

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

THE GOVERNMENT OF THE PROVINCE OF BRITISH  
COLUMBIA (LIQUOR DISTRIBUTION BRANCH)

(the "LDB")

-and-

PACIFIC COAST DISTRIBUTION LTD.

("PC")

-and-

B.C. GENERAL EMPLOYEES' UNION

(the "Union")

PANEL:	David Duncan Chesman, K.C., Vice-Chair
APPEARANCES:	Stephanie A. Vellins, for the LDB P.G. Kent, for PC Craig Bavis, for the Union
CASE NO.:	2022-001113
DATES OF HEARING:	August 19 and 22, 2022
DATE OF DECISION:	August 25, 2022
DATE OF REASONS:	November 4, 2022

## REASONS FOR THE BOARD'S DECISION

### I. INTRODUCTION

1 By its application dated August 17, 2022, as revised by its submission dated  
2 August 19, 2022, the Union applied under Section 65 of the *Labour Relations Code* of  
3 British Columbia (the "Code") for a declaration of PC as an "ally" of the LDB and related  
4 orders (the "Application").

5 An expedited hearing of the Application was held by videoconference on  
6 August 19 and 22, 2022 (the "Hearing").

7 I issued the following bottom-line decision on August 25, 2022: "the Application is  
8 dismissed" (the "Bottom-Line Decision").

9 The LDB subsequently requested written reasons for the Bottom-Line Decision.

10 These are my written reasons for the Bottom-Line Decision.

### II. BACKGROUND

11 Two witnesses testified at the Hearing: Mark Guolo, an LDB employee on behalf  
12 of the Union, and Chris Funk, PC's General Manager, on behalf of PC.

13 The findings of fact material to my decision, based on the evidence tendered  
14 during the Hearing including the testimony of Guolo and Funk, are summarized below.

15 The testimony of Guolo and Funk was somewhat contradictory with respect to  
16 matters relevant to the relationship between PC and the LDB. Funk's testimony  
17 concerning that relationship was straightforward, well-informed, and survived cross-  
18 examination. Guolo's understanding of the relationship between PC and the LDB was  
19 revealed under cross-examination to be limited and other than well-informed. In the  
20 result, I prefer Funk's testimony with respect to those matters and the material findings  
21 of fact summarized below are consistent with that preference.

22 All documents quoted below are quoted on a "reproduced as written" basis,  
23 meaning without the identification or correction of errors.

#### **The LDB and PC**

24 The LDB is a branch of the Provincial Government responsible for the wholesale  
25 distribution and retail sale of liquor and non-medical cannabis products in the Province.

26 The LDB distributes products from its Delta Distribution Centre ("DDC") and  
27 Kamloops Distribution Centre to retail outlets, including LDB retail stores.

12 PC is a trucking contractor.

13 PC and the LDB entered into a one (1) year "General Services Agreement" in 2020 and have entered into one (1) year General Services Agreements in each subsequent year. Funk testified that the "General Services Agreement" in effect between PC and the LDB as of August 15 and 16, 2022 has the same terms and conditions as their prior August 3, 2021–August 2, 2022 "General Services Agreement", which was entered into evidence (the "Agreement").

14 Under the Agreement, PC is the LDB's secondary or back-up trucking contractor for the Lower Mainland ("Region 1"). As such, PC is contracted to transport products within Region 1 "as and when requested" by the LDB as, for example, when the LDB's primary trucking contractor is unable to do so.

15 The Agreement includes the following Articles:

**2 SERVICES**

Provision of services

2.1 The Contractor must provide the Services in accordance with this Agreement.

Term

2.2 Regardless of the date of execution or delivery of this Agreement, the Contractor must provide the Services during the Term.

\* \* \*

**10 FORCE MAJEURE**

Definitions relating to force majeure

10.1 In this section and sections 10.2 and 10.3:

(a) "Event of Force Majeure" means one of the following events:

(i) a natural disaster, fire, flood, storm, epidemic or power failure,

(ii) a war (declared and undeclared), insurrection or act of terrorism or piracy,

(iii) a strike (including illegal work stoppage or slowdown) or lockout, or

(iv) a freight embargo

if the event prevents a party from performing the party's obligations in accordance with this Agreement and is beyond the reasonable control of that party; and

(b) "Affected Party" means a party prevented from performing the party's obligations in accordance with this Agreement by an Event of Force Majeure.

Consequence of Event of Force Majeure

10.2 An Affected Party is not liable to the other party for any failure or delay in the performance of the Affected Party's obligations under this Agreement resulting from an Event of Force Majeure and any time periods for the performance of such obligations are automatically extended for the duration of the Event of Force Majeure provided that the Affected Party complies with the requirements of section 10.3.

Duties of Affected Party

10.3 An Affected Party must promptly notify the other party in writing upon the occurrence of the Event of Force Majeure and make all reasonable efforts to prevent, control or limit the effect of the Event of Force Majeure so as to resume compliance with the Affected Party's obligations under this Agreement as soon as possible.

16 The Agreement's "Schedule A-Services" ("Schedule A") includes the following Articles:

**PART 2. SERVICES:**

**Definitions**

2.1 In this Schedule:

\* \* \*

f) "Delivery Services" or "Services" means the delivery of Cargo between DDC and one or more Consignees which may include the return of Cargo, empty pallets and Recyclables to DOC, additional miscellaneous services related to the delivery of Cargo, and such ad hoc Cargo delivery services as and when requested by the LDB;

g) "Delivery Window" means the one (1) hour prior to and three (3) hours following a scheduled delivery date and time;

\* \* \*

- m) "Region" means Region 1, consisting of the Lower Mainland Area, in which Service Locations are located, and within which Delivery Services will be provided;
- n) "Service Locations" means the locations of Consignees, as set out in Appendix A-4 and amended from time to time, to which the LDB may require Delivery Services under the Schedule;

\* \* \*

#### Scope and Deliverables

- 2.3 The Contractor must provide Delivery Services to the LDB in the Region on an as-and-when-requested basis. Delivery Services will be provided to the locations set out in Appendix A-4 – Service Locations, as amended by the LDB from time to time during the Term due to changing business requirements.
- 2.4 The Contractor will serve as a back-up Contractor by providing Delivery Services to and from DDC as-and-when requested by the LDB. The LDB will endeavor to provide the Contractor as much notice as possible when requesting Delivery Services; however, the Contractor may be notified of a request for Delivery Services less than twenty-four hours before Cargo pick-up.

\* \* \*

- 2.6 The LDB reserves the right to utilize an alternative delivery services provider, in the event the Contractor is not available to provide the required Delivery Services in the Region.
- 2.7 The Contractor must have the ability to provide Delivery Services to the LDB in the Region, on Statutory Holidays (excluding December 25 and January 1) and Weekends, as-and-when-requested by the LDB.

\* \* \*

- 2.9 To ensure trailer security, the Contractor's cross docking facilities and terminals must at a minimum:
  - a) be secured and lockable;
  - b) have live-video monitored CCTV systems and in-person security; and

- b) have a record of entry and exit.

\* \* \*

#### Cargo Pick-up

- 2.14 The Contractor must pick up Cargo from DDC as-and-when requested by the LDB.

\* \* \*

#### Cargo Delivery

- 2.24 The Contractor must deliver Cargo:

- a) in the original condition;
- b) to the designated Consignee;
- c) into the designated Consignee receiving area approved by the LDB; and
- d) within the Delivery Window.

\* \* \*

- 2.27 In the event of any delivery outside of the Delivery Window, the Contractor must:

- a) immediately notify the LDB; and
- b) contact the LDB to arrange for an alternate delivery time as soon as reasonably practicable.

\* \* \*

- 2.29 Where the Delivery Service is made outside the Delivery Window and the delay is not deemed by the LDB to be due to one of the following events:

- a) a natural disaster, fire, flood, storm, epidemic or power failure;
- b) a war (declared and undeclared), insurrection or act of terrorism or piracy;
- c) a strike (including illegal work stoppage or slowdown) or lockout;
- d) a freight embargo;

- e) the unavailability or refusal of a Consignee to accept delivery; or
- f) any other delays caused by the Consignee; the LDB may assess 50% late fee on the invoice at the end of each delivery day.

17 Appendix A-4 of the Agreement lists the "Service Locations" covered by the Agreement and include retail stores in the Lower Mainland.

18 Appendix C of the Agreement lists 457 scheduled deliveries to various locations within Region 1 each week ("Appendix C").

19 Deliveries to retail stores within Region 1 are generally made by trucks because most stores cannot accommodate trailers.

20 Prior to August 15, 2022, PC made deliveries within Region 1 under the Agreement, as and when requested by the LDB. Such deliveries included inter-store LDB transfers and delivery to the 2020 Wine Fest in downtown Vancouver.

21 Guolo testified it is important that deliveries be made within their delivery windows, but, as there "can be hitches", deliveries outside of delivery windows occur.

### **LDB and the Union**

22 The Union is certified to represent a bargaining unit of LDB employees, including employees at the DDC and the LDB's retail stores.

23 The Union was in a legal position to strike the LDB as of 3:30 p.m. on August 15, 2022.

### **August 15 and 16, 2022**

24 Guolo testified that, leading up to the strike on August 15, 2022, the DDC had "never been so busy".

25 On the morning of August 15, 2022, four of the LDB's regular drivers were unavailable for work, and the LDB's primary trucking contractor, F&G, was unable to provide all the trucks the LDB required to transport the products scheduled for pick-up from the DDC that morning, for delivery within Region 1 that day.

26 In the circumstances, the LDB requested that PC, its secondary Region 1 trucking contractor, dispatch three 53-foot trailers to pick up products from the DDC scheduled for delivery within Region 1 that day, August 15, 2022. The LDB advised PC that PC's trailers had to depart the DDC prior to 2:00 pm on August 15, 2022 because the Union would be in a legal strike position later that afternoon.

27 As requested by the LDB, PC dispatched three 53-foot trailers to the DDC where they were loaded by LDB bargaining unit employees. Once loaded, the PC trailers departed the DDC on or before 2:00 p.m. on August 15, 2022, en route to PC's facility in Langley.

28 Once the Union was in a legal strike position at 3:30 p.m. on August 15, 2022, it initiated strike-related actions including the withdrawal of bargaining unit services from, and picketing at, the DDC, all of which continued through August 16, 2022 (the "Strike").

29 The Union did not withdraw bargaining unit services from, or picket, LDB retail stores within Region 1 on August 15 or 16, 2022.

30 Upon arrival at PC's Langley facility, the PC trailers were unloaded onto smaller trucks for the delivery of their cargo (the "Cargo"). The Cargo was subject to 14 separate Bills of Lading, each with a designated destination or consignee, being LDB and other retail stores within Region 1 (the "Stores").

31 PC's Funk decided not to deliver the Cargo to the Stores until the next day, August 16, 2022. Funk acknowledged his decision exposed PC under the Agreement to a possible penalty for late delivery.

32 PC delivered the Cargo to the Stores on August 16, 2022.

### III. POSITIONS OF THE PARTIES

33 As revised, the Application does not say PC's pick-up of the Cargo from the DDC on August 15 for delivery to the Stores was in the furtherance of stockpiling products in its retail stores to resist the Strike.

34 Further, the Union says PC was not made an ally of the LDB by its actions prior to the commencement of the Strike at 3:30 p.m., on August 15, 2022.

35 The Union says PC is presumed to be an ally of the LDB under Section 65(2) of the Code because its impugned actions on August 15 and 16, 2022 were actions of a nature and kind that, but for the Strike, would have been performed by the LDB.

36 The Union says *Liquor Distribution Branch*, BCLRB No. B32/78, [1978] 2 Can LRBR 334 ("*Hiram Walker*"), while "not the last word", is the Board's "fundamental" decision concerning the ally doctrine.

37 The Union acknowledges that prior Board decisions have found a party's conduct of "business as usual" did not make it an ally under the Code but says there is no blanket rule that a pre-existing commercial relationship establishes an "other than ally status".

38 The Union says PC's delivery of the Cargo to the Stores on August 16, 2022 was outside the normal business relationship between PC and the LDB and, therefore,

"unusual" because the LDB requested PC's services on short notice the morning of August 15, 2022; PC had not previously delivered to the Stores; and PC's delivery of the Cargo to the Stores on August 16, 2022 was outside the August 15, 2022 delivery window.

39 The Union also says PC's impugned actions on August 15 and 16, 2022 were "unusual" because PC had the following options in lieu of delivering the Cargo to the Stores: the invocation of "force majeure" under the Agreement; the return of the Cargo, undelivered, to the DDC; or holding the Cargo at its Langley facility.

40 The Union further says PC's delivery of the Cargo to the Stores provided "significant" assistance to the LDB, from the Union's perspective, because it resulted in those stores receiving products while the DDC was on strike.

41 In brief, the Union says PC was made an ally of the LDB because its delivery to the Stores on August 16, 2022 was "unusual" and provided significant assistance to the LDB as a struck employer.

42 By way of remedy, the Union seeks a Board declaration that PC is an ally of the LDB; a Board order permitting the Union to picket PC's Langley facility for two days; and/or a Board order that the products delivered by PC to the Stores on August 16, 2022, be returned to the DDC.

43 In response, PC says it is not presumed an ally of the LDB under Section 65(2) because the evidence does not establish that, but for the Strike, its impugned actions on August 15 and 16, 2022 would have been performed by the LDB.

44 PC also says the language of the Agreement is mandatory, and it must provide services, "as and when requested" by the LDB, even with less than 24 hours' notice.

45 PC further says the evidence establishes that prior to August 15, 2022, it had made deliveries to the 2020 Wine Fest and various intra-store transfers within Region 1, as and when requested by the LDB.

46 PC further says its services were engaged by the LDB on August 15, 2022 because the LDB's drivers were at full capacity, and F&G could not deliver more trucks due to mechanical problems, circumstances PC references as "exactly the reason(s)" the LDB contracted a secondary or back-up trucking contractor.

47 PC further says the evidence establishes it did not know the Cargo's various Region 1 destinations until it had unloaded its trailers at its Langley facility, at which point Funk decided to delay the delivery of the Cargo to the Stores until the next day, August 16, 2022. PC asserts the Union may castigate it for that judgment call, but that judgment call did not make it an ally of the LDB.

48 Referring to *Hiram Walker*, PC says it did not engage in "unusual action in the course of the strike" because there was no strike in effect when it picked-up the Cargo

from the DDC, and it was not turned away by LDB bargaining unit employees when it delivered the Cargo to the Stores, which had "no pickets" and "were not struck".

49 PC also says force majeure did not apply because there was no strike in effect  
when it picked-up the Cargo from the DDC, and there were no pickets present when it  
delivered the Cargo to the Stores.

50 Further, PC says under the Agreement it could not have held the Cargo at its  
Langley facility during the Strike.

51 The LDB's position generally aligns with that of PC and, therefore, does not  
require a detailed summary.

52 The LDB says there was no force majeure because PC picked up the Cargo from  
the DDC before the Strike began on August 15, 2022, and the Strike did not change  
PC's obligation to deliver the Cargo to the Stores.

53 The LDB also says, once the Strike began PC did not have an option to return  
the Cargo or hold the Cargo because it was contractually obligated to deliver it to the  
Stores.

54 The LDB further says there is nothing "legally significant" about PC's decision to  
delay its delivery of the Cargo to the Stores to August 16, 2022.

55 In final reply, the Union says, but for the strike, PC's impugned actions would  
have been performed by LDB employees.

56 In reply to the LDB's assertion there was no force majeure because the Strike did  
not prevent PC's pick-up of the Cargo at the DDC on August 15, 2022, the Union says it  
was not PC's pick-up of the Cargo but its delivery of the Cargo to the Stores that  
triggered PC's ally status.

#### IV. ANALYSIS AND DECISION

##### 1. Code

57 The Code provisions relevant to the ally doctrine are Sections 65(1)(2)(4)(5)(6),  
which state:

65 (1) In this section:

"ally" means a person who, in the board's opinion, in combination,  
in concert or in accordance with a common understanding with an  
employer assists the employer in a lockout or in resisting a lawful  
strike;

\* \* \*

(2) A person who, for the benefit of a struck employer, or for the benefit of an employer who has locked out, performs work, supplies goods or furnishes services of a nature or kind that, except for a lockout or lawful strike, would be performed, supplied or furnished by the employer, must be presumed by the board to be the employer's ally unless he or she proves the contrary.

\* \* \*

(4) The board may, on application and after making the inquiries it requires, permit picketing

(a) at or near another site or place that the employer causing a lockout or whose employees are lawfully on strike is using to perform work, supply goods or furnish services for the employer's own benefit that, except for the lockout or strike, would be performed, supplied or furnished at the site or place where picketing is permitted by subsection (3), or

(b) at or near the place where an ally performs work, supplies goods or furnishes services for the benefit of a struck employer, or for the benefit of an employer who has locked out,

but the board must not permit common site picketing unless it also makes an order under subsection (6) defining the site or place and restricting the picketing in the manner referred to in that subsection.

(5) In subsection (4), "employer" means the person whose operation may be lawfully picketed under subsection (3).

(6) The board may, on application or on its own motion, make an order defining the site or place at which picketing that is permitted by subsection (3), or that is permitted under subsection (4), may take place.

**2. Jurisprudence**

58 The Code language relevant to the ally doctrine has changed over time but "the criteria used in examining whether a particular company or employer is an ally have in essence not changed". (*Superior Poultry Processors Ltd.*, BCLRB No. B413/2000 (Leave for Reconsideration granted BCLRB No. B496/2000), para. 74).

59 *Hiram Walker* is the Board's leading decision concerning the ally doctrine. There, the Board said an alleged ally's impugned actions must be viewed "from a practical industrial [labour] relations point of view" having regard to the relationship between the alleged ally and the struck employer (p. 341).

60 The Board summarized the ally doctrine in *Hiram Walker* as follows:

...the Board has concluded that not every form of assistance to a struck employer renders the third party an "ally". In our view, if a third party merely continues its ongoing business relationship with the struck employer – if it conducts itself in its normally everyday fashion – that is not the kind of special alliance which was contemplated by the Legislature...

\* \* \*

...the law does not impose an obligation on the Branch [the alleged ally] to take the unusual step of severing its customary relationship with the struck employer, on pain of being picketed by the striking union. Only if a third party engages in unusual action in the course of the strike, markedly changing its normal manner of doing business in order to avoid the impact of the union's lawful strike and picketing, can that party be described as an "ally".

(p. 340)

61 The ally doctrine contemplates "some voluntary act" by the alleged ally (*Johnston Terminals*, BCLRB No. B57/75, [1975] 2 Can. L.R.B.R. 297 ("*Johnston Terminals*"), p. 309 and *Hiram Walker*, p. 348). Accordingly, a party "must have as [its] option the refusal of the assistance which [it] is said to be rendering" to qualify as an ally under the Code (*Johnston Terminals*, p. 309; *Hiram Walker*, p. 348; *Web Press Publications Ltd.*, BCLRB No.47/80; and [1980] 3 Can LRBR 186 ("*Web Press*"), p.192).

62 This means a party is not made an ally by exercising its only lawful course of action. It also means a party may be made an ally by an action(s) it could have lawfully refused or avoided, but I do not understand it to mean a party is necessarily made an ally by an impugned action(s) it could have lawfully refused or avoided. As the Board said in *Hiram Walker*: "As far as the Board is concerned, anyone who isolates a single theme in a particular decision and holds this up as the litmus test for an" ally", does so at his own peril" (p. 350).

63 Further, the Board must make "a practical judgement about the degree, about the significance", of the alleged ally's assistance to the struck employer" (*Hiram Walker*, p. 347). The question is whether the alleged ally "has provided *undue* assistance to the struck employer, sufficient to justify an escalation in picketing by the union" (*Hiram Walker*, p. 350, italics in original).

64 Further, a party need not intend to assist a struck employer to become its ally (*Web Press*, p. 193). However, "some informed action" by the alleged ally is necessary and may be satisfied by an action taken with "sufficient knowledge of the labour relations dispute" (*ibid.*).

### 3. Analysis

#### Introduction: Onus

65 The Union says PC bears the onus under Section 65(2) of the Code of proving it  
is not an ally of the LDB.

66 Section 65(2) provides a party "must be presumed" an ally of a struck employer  
where it provides services "for the benefit of the struck employer", "of a nature and kind"  
that, but for the strike, would be provided by the struck employer.

67 I find PC's pick-up of the Cargo from the DDC on the morning of August 15, 2022  
was not for the benefit of the LDB, as a struck employer, because the LDB was not then  
a struck employer.

68 Further, I find the evidence falls short of establishing that PC's impugned actions  
on August 15 and 16, 2022 were actions of a nature and kind that, but for the Strike,  
would have been performed by the LDB.

69 The evidence is that the LDB engaged PC's services on the morning of  
August 15, 2022 when the LDB's primary trucking contractor, F&G, was unable to  
satisfy the LDB's trucking requirements.

70 Accordingly, I find the impugned services performed by PC on August 15 and  
16, 2022 were not services of a nature and kind that, but for the Strike, would have  
been performed by the LDB but, rather, contracted trucking services that, but for F&G's  
inability to perform them, would have been performed by F&G.

71 In the result, I find PC is not a presumed ally of the LDB under Section 65(2) and  
does not bear the onus to prove otherwise.

#### Introduction: General

72 Having regard to the Board's jurisprudence, I am to consider PC's impugned  
actions from a practical labour relations perspective and decide whether, in the context  
of the parties' relationships, those actions made PC an ally of the LDB (*Hiram Walker*, p.  
342).

73 PC may be an ally of the LDB under the Code if, with sufficient knowledge of the  
Strike, it engaged in "unusual" actions that, intentionally or not, provided significant  
assistance to the LDB during the Strike (*Hiram Walker*, pp. 340, 347–350).

74 I may consider whether PC's impugned actions were "unusual", having regard to  
whether PC had a lawful option to refuse to pick up and deliver the Cargo to the Stores  
on August 15 and 16, 2022 (*Johnston Terminals*, p. 309 and *Web Press*, p.192).

**Sufficient Knowledge of the Strike?**

75 Funk testified the LDB expressly requested PC to pick up the Cargo from the DDC prior to 2:00 p.m. on August 15, 2022 because the Union would subsequently be in a legal strike position.

76 In the result, I find PC undertook its impugned actions on August 15 and 16, 2022 with sufficient knowledge of the Strike.

**"Unusual" Actions?**

77 The Union says it was "unusual" for PC to pick up the Cargo from the LDB on short notice on the morning of August 15, 2022, for delivery to the Stores, being stores within Region 1 to which PC had not previously delivered.

78 The Union also says PC's deliveries of the Cargo to the Stores on August 16, 2022, outside their August 15, 2022 delivery windows, was "unusual".

79 I am not persuaded the short notice given PC by the LDB on the morning of August 15, 2022 was "unusual" having regard to the relationship between PC and the LDB, as defined by the Agreement.

80 As the LDB's secondary or back-up Region 1 trucking contractor, PC is obligated under Articles 2.1, 2.3 and 2.4 of Schedule A to pick up and deliver products within Region 1 "as and when requested" by the LDB. I find the short notice given PC by the LDB on the morning of August 15, 2022 was not "unusual" but, rather, consistent with the foregoing Articles; Article 2.4 of Schedule A which expressly contemplates that "the Contractor may be notified...less than twenty-four hours before cargo pick-up"; and, at a practical or common sense level, the kind of limited notice a secondary or back-up trucking contractor such as PC might reasonably expect.

81 I am also not persuaded it was "unusual" for PC to deliver the Cargo to the Stores on August 16, 2022, having regard to the relationship between PC and the LDB, as defined by the Agreement and their prior history.

82 I find PC had not delivered to the Stores prior to August 16, 2022. I also find the Stores are expressly identified in the Agreement as Region 1 locations to which PC is obligated to deliver "as and when required" by the LDB. I further find that PC made deliveries within Region 1, as and when requested by the LDB, prior to August 15, 2022.

83 In the result, I find PC's pick-up and delivery of the Cargo on August 15 and 16, 2022 was not "unusual" but, rather, consistent with the discharge of its obligations under the Agreement and PC's prior history of delivering within Region 1 "as and when requested" by the LDB.

84 I am also not persuaded PC's late delivery of the Cargo was "unusual", having regard to the relationship between PC and the LDB, as defined by the Agreement and their prior history or that such late delivery was of assistance to the LDB.

85 Articles 2.24, 2.27, and 2.29 of the Agreement expressly contemplate deliveries outside their delivery windows. Further, Guolo testified that late deliveries do occur and there is no evidence before me to suggest that PC's deliveries of the Cargo on August 16, 2022, rather than August 15, 2022, assisted the LDB during the Strike.

86 In the result, I find PC's deliveries of the Cargo to the Stores on August 16, 2022, outside their August 15, 2022 delivery windows, was not "unusual".

### **Other Options?**

87 The Union also says PC's impugned actions were "unusual" having regard to PC's alleged option to invoke "force majeure" under the Agreement by reason of, or in response to, the Strike.

88 Article 10.1 of the Agreement's "Schedule A-Services" provides:

(a) "Event of Force Majeure" means...

\* \* \*

(iii) a strike (including illegal work stoppage or slowdown) ...

if the event prevents a party from performing the party's obligations in accordance with this Agreement and is beyond the reasonable control of that party...

89 On a plain reading, the above Article allows a party to invoke "force majeure" where it is prevented from performing its obligations under the Agreement for reasons beyond its control, including a "strike" as defined by the Article. In short, the invocation of "force majeure" under the Agreement is conditioned on a party being prevented from performing its obligations under the Agreement.

90 The Strike did not prevent PC from picking up the Cargo from the DDC on August 15, 2022 because PC picked up the Cargo and departed the DDC prior to the commencement of the Strike.

91 The Strike did not prevent PC's delivery of the Cargo to the Stores on August 16, 2022 because the Stores were not subject to a withdrawal of bargaining unit services or picketing.

92 As the Strike did not prevent PC's pick-up or delivery of the Cargo on August 15 and 16, 2022, I am not persuaded the invocation of force majeure was an option available to PC under the Agreement.

93 The Union says PC's delivery of the Cargo to the Stores after the commencement of the Strike was "unusual" because PC had the option to return the Cargo to the DDC or hold the Cargo at its Langley facility.

94 Articles 2.24(b) and (c) of Schedule A expressly provide the "Contractor *must* deliver cargo...to the designated consignee; [and] into the designated consignee receiving area approved by the LDB ... (emphasis added)". Accordingly, absent a "force majeure", I find PC was obligated by the Agreement to deliver the Cargo to the Stores on August 15 and 16, 2022 and I am not persuaded PC had a lawful option to either return the Cargo to the DDC or hold the Cargo at its Langley facility, after the Strike commenced on August 15, 2022.

95 In the result, I find PC's impugned actions on August 15 and 16, 2022 were made "as and when requested" by the LDB in the discharge of PC's obligations under the Agreement, absent a lawful alternative. Stated another way, employing the language used by the Board in *Hiram Walker*, page 340, I find PC's impugned actions on August 15 and 16, 2022 were a continuation of its ongoing business relationship with the struck employer.

96 For the above reasons, I find PC's impugned actions on August 15 and 16, 2022 were not "unusual".

### **Significant Assistance?**

97 In any event of the above, I find PC's August 16, 2022 deliveries of the Cargo to the Stores, being 14 retail stores within Region 1, represent a very small fraction of the LDB's 457 regularly scheduled weekly deliveries within Region 1, under Appendix C.

98 I am not persuaded PC's deliveries to such a small fraction of the LDB's weekly deliveries within but one LDB Region rendered significant assistance to the LDB during the Strike. Stated another way, I am not persuaded such deliveries were of sufficient assistance to the LDB to justify an escalation of Union picketing to include PC.

99 Accordingly, I find PC did not provide significant assistance to the LDB during the Strike.

### **Conclusion**

100 As required by the Agreement, PC picked up the Cargo from the DDC "as and when requested" by the LDB before the Strike began on August 15, 2022, and delivered it on August 16, 2022 to the Stores, which were not subject to a withdrawal of bargaining unit services or picketing.

101 PC's position as an alleged "ally" in this matter is analogous to that of the LDB, as the alleged "ally", in the below hypothetical posed by the Board in *Hiram Walker*:

Suppose, for example, that just before the strike began, the Liquor Branch [the alleged ally] had received its normal supply of liquor from Hiram Walker. The Branch continues to sell that liquor during the strike. Obviously, that action by the Branch is helpful to Hiram Walker in an economic sense

(p. 340).

102 In such hypothetical circumstances, the Board reasoned that the LDB was not an ally of *Hiram Walker*, the struck employer:

...the law does not impose an obligation on the Branch [the alleged ally] to take the unusual step of severing its customary relationship with the struck employer, on pain of being picketed by the striking union.

(p. 340)

103 Consistent with *Hiram Walker*, I find PC was not required to sever its customary relationship with the LDB under the Agreement by refusing to pick up the Cargo from the DDC before the Strike began or by failing to deliver the Cargo to the Stores, which were not subject to a withdrawal of bargaining unit services or picketing.

104 Stated another way, just as the LDB could sell *Hiram Walker* products in the circumstances of the above hypothetical without becoming an ally of *Hiram Walker*, I find PC could discharge its obligations under the Agreement and pick up the Cargo from the DDC before the Strike began and deliver the Cargo to the Stores, which were not subject to a withdrawal of bargaining unit services or picketing, without becoming an ally of the LDB.

105 For all the above reasons, I find PC's impugned actions of August 15 and 16, 2022 were not "unusual" and, in any event, did not provide "significant assistance" to the LDB during the Strike.

106 In the result, I find PC is not an ally of the LDB and I need not consider remedy.

V. CONCLUSION

107 The above are my written reasons for the Bottom-Line Decision.

LABOUR RELATIONS BOARD



DAVID DUNCAN CHESMAN, K.C.  
VICE-CHAIR