not necessary for there to be actions by the respondent affiliate causing the loss of work for there to be a violation. The Section prohibits affiliates from seeking to obtain work as to which an established work relationship exists, by agreement or collusion.

HEU/CUPE alleges that the activities of IWA in these matters amount to collusion between IWA and contractors. These are serious allegations that, if pursued, might require more stringent standards for the taking of evidence combined with full opportunities for cross-examination. I make no finding with respect to the allegations of collusion. I note however that it is not necessary for me to deal with allegations of collusion in order to determine whether or not there has been a violation of Section 4.

It is reasonable to conclude that by the various agreements with contractors, Local 1-3567 did seek to obtain work for its members, work which was, at the material times, work as to which an established work relationship existed.

For the above reasons I find that HEU/CUPE had an established work relationship at the institutions in question, within the meaning of Section 4 of Article 4 of the CLC Constitution, and that IWA and its Local 1-3567 failed to respect the established work relationships of HEU/CUPE by seeking to obtain work for its members by making agreements of various types with contractors.

Accordingly, I find that IWA and its Local 1-3567 are in violation of Section 4 of Article 4 of the CLC Constitution.

I wish to thank the representatives of HEU/CUPE and IWA for their able presentations and their assistance in this matter.

Dated this 17th day of September, 2003
"L. Victor Pathe"

L. Victor Pathe, Impartial Umpire