SPECTRUM

Society for Community Living

www.spectrumsociety.org

Wage Equity Update #4 - August 31, 1999

Wage Increases:

Effective August 24th, 1999, the following pay scales are in effect at Spectrum:

Position	Start	1 year	2 years	3 years
Asleep Overnight	7.40	7.70	8.00	8.30
Awake Overnight	11.00	11.75	12.50	13.00
CSW	12.35	12.80	13.30	13.80
Manager	15.35	16.05	16.80	17.55
Coordinator	17.95	18.70	19.45	20.20

These increases are made possible because we have started up two new programs which bring with them additional wage and administrative funding, and because we have stayed within budget for our existing programs.

The cancellation of team meetings and staff training during July and August saved Spectrum about $6,000. We also saved money by replacing many individual summer vacations with our first week-long camp. Our summer student grant from the federal government allowed us to serve a number of people who have no funded services, at no additional cost to Spectrum. Funding from casino grants was more than in previous years. And thanks to our effective lobbying campaign and our local MCF staff, **Spectrum was granted an exemption from the 1.5% budget cuts** being applied to other social service agencies. (See the attached letter) All of these savings have alleviated some of the financial pressure we were feeling just a few months ago, allowing us to increase staff wages again. This is the fourth raise in less than a year.

We still have not received any additional wage money from government since 1996. Most of our contracts are funded at $12.70/hr for CSW positions - meaning that Spectrum is now subsidizing staff wages through efficiencies by over 4%. We are doing everything in our power to secure a further wage lift for our employees effective October 1,1999 to coincide with the wage lift negotiated for union workers. Spectrum has an historic long-term commitment to higher wages and better benefits because we know the people who work for Spectrum deserve to make a decent living and have the security of good benefits. Families and advocates have raised this issue repeatedly as well, stating that they strongly value the people that support their family members and want to ensure the staff are able to make a long-term commitment to their job.

Unfair Labour Practice Complaint

On July 6th, Spectrum and 30 other non-union agencies filed an unfair labour practice complaint against the provincial government. Our complaint alleges that the government is coercing employees to join a union as the only way to secure equitable wages and benefits. The government settled contracts with unions in June, granting substantial wage lifts to unionized social service workers. However, government has been refusing to negotiate with the non-union sector, and is stalling on

promised wage lifts for our employees. Since July 6th, another 20 agencies have signed on to the lawsuit, with more joining every week.

On August 13th, the government filed their statement of defense. The most interesting comment comes on page 10:

"In fact, PSEC is currently in discussions with CSSEA with respect to providing an interim non-union increase for the fiscal year 1999-2000 and further increases for the fiscal year 2000/2001."

We remain optimistic that we will be able to negotiate wage increases for our employees that will be effective October 1st, 1999.

Media Relations

Along with the unfair labour practice complaint, Spectrum has participated in various media activities aimed at increasing public awareness of the wage discrimination being perpetrated against our employees. Candice Larscheid and one of her support staff appeared on the BCTV news in a story covering the lawsuit. Ernie Baatz and Rick Mowles (Executive Director of the North Shore Association for the Mentally Handicapped) met with the Vancouver Sun Editorial Board, a meeting that resulted in an editorial entitled "Non-union caregivers deserve equal wages" (see attached copy of editorial). A number of community papers throughout the lower mainland have also picked up on the story.

Policy Committee

On August 25th, 1999, the Spectrum policy committee members met for the last meeting of their term. In September, policy representatives will ask teams to elect a policy representative for the next year. Policy meetings are generally once every two months, currently on Wednesday from 4pm to 7pm with an extra hour paid to facilitate the extra work policy representatives do in consulting with and informing their fellow team members. The policy rep is responsible for bringing team issues forward to help clarify existing policy or draft new policy. As well, the policy rep is responsible for bringing information back to their team about changes to Spectrum programs, policies or practices.

At the meeting on the 25th, policy representatives finalized a new personnel policy and procedures manual which will be printed this week. In the front of the manual, there will be a summary of the changes made from the old manual. Watch for the delivery of new manuals in the next week or two.

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Letter Granting Exemption to Spectrum Society for Community Living from the 1.5% cut to all contracts. Many thanks to all the families and staff who wrote letters of support. As well, many thanks to Doug Portfors, Gus Assonitis and Fred Milowski for their support of our request.

BRITISH COLUMBIA

August 6, 1999

Fred Milowsky, Regional Executive Director
Vancouver Richmond
Ste. 1120, 1185 West Georgia
Vancouver, British Columbia
V6E 4E6

Dear Fred:

Today the Ministry's Executive Committee met to review requests for exemptions from the 1.5 percent contract reduction.

You submitted an exemption request for Spectrum Society for Community Living and recommended our approval.

The Executive Committee concurred with your recommendation to approve this exemption given the findings of the 1997 audit completed by the Office of the Comptroller General which found that the Society develops accurate budgets, maintains control over its expenditures and is well managed.

Please feel free to share this letter of approval with the contractor.

Sincerely,

Vaughan Bowie
Assistant Deputy Minister

Pc: Mike Corbeil, Deputy Minister

Ministry for Children and Families

Regional Operations Division

Mailing Address:
4th Floor 765 Broughton Street
Victoria, BC V8W 9S2

(250) 387-1847
(250) 387-2558

LAWSON LUNDELL

LAWSON & McINTOSH

BARRISTERS AND SOLICITORS
July 6, 1999

BY HAND
Labour Relations Board

800 - 360 West Georgia Street

Vancouver, B.C.

V6B 6B2

Attention Lisa Hansen, Registrar

Dear Sirs and Mesdames:

Re: **Application pursuant to Sections 6(1), 9, 14 and 133 of the Labour Relations Code by North Shore Association for the Mentally Handicapped and others against Her Majesty the Queen in Right of the Province of British Columbia and others**

We are Counsel for the Complainants and are authorized to file this Complaint on their behalf,

1. Complainants

This complaint is brought on behalf of the:

North Shore Association for the Mentally Handicapped

1070 Roosevelt Crescent

North Vancouver, B.C., V7P 1M3,

Telephone - (604) 984-9321 Fax: (604) 984-9882

Attention: Rick Mowles, Executive Director

(hereinafter called "NSAMH")

Community Living Society

300-5945 Kathleen Avenue

Burnaby, B.C. V5H 417

Telephone - (604) 451-8699 Fax - (604) 451-6708

Attention: Ken Pook, Executive Director

(hereinafter called "CLS")

and the agencies listed on Appendix A. (hereinafter collectively called "the Complainants")

Counsel for the Complainants is:

Walter G. Rilkoff

Lawson Lundell Lawson & Macintosh

1600 Cathedral Place

925 West Georgia Street

Vancouver, B.C., V6C 3L2

Tel:(604) 631-6719

Fax: (604) 669-1620

2. Respondents

The persons against whom this Complaint is brought are:

Her Majesty the Queen in Right of the

Province of British Columbia

c/o The Attorney General for British Columbia Level 4, 1001 Douglas Street,

Victoria, B.C. V8W 9J7

Mailing Address:
P O Box 9280 Stn Prov Govt
Victoria, BC V8W 9J7

(hereinafter called "the Government")

Lois Boone
Minister for Children and Families
028, Parliament Buildings
Victoria, BC V8V 1X4

Mailing Address:
P O Box 9058
Stn Prov Govt
Victoria, B.C. V8W 9E2
Telephone: (250) 387-9699 Fax: (250) 387-9722

(hereinafter called "Minister for Children and Families")

Public Sector Employers' Council
2nd Floor, 468 Belleville Street
Victoria, BC
V8V 1X4

Mailing Address:
P O Box 9400 Stn Prov Govt
Victoria, B,C, V8W 9El
Telephone (250) 387 0842 Fax - (250) 387-6258

Attention: Joy MacPhail,
Minister of Finance and Corporate Relations
Chair of PSEC

(hereinafter called "PSEC")
(hereinafter collectively called "the Respondents")

Sections of the Labour Relations Code pursuant to which this Complaint is Brought

Sections 6(1), 9, 14, 133

Summary of Complaint

(a)The Respondents and each of them have and are continuing to coerce the non-union employees of the Complainants into joining trade unions by refusing to pay those employees the same wages and provide them with the same benefits as they are providing to the unionized employees of community social services agencies performing the same work under the same conditions. In doing so, the Respondents are violating Section 9 of the Labour Relations Code (hereinafter called the"Code")

(b) The Respondents and each of them are providing and continue to provide financial support to trade unions contrary to Section 6 (1) of the Code,

The Respondents are doing so in three ways:

(i) By taking into account the payment of union dues by unionized employees as some or all of the rationale for a differential in the pay between union and non-union employees, the Respondents are in fact paying the union dues of those employees.

(ii) By coercing the non-union employees of the Respondents into joining trade unions, providing an increase in pay if they do so, and then making it a condition of employment to belong to a union and pay union dues, the Respondents are contributing financial support to those trade unions,

(iii) By paying unionized employees of Community Social Services agencies more in whole or in part to compensate employees because they may have gone on strike, the Respondents are contributing support to the unions.

Remedy requested

The Complainants request that the Labour Relations Board order:

(a) the Respondents and each of them to cease and desist from violations of the Code by providing employees of the Complainants lesser wages and benefits based solely on whether they are members of a union or not;

(b) the Respondents and each of them to cease considering whether employees of community social services are union or non-union in determining what wages and benefits to provide to them;

(c) the Respondents and each of them to cease considering whether employees of Community Social Services have or have not gone on strike in determining what wages and benefits to provide them;

(d) the Respondents and each of them rectify their violations of the Code by:

- (i) providing the same wages and benefits to employees of the Complainants as they have to employees of union agencies since 1996; and
- (ii) providing the employees of the Complainants with the same increases in wages and benefits as the Respondents have agreed to provide to the unionized agencies represented by the Community Social Services Employers' Association (hereinafter or called "CSSEA') in the settlement dated May 28, 1999 between CSSEA and the BC Government and Services Employees' Union (hereinafter called the "BCGEU"), Canadian Union of Public Employees (hereinafter called "CUPE), Health Sciences Association (hereinafter called "HSA"), and the Hospital Employees" Union (hereinafter called the "HEU") (collectively called the 'Unions") (the settlement will hereinafter be called the "CSSEA Settlement") at the same time as increases are provided to newly certified community service agencies represented by CSSEA (The CSSEA settlement is attached as Exhibit B);
- (iii) to pay the costs of this application.

The facts:

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The community social services sector is composed of up to 3300 agencies ranging from very small agencies with one to three full time equivalent employees (FTE's), volunteer boards and significant community volunteers to large multi-service agencies with several hundred FTE's providing a range of services across a number of regions. Some are non-profit and some are for-profit. They provide services to mentally and physically handicapped individuals, battered women, First Nations people and those with drug and alcohol problems.

The primary function of both NSAMH and CLS is to provide services to persons with mental and physical handicaps. These services involve group homes where clients of the agencies live with the support of agency staff, day programming, workshops, assistance with finding employment and advocacy on behalf of their clients.

NSAMH and CLS are two of the larger non-union employers in the community social services sector. The funding for all agencies in the community social services sector is largely provided through contracts with the Ministry for Children and Families and is provided to supply a particular service.

The funding in the contracts is divided into two portions: one portion is for employee wages and benefits and the other portion is for the provision of the contracted services, which is everything but wages and benefits. This includes food for the group homes, upkeep of the homes, administration and the like. The Respondent Minister for Children and Families has directed that the administrative portions of the contracts be cut by 1.5% for all agencies.

The funding for wages and benefits for the Complainants comes entirely from the Respondents and cannot be used for any other purpose. Similarly funding for services to their clients cannot be used for wages and benefits. While some agencies do some fundraising, they cannot use those funds for wages and benefits Unless the outside funding can be guaranteed from year to year.

In short, the Complainants are totally dependent on the Respondents to provide the funds necessary to provide the wages and benefits to the Complainants' employees. If the **Respondents refuse to provide an increase in funding to the Complainants for wages and benefits, the Complainants cannot provide such an increase.**

With the advent of Public Sector Employers Act RSBC 1996, chapter 384 (hereinafter called "PSEA") in 1993, about 640 of the agencies in the community social services sector were required to become members of CSSEA. CSSEA is the employers' association established for the sector. Its duties are set out in Section 6 of PSEA and involve coordinating the following with respect to their sector:

(a) compensation for employees who are not subject to collective agreements;

b) benefit administration;

(c) human resource practises;

(d) collective bargaining objectives.

CSSEA in turn is a member of the Respondent PSEC which is also established under the PSEA.

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PSEC consists of up to seven cabinet ministers, a representative of each of the public sectors defined under the PSEA and the Commissioner of the Public Service Employees Relations Commission. Joy MacPhail, Minister of Finance and Corporate Relations is ex officio Chair of the Council and the Respondent Minister for Children and Families is a member. The current members of the Council are attached as Exhibit C.

The other public sectors (health, crown corporations, post secondary, university, public Schools, and employees of the respondent Government) are either largely or wholly unionized. By contrast, a majority of the employees of the community social services sector represented by CSSEA are non-union. The approximate division is as follows:

	CSSEA Members	FTE's
Non-union	449	8100
Union	230	6700

CSSEA is statutory mandated to negotiate the CSSEA settlement with the Unions (although the settlement was finally negotiated by represeatatives of the Respondent Government and specifically functionaries from the Premier's office) and had to have the formal approval of the Respondent PSEC.

According to the Ministry for Children and Families, the unions representing employees of CSSEA members are:

Union	**Certifications**
BCGEU	**122**
CUPE	**46**
HEU	**21**
HSA	**13**
USWA	**3**
BCNU	**2**
CLAC	**3**
UFCW	**1**

ICTU	2
PEA	1

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[The CSSEA settlement only lists 114 agencies for the BCGEU, 18 for HSA, 23 for HEU, and 42 for CUPE.]

While CSSEA is an accredited employers association on behalf of the unionized employers in its sector, its role vis-a-vis the non-union sector is less clear. Although as we have stated above, one of the statutory mandates of CSSEA is to coordinate compensation for employers who are not subject to collective agreements, the meaning of that in concrete terms is undefined.

Moreover, in a recent decision of the B.C. Supreme Court (Vernon & District Association for the Mentally Handicapped v. Her Majesty the Queen in Right of the Province of British Columbia, (May 4, 1999, unreported, Vancouver Registry A981473) the Honourable Madam Justice Boyd stated:

"However, on review of the Act [PSEA] it is clear that there is in fact no provision in the Act which requires that the Plaintiff [Vernon& District Association for the Mentally Handicapped] allow the CSSEA to contract on its behalf. Nor is there any provision in the Act which takes away the right of the Plaintiff to contract. Nor is there any provision in the Act which provides the CSSEA any right to contract on behalf of the Plaintiff. Rather the Act allows the CSSEA to conduct collective bargaining under the Labour Relations Code on behalf of its unionized members with their unionized employees", This is the CSSEA's only role as the "solely exclusive bargaining agent" as alleged in the Statement of Claim" (at page 8).

In the Legislature, the Respondent Minister for Children and Families did not mention CSSEA with regard to funding for wages and benefits of non-union agencies who are members of CSSEA. Rather, on June 9, 1999, she stated:

"Any dollars that would be given to the non-union sector would be a decision of PSEC through the Minister of Finance." (British Columbia Debates, June 9, 1999 volume 15, Number 23, Page 13484).

Notwithstanding the position of the Respondents, CSSEA has supported wage equity. The 1998 Annual General Meeting of CSSEA passed several resolutions supporting wage equity between union and non-union employees in the community social services sector:

(DR/98/05 submitted by Family and Children's Services) "Be it resolved that CSSEA seek a written guarantee from the Provincial Government to be given to CSSEA members that the distribution of wage increases in 1988/99 and beyond will eliminate the differential between wages paid to unionized and non-unionized employees"

(DR/98/06A) submitted by Other Community Social Services) "Be it resolved that CSSEA shall negotiate a settlement within the provincial tables of unionized members which will allow the distribution of compensation increases in 1998/99 and the next two fiscal years that will eliminate the differential in excess of 2% between compensation for unionized and non-unionized employees".

These motions have not been revoked, although it is apparent that such funding or guarantees of funding have not been provided to CSSEA members by the Respondents.

Similarly, when the CSSEA Settlement was reached under the auspices of Mediator Don Munroe, a spokesperson for CSSEA, was quoted as saying:

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"The contract includes a commitment by Government that for all sectors except day care, the raises will be the template for 450 non-unionized community service agencies that were not part of the negotiations."

He was further quoted as saying that CSSEA:

"will make sure that the benchmarks and principles set with this agreement can be worked through the entire sector" (Vancouver Sun, June 1, 1999, page A2).

On June 8, 1999 a letter was sent to CSSEA by NSAMH asking for clarification of this statement:

"Does purporting to make sure that the benchmarks and principles set with this agreement are worked through the entire systems mean that our employees will get the same wages and benefits as those you have agreed to give to the unionized sector and will our employees receive them at approximately the same time? If not, with regard to the issue of wage and benefit equity between the union and non-union sector, in concrete terms what does it mean?" (the letter is attached as Exhibit D)

The letter also asked where and when the commitment alluded to by the CSSEA spokesperson was made. Four weeks later, CSSEA has not responded to the letter.

The CSSEA Settlement provides for sectoral bargaining in the community social services sector at least for employees who become certified to one of the Unions. Paragraph 8 of the CSSEA Settlement states:

Notwithstanding item #2 above, employees who are certified during the term of this agreement will receive a wage increase of 2% effective the date of certification. Thereafter, the following salary treatment will apply:

Employees who are Residential Care Workers or the equivalent will receive the appropriate wages rates as per the interim equity wage grid effective Oct. 1, 1999. RCW's or equivalent who have received an equivalent general increases (sic)(i.e. the April 1, 2000 general wage increase of 2%) prior to the date of certification will not receive that increase again.

In addition, employees of newly certified agencies will receive benefits in place for 6 months at the beginning of the month following ratification of their collective agreement and, in other cases, 6 months after the benefit is extended to unionized employees.

The policy of the Respondents with regard to the non-union employees of CSSEA members is apparently to provide those employees with 10% less in wage and benefits than their Union counterparts.

The Respondent Minister for Children and Families in a letter to NSAMH dated April 27, 1999 alluded to this policy stating:

"The framework for wage increases for both union and non-union employees is established by the Public Sector Employers' Council (PSEC) and not by the Ministry for Children and Families. As you may be aware, PSEC policies provide for differential in compensation for non-union employees based on a number of criteria. The intent of the PSEC policy is that it

should be neither an incentive nor disincentive regarding unionization".(Letter attached as Exhibit F)

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In a letter to NSAMH dated June 7, 1999, Garry Shury, Acting CEO and Secretary to the Respondent PSEC stated:

"In 1994, the Public Sector Employers' Council (PSEC) addressed the issue of the union non-union differential. The Council supported maintaining comparative increases where the differential was approximately ten percent. It should be noted, when Council addressed the issue of the differential, the compensation mandate was percentage based, unlike the current monetary mandate framework. Nevertheless, the intent of the policy was to be neither an incentive nor a disincentive." (Letter attached as Exhibit E)

The letter went on to state:

"There has naturally been lots of debate about this. On the One hand, there is the view that the only permissible differential should be a small discount for union dues. On the other hand there is the view that a negative larger differential does not create an incentive to unionize due to the impact strike action has on unionized employees".

The policy of a 10% differential between union and non-union employees appears to still be in place. Last year, on July 14, 1998, in the Legislature, the Respondent Minister for Children and Families discussed the 10% differential:

"The unionized sector negotiated increases last year. They got some of those increases this year, in April. In fact, the unionized sector went on strike in order to get their wages; this was not something that was just handed over to them. Generally speaking, the non-union sector would receive a wage redress with a 10% differential. That would come through PSEC, and I am not sure when they would be making those adjustments."(British Columbia Debates, Volume 11, Number 20, page 10069)

The Respondent Minister further provided this strange rationale for not providing increases to the non-union sector:

"CSSEA is a group that bargains on behalf of the employers in response to the unionized sector - 600 employers of which 200 are union. So that is the unionized sector. They bargain on behalf of all those unionized employers and they bargain with the union. There is no bargaining that is going on with the other, because there is no group to bargain with. A non-unionized sector does not have a bargaining group.(British Columbia Debates, supra.)"

She also stated:

"I think there was a belief that in those areas where the union people go on strike and hit the bricks more or less - they take the pain, they go with a wage loss in order to gain some advantages for their people and for themselves - it would be entirely unfair to watch the non-union sector just automatically get the same increase - it would seem so to me if I were a unionized person there. That obviously would not be an entirely fair process" (supra, page 10071).

This year, on June 9, 1999, the Respondent Minister referring to a prior agreement reached with the unionized sector alluded to the policy providing for a union - non-union differential:

"The moneys which we will be receiving for this contract, whenever it is ratified by both sectors(sic), will come to this Ministry to cover the costs of that contract, which is a negotiated contract between (sic) the union sector ..... That does not include the non-

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union sector. Any dollars that would be given to the non-union sector would be a decision of PSEC through the Minister of Finance."(British Columbia Debates, June 9, 1999, Volume 15, Number 23, page 13482)

When asked whether the Ministry would provide a commitment that they would treat the non-union agencies equally, the Respondent Minister stated "We went through that last year. This is a policy of the Ministry of Finance." (supra, page 13482)

While the Respondent Minister has stated that generally the non-union agencies have received increases in the year following that for the unionized agencies, this has in fact not-been the case. The unionized community social services sector has received wage increases in 1995, 1996, 1997, and 1998. Up until 1998, the increases were percentage based but now are set wages. In 1998, the job rate for all Residential Care Workers (RCW's) or equivalents employed by unionized CSSEA members, went to $14.45 per hour [The RCW rate is the benchmark rate in the sector]. Under the CSSEA settlement, the RCW rate will go to $15.00 on October 1, 1999 and will climb to at least $16.83 per hour by October 1, 2002. On the other hand there has been no increase provided to the non-union sector since 1996 when "low wage redress" was provided to employees earning less than $15.00 an hour. The last general increase was 1995. For example, the job rate for RCW's employed by NSAMH is $14.07 per hour and has not changed since 1996. In short, the Respondents have refused to provide a general increase to the non-union sector for 4 years and no increase at all for 3 years while providing increases to the union sector in every year from 1996 to 2003.

On the basis of the Respondent's policy mandating a 10% differential, it would appear, non-union RCW's or equivalents would not get an increase unless they are earning less than $13.50 per hour in October 1, 1999. However, if they unionize, they will instantly receive increases and will receive the same wages and benefits as the unionized sector. If one ignores the bizarre view of the Respondent Minister that one cannot extend increases to the non-union sector because "there is no one to bargain with", the only basis for a wage differential that could climb to over $1.65 per hour in wages alone for employees doing the same work is based solely on the choice of the Complainant's employees to remain non-union.

· In the case of NSAMH, its employees have rejected numerous and vociferous overtures to join a union, notwithstanding vigorous campaigns by the BCGEU. In *NSAMH and the BCGEU,* (BCLRB No. B87/98) the Labour Relations Board recited the following facts:

"The Union began its organizing drive in late April 1997. In June 1997 the Employer allowed the Union to attend a regular staff meeting and address the employees about unionizing.

The Union filed its first application for certification on August 15, 1997. The Union did not have the requisite support for a vote [45%]. As a result, the Union applied to withdraw its application. The Board granted the withdrawal.

The Union filed its second application for certification on September 19, 1997. The application was dismissed at the Board on September 16, 1997 because the Union did not have the 45% support necessary for a representation vote to be ordered." (at page 1).

Subsequently as part of a settlement of various complaints, NSAMH agreed to the sending out by the Labour Relations Board of union material including membership cards to all of its employees

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in December, 1997. Again, the Union was unsuccessful in signing up enough employees even for a vote.

NSAMH obtained an order against further organizing by the BCGEU until July 5, 1998. Even after that date no further organizing activity was apparent. However, within days of the CSSEA Settlement, the HEU and BCGEU commenced attempting to organize NSAMH's employees. The CSSEA Settlement was a prominent part of the propaganda material of both unions. The HEU has even set up a web site called the "NSAMH-HEU Organizing Website" At its Web site, the HEU posits the following question and answer: .:.-

"Q. Now that the other workers have won wage increases, won't we just get them as well?

A. NO, there are no such guarantees,...Well, the most likely answer is that there are no such monies provided for; we will continue to receive only what the employer wishes to give us, and no more. If funding becomes a general issue, ...then wage increases will not be a priority for the employer."

That statement, of course, deliberately ignores the fact that NSAMH in common with other employers in the sector can only pay the increases that the Respondents provide and further deliberately ignores the fact that the non-union CSSEA employers including NSAMH have been strenuously lobbying to get the same increases.

The published material of the HEU states that its monthly dues are 2.1% of gross pay while the BCGEU states that its monthly dues are 1.6% of gross pay. If all of the 8100 non-union FTE's were to join one of the unions (at a wage of $15.00 per hour), it would provide for dues of at least $3.79 million per annum to the Unions.

The party in power provincially is the New Democratic Party. It's close affiliation with trade unions, in particular the Unions, is notorious. They are major funders of the NDP. Filings with Elections British Columbia show that in 1996, the year of the last provincial election, the BCGEU provided over $151,000 to the NDP, CUPE over $53,000 and the HEU over $19,000. These figures of course do not include "volunteers" and paid staff who are provided by trade unions to the NDP to assist in elections, recall campaigns and the like.. Contributions from the unions continue in non-election years, albeit at a reduced rate.

The Minister of Finance, Joy MacPhail, Chair of PSEC, is a former employee of the BCGEU and of the B.C. Federation of Labour.

It is further clear that the community social services sector is a low wage sector in need of wage redress. If there is any dispute about this notion, one need go no further than the Premier of the Province, Glen Clark. Speaking in support of the CSSEA settlement, the Premier was quoted in the Vancouver Sun on Monday, May, 31, 1999 (at page A1):

"The increases are very large, and we will probably be criticised for it ..... I think they are, in some cases, over 30% over 5 years. *But these are people who have been historically underpaid* While they still are relatively low paid, at the end of the 5 year period I think we will have fairly decent family supporting jobs." (emphasis added)

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The Complainants' non-union employees perform exactly the same work under the same conditions as the unionized employees. There is absolutely no distinction between the work or type of work performed by the employees of unionized agencies and non-unionized agencies. The only basis for any difference is whether the employees have chosen to be union or non-union: if the employees choose to be non-union they are penalized by the Respondents in the wages and benefits they receive.

ARGUMENT

A basic premise of the *Code* is that employees are free to choose whether or not to be members of a trade union and have it represent them in collective bargaining with their employer. Section 4 (1) of the *Code* makes this right explicit:

"Every employee is free to be a member of a trade union and to participate in its lawful activities".

Section 9 of the *Code* states:

"A person must not use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue or cease to be a member of a trade union."

The rationale for these sections was described by the Labour Relations Board in Cardinal *Transportation BC Inc, (1997). 34 CLRBR (2d) I,* when the Board stated:

"The unfair labour practice provisions set out in ss. 6 and 9 are intended to ensure that the right of "freely chosen" trade-union representation for the purpose of collective bargaining is meaningful. It has been recognized at least since the drafting of the *National Labour Relations Act,* c 372, 49 Star. 449 (1935) (the *"Wagner Act")* in1935 that employees are economically dependent upon their employers, and are thereby unusually vulnerable to any attempt by employers to influence or interfere with their choice in collective representation. The unfair labour practice provisions of the Code, and the equivalent provisions in other labour legislation in North America, are intended to protect the right to bargain collectively; *i.e.,* the right to freedom of association in the workplace. Such provisions are one of three essential components of all legislation modelled on the *Wagner Act* (Including all labour legislation in Canada): certification, unfair labour practices and the duty to bargain in good faith." (at page 48)

In *Cardinal*, the Board reiterated that coercion could include economic coercion. It adopted the definition of "coercion" adopted by the BC Court of Appeal in *Therien v. International Brotherhood of Teamsters, Local 213, (1959) 27 WWR 49* when the Court in interpreting a predecessor to Section 9 stated:

"In my opinion, any form or pressure, including economic and perhaps some forms of social pressure, is included in "coercion" and "intimidation" under sec. 6 even though the conduct be not otherwise wrongful." (at page 64)

In *Cardinal,* the Board set out this definition of "coercion":

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"In our view it contains this basic element: any effort by an employer to invoke some form of force, threat, undue pressure or compulsion for the purpose of controlling or influencing an employee's freedom of association." (at page 52)

However, in order to violate Section 9, the respondent need neither be an employer nor even have intended the result (see ACTE Local 1728 and Dr. Pat McGeer, BCLRB 73/79). In the McGeer case, the Board determined that a program of public coercion, spearheaded by a Minister of the Crown, amounting to intense and irresistible community pressure on employees of Notre Dame University of Nelson to give up their membership in a union was a violation-of-what is now Section 9.

In Peninsula Consumer Services Co-operative, BCLRB No. B180/95, the Board found that discussions of possible effects on people's seniority rights, and the higher payment of initiation fees after certification ($100.00 versus $0) amounted to coercion or intimidation contrary to Section 9 of the Code. Clearly, on the facts, the Board accepted that Section 9 included economic coercion.

The context of any statements or actions, the relative power of the parties, the ability to take action that would adversely affect the employees if they do not act in the desired manner are relevant factors to consider when deciding whether improper coercion has occurred. The Board's conclusion that an employer has violated Section 9 often stems from finding that the employer has the power to carry out the threat made during an organization campaign and has effectively capitalized on the employees' economic dependence.

While in most cases, the conduct being examined involves coercion by an Employer inducing employees not to join a trade Union, the principles apply no less where the undue pressure is to induce employees to join a trade union. The wording of Section 9 makes that clear that it prohibits coercion "to become ... a member of a trade union".

If employees have the right to choose whether or not to join a union, that 'choice must be made free of coercion by anyone: employer, union or third party. That must be particularly so when the third party, like the Respondents, is the government itself displaying not only the usual power associated with a government, but also expressly controlling whether the employees have a job (If the Government cuts funding, the programme doesn't exist and the employees are out of a job) and the wages and benefits those employees receive. It cannot but be coercion in any instance where the full force of the government is brought to bear on employees to tell them that they will get inferior wages and benefits unless they join one of the Unions, and where the government has the full and visible power to carry out that threat and has in fact continuously done so.

If the same pressure were brought to bear by the Respondents on the employees against their joining a trade union, the result of a Section 9 Complaint would be obvious. Although the pressure was social in that case, rather than monetary, that was the result in McGeer (supra). The coercion is even more evident where the pressure is economic and the coercion is in favour of joining one of the Unions.

The remedy, we say, follows from the breach. The only way to rectify the Respondents' unlawful conduct is to order them to provide the same funding to the non-union employees of the

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Complainants and to order them not to consider unionization or strike action when determining funding for wages and benefits in the community social services agencies in future.

By their discriminatory funding of the non-union agencies, we say that the Respondents have also violated Section 6(1). Section 6(1) states:

"An employer or a person acting on behalf of an employer must not participate in or interfere with the formation, selection or administration of a trade union or contribute financial or other support to it."

The Respondents have violated Section 6(1) because:

(a) To the extent that any differential in wages wholly or partially takes into account union dues paid by unionized employees, then effectively the employer is paying the union dues;

(b) To the extent any differential takes into account union strike action, it is contributing other support to the Unions by making up wages lost to strike action;

(c) By inducing employees to join the Unions, immediately providing increase equal to or greater than the union dues and then requiring that employees join the unions and pay dues, it is providing financial support to the Unions.

As we stated above, HEU charges 2.1% and BCGEU charges 1.6% of gross salary as union dues. If all 8100 full time FTE's employed by the non-union agencies were pressured into joining the Unions, it would be a major financial bonanza for the Unions, in an amount in excess of $3.7million per annum. Section 6(3)(f) of the *Code* makes it an unfair labour practise for an employer to refuse to agree to remit dues. We do not argue with dues being deducted and remitted; we do however take issue with paying employees more to join the union and basing that increase wholly or in part on union dues and union strike action. Because wages to the employees would be increased to pay the dues, the flow through from the Respondents to the Unions is fairly direct. Although intention is not a necessary element of a finding of a violation of Section 6 (1), in light of the extremely close relationship between the Unions and the Respondents, it is evident that the likely result is the one being sought.

It may be argued that the prohibition in Section 6(1) is against an employer or a person acting on behalf of an employer. While we do not say that the Respondents are the employer, they totally control the purse strings with regard to what Wages and benefits the Complainants can provide, and in so doing they are acting on behalf of employers, namely the Complainants. They are the funding source for all income and benefits for employees of the agencies. To that extent, they determine the salaries and benefits that will be paid to the employees. While we do not dispute that the agencies remain the employer, in this case, the Respondents act on behalf of the employer in establishing the rates.

Whether it be the Respondents or any of them, the result is the same. For political reasons, but in any event contrary to the Code, the Respondents are contributing financial and other support to the Unions. Again the remedies requested flow from the nature of the violation.

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A hearing is requested in Vancouver. Its length will depend in part on the Respondent's position but will be at least 5 days. The matter is of considerable urgency as the Complainants' employees have not had increases since 1996 and are being solicited to join a union on the basis of the CSSEA Settlement.

All of which is respectfully submitted.

Yours truly,

Walter G. Rilkoff

WGR/svg

cc Office of the Attorney General

cc Lois Boone, Minister for Children and Families

cc Public Sector Employers' Council

cc Complainants

The application continues with about 60 pages of exhibits... Come by the office to peruse the full copy.

Write to Ernie if you have any questions.

Lang Michener Lawrence & Shaw

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August 13, 1999

DELIVERED

Labour Relations Board of British Columbia

900 - 360 West Georgia Street

Vancouver, B.C.

V6B 6B2

Attention: Mark Clark, Deputy Registrar

Dear Sirs:

North Shore Association for the Mentally Handicapped, Community Living Society, et al -and- The Government of the Province of British Columbia, Minister for Children and Families and PSEC

(Sections 6 and 9 - Case No. 40489/99MC)

We represent the respondents and are instructed to file this submission on behalf of the respondents in reply to the complainants' application dated July 6, 1999.

Counsel for the respondents is:

N. David McInnes
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1. Outline of the respondents' position

The complainants' application comes down to this: being dissatisfied with the level of contractual funding which they have been able to negotiate relative to funding which has been committed to certain other agencies in the community social services sector through the collective bargaining process, the complainants submit that the Labour Relations Board should order the respondents to provide a higher level of funding to them.

On behalf of the respondents, we respectfully submit that the level of funding to be provided to the complainants for performing services under contract is a matter of public policy reserved to the Government to decide. We respectfully submit that this Board has no jurisdiction to direct the respondents, or any of them, to fund the complainants to a certain level, or for that matter, to fund them at all. The respondents respectfully submit that this complaint must be dismissed.

Further, and in the alternative, we submit that the facts raised in the complainants' submission do not give rise to any violation by the respondents of Sections 6 or 9 or any other provisions of the *Labour Code.*

2. Outline of facts relied upon and response to the complainants' allegations of fact

Below We provide a statement of the facts upon which the respondents rely and provide our reply to the complainants' submission.

(a) Government of the Province of British Columbia

For many years the Government of the Province of British Columbia (the "Government") has, through a number of its ministries, provided funding to both nonprofit and for profit agencies which in turn provide contracted services in what is now described as the community social services sector. Some of these services, for e.g. support for children and families in care, are mandated by statute, while others, for e.g. the provision of services in the community for mentally handicapped adults reflect government policy. Although the Government could meet its statutory and assumed program obligations directly within the public service, it has chosen as a matter of policy to do so by entering into contractual arrangements with service providers in the community. Agencies in this sector provide:

- social services having as their object the lessening, removal or prevention of the causes and effects of poverty, child neglect and suffering;

- case work, counselling, assessment, referral and advocacy services;
- residential and foster home care services or any form of child and youth care services;
- day care and related early childhood services;
- adoption services;
- residential services for adults;
- occupational training, retraining, rehabilitation and other employment related services for mentally or physically handicapped individuals, or individuals having unusual difficulty in obtaining or maintaining employment;
- services having as their objective the lessening or prevention of the causes and effects of violence against women;
- settlement and adjustment services for new immigrants;
- rehabilitative services for offenders or ex-offenders;
- services designed to encourage and assist residents of a community to participate or to continue to participate in improving the social conditions of their community; and
- other forms of aid such as community legal services.

Social services contract funding, like other government expenditures, is governed by the *Financial Administration Act,* R.S.B.C, 1996,c.138 (the "FAA"). Money must not be paid out of the consolidated revenue fund without the authority of an appropriation (FAA, section 21(1)). An appropriation is defined in that *Act* as meaning:

(a) an appropriation in a Supply Act,

(b) a provision in this or another Act that expressly

i) authorizes or directs payment from or out of the consolidated revenue fund,

- authorizes payment from or out of a special fund, or
- dispenses with the need for another appropriation, or

(c) an appropriation by special warrant under section 24;

The Treasury Board is a committee of the Executive Council which consists of the Minister of Finance and Corporate Relations as chair, and other members of the Executive Council appointed by the Lieutenant Governor in Council and must act as a committee of the Executive Council in matters relating to inter alia: government financial management and control, including expenditures and assets and the evaluation of government programs as to economy, efficiency and effectiveness. Section 27 of the FAA deals with the regulation of expenditures:

27 (1) The Treasury Board may do one or more of the following:

(a) by directive, control or limit expenditure under any appropriation;

(b) by directive, subject to any limitations stated in the appropriation, set conditions for any kind of expenditure under an appropriation;

(c) make regulations to provide that interest at a rate prescribed in the regulations is payable under prescribed conditions on money owing by the government;

(d) make regulations establishing amounts or allowances, to be paid out of an appropriation, for or in respect of out of pocket, travelling and other expenses incurred by persons in the discharge of official duties, with power to set different rates.

(2) Nothing in subsection (1) empowers the Treasury Board to

(a) change the terms or conditions of a security, or

(b) limit expenditure under an appropriation if the expenditure is required

(i) to honour an obligation of the government under a security, a guarantee or an indemnity, or

(ii) to make a payment authorized by or under the *Crown Proceeding Act.*

The funding which is paid to service providers under contract, including the complainants, amount to specific appropriations of the legislature, paid out of consolidated revenue. Monies available to fund social services contracts are established through the government budget process which itself is a reflection of government policy.

Currently, service contracts signed by agencies, including the complainants, contain the following provision:

5.03 The Province's obligation to pay money to the Contractor under this Agreement is subject to the *Financial administration Act,* which makes the obligation subject to an appropriation being available in the fiscal year of the Province during which payment becomes due.

Government ministries historically contracted for services directly with individual service providers in the sector under a purchase of service contract ("POSC") as the need for the service became identified either by the Government or from within the community. In each instance funding was committed by the ministry to the contracting agency having regard for a range of considerations, such as the extent to which the agency was also funded by non-government sources, and the agency cost base to provide the services, including wage and benefit costs which may have been negotiated pursuant to collective bargaining.

The deficiencies which were inherent in the historical service delivery model above described were identified in Volume 2 of the Report of the Commission of Inquiry into the Public Service and Public Sector (the "Korbin Commission") published in 1993. Referring to the contracted community social services sector, the Korbin Commission stated at Page E7:

"The major premise of the POSC contracting system includes a tendering, free market, arm's length approach to the delivery of services. This service delivery model assumes that the marketplace will develop a range of agencies, individuals or companies which will compete with each other and thereby provide a high quality service at competitive rates. The commission found that both service providers and government contract managers question the appropriateness of this model for the purchase and delivery of community social services.

Although general contracting guidelines and expectations have been established, most contracting practices have been developed on a program by program basis. Agencies that contract with a number of programs and ministries experience a wide variation in contracting procedures and requirements. These differences, in the view of contracting agencies, create an undue administrative burden and

result in an ineffective and inequitable contracting process. Inconsistencies with respect to allowable budget items and financial reporting requirements were cited by agencies as particular concerns"

(b) Public Sector Employers' Council

One of the key recommendations of the Korbin Commission was the establishment of the Public Sector Employers' Council (the "Council"), At page A2 of Volume 2 of the Report the Commission stated:

".., the linchpin of the commission's recommendations is the establishment of a Public Sector Employers' Council (PSEC) ... [which] ... will provide for the necessary linkage between government and public sector bodies on fiscal matters. It will be an avenue for the government to advise broad public sector employers on its strategic directions and for government to be advised, in a timely manner, of public sector human resource issues."

Acting on the recommendation of the Korbin Commission, the Government in 1993 enacted the *Public Sector Employers' Act,* R.S.B.C. 1996, c. 384 (the *"Act")* which established the Public Sector Employers' Council.

The composition of the Council is no longer as described in Exhibit "C" of the complainants' submission. In particular, the Honourable Gordon Wilson has replaced Joy K. MacPhail as Chair of the Council and Maureen Nicholls has replaced John Mochrie as Commissioner, Public Service Employee Relations Commission.

The respondent Minister for Children and Families is a member of the Council appointed by the Lieutenant Governor in Council and in such capacity, carries out the functions of the Council which we describe below.

The Council has no contractual relationship with any of the complainants, nor does any employment relationship exist between the Council and any of the complainants' employees. As contemplated by the Korbin Commission, the role of the Council, broadly described, is to make recommendations to government with respect to compensation guidelines and other employment related issues consistent with the fiscal framework established from time to time by Treasury Board. One of the Council's responsibilities is to establish compensation increase guidelines for government ministries, including the Ministry for Children and Families, which in turn negotiate service contracts with the complainants and other agencies in the sector. The statutorily mandated functions of the Council are set out in Section 4 of the *Act* which we reproduce below:

4 (1) The functions of the council are

(a) to set and co-ordinate strategic directions in human resource management and labour relations,

(b) to advise the government on human resource issues with respect to the public sector, and

(c) to provide a forum to enable public sector employers to plan solutions to human resource issues, consistent with cost efficient and effective delivery of services in the public sector.

(2) In addition, it is a function of the Council to enable representatives of public sector employees to consult with public sector employers on policy issues that directly affect the employees.

(c) Ministry for Children and Families

The Ministry for Children and Families is correctly described in the complainants' submission as being the government ministry which is predominately responsible for contracting with the complainants and other service providers in the sector. However, other government ministries, including the Ministry of Health, Ministry of Women's Equality, Ministry of Advanced Education, Training and Technology, and Ministry of Attorney General also contract with service providers in the sector. The Ministry for Children and Families and other contracting ministries are required to negotiate service contracts and renewals within such guidelines as may be recommended by PSEC and adopted by the Government,

(d) CSSEA

As explained in the complainants' submission, the Community Social Services Employers' Association ("CSSEA") is the employers' association established under Section 6(1) of the act for the community social services sector. CSSEA is comprised of the following seven service divisions:

aboriginal community social services
child care/related early childhood services
community justice services
family and children services
other community social services
services for community living
women's services

As of August 1999 CSSEA's membership is comprised of 260 voluntary member agencies representing 2,579 FTE's and 416 designated member agencies representing 12,826 FTE's. As of August 1999, 441 CSSEA member agencies representing 6,583 FTE's operate non-union and 235 member agencies representing 8,770 FTE's are union certified.

CSSEA currently negotiates with 11 unions representing 260 certifications as outlined below. Some member agencies are certified with more than one union.

BCGEU 151 BCNU 1

CUPE 50 CAW 2

HSA 17 PEA 1

HEU 28 UFCW 1

CLAC 5 USA 3

CSWU 1

Membership in CSSEA is either on a designated or voluntary basis. Social services employers are presently designated as members of CSSEA where:

(a) they contract for the provision of services valued at $100,000 or more annually, either directly with the provincial government, or indirectly through a regional health authority, and

(b) if multi-funded, receive at least 50% of funding from contracts with the provincial government.

Social services employers who do not meet the requirements for designation may apply for voluntary membership, (There is presently a moratorium on new voluntary members until December 31, 1999.)

The 33 complainants (as identified in Appendix A of the complaint) represent a small proportion of the total of CSSEA's non-union member agencies. The roster of complainants is comprised of both designated and voluntary members of CSSEA.

Although it is correct that the most significant source of funding for the complainants is from the provincial government, the complainants incorrectly submit at page 5 that the funding for wages and benefits comes entirely from the Government. In fact, we are informed that at least some of the complainants fund part of their operating and wage and benefit budgets from non-provincial government sources.

The complainants also submit at page 5 that non-government funding cannot be used to fund wages and benefits. If the complainants seek to imply that the respondents have established some contractual or statutory bar to so doing, that is not correct. No such prohibition exists.

(e) The 1999 CSSEA collective bargaining settlement

The complainants' submission is inaccurate in certain respects concerning the collective agreements negotiated in May/June, 1999 (but not yet fully ratified) between CSSEA on behalf of certain of its members and the BCGEU, CUPE, HSA and HEU. The CSSEA settlement (to use the complainants' terminology) is attached as Exhibit "B" to the complainants' submission. The CSSEA settlement in fact represents separate collective agreements between 122 "Certain Employers" and the four unions who were prepared to negotiate collectively as part of a voluntary negotiation process. A number of CSSEA member employers who are also certified to one or other of the four unions did not participate in the process leading to the CSSEA settlement.

The complainants are incorrect in asserting at page 8 that the settlement provides for sectoral bargaining and also incorrect in asserting at page 10 that if non-union employees in the sector unionize

"... they will instantly receive increases and will receive the same wages and benefits as the unionized sector."

In fact neither proposition is correct. The complainants' reliance on paragraph 8 of the CSSEA settlement in support of the above submissions is misplaced. In fact paragraph 8 applies only to employees who become certified by one of the four unions during the term of the CSSEA settlement to the 122 employers who are parties to the settlement and are listed on Appendix A.

It is paragraph 7 of the CSSEA settlement which is the applicable provision that addresses what happens in collective bargaining which is yet to take place between employers who are not parties to the CSSEA settlement and whose employees are certified to one of the four unions and are listed on Appendix A as a "New Certification" or *"Renewal",* or employers which may be certified to One of the four unions during the term of the CSSEA settlement. In such cases paragraph 7 sets out certain principles which

"... are adopted as objectives for negotiation outcomes...".

These principles may well form the basis for subsequent collective agreements. However, contrary to the complainants' submission, that result is neither automatic nor guaranteed by the CSSEA settlement. Legally CSSEA was in no position to bind its employer members who were not at the table, and so advised the unions during bargaining, and presumably nor were the unions able to bind employees for whom they were not then bargaining.

Furthermore, the remaining unions who hold certifications in the sector - USWA, BCNU, CLAC, UFCW, ICTU, PEA, and CSWU - have yet to bargain. The CSSEA settlement has no applicability to

them at all. It remains to be seen to what extent collective agreements yet to be negotiated with these unions will ultimately replicate, or differ from, the CSSEA settlement.

It should be apparent from the foregoing that the complainants' submission presents a gross over-simplification of contract funding within the sector. There simply does not exist in the sector a uniform "unionized" wage and benefit rate for all union employees as compared to a uniform "non-unionized" rate for all non-union employees.

(f) Community social services sector funding

Funding the community social services sector has presented enormous challenges to the respondents - both in terms of the amount of funds, which approach one billion dollars annually, which are required in the aggregate to be committed to the sector, and in terms of developing a comprehensive compensation strategy throughout the sector given the historical anomalies as identified by the Korbin Commission,

An ongoing issue for debate, not yet concluded, between the respondents on the one hand, and CSSEA and some of its members on the other, is the extent to which there should be any differential in contract funding provided by the Government to non-union service providers as compared to that which may be provided to unionized agencies in the sector. It is, of course, into the midst of this public policy debate which the complainants seek to inject the Board.

For its part, CSSEA has advanced the formal position that the only acceptable differential in funding is approximately 2% to reflect the cost of union dues. The complainants, however, assert that they should automatically receive an increase in funding which would permit them to compensate their employees at the level which has now been established in the CSSEA settlement.

The complainants have attached, as Exhibit E of their submission, a letter dated June 7, 1999 from Mr. Garry Shury, Acting Chief Executive officer and Secretary to the Council to Mr. Rick Mowles, Executive Director for NSAMH. The letter states, in part

"In 1994, the Public Sector Employers' Council ('PSEC) addressed the issue of the union-non-union differential. The Council supported maintaining comparative increases where the differential was approximately ten percent, It should be noted, when Council addressed the issue of the differential, the compensation mandate was percentage-based, unlike the current monetary mandate framework. Nevertheless, the intent of the policy was to be neither an incentive nor a disincentive.

There has naturally been lots of debate about this. On the one hand, there is the view that the only permissible differential should be a small discount for union dues. On the other hand, there is the view that a negative larger differential does not create an incentive to unionize due to the impact strike action has on unionized employees. In any event, the issue is one that must be managed. With this in mind, PSEC is developing options for a non-union increase, As per our May 14th meeting, as follow-up we may need your assistance with appropriate compensation data in order to fully address the financial considerations of this decision,"

PSEC is well aware that the CSSEA settlement will accelerate the need to manage the issue of funding increases to non-union agencies in the sector, including the complainants, relative to increases negotiated in the CSSEA settlement and relative to increases which may be negotiated by CSSEA on behalf of unionized employers who are not captured within the CSSEA settlement.

In fact, PSEC is currently in discussions with CSSEA with respect to providing an interim non-union increase for the fiscal year I999/2000 and further increases for the fiscal year 2000/2001.

3. Argument

- Funding. provided to the complainants is a matter of government policy and is not reviewable

Although the issues raised in the complainants' submission address an extremely complex funding issue in the community social services sector, we submit that the legal issue is clear and simple enough which is that: decisions about discretionary funding are policy matters reserved exclusively for the Government to decide, based upon advice provided by the Council or other advisors. We respectfully submit that the Board must decline the invitation to become embroiled in what is patently a dispute that belongs in the public political arena since the Board is, in our respectful submission, without jurisdiction to make the orders sought by the complainants.

It is a fundamental constitutional principle that, except for special circumstances, no public money may be paid out of the consolidated revenue fund without the authority of an appropriation by the legislature (The *Queen v. Lords Com 'rs of the Treasury* (1872), L.R. 7 Q.B. 387 (C.A.)). The authority of the court (or any judicial or quasi judicial body) to initiate the expenditure of appropriated money is very limited.

The decision to fund government programs, including contracts within the social services sector, and the amounts of any appropriations to be paid from consolidated revenue are matters solely for the legislature and the executive acting through Treasury Board. The decisions of the legislature and Treasury Board reflect government policy. Each of the respondents is in some way either establishing or implementing government policy. It is respectfully submitted that a review of the decisions taken are beyond the jurisdiction of this Board.

This application is not the first attempt made to require the respondents to provide a particular level of funding to service providers in this sector. In *Vernon and District Assn. for the Mentally Handicapped v. British Columbia,* [1999] B.C.J. No. 1026, Vancouver Registry No. A981473, the plaintiff, which happens to be one of the complainants in this application, sought in addition to other relief, an Order that the Government provide funding equivalent to that provided to union agencies. At page 5 of the decision Boyd S. stated:

"The gravamen of the claim against the Crown is set out in para. 25(0 of the Prayer for Relief, in which the plaintiff seeks a declaration that the Ministry ought to provide "sufficient funding" to the plaintiff under its contracts with the Ministry, at a rate comparable to unionized workers. However, nowhere in the Statement of Claim nor during submissions, did Mr. Promislow identify any statutory or common-law right which could support such a claim.

I agree with the Crown's Counsel that the manner in which the Ministry decides to fund the plaintiff's contracts is an issue of discretionary funding reserved to the legislature a matter which falls squarely in the political arena and not a matter which is reviewable by the Court."

Canada (Attorney General) v. Smart J. and Savard (1996), 74 B.C.A.C.81;

The Queen v. The Lords Commissioners of the Treasury Board [L.1L VoL VIII

Re Metropolitan General Hospital and Minister of Health (1979), 101 D.L.R. (3d) 530;

Re Regional Municipality of Hamilton-Wentworth and Minister of Transportation for Ontario; City of Stoney Creek et al (I991), 78 D.L.R. (4th) 289;

Gajic v. British Columbia (Minister of Finance and Corporate Relations)(No. 2) (1996) 70 B.C.A.C. 213;

The Minister of Finance of British Columbia and His Majesty The King, [1935] S.C.R. 278;

Re Simon et al. and Municipality of Metropolitan Toronto 99 D.L.R. (4th) ! 1"

We respectfully submit that the comments of the Court above are apposite to the complainants' application before this Board.

The decision to fund a specific program, and the amount of any appropriation, is for the legislature and Treasury Board, not for an individual minister, to decide, including the respondent Minister for Children and Families. Decisions taken to fund programs are developed as a matter of government

policy. The role of the respondent Minister for Children and Families as a member of the Council which makes recommendations about compensation matters to Treasury Board are not reviewable by this Board.

In *Gajic v. British Columbia* (1996), 19 B,C,L,R (3rd) 169 (B.C.C.A) the petitioner had sought relief against the Minister of Finance and Corporate Relations in the form of a mandatory order requiring the Minister to remit certain taxes and penalties. The Court of Appeal dismissed Gajic's appeal on the basis that the relief he sought against the Minister of Finance was beyond the jurisdiction of the Court. The Minister's role was limited to presenting a recommendation to Cabinet, The Court of Appeal held that the Crown was immune from coercive orders and referred to Lord Lush's statement in the *Queen v. the Lords Commissioners of the Treasury supra:*

"When the money gets in the hands of the Lords Commissioners of the Treasury, who are responsible for dispensing it, it is in their hands as servants or agents of the Crown, but practically to the House of Commons, and in no sense are they accountable to this or any other court of justice."

A similar result was reached in *Metropolitan General Hospital and Minister of Health* (I979) 101 D.L.R. (3d) 530 (Ont- High Court) where the Minister of Health's decision to reduce hospital funding was challenged, Grange J. dismissed the petition. In his reasons for judgment at p. 536 he says:

"...The Minister has filed much material to justify the merits of his decision but I make no comment upon it or upon the case presented by the applicant because in my view it is not for me or any Court to oversee the Minister in his policy decisions or in the exercise of his discretion in the expenditure of public funds entrusted to this Department by the Legislature. The propriety of the payment or the withholding of payment may in some circumstances be inquired into; the wisdom of the decision can never be the subject of judicial review. It is a political not a judicial problem."

We also refer the Board to the decision of the British Columbia Court of Appeal in *Independent Canadian Business Assn. v Vancouver* (1988), 24 B.C.L.R. (2d) 196. Although this case involves the decision of a municipal authority to implement a fair wage policy, the Court referred to numerous authorities which indicated that it was unable to interfere in policy decisions taken by government.

(b) The respondents are not in violation of the *Labour Code*

We submit that the complainants, in framing their submission, have ignored the fundamental reality that the wage and benefit increases negotiated in the CSSEA settlement reflect the Unions' success in exerting pressure through strike action. The CSSEA settlement was achieved only following a disruptive 11 week strike. Presumably, the purpose of the strike, from the perspective of the Unions and the employees who went on strike, was to obtain greater wages and benefits than were on offer during the course of negotiations prior to job action.

It is a fact, at the present time at least, that employees covered by the CSSEA settlement may earn more than other unionized employees in the sector who arc not covered by the settlement, and presumably will earn more than the complainants' employees. However, we submit that fact does not give rise to a complaint that the respondents are in violation *of the Labour Code.*

We submit that simply because the Government has agreed to provide a certain level of funding to the Certain Employers following classic trade union pressure exerted during a lengthy strike, nothing in the *Labour Code* requires the Government to provide equivalent increased funding to any other employer in the sector, whether unionized or not, with whom the Ministry for Children and Families or other ministries may contract.

It may or may not prove the case that other unionized employees in the sector who are not covered by the CSSEA settlement will be able to place sufficient pressure in negotiation on their employers so as to convince the Government to provide funding to those employers equivalent to that provided in

the CSSEA settlement. Furthermore, it may or may not prove the case that the complainants, negotiating through CSSEA or vigorously campaigning in the public arena, are able to convince the Government that they should receive increased levels of funding. Furthermore, the Government may, or may not, be in a financial position in future to fund other service providers, whether union or non-union, to a particular level, or the Government may determine that it has different funding priorities. However, we respectfully submit no matter what transpires, that the issue cannot be a matter for inquiry and determination by the Board.

We now turn to the specific arguments raised by the complainants to support the assertion that the respondents have violated the provisions of Section 6 and 9 of the *Labour Code.*

(i) Section 6 - Unfair labour practices

The complainants submit that the respondents are in violation of Section 6(1) of the *Labour Code* by providiug financial support to trade unions. Understandably, the complainants are unable to provide any authorities in support of their submission that the respondents are in violation of Section 6(1) of the Code.

Firstly, as a threshold matter, since they have conceded that none of the respondents are employers (at least in the context of this application), the complainants must establish that the respondents or any of them are "persons acting on behalf of an employer".

With respect, the submission that the respondents fall within this category because they provide funding to "employers" i.e. the complainants, and thus are acting on their behalf must fail. The complainants are able to point to no authority in support of the proposition that entering into a contractual relationship with a government ministry would result in the respondents "acting on behalf of an employer". The relationship between the complainants and the Ministry for Children and Families is contractual, and if anything, is potentially adversarial as each party pursues its own interests as may arise in that contractual relationship. On this threshold issue alone, we submit that the complainants' Section 6(1) submission must fail.

The complainants submit that Section 6(1) is violated because the respondents are in fact paying the union dues of the employees covered under the CSSEA settlement. With respect, the respondents are not paying the union dues. The employees are since the dues come out of their wages. As stated above, the CSSEA settlement followed an 11 week strike. During any negotiations, unions and employers are well aware that employees pay union dues out of wages and thus wage demands and settlements reflect this fact. We submit that if a union is able to negotiate a higher wage rate to account for union dues, that in no way can be said to amount to providing financial assistance contrary to Section 6(I).

The complainants also submit that the respondents violate Section 6(1) by coercing "non-union employees" into joining trade unions, providing an increase in pay if they do so and then making it a condition of employment to belong to a union and pay union dues. This submission simply does not reflect the facts. As set out above, the CSSEA settlement does not generally provide automatic pay increases to employees in the Sector who unionize. Unionized employees in the sector who have received pay increases have received them not simply as some sort of gift for becoming unionized, but rather because the unions which represent them have been successful in placing traditional and lawful economic pressure on CSSEA's members. Furthermore, the respondents have certainly not made it a condition of employment that any employees in the sector belong to a union and pay union dues. Any such conditions have been negotiated between CSSEA's member employers and the particular unions involved.

The complainants also submit that the respondents are contributing to the support of trade unions because employees subject to the CSSEA settlement will earn more to compensate them because they went on strike. The submission suggests that these employees are being rewarded or

reimbursed for having taken strike action. With respect, that submission is without merit. Any increase in wages and benefits which these employees may receive will be as a result of having placed pressure on their employers, and ultimately on the respondents, as a result of having taken strike action.

We submit the complaint raises no facts that could give rise to a successful complaint based on a Section 6 violation.

(ii) Section 9 - Coercion

The essence of the complainants' submission is that a failure to provide funding to the complainants so as to enable them to pay wages and benefits to their employees equivalent to that set out in the CSSEA settlement amounts to coercion as defined in the *Labour Code* because the differential has the inevitable effect of encouraging the complainants' employees to become unionized.

We respectfully submit that Section 9 cannot be construed as insulating the complainants against the possibility that their employees may seek to find some way to achieve an increase in salary and benefits, including possibly seeking unionization. The fact that the Government provides different funding levels in the sector, we submit, does not constitute coercion; rather it reflects the present state of funding in the social services sector which cannot be elevated to constitute a breach of Section 9 of the *Code.*

As we have submitted above, not all currently unionized employees in the sector, nor employees who become unionized, fall within the ambit of the CSSEA settlement. Surely it could not be argued that the failure of the Government to automatically provide funding for those employees equivalent to the CSSEA settlement would constitute any violation of the *Labour Code.* We submit that the complainants are no more able to succeed with such a submission simply because they happen to operate on a non-union basis.

4. Summary

In summary, we respectfully submit that the Board has no jurisdiction to make any of the orders sought by the complainants affecting the level of funding which the respondents are prepared to provide to the complainants to provide services. In the alternative, the respondents submit that the present funding arrangements in the sector are not in violation of Sections 6 or 9 or any other sections of the *Code.*

Although the complainants have requested a hearing, in our respectful submission, we submit that the Board ought to dismiss this application without a hearing. Should the Board decide that a hearing is necessary it is our position that the issue of the Board's jurisdiction to hear and decide the complaint ought to be addressed as a preliminary matter prior to evidence and argument being heard on the merits of the complainants' application.

Service

We confirm that a copy of this submission has been telecopied today to counsel for the complainants, Lawson Lundeell Lawson & McIntosh, Attn: Walter Rilkoff. A hard copy of the submission and attachments will follow by courier.

All of which is respectfully submitted.

Yours truly,

N. David McInnes

for LANG MICHENER LAWRENCE & SHAW

NDM/dmm

cc Respondents
Lawson Lundell Lawson & McIntosh
Attn: Walter Rilkoff

Last Updated: Wednesday 11 August 1999

OPINION

Non-union caregivers deserve equal wages

The Labour Relations Board's fairness will be challenged by an appeal from non-unionized social services workers seeking wage parity with unionized workers doing the same job.
Vancouver Sun

There is no difficulty in measuring the independence of the New Democratic Party government from organized labour in British Columbia: None. Premier Glen Clark has demonstrated the closeness of that embrace consistently, indeed boastfully.

But the B.C. Labour Relations Board is supposed to be an objective referee in labour-management disputes. That independence from the government's political and ideological interests will be put to the test by an unfair labour practices complaint to the LRB by the North Shore Association for the Mentally Handicapped, Burnaby's Community Living Society and almost 40 other organizations backing their complaint -- plus others believed to be too fearful of government retaliation to speak out publicly.

B.C.'s social services sector is served by 450 groups, both non-unionized, like the above, and unionized; some are non-profit, some for profit. All provide important services including help for the mentally and physically handicapped, the alcohol- and drug-addicted, battered women and aboriginal people.

In short, their work is the same. The difference is that the government gave unionized workers pay increases of more than 30 per cent over five years to settle their 11-week strike this spring -- and gave non-unionized workers vague words.

The Community Social Services Employers' Association, created by the NDP in 1994, supports wage equity, the complainants claim. But their letter to the association has gone unanswered, and Children and Families Minister Lois Boone has passed the buck to the Public Sector Employees' Council.

The complainants claim the government is trying to coerce their workers to join unions, and, by denying them the same wages and benefits as unionized workers, is violating its own Labour Relations Code. Furthermore, by taking into account union dues in determining compensation, the government is in effect paying those dues. The strike settlement, the complainants say, was negotiated not by the employers' association but by "functionaries from the premier's office."

The destination of part of those union dues is also of interest. In the 1996 election at least three of the unions involved contributed to the NDP campaign -- the B.C. Government Employees' Union, $151,000, the Canadian Union of Public Employees, $53,000, and the Hospital Employees Union, $19,000.

Logic says: The non-unionized workers should simply join unions. They prefer not to. In recent years three attempts were made to organize the 300-employee North Shore Association for the Mentally Handicapped. All failed. The passion and sensitivity these workers bring to their tasks apparently are bigger than union paycheques and NDP preferment.