

LABOUR RELATIONS BOARD OF BRITISH COLUMBIA

BETWEEN:

UNIVERSITY OF BRITISH COLUMBIA

(the "Employer" or the  
"University")

AND:

CANADIAN UNIVERSITY EMPLOYEES' UNION

(the "Union")

PANEL: Wayne Moore, Vice-Chairman  
John Langley, Member  
Anthony J. Poje, Member

COUNSEL: A. Keith Mitchell, Q.C. & Alison Narod for Employer  
Joe Denofreo & Ted Byrne for Union

DATES OF HEARING: November 8, 1986

DATE OF DECISION: November 10, 1986

DECISION OF THE BOARD

I

On October 30, 1986, the Board received the following request from the Minister of Labour:

" Whereas labour disputes exist between the Health Labour Relations Association and the Health Sciences Association, the British Columbia Nurses' Union and the Hospital Employees' Union, and whereas, as a consequence of these disputes, there exists a dispute between the University of British Columbia (the

employer) and those members of the Canadian University Employees' Union (the trade union) who perform their work at the facilities of the member institutions of the Health Labour Relations Association as to how work will be done in the event that a strike or a lockout occurs at any of these facilities, I hereby, pursuant to S. 73(1)(b) of the Labour Code, request the Labour Relations Board to designate the facilities, productions and services it considers necessary or essential to prevent immediate and serious danger to life, health or safety, and the board may order the employer and the trade union to continue to supply, provide or maintain in full measure those facilities, productions and services and not to restrict or limit a facility, production or service so designated."

On November 8 the Board convened a hearing for the purpose of inquiring into what facilities, productions and services are necessary or essential to prevent immediate and serious danger to life, health and safety and to determine what orders are appropriate to ensure that such facilities, productions and services are maintained.

At the hearing, both parties presented their positions to the Panel. Board members Langley and Poje, along with representatives of the Board, met with the parties in order to explore and clarify their positions. As the Panel was of the view that after meeting with the parties the Board still did not have sufficient information upon which it could act in fulfilling its statutory obligation pursuant to Section 73 of the Code, the parties were advised that a further investigation would be conducted. Representatives of the Board have now had an opportunity to meet with some of the doctors and staff involved and have reported back to the Panel.

## II

The involvement of the Employer in the present hospital dispute flows from the relationship between the University's Faculty of Medicine and the various teaching hospitals in the Province. For reasons that do not need to be explained here, part of the relationship between the University and the hospitals is the provision of certain staff to the hospitals and the practising doctors in those facilities that form part of the

Faculty of Medicine. In this case, we are concerned with such staffing only with respect to four hospitals -- Vancouver General Hospital, British Columbia's Children's Hospital, The Salvation Army Grace Hospital and Shaughnessy Hospital.

The Employer seeks essential service designations with respect to 23 employees that fall, broadly speaking, into two groups. First, there is a group of six employees who perform clerical functions in the medical genetics department at Grace Hospital. This department is primarily involved in prenatal diagnosis by means of amniocentesis of high-risk pregnant women. This diagnostic process is carried out within strict time constraints occasioned by a combination of the timing of the tests, the length of time it takes for test results to be determined and the limited time after the test results are in that a safe therapeutic abortion can be conducted if that is deemed appropriate. The staff provided by the Employer provide clerical assistance to the technicians involved in this process.

Second, there is a group of 17 senior clerical staff that work in conjunction with doctors who practice and teach within the hospitals. These doctors, generally speaking, are not only the heads of departments in each hospital relating to their specialization, but are also among the leading doctors in their fields within the Province. Due to their expertise, they are consulted with respect to the most difficult cases in their field and are involved in the direct provision of care often on an emergency basis. In addition to their medical and administrative responsibilities within the hospital, and their private practices, these doctors fulfill a teaching function which involves the supervision of residents and clinical students. This teaching aspect involves giving lectures to interns and residents at the hospital, as well as clinical, hands-on treatment of patients. In this regard a large part of these doctors' day is spent in patient contact, much of which is of an urgent or emergent nature, that is to say, it is not elective care. They are not directly remunerated for such teaching services, however, the University does provide certain clerical staff who assist them, not only with respect to their teaching duties but also in the performance of their duties both within the framework of the hospital and their private practices.

The position of the Employer is that the functions performed by these doctors and by the medical genetics department is essential to life, health and safety and that the clerical staff in issue are necessary to the performance of those essential services.

The Union, for its part, submits that the Employer's request is not based on any consideration of what is essential within the meaning of Section 73 of the Code but rather is directed at

looking at what the doctors want. Furthermore, no consideration has been given by the Employer to the question of the availability of other resources to perform the limited degree of work that may be essential.

### III

The Employer has requested that certain secretarial assistance be designated as essential for various of the divisions in the teaching hospitals listed above. A brief description of these requested designations follows:

#### Vancouver General Hospital

Division of Cardiology - Clinical Secretary II

Department of Gynaecology - Secretary IV

Division of Hematology - 2 Clinical Secretary I positions

Division of Infectious Diseases - Clinical Secretary II

Division of Respiratory Medicine - Clinical Secretary II

Division of Nephrology - Clinical Secretary II

Division of Neurology - Clinical Secretary II

Division of Rheumatology - Clinical Secretary I

#### Shaughnessy Hospital

Department of Gynaecology - Clinical Secretary

Department of Medicine - Secretary V, Clinical Secretary I

#### The Salvation Army Grace Hospital

Department of Medical Genetics - Clinical Office Assistant II, Clinical Secretary I, Clerk II, Clerk II, Clerk II, Clinical Secretary 1

Department of Obstetrics - Clinical Secretary I, Clinical Secretary I, Clinical Secretary I

#### British Columbia's Children's Hospital

Division of Biochemical Disease - Clinical Secretary I

Department of Oncology and Hematology - Clinical Secretary I

There are a total of 122 positions in the Union's bargaining units at these four teaching hospitals. Out of this, the Employer is asking that 23 positions be designated as essential. Although it is not possible to generalize the type of work performed by each of these clerical employees, there are some things that are common between them. Generally speaking, these employees are required to answer telephone calls from patients and other doctors, determine whether or not the inquiries are of an emergency or urgent nature and if so, track down the doctors in order that they can deal with the situation. These secretaries have a detailed knowledge of not only the workings of each of the departments, including symptoms that would indicate an emergency situation, but also the patients whose care the physicians are already involved with. In addition, the clerical staff type correspondence dealing with patients, patient charts and follow-up reports, some of which must be done on a daily basis in order that appropriate treatment may be given to the patients. The secretaries often provide liaison between family physicians and the doctors as well as booking patients in for tests and ensuring that the results of the tests reach the appropriate doctors.

The secretarial staff also type research papers for the doctors as well as lecture notes and teaching schedules. Some secretaries handle routine administrative typing including patient billings.

It is clear from the information before the Panel that much of the clinical work done by the doctors with the patients is of an emergent and urgent nature and essential to the life, health and safety of the public. It is also clear that it is necessary, if the doctors are to perform those essential functions, for them to have specialized secretarial support. This is particularly so considering the fact that most of these doctors spend a considerable amount of time away from their offices and are unavailable to handle the telephone calls from patients and other doctors that come in during the day. When these doctors are away from their offices, they are frequently in the operating room or attending to patients in the clinics who need urgent or emergency treatment. They might also be doing their daily rounds in the hospitals or seeing their own private patients. It is during this time that the doctors need experienced and knowledgeable secretarial assistance to handle the telephone calls that come to them, generally during office hours, so that urgent situations can be efficiently dealt with. Outside of regular office hours and on the weekends an emergency procedure is in place in each of the departments whereby the doctor will be reached directly through a pager system. The majority of patients are dealt with during regular office hours at which time the doctor is in attendance at the hospital but is generally unavailable to take

the call himself and make the determination as to its urgent or emergent nature.

After careful consideration of the submissions of the parties and the investigation conducted by representatives of the Board, we have concluded that the medical services performed by the doctors related to this application are essential to the life, health and safety of the public. We are further satisfied that in order that those essential services be maintained in full measure it will be necessary to order that the Union provide some of its members involved in the delivery of specialized support services to the doctors. In making our determination in this matter we are cognizant of the fact that some of the work performed by the secretaries requested by the Employer is not essential in nature. We have in mind work such as typing of research projects, technical reports, lecture notes, teaching schedules, routine administrative typing and patient billing.

We have therefore considered various methods in which we could make our determinations, having those non-essential services in mind. We considered the possibility of requiring the doctors to share secretarial assistance but rejected that because it is the specialized knowledge of the department and the patients that is fundamental to the services provided by these secretaries. We also considered the possibility of compressing the work day to reflect whatever proportion of the secretary's day is spent on tasks requiring this specialized knowledge but rejected that approach as we are satisfied that it is impossible to predict or restrict the time frame during which the essential services may be required. In making this determination, we have not forgotten the Union's submission with respect to the limited hours that the secretaries work in any event. However, we are satisfied that the doctors' ability to cover those matters, or at least the emergency calls, outside regular office hours is predicated on the availability and accessibility of the doctor when not performing medical tasks in the facility.

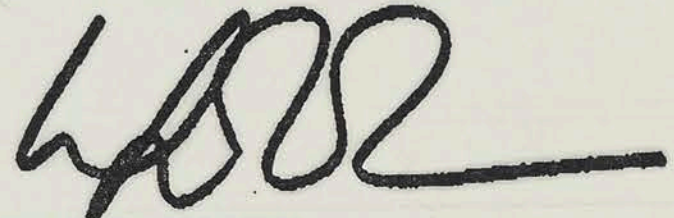
With respect to the Medical Genetics Department at Grace Hospital, we have concluded that a considerable proportion of the services provided by that department are essential to life, health and safety of the public. In particular, we are satisfied that the prenatal diagnosis and the general genetics program as it relates to new-born infants and children are essential services that must be maintained.

Given the essential nature of the work of these doctors and of the Medical Genetics Department at Grace Hospital, the Panel is satisfied that the 23 positions requested by the Employer are necessary for the maintenance of the essential portion of those services. In making this determination, we are satisfied that the reduction of 122 positions to 23 positions will leave the

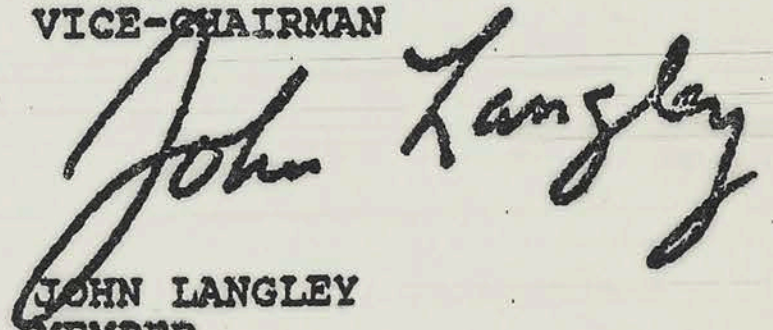
facilities with adequate staffing to provide in full measure the functions of those facilities that are essential to prevent immediate and serious danger to life, health and safety of the public. In designating the 23 positions we wish to make it clear that although we have concluded it is neither appropriate nor feasible to make further reductions due to the specialized knowledge of these clerical employees, those employees should not be required to perform non-essential services, such as those described above, while the designation is in effect.

The Board will, as is its practice in all matters of essential service designations monitor the facilities and either party may apply to vary this determination.

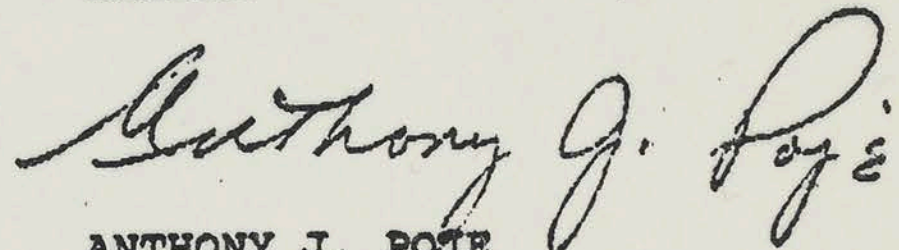
LABOUR RELATIONS BOARD  
OF BRITISH COLUMBIA



WAYNE MOORE  
VICE-CHAIRMAN



JOHN LANGLEY  
MEMBER



ANTHONY J. POJE  
VICE-CHAIRMAN

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CANADIAN UNIVERSITY EMPLOYEES' UNION

(the "Union")

PANEL: John Kinzie, Chairman  
Ken Albertini, Vice-Chairman  
M. Lloyd Sim, Vice-Chairman

COUNSEL: Joe Denofreo, for the Union

DATE OF DECISION: January 6th, 1987

DECISION OF THE BOARD

I

This is an application by the Union pursuant to Section 36 of the Labour Code requesting that the Board reconsider its earlier decision in this matter, BCLRB No. 283/86.

That decision arose out of collective bargaining disputes between Health Labour Relations Association and three unions representing employees working in the health care institutions operated by members of Health Labour Relations Association, i.e., the Hospital Employees Union Local 180, the B.C. Nurses Union, and the Health Sciences Association. Four of these members are



Vancouver General Hospital, Children's Hospital, The Salvation Army Grace Hospital, and Shaughnessy Hospital. In particular, the Health Sciences Association had engaged in strike action and picketing in support of their position in their dispute with Health Labour Relations Association.

Employees of the Employer who are members of the Union also work at the four hospitals referred to above on behalf of various specialist doctors and in the medical genetics department at the Grace Hospital. In light of the collective bargaining disputes between Health Labour Relations Association and the three unions, and, in light of the fact that as a consequence of those disputes, a dispute existed between the Employer and the Union as to how the work of the Union's members would be performed in the event of a strike or lockout at any of these facilities, the Minister of Labour requested the Board to designate essential services pursuant to Section 73(1)(b) of the Labour Code.

It is the decision of the original panel making the designation pursuant to Section 73(1)(b) that the Union requests the Board to reconsider.

## II

In his submission in support of the Union's application for reconsideration, counsel for the Union argues that:

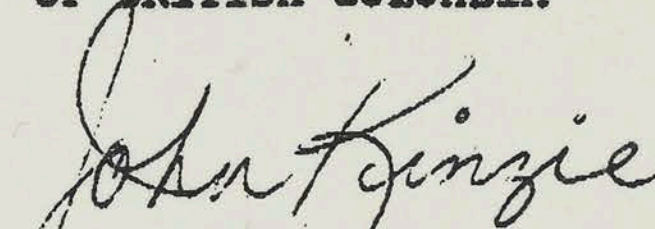
1. it was not given the opportunity to adduce certain evidence;
2. the original panel did not address in its decision various arguments made to it by the Union;
3. the decision is inconsistent with other decisions of the Board regarding designation of essential services, and
4. the Union should be given the opportunity to introduce new evidence brought to its attention after the decision was published.

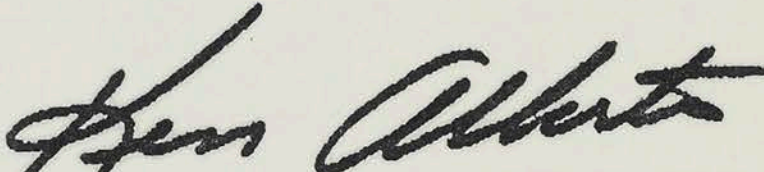
All of the collective bargaining disputes that gave rise to the Minister's request and the Board's designation of essential services in this case have been settled. As a result, the designation contained in the original panel's decision will not have to be implemented by the Employer and the Union. In this sense, the Union's request for a reconsideration of the original panel's decision is academic. We are satisfied that the Union's application should be dismissed on that basis.

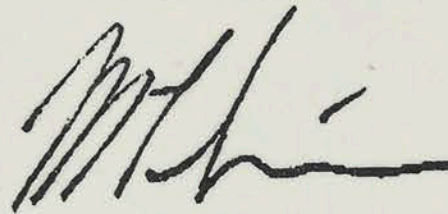
Should the Board be requested in the future to designate essential services in respect of a dispute between the Employer and the Union, the Union will be free then to introduce the evidence and make the arguments it raises in its application for reconsideration, if it still wishes to do so at that time.

The Union's application for reconsideration is dismissed.

LABOUR RELATIONS BOARD  
OF BRITISH COLUMBIA

  
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CHAIRMAN

  
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VICE-CHAIRMAN

  
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