CITATION: Bell Canada v. UNIFOR, LOCAL 6004, 2019 ONSC 926
DIVISIONAL COURT FILE NO.: 031/18
DATE: 20190207

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

C. Horkins, Conway Labrosse JJ.

BETWEEN:	)	
	)	
Bell Canada	)	*Maryse Tremblay* and *Bethan Dinning*, for the Applicant
Applicant	)	
	)	
– and –	)	
	)	
UNIFOR, LOCAL 6004	)	*Douglas Wray*, for the Respondent
Respondent	)	
	)	
	)	**HEARD at Toronto:** December 3, 2018

C. HORKINS J.

OVERVIEW

[1] The Applicant, Bell Canada, ("Bell") brings this application for judicial review to set aside the December 5, 2017 award of Arbitrator Gordon Luborsky (the "Arbitrator").

[2] The Arbitrator found that Bell violated the Collective Agreement between Bell and the Respondent, UNIFOR, LOCAL 6004, when Bell outsourced work resulting in loss of employment for 31 Bell employees.

[3] The 31 Bell employees had previously been employed by Bell Internet Management Services ("BIMS"), a wholly owned subsidiary of Bell. BIMS operated a call centre that provided technical assistance for Bell customers having difficulties with internet services. BIMS employees were not unionized or included in an existing bargaining unit.

[4] In a Memorandum of Agreement dated May 29, 2013 ("May 29, 2013 MOA"), Bell and UNIFOR, LOCAL 6004's predecessor, Communications Energy and Paperworkers Union of Canada (together referred to as the "Union") agreed to designate Bell and BIMS as a single employer for all non-management BIMS employees.

[5] The May 29, 2013 MOA provided that all non-management BIMS employees would "remain at the employ of BIMS until March 31, 2014". Effective April 1, 2014, these

employees would be transferred to Bell and assigned to the Craft and Service bargaining unit (Craft Unit) or the Clerical and Associated Employees bargaining unit (Clerical Unit).

[6] The Collective Agreement for the Clerical Unit offered some protection against outsourcing. The issue on this application is whether the 31 employees assigned to the Clerical Unit were entitled to this protection.

FACTUAL BACKGROUND

The Collective Agreement

[7] The starting point is the Collective Agreement for the Clerical Unit and the terms that are relevant to this application.

[8] Employees in Bell's Clerical Unit were covered by a Collective Agreement in force from January 19, 2010 until May 31, 2013 ("2010-2013 Collective Agreement"). The 2010 - 2013 Collective Agreement included a Memorandum of Agreement signed by the parties on January 19, 2010 titled "Outsourcing/Contracting Out" (the "Outsourcing MOA").

[9] The Outsourcing MOA provided protection against outsourcing for any "Regular Bell employee" who was included in the Clerical Unit and employed by Bell on the day that the Outsourcing MOA was signed.

[10] On May 30, 2013, one day before the 2010 - 2013 Collective Agreement expired, the parties reached a tentative agreement on the terms of a new Collective Agreement. The new Collective Agreement was effective June 1, 2013 until November 30, 2017. The Union's membership ratified the new agreement on June 28, 2013.

[11] Continuing as a term of the new Collective Agreement was the Outsourcing MOA previously dated January 19, 2010. The terms of that MOA were not altered from the 2010 version, except to change the signing date to September 23, 2013. Both the 2010 – 2013 and 2013 – 2017 Outsourcing MOAs stated:

> ...
>
> The Company's preference is to maintain employment internally. In light of this, the intent of this Memorandum of Agreement is to provide a measure of job security for existing Regular Bell employees, who are included in the Clerical and Associated Employees bargaining unit and who are employed by Bell Canada at the date of the signing of this Memorandum of Agreement, in the event that Bell Canada decides to outsource or contract out any of the work normally performed by employees included in the Clerical and Associated Employees bargaining unit.
>
> ...
>
> 1. It is agreed that for the duration of this Memorandum of Agreement, Bell Canada will not, as a direct result of the outsourcing or contracting out of any of the work normally performed by employees included in the

> Clerical and Associated Employees bargaining unit, declare a surplus that would result in the termination or lay off of any Regular Bell Canada employee included in the Clerical and Associated Employees bargaining unit and who is employed by Bell Canada on the date of the signing of this Memorandum of Agreement. [Emphasis added.]

[12] Article 3 of the Collective Agreement defined "Employee" as:

> 3.01 For purposes of this Agreement,
>
> "Employee" means a person employed in Bell Canada, to do work in any of the occupations listed in Appendix A, but does not include a person who (...)

The Single Employer Declaration

[13] Over the years the Union came to recognize that the BIMS employees performed substantially the same function as those in the Craft or Clerical unit. They worked in the same Bell offices in Ottawa and Montreal.

[14] On May 4, 2011, the Union filed an application with the Canadian Industrial Labour Relations Board (the "CIRB") against Bell and BIMS pursuant to ss. 35 and 44 of the *Canadian Labour Code*, R.S.C., 1985, c. L-2 (the "*Code*"). The Union claimed that pursuant to those sections, Bell and BIMS constituted a single employer or in the alternative that a "sale of business" occurred between them, thus impacting the Union's bargaining rights.

[15] The Union filed this application during the term of the 2010-2013 Collective Agreement which, as stated above, incorporated the Outsourcing MOA.

[16] In its application to the CIRB, the Union alleged that BIMS employees were "performing a range of work functions that clearly fall within the ambit of work performed historically by Bell Canada employees in the [Craft and Clerical Units] and that being a wholly owned subsidiary...BIMS is clearly under common control or direction with Bell". The Union requested a declaration that:

> (i) Bell and BIMS are a single employer pursuant to s. 35 of the *Code*;
>
> (ii) All BIMS employees are subject to the terms and conditions of the Collective Agreement; and
>
> (iii) Full compensation to the Union and all BIMS employees.

[17] There were over 600 BIMS employees who would be impacted by a single employer designation.

[18] Bell rejected the Union's application arguing that its labour relations fell within provincial rather than federal jurisdiction. On July 20, 2012, the CIRB issued a decision

rejecting Bell's argument and made a finding that "BIMS falls within federal jurisdiction for the purposes of the [Union's] application".

[19] The CIRB also made a number of factual findings as follows:

> 1. BIMS has operations in Montreal and is characterized as a bilingual call centre located on the 2nd and 3rd floors of a Bell building;
>
> 2. BIMS does not generate income, but provides support to existing Bell customers for billing concerns. It works exclusively for Bell in all of its activities;
>
> 3. Bell manages BIMS' call volume and Bell's Command Centre coordinates the schedules of BIMS' employees;
>
> 4. BIMS employees have a Photo ID security pass, which Bell issues, and has Bell's logo on it;
>
> 5. BIMS employees all sign Bell's Code of Conduct;
>
> 6. Bell employees create and design the training modules used for BIMS' employees;
>
> 7. BIMS handles Bell customer inquiries covering topics such as rates, changes, credits, clarifications, and promotions involving wireline, internet, TV, as well as Bell's bundles and packages of services;
>
> 8. BIMS Ottawa operations has 3 distinct units located again in Bell buildings: i) Small/Medium Business Technical Support; ii) residential Internet Technical Support; and iii) Bell Second Line/Level II IPTV Resolution Team;
>
> 9. BIMS' three Ottawa units assist Bell's customers with bilingual technical support for telephone, internet and/or TV;
>
> 10. Bell assists in the recruitment of BIMS' employees.

[20] The CIRB relied upon the Board's Industrial Relations Officer's (the "IRO") Report dated November 30, 2011 and a Supplemental Report dated April 19, 2012 detailing the activities of BIMS employees and their relationship to Bell. The Supplementary Report was attached to the CIRB's decision and incorporated into its reasons. The Supplementary Report revealed that:

> (a) Bell Canada employees holding senior management positions occupied offices adjacent to BIMS employees working in cubicles within Bell's Ottawa office buildings;
>
> (b) all calls from Bell Canada customers were routed to the BIMS operations in Ottawa via Bell Canada's automated Interactive Voice Response ("IVR")

system and could be re-routed to call centres depending on call volume as determined by Bell Canada;

(c) Bell Canada provided the BIMS managers with yearly forecasts (broken down by month) of expected call volume and Bell Canada would build annual plans around those forecasts for BIMS operations;

(d) while BIMS employees referred day-to-day human resources matters to their "Team Leaders" (who were BIMS managers), they had access to Bell Canada's Intranet Services (referred to as "Bellnet") and/or the Bell Canada employee assistance toll-free number to resolve human resource inquiries and for other services available to Bell Canada employees generally;

(e) each BIMS operations manager had access to a Bell Canada human resources contact to assist with more complex employment issues;

(f) in order to hire a new BIMS employee the BIMS operations manager contacted Bell Canada human resources to initiate recruitment and to arrange an appropriate job posting;

(g) Bell Canada human resources also provided assistance with the offer of employment letters and letters of termination for BIMS employees; and

(h) all necessary office equipment and supplies for BIMS were provided by Bell Canada, as were the operating funds for salaries and benefits to all BIMS staff.

[21] Oral hearings before the CIRB on the merits of the Union's single employer application were held on November 6, 7, and 8, 2012, with continuation dates set for May 28 - 30 and June 11 – 12, 2013.

[22] Instead of continuing with the hearings at the CIRB in May, the parties attended a mediation to try and settle the single employer application.

[23] On May 29, 2013, two days before the expiration of the 2010 - 2013 Collective Agreement, the parties resolved the single employer application. The parties signed an "Agreed Statement of Facts" that was intended to be the factual basis on which the CIRB could exercise its independent discretion to grant the single employer declaration.

[24] The Agreement Statement of Facts was signed by the representatives of Bell, the Union, and BIMS, and was attached as "Schedule A" to the CIRB's ultimate decision.

[25] The Agreement Statement of Facts included the following:

9. The evidence presented before the Board established that: (a) the five conditions that are required for a single employer declaration existed; and (b) there is a sound labour relations purpose of the Board exercising its discretion.

> 10. The reasons for the exercise of the Board's discretion include a recognition that the employees at BIMS perform similar functions to employees at Bell and as such the issuance of the order will further the objectives of the Code.

[26] At the same time, the parties were negotiating the terms of the May 29, 2013 MOA. The May 29, 2013 MOA provided that BIMS employees would be transferred to Bell as of April 1, 2014 and that the Union would become the certified bargaining agent of the newly transferred employees.

[27] The sole reason for delaying the transfer of the employees to Bell was to give Bell sufficient time to evaluate the BIMS jobs and determine into which bargaining unit (Clerical Unit or Craft Unit) the positions would fall. The parties agreed that during the period between May 29, 2013 and March 31, 2014, Bell would conduct this evaluation.

[28] The May 29, 2013 MOA was conditional on the CIRB issuing an order declaring that BIMS and Bell constitute a single employer pursuant to s. 35 of the *Code*. On July 4, 2013, the CIRB issued a single employer declaration (the "Single Employer Declaration") confirming that Bell and BIMS constitute a single employer pursuant to s. 35(1) of the *Code*.

[29] While the parties were resolving the single employer application, Bell and the Union were finalizing terms of the new Collective Agreement for 2013 – 2017. A tentative agreement was reached on May 30, 2013. The Union ratified the agreement on June 28, 2013 and the Collective Agreement was executed on September 23, 2013. The reason for the delay in signing the new Collective Agreement was not explained.

[30] As noted above, the Outsourcing MOA was a term of the new Collective Agreement for Bell employees in the Clerical Unit.

[31] There is no evidence that the parties discussed the applicability of the Outsourcing MOA to the BIMS employees that were assigned to the Clerical Unit, during the renewal of the new Collective Agreement, the single employer application or the mediation.

[32] As required by the May 29, 2013 MOA, Bell engaged in the administrative transition/evaluation process of the non-management BIMS employees. The BIMS employees were formally transferred to Bell on April 6, 2014, and placed in either the Craft or Clerical Unit (the April 1 deadline was later extended to April 6 to achieve smooth integration of the BIMS payroll into Bell's).

Breach of the Outsourcing MOA

[33] On May 19, 2015, Bell informed the Union that it was outsourcing the function of former BIMS employees at its Ottawa offices in the classification "Resolution Representative", resulting in the declaration of surplus of 30 employees. Bell also declared as a surplus the single "Administrative Support" position for the Resolution Representatives. These 31 employees were part of the Clerical Unit.

[34] Notwithstanding Bell's efforts to relocate the affected employees, 30 of the 31 were declared a surplus effective June 4, 2015 and lost their employment as a direct result of the Bell's outsourcing decision ("the grievors").

[35] On June 18, 2015, the Union filed a group grievance on behalf of the grievors. The grievance alleged violations under the May 29, 2013 MOA and specifically the Outsourcing MOA signed on September 23, 2013.

[36] Bell argued that there was no violation of the May 29, 2013 MOA because the grievors did not become Bell employees and join the Clerical Unit until April 6, 2014. As a result, Bell argued that the grievors were not covered by the Outsourcing MOA signed on September 23, 2013.

[37] The Union claimed that as a result of the CIRB's single employer declaration on July 4, 2013, the grievors were, in law, Bell employees and members of the Clerical Unit, effective that date. As a result, the Union argued the grievors were entitled to the security of tenure provided in the Outsourcing MOA dated September 23, 2013.

[38] The Arbitrator's interpretation of the May 29, 2013 and Outsourcing MOA, and their applicability to the Clerical Unit Collective Agreement is the subject of this judicial review application.

SUMMARY OF THE ARBITRATOR'S DECISION

[39] In a lengthy decision, the Arbitrator provided a detailed review of the facts leading to the grievors' termination. He described the position of the parties and then analyzed the grievance through a series of questions, three of which are relevant to this application:

1. What was the grievors' status on the effective date of the relevant Outsourcing MOA?

2. Given that status, how did the Outsourcing MOA affect the grievors' contractual rights?

3. Did the May 29, 2013 MOA change the situation, and if so, how and/or is that change unenforceable?

[40] First, the Arbitrator held that based on the facts and applicable law the "BIMS employees' status as *de facto* "employees" of Bell Canada ***prior*** to the CIRB's declaration of single employer on July 4, 2013 could not be clearer" [emphasis in original].

[41] Second, the Arbitrator found that if Bell had properly recognized the status of the BIMS employees at the appropriate time (by May 29, 2013, if not earlier), then they would have been entitled to the contractual protection provided under the Outsourcing MOA.

[42] Third, the May 29, 2013 MOA did not change the situation. If Bell had intended the BIMS employees to have no status as Bell employees until April 6, 2014, then the May 29, 2013 MOA should have stated this in clear and unequivocal language. The Arbitrator found that it did not.

STANDARD OF REVIEW

[43] The standard of review of a grievance arbitrator's decision is reasonableness. At issue is the interpretation of the Collective Agreement and the MOAs that were signed, together with the statutory provisions and law that govern a single employer declaration. Labour arbitrators routinely engage in this type of task and have significant experience in doing so. Their decisions are entitled to deference (*Association of Justice Counsel v. Canada (Attorney General),* 2017 SCC 55 at para. 17; *Wong v. Globe and Mail Inc.*, 2014 ONSC 6372 at para. 16).

[44] Deference "imports respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir and Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, at para. 48).

[45] As stated in *Dunsmuir*, at para 47, a reasonableness standard directs the court to inquire "into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes". The inquiry is "concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. It is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

[46] The reasonableness standard recognizes that there may be more than one reasonable interpretation of legislation or more than one reasonable decision with respect to the question before the decision maker.

BELL'S POSITION

[47] Bell states that the Arbitrator reached a conclusion that is inconsistent with the facts and the terms of May 29, 2013 MOA and the Outsourcing MOA. Bell argues this led to an "unreasonable and absurd result" because the benefits of the Outsourcing MOA were applied to the grievors, but not any other term of the Collective Agreement.

[48] Further, the Arbitrator applied the Outsourcing MOA to the grievors as of September 23, 2013 when it had not yet been determined into which bargaining unit each person would fall. Bell says it is illogical and absurd to find that the grievors were protected by the Outsourcing MOA signed on September 23, 2013 because the BIMS employees were not assigned to a bargaining unit until April 1, 2014.

[49] Bell also argues that it was factually incorrect for the Arbitrator to hold that the BIMS employees were performing the precise jobs as those in the Clerical Unit, as it was not known until after the evaluation process was completed into which bargaining unit the grievors would fall.

[50] Bell adds that the Arbitrator's decision was inconsistent with other facts, including for example, that the grievors would continue to be governed by the terms of their individual employment contracts until assigned to a unit. As well, they remained unrepresented and paid no union dues until they were assigned to the Clerical Unit in April 2014.

[51] Bell further submits that the plain wording of the Outsourcing MOA did not support a finding that the grievors were Bell employees as of September 23, 2013. Specifically, they were not: (1) existing employees of Bell; (2) "Regular Bell Canada employee" as defined in the May 29, 2013 MOA; and (3) employees included in the Clerical Unit.

[52] Bell argues that it was unreasonable for the Arbitrator to reject Bell's position that the Single Employer Declaration was a bare declaration, adding that the Arbitrator's reliance on the declaration is a "flagrant disregard of the factual matrix".

[53] For these reasons, Bell states the Arbitrator's decision is unreasonable.

ANALYSIS

Arbitrator's Decision is Reasonable

[54] I find that the Arbitrator's decision meets the goal of providing "justification, transparency and intelligibility" and it "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

[55] The Arbitrator framed his analysis by recognizing that "labour laws throughout Canada recognize the risk that employers may seek to exalt "form over substance" in efforts to avoid or undermine the rights of employees to freely associate in their employment relationship through unionization". Further, he explained that the *Code* proclaims a "long tradition in Canada of labour legislation and policy designed for the promotion of the common well-being through the encouragement of free collective bargaining and the constructive settlement of disputes".

[56] The Arbitrator noted that to protect these rights, "section 35(1) of the *Code* ... has traditionally been construed by the CIRB as "remedial in nature" that is intended to prevent erosion of collective bargaining rights or the avoidance of employers' obligations under the *Code* where safeguarding such rights continues to be a paramount objective". The remedial nature of s. 35(1) was recognized in *Air Canada Pilots Assn. v. Air Line Pilots Assn.*, 2003 FCA 160 at para. 49.

[57] The Arbitrator analyzed and answered the questions noted below, after a careful review of the facts and applicable law.

[58] As explained below, the Arbitrator rejected Bell's position because it was "an attempt to discount the significant factual findings and policy considerations that must underlie [a single employer declaration] which continues to have at its core a remedial objective that seeks to redress an employer's conduct in circumventing the objectives of the Code, [and] if not checked will ultimately undermine the integrity of the bargaining agency."

1. What was the grievors' status as of the effective date of the relevant Outsourcing MOA?

[59] The Arbitrator found that the grievors' status as de facto "employees" of Bell Canada had been established before the CIRB's declaration of single employer on July 4, 2013 and that this "could not have been clearer".

[60] The Arbitrator held that as of May 29, 2013 (the date when the parties agreed to designate Bell and BIMS as a single employer), the BIMS employees already had, in law, status as employees performing similar functions to the unionized employees of Bell's Craft and/or Clerical Units. In coming to this decision, the Arbitrator relied on the following:

- Labour laws throughout Canada recognize "form over substance" and that this approach was required to avoid undermining the rights of employees to unionize;

- His concurrent jurisdiction with the CIRB, pursuant to s. 60(1)(a.1) of the *Code*, to interpret supplementary agreements;

- The purpose of s. 35 of the *Code* which is construed by the CIRB as being "remedial in nature", intends to prevent the erosion of collective bargaining rights, and requires an application of the five part test under *Murray Hill Limousine Service Ltd.* et al. for a single employer declaration; and

- Considerations under s. 18.1(2) of the *Code* respecting bargaining unit configurations in the context of a single employer declaration under s. 35 of the Code.

[61] The Arbitrator applied a two-step process which first required objectively satisfying the five part test in *Murray Hill*, followed by considering s. 18.1(2) of the *Code*. The Arbitrator explained that the proper sequence to the analysis is to "consider the status of the BIMS employees before exploring their rights and obligations under the [May 29, 2013 MOA], and then consider whether that [Agreement] is enforceable as an agreement under s. 18.1(2) and compliant with the purposes of the *Code*".

[62] The Arbitrator found that by at least May 29, 2013 (when the Agreed Statement of Facts was signed), evidence existed to establish the five conditions required for the single employer declaration and there were sound labour relations purposes for the CIRB to exercise its discretion to issue the declaration.

[63] The Arbitrator noted that in the Agreed Statement of Facts the parties agreed in paragraph 10 "***that the employees at BIMS perform similar functions to employees at Bell...[and] which they included as a part of the reasons justifying the exercise of the [CIRB's] discretion in making the single employer declaration***". The Arbitrator relied on this in finding that the BIMS employees were performing functions similar to those performed by the unionized employees in the two bargaining units.

[64] The Arbitrator adds that even before the Agreed Statement of Facts was presented, the CIRB's earlier decision on June 20, 2012 relied on the factual findings of the IRO reports from November 2011 and April 2012. The Arbitrator found that the reports supported the status of BIMS workers as employees of Bell Canada in substance, if not in form.

[65] Based on the evidence before him, the Arbitrator concluded that as of May 29, 2013, if not earlier, the BIMS employees had, in law, the status of also being employees of Bell performing similar functions to the unionized employees of the Clerical Unit. The Arbitrator added that the BIMS employees' inclusion in one of the bargaining units furthered the objectives of the *Code* and that this was later formalized by the CIRB's single employer declaration.

2. Given that status, how did the Outsourcing MOA affect the grievors' contractual rights?

[66] The Arbitrator found that based on the remedial nature of s. 35(1) of the *Code*, the objectives of the *Code*, and the factual findings made under question 1, the BIMS employees had status, in law, as Bell employees, before the parties signed the Outsourcing MOA on September 23, 2013. Therefore, they were entitled to the outsourcing protection.

[67] In reaching this conclusion, the Arbitrator examined the wording of the Outsourcing MOA and found that the three conditions for protecting BIMS employees had been met.

[68] First, having found on the facts that the grievors had the status of Bell employees, "they were by operation of law and the terms of the collective agreement in substance members of the Union's [Clerical Unit] when the Outsourcing MOA was signed". This was consistent with the agreement to recognize their "significant seniority rights".

[69] Second, the Arbitrator found that the grievors were "performing in existing jobs recognized under ... the collective agreement" and had been doing so "likely for some years". As such, the Arbitrator found that they were "existing Regular Bell Canada employees" as the Outsourcing MOA required. He explained as follows:

> ... the objective facts support the conclusion that these BIMS employees were, but for the circumvention of the *Code* by the Company, performing in or occupying the "existing" occupations of "Resolution Representatives" and "Administrative Support" listed in Appendix A under the Clerical and Associated Employees collective agreement thereby satisfying the definition of "employee" under article 3.01(a) of that collective agreement.

[70] The facts also demonstrated that "there was a degree of permanency to that occupational status for those 31 grievors thereby satisfying the definition of "Regular Employees" under article 3.01(b)."

[71] The Arbitrator further explained that the "remedial effect of the section 35(1) declaration by the CIRB is to affirm what should have been their positions in existing

bargaining unit positions under the Clerical and Associated Employees' collective agreement, in the equivalent role of any other "Regular Bell Canada employee".

[72] Finally, the Arbitrator addressed the third and perhaps most important precondition for the application of the Outsourcing MOA; that the grievors must be "employed by Bell Canada on the date of the signing of this Memorandum of Agreement" (September 23, 2013). The Arbitrator found that this date was arbitrary. This was supported by the fact that the parties attached no significance to the date, aside from it being a convenient time for signing.

[73] Viewed from the remedial perspective of s. 35 of the *Code*, the Arbitrator held that the grievors were employed by Bell on the date the Outsourcing MOA was signed. Given this, the Outsourcing MOA prohibited Bell from outsourcing or contracting out any work normally performed by the grievors that had the direct consequence of termination.

[74] Finally, the Arbitrator found that the layoffs or termination of the grievors occurred as a direct result of Bell's decision to outsource or contract work normally performed by the Clerical Unit and this triggered the protection afforded in the Outsourcing MOA.

3. Did the May 29, 2013 MOA change the situation, and if so, how and/or is that change unenforceable?

[75] This question focuses on the ten month transitional period between May 2013 and April 2014. During this transition, it was agreed that Bell would assess each employee and allocate the employees to the Clerical Unit or Craft Unit. The Arbitrator considered whether this had the effect of removing the protection of the Outsourcing MOA. He found that it did not.

[76] Given that the BIMS employees already had the status of Bell employees as of September 23, 2013, the Arbitrator determined that they were entitled to the protection of the Outsourcing MOA throughout and after the transitional period.

[77] The Arbitrator stated that "any agreement by the parties that, in effect, permit[ted] Bell to benefit from its successful circumvention of its obligations under the code … cannot be inferred, but must be clearly and unequivocally supported by the language".

[78] The Arbitrator found that the May 29, 2013 MOA did not have the clear and unequivocal language required to establish that the BIMS employees had no rights under the Outsourcing MOA.

[79] Finally, the Arbitrator explained that the ten month transitional period was provided solely to assist Bell:

> I therefore find on this negotiating history and the practice of the parties that followed, that the agreement to delay the implementation of the CIRB's single employer declaration was premised on the mutual intention of the Company and the Union to facilitate the administrative convenience of effecting a smooth transition of the payroll and other remunerative terms of

> the Craft and/or Clerical Unit collective agreements that the parties did not intend to affect the fundamental status of those BIMS employees to also be Bell Canada employees as of the Board's single employer declaration on July 4, 2013.

[80] In summary, the Arbitrator's decision articulates the issues before him. His decision making process is clear and is supported by the facts and law. The Arbitrator's decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[81] I recognize that Bell advances a different interpretation of the various agreements and that one might interpret the agreements this way. That said, Bell's position is narrowly focused and at odds with the facts and the remedial nature of a single employer declaration.

[82] The purpose of a single employer declaration is to bring people into a bargaining unit and provide them with the benefits of being part of a union. The parties agreed to delay the transfer until April 1, 2014, to give sufficient time to allocate the employees to the Craft or Clerical unit. An agreement to accommodate Bell's administrative needs should not undermine the very purpose of the single employer designation.

CONCLUSION

[83] The application is dismissed.

[84] The Applicant shall pay the Respondent reasonable costs that are fixed at $5,000 all-inclusive.

Justice C. Horkins

C. Horkins J.

I agree: Conway

Conway J.

I agree: Ghurling for Labrosse J.

Labrosse J.

Released: February 7, 2019

CITATION: Bell Canada v. UNIFOR, LOCAL 6004, 2019 ONSC 926
DIVISIONAL COURT FILE NO.: 031/18
DATE: 20190207

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

C. Horkins, Conway Labrosse JJ.

BETWEEN:

Bell Canada

Applicant

– and –

UNIFOR, LOCAL 6004

Respondent

REASONS FOR JUDGMENT

C. Horkins J.

Released: February 7, 2019