ONTARIO LABOUR RELATIONS BOARD

1078-01-U Labourers' International Union of North America, Ontario Provincial District Council on its own behalf and on behalf of its affiliated Local Unions 183, 247, 493, 506, 527, 607, 625, 837, 1036, 1059, 1081 and 1089, Applicant v. Labourers' Employer Bargaining Agency, Construction Labour Relations Association of Ontario and **Sudbury Construction Association,** Responding Parties.

BEFORE: Harry Freedman, Vice-Chair.

APPEARANCES: Daniel Randazzo and Patrick Little for the applicants; Bruce Binning, Joe Keyes, Rick Thomas and Ron Martin for the responding parties.

DECISION OF THE BOARD; June 12, 2002

1. The Board, by decision in this matter dated April 23, 2002 outlined the background of this application under section 96 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, as am. (the "Act") and the context for understanding the issues raised by this application. Briefly, the applicant alleges the responding parties violated section 17 of the Act because they permitted the Construction Association of Thunder Bay (the "CATB") to bargain with Local 607 over terms and conditions applicable to all work in the industrial, commercial and institutional sector of the construction industry within the geographic jurisdiction of Local 607, but when an agreement was reached with Local 607, took the position that the CATB did not have authority to bargain in respect of one portion of Local 607's territory known as the Kapuskasing Area. While not alleging bad faith on the part of the responding parties, the applicant claims that the responding parties did not meet the objective standard (which does not require "bad faith" to establish a contravention) imposed by section 17 of the Act of making "every reasonable effort to make a collective agreement" because their actions precluded Local 607 and the CATB from reaching an agreement that was to be incorporated into the Labourers' Provincial ICI Collective Agreement expiring April 30, 2004 (the "ICI Agreement").

2. The Labourers' International Union of North America (the "International") merged its Union Locals 491 and 493 and transferred the Kapuskasing Area that had been held by Local 491 for about 10 years back to Local 607. The Kapuskasing Area had been within the territory of Local 607 until 1990 when the International transferred jurisdiction over the Kapuskasing Area from Local 607 to Local 491. (For some background and history to the change in Local 607's territorial jurisdiction see *Labourers' International Union of North America*, [2000] OLRB Rep. Sept./Oct. 925 and *Labourers' International Union of North America*, unreported, Board File No. 0673-00-U, decision dated March 29, 2001.) The merger of Locals 491 and 493 and transfer of jurisdiction over the Kapuskasing Area back to Local 607 were finalized in April, 2002, while negotiations for the renewal of the ICI Agreement were ongoing. Local 607 reached an agreement with the CATB that purported to apply to the Kapuskasing Area. Subsequently, Local

607 was advised by the responding parties that the CATB did not have the authority to make that agreement. Local 607 claims the responding parties violated the Act by taking that position.

3. Negotiations for the renewal of the ICI Agreement involve both central bargaining and local bargaining. The parties to the negotiations of the ICI Agreement are the Labourers Employer Bargaining Agency and the Labourers Employee Bargaining Agency. Those two entities are ultimately responsible for bargaining and concluding the ICI Agreement. See sections 156 and 157(a) of the Act.

4. The Labourers Employer Bargaining Agency is comprised of several employer associations including the Industrial Contractors Association of Canada, the Ontario Masonry Contractors Association and the Construction Labour Relations Association of Ontario ("CLARO"). The members of CLARO are all local employer associations including the CATB and the Sudbury Construction Association (the "SCA").

5. The Labourers' Employee Bargaining Agency is comprised of the International and the Labourers' International Union of North America, Ontario Provincial District Council (the ("OPDC") on its own behalf and on behalf of its affiliated local unions including Local 607, Local 493 and Local 491.

6. The master portion of the ICI Agreement is bargained centrally by bargaining committees representing the two bargaining agencies while the bargaining for the local union schedules in the ICI Agreement is done by the affected local parties and then submitted to their respective bargaining agencies for approval. Ultimately, it is up to the two bargaining agencies to approve and agree upon the local schedules before the ICI Agreement is concluded.

7. The CATB and Local 607 had historically bargained and reached agreements covering their local issues in respect of the geographic area over which Local 607 had jurisdiction that prior to 1990 included the Kapuskasing Area. Similarly, the SCA and Local 493 and Local 491 had historically bargained and reached agreements over local issues in respect of the geographic areas over which Locals 493 and 491 had jurisdiction. When the International initially moved the Kapuskasing Area from the geographic jurisdiction of Local 607 to Local 491, Local 607 and the CATB accepted that the Kapuskasing Area was within the geographic jurisdiction of Local 491 and, according to both Patrick Little, Business Manager of Local 607 and Harold Lindstrom, Manager of the CATB, everybody, that is, the employers, the unions, the CATB and the SCA understood that the SCA and Local 491 were to be responsible for bargaining the local union schedule applicable to the Kapuskasing Area. Mr. Little also testified that when the International made the initial change to the territorial jurisdiction of Local 607, there was nothing he could do to challenge or object to that change and therefore had to accept that the geographic jurisdiction of Local 607 no longer included the Kapuskasing Area.

8. The reversion of the Kapuskasing Area to the territory of Local 607 became effective in April 2001 as a result of proceedings before the Board. Subsequently, Local 607 took the position with the CATB that they ought to bargain and reach a local agreement covering all of Local 607's territory, including the Kapuskasing Area. The SCA, on the other hand, was of the view that it had bargained in respect of the Kapuskasing Area since the early 1990's and that it continued to have the responsibility for bargaining the terms and conditions applicable to work covered by the ICI Agreement undertaken in the Kapuskasing Area by employers bound by that agreement.

9. It is the difference between the SCA and CATB over the responsibility for bargaining the terms and conditions applicable to the Kapuskasing Area that lies at the heart of this dispute.

10. The SCA and the CATB are members of CLARO. When the International notified the Labourers Employer Bargaining Agency that the Kapuskasing Area had been moved to Local 607, Joe Keyes, Secretary of the Labourers Employer Bargaining Agency advised the International by letter dated May 2, 2001 that "any changes that involve the collective agreement require both Bargaining Agencies." That letter went on to state:

> Since we are currently bargaining the timing is good. At our next meeting we can arrange for the local parties to get together, assuming this is not done beforehand.

Mr. Lindstrom received a copy of that letter. He testified that he conducted the bargaining on behalf of the CATB with Mr. Little, who did the bargaining on behalf of Local 607. He acknowledged that when he began bargaining with Mr. Little in March, the Kapuskasing Area was not part of the area for which he was bargaining. Indeed, the initial bargaining proposals received from Local 607 did not mention the Kapuskasing Area as an issue.

11. Mr. Lindstrom testified that the Kapuskasing Area was raised by Mr. Little as an issue at a bargaining meeting at the end of April. Mr. Little testified that at a meeting with Mr. Lindstrom on April 24, 2001 in Toronto, Mr. Little advised Mr. Lindstrom that the vote had taken place and the International's decision to transfer the Kapuskasing Area to Local 607 had been confirmed. Mr. Lindstrom's notes about the bargaining meeting of April 24th contains the notation "?change jurisdiction". Mr. Lindstrom indicated in his testimony that the issue of the Kapuskasing Area was not a significant issue for him in his bargaining with Local 607.

12. Mr. Lindstrom says he sought information and advice from Mr. Keyes and from Murray MacLean, the former manager of the CATB about the change in jurisdiction. Mr. Lindstrom testified that when he asked Mr. Keyes about CLARO's view concerning the Kapuskasing Area, Mr. Keyes told him, not in specific terms, but generally that it was up to him and Ron Martin, Manager of the SCA, to resolve the matter. Mr. Lindstrom also testified that as a result of his several conversations with Messrs. Keyes, Little and MacLean, he concluded the CATB was in a position to bargain with Local 607 in respect of the Kapuskasing Area. Mr. Lindstrom said that he had not received any clear direction from CLARO that he could not bargain in respect of the Kapuskasing Area but also acknowledged that he had not been authorized by CLARO to bargain with Local 607 in respect of the Kapuskasing Area. Mr. Lindstrom testified he also spoke with Mr. Martin and Rick Thomas, chair of the Labourers Employer Bargaining Agency negotiating committee about the issue. He testified that he was not given any clear direction about how to deal with the change in the geographic jurisdiction of Local 607. He explained that Mr. Martin had advised him that if the Local 607 rates applied in the Kapuskasing Area, there would be a significant jump in the rates for that area. He said that Mr. Martin had asked him to ask Mr. Little for "breaks" for the Kapuskasing Area. Mr. Lindstrom testified that he understood that Mr. Martin had tried to raise those concerns with Local 607 and that he, Mr. Lindstrom, did, albeit unsuccessfully as Mr. Little had made it clear to Mr. Lindstrom that Local 607 would not agree to reduced rates for the Kapuskasing Area.

13. Mr. Lindstrom in cross-examination agreed with the proposition put to him by counsel for the responding parties that any change in the geographic jurisdiction of a local schedule to the ICI Agreement required the approval of the Employer Bargaining Agency. Mr. Lindstrom testified that Mr. Martin had told him at a meeting in early 2001 that if there were to be changes to the working conditions in the Kapuskasing Area, discussions would be required with the SCA. He also acknowledged that Mr. Martin had made it clear to him that the SCA would not accept the Local 607 rates and working conditions for the Kapuskasing Area. Mr. Lindstrom conceded in cross-examination that by agreeing to have the Local 607 schedule apply to the Kapuskasing Area, the increase in the rates paid by contractors working in that area would be greater than the increase paid by contractors in any other area of the province.

14. Mr. Lindstrom agreed that the CATB was a member of CLARO and as such, was subject to the By-Laws of CLARO. Article XII of those By-Laws permits a member, in this case the SCA, to veto any change recommended by the bargaining committee to a provision "in the agreement specifically identified with that member if such change is less favourable to any employer on work falling within the geographic jurisdiction of the member." Work in the Kapuskasing Area had been within the jurisdiction of the SCA prior to the commencement of the 2001 negotiations. It was clear from the evidence that neither CLARO nor the SCA had agreed to transfer jurisdiction over the work done by employers in the Kapuskasing Area to the CATB.

15. Mr. Little and Mr. Lindstrom met again in May 2001. Mr. Lindstrom indicated that by the end of those May meetings he and Mr. Little had agreed to a resolution of the local issues but for some concerns about language for a clause dealing with a health and safety representative. Mr. Little testified that Mr. Lindstrom had agreed that the CATB would bargain with Local 607 in respect of the Kapuskasing Area and that he would provide Mr. Lindstrom with the appropriate language. According to Mr. Little, the only issue after the May meetings was clarification of the language dealing with the safety representative proposal. As far as Mr. Little was concerned, his agreement with the CATB applied to the Kapuskasing Area, although no formal memorandum had been signed in May.

16. Mr. Little and Mr. Lindstrom did not meet again to bargain, although they had been scheduled to do so in June when the "central table" bargaining was taking place, as a result of a death in Mr. Lindstrom's family. Mr. Little did, however, attend the central bargaining meetings in Toronto on June 13 and 14, 2001. Tom Connolly, chair of the Labourers Employee Bargaining Agency negotiating committee advised Mr. Little that he, Mr. Connolly, had been asked whether the rates and conditions for the Kapuskasing Area had been dealt with. Mr. Little testified that Mr. Martin had raised the issue of the rates for the Kapuskasing Area on June 13th. Mr. Little said he told Mr. Martin that if there are issues affecting the Kapuskasing Area, those issues should be presented to him by the CATB through Mr. Lindstrom. Later that day, Mr. Little was approached by Mr. Thomas and Stephen MacArthur, a Hamilton labour lawyer involved in the central negotiations, and was asked by them what he was prepared to do about the Kapuskasing Area. Mr. Little testified that he told them that he dealt with the CATB in respect of the Kapuskasing Area and he was not going to bargain a separate schedule for the Kapuskasing Area with anyone else. Mr. Little was adamant that he had not been told prior to June 13th he could not negotiate rates and working conditions for the Kapuskasing Area with the CATB and Mr. Lindstrom. It was only on June 13th that Mr. Little was told directly that he had to deal with Mr. Martin of the SCA for the rates and conditions for the Kapuskasing Area.

17. Mr. Little, in cross-examination, agreed that there had been a signed memorandum of agreement about the change in the jurisdiction of Local 607 when the Kapuskasing Area was transferred from Local 607 to Local 491. Mr. Little agreed that Mr. Lindstrom had had some

question about the geographic jurisdiction of the CATB and also acknowledged that Mr. Martin had made several approaches to him, Mr. Little, during bargaining. Mr. Little said that it was obvious to him that Mr. Martin wanted to negotiate his own provisions for the Kapuskasing Area and not have it done through the CATB. Mr. Little also acknowledged that Mr. Thomas and Mr. MacArthur had told him that he had to speak to Mr. Martin about the wage rates and costs in the Kapuskasing Area, and confirmed in his re-examination that Mr. Thomas had come back to him later on June 13th and said that he, Mr. Little, had to deal with Mr. Martin in respect of the Kapuskasing Area.

18. On June 18, 2001 Mr. Lindstrom and Mr. Little signed a Memorandum of Settlement for the Local 607 schedule that specifically included the Kapuskasing Area. No further negotiations took place in relation to the Kapuskasing Area either with Mr. Lindstrom or Mr. Martin after June 13th. Subsequently, Mr. Lindstrom and Mr. Little executed the formal document setting out the Local 607 schedule on June 25, 2001 when the monetary issues were at the central table. At that same time, the Labourers Employer Bargaining Agency and the Labourers Employee Bargaining Agency executed a Memorandum of Settlement settling the ICI agreement. That Memorandum of Settlement entered into between the two bargaining agencies stated in part:

> In the matter of the renewal of the Provincial Collective Agreement between the Employer Bargaining Agency and LIUNA O.P.C.C. expiring April 30, 2001:
>
> …
>
> 3. The parties agree that the dispute with respect to the "Kapuskasing Area" shall be referred to the Ontario Labour Relations Board.
>
> 4. This memorandum is executed by both parties without prejudice to any position they may take before the Ontario Labour Relations Board regarding the "Kapuskasing" issue referred to in paragraph 3.
>
> 5. The Thunder Bay memorandum of settlement is agreed except in respect of the disputed areas referred to in paragraph 3 above.

19. The parties agreed that the dispute referred to the Board mentioned in paragraph 3 of the Memorandum of Settlement is this application. The issue is whether the responding parties violated section 17 of the Act by taking the position that Local 607 could not reach an agreement with the CATB in respect of the Kapuskasing Area in the latter stages of bargaining when they knew or ought to have known that Local 607 had been bargaining with the CATB in respect of its entire geographic jurisdiction which, after mid April 2001, included the Kapuskasing Area.

20. The applicant argued that the Labourers Employer Bargaining Agency, as the party responsible for bargaining the ICI agreement with the applicant, violated section 17 of the Act because it did not "make every reasonable effort to make a collective agreement."

21. Counsel outlined the scheme of collective bargaining in the industrial, commercial and institutional sector of the construction industry and the role of both the bargaining agencies and the local parties. He pointed out that the bargaining proposals are developed locally and submitted to the bargaining agencies. The bargaining that takes place, at least in respect of the ICI agreement at issue in this case, involves both local parties negotiating their local schedules and the provincial bodies conducting bargaining over the master portion. Additionally, the affected trade associations (Ontario Masonry Contractors Association, Sealant and Waterproofing Association, Concrete Floor Contractors Association of Ontario) bargain with the applicant in respect of the trade appendices (masonry tenders, cement finishers and waterproofing) to the ICI Agreement. Those local schedules and trade appendices are then submitted to the parties' respective bargaining agencies for review and approval. Once approved, those schedules and appendices together with the master portion ultimately comprise the ICI Agreement.

22. The applicant contends that the duty to bargain in good faith, although an obligation of the respective bargaining agencies, also encompasses the bargaining that takes place at the local levels since the bargaining agencies delegate the authority to bargain the local schedules down to the local parties. Thus, in order to meet the obligation imposed by section 17 of the Act, it is incumbent on the bargaining agency to ensure that it both develops a mandate for its local representative and provides adequate instructions to that local representative. In this case, the CATB through Mr. Lindstrom indicated to Local 607 through Mr. Little that the CATB had the authority to bargain with Local 607 about the Kapuskasing Area. Counsel submits that the Labourers Employer Bargaining Agency failed to make reasonable efforts to reach a collective agreement by failing to provide clear directions to the CATB about its lack of authority with respect to the Kapuskasing Area. Counsel argued that the 11th hour direction to Local 607 that it had to bargain with the SCA over the Kapuskasing Area had the effect of undermining the bargaining carried on in good faith by Local 607 with the CATB and ambushing the agreement that was reached between them.

23. The applicant relies on *DeVilbiss (Canada) Limited*, [1976] OLRB Rep. March 49 in which the Board wrote at 64:

> Further, in the facts at hand, we have no doubt, when the totality of the respondent's conduct is considered, that the "bad faith" aspect of the duty also effectively characterizes the respondent's failure in this regard. But, as noted above, a finding of bad faith is not a prerequisite to a finding that section 14 [now 17] has been violated.

Counsel submits that even though there was no evidence or suggestion that the responding parties had acted in bad faith, the failure to ensure adequate instructions about the authority of the CATB together with effectively vetoing the agreement reached by Local 607 and the CATB because it applied to the Kapuskasing area amply demonstrate that the responding parties had violated the "make reasonable efforts" component of section 17. Counsel also referred to *Corporation Le Lycée Claudel*, [1996] OLRB Rep. May/June 370 in which the Board wrote at page 382:

> The Board is convinced that all the individuals concerned were acting in good faith in the personal sense of the words and in the sense of having the intention to recognize the union and conclude a collective agreement. But section 15 can be breached even where there is good faith, because of the companion obligation to make every reasonable effort to conclude a collective agreement. See *DeVilbiss (Canada) Limited*, [1976] OLRB Rep. March 49. The real question is whether, on balance, what happened amounts to reasonable efforts to conclude a collective agreement.

24. The Board in *DeVilbiss (Canada) Limited* discussed the obligations imposed by section 17 of the Act on the bargaining parties. The Board at page 62, after pointing out that the bargaining duty reinforces an employer's obligation to recognize a trade union's role as the exclusive bargaining agent of the employees in the bargaining unit wrote:

> But we believe the duty to meet and make every reasonable effort to make a collective agreement has an even more important function in a modern society that for the most part accepts that trade unions have legitimate and important roles to play. That is to say that the duty assumes that when two parties are obligated to meet each other periodically and rationally discuss their mutual problems in a way that satisfies the phrase "make every reasonable effort", they are likely to arrive at a better understanding of each other's concerns thereby enhancing the potential for a resolution of their differences without recourse to economic sanctions—the impact of which is never confined to the immediate parties of an industrial dispute.

The Board summed up the two principal functions of the duty imposed by section 17 at page 63 when it wrote:

> The duty reinforces the obligation of an employer to recognize the bargaining agent and, beyond this somewhat primitive though important purpose, it can be said that the duty is intended to foster rational, informed discussion thereby minimizing the potential for "unnecessary" industrial conflict.

25. Counsel for the applicant analogized the conduct of the Labourers Employer Bargaining Agency to the conduct of the employer in *Corporation Le Lycée Claudel* which did not provide its negotiators with a mandate for bargaining. He submitted that the CATB was not given any direction with respect to the Kapuskasing Area and therefore the bargaining with Local 607 in respect of the Kapuskasing Area turned out to be a waste of time. As the Board noted in *Corporation Le Lycée Claudel* at page 382:

> The fact that the two committees engaged in serious negotiations over six months when in fact the employer side had no specific instructions as to what was acceptable means that there was no guarantee that the parties were not engaged in a fruitless exercise—when the object of section 15 [now 17] is to ensure that negotiations bear the fruit of a collective agreement if reasonably possible.

In that case the Board concluded at page 382 that the failure to develop a mandate acceptable to the employer's board of directors (who had refused to ratify the agreement reached by their negotiators) "falls short of making every reasonable effort to conclude a collective agreement."

26. Although it is clear from the evidence that the Labourers Employer Bargaining Agency did not provide explicit instructions to Mr. Lindstrom about his authority to bargain in respect of the Kapuskasing Area until the bargaining was moving towards a conclusion, it is also clear from the evidence that Mr. Little knew that the rates for the Kapuskasing Area was a continuing concern for the SCA and Mr. Martin. Furthermore, the structure of bargaining for the ICI Agreement required all local arrangements to be approved by both bargaining agencies. Mr. Little wished to bargain with the CATB and Mr. Lindstrom with respect to the Kapuskasing Area. He rebuffed any attempt to deal with Mr. Martin over that area, despite attempts by Mr. Martin to do so. Indeed, Mr. Little acknowledged that Mr. Martin wanted to negotiate his own provisions

for the Kapuskasing Area. The applicant did not contend that the memorandum of agreement signed by Mr. Lindstrom and Mr. Little on June 18th in which the Kapuskasing Area was to be included in the Local 607 schedule was binding on the Labourers Employer Bargaining Agency. Indeed, it would have been impossible for it to do so since the Labourers Employer Bargaining Agency through the chair of its negotiating committee, Mr. Thomas, and counsel had made it clear to Mr. Little on June 13th that the CATB did not have authority in respect of the Kapuskasing Area. Thus, it is the period between April 24, 2001 and June 13, 2001 when Mr. Little and Mr. Lindstrom were bargaining and reached agreement over the terms and conditions for the Local 607 schedule and which purported to included the Kapuskasing Area that forms the basis of the applicant's complaint.

27. There can be no doubt that the appointment of a party's bargaining representative is within the exclusive purview of that party. An employer cannot dictate the composition of a trade union's bargaining committee because doing so violates both the duty to bargain in good faith under section 17 of the Act as well as the prohibition found in section 70 of the Act on employers interfering in the administration of a trade union and in its representation of employees. See *Journal Publishing Co. of Ottawa Limited,* [1977] OLRB Rep. June 309 at 320; *High Times Publication Ltd.,* [1984] OLRB Rep. Oct. 1448; *Brantwood Manor Nursing Homes Limited,* [1986] OLRB Rep. Jan. 9 at 64. Similarly, it seems to me a trade union that bargains with an employers' organization cannot dictate the association representatives with whom it will negotiate because doing so would not only violate section 17 but would also contravene section 71 which prohibits a trade union from interfering in the administration of an employers' organization.

28. With those principles in mind, it becomes clear that it was up to the Labourers Employer Bargaining Agency to decide which employers' association had the responsibility to bargain in respect of the Kapuskasing Area. While the change in the geographic jurisdiction of Local 607 might well suggest that it would make more sense from both a practical and historical perspective for the CATB to take over responsibility for that bargaining, there was no legal obligation on the part of the Labourers Employer Bargaining Agency to change the geographic jurisdiction of the SCA and the CATB to match the change the International had made to the territory for which Local 607 was responsible. Mr. Little, who was the business manager of Local 607 when the International took jurisdiction over the Kapuskasing Area away in 1990 and when that jurisdiction was returned, wanted to negotiate a single Local 607 schedule applicable to its entire area. Bargaining only with the CATB would make it much easier to achieve that objective and Mr. Lindstrom was prepared to accommodate Mr. Little. Nevertheless, in the absence of any change in the jurisdiction of the affected employers' associations, the responsibility for bargaining in respect of the Kapuskasing Area remained with the SCA.

29. The applicant does not take issue with the SCA's authority to bargain in respect of the Kapuskasing Area. Rather, its complaint rests on the failure of the Labourers Employer Bargaining Agency to make it clear that it was the SCA and not the CATB that had the authority to bargain in respect of the Kapuskasing Area. In my view, the failure or refusal by the Labourers Employer Bargaining Agency to make that authority clear until June 13, 2001 does not establish that it had not made every reasonable effort to make a collective agreement. To the contrary, the ambiguity of the initial responses permitted Local 607 and the CATB to deal with their local issues and allowed the affected parties to wait and see if there might be a satisfactory settlement reached without having to face and ultimately resolve what was a difficult issue. In other words, which employers' association was responsible to negotiate with Local 607 over the Kapuskasing Area need not necessarily have been decided if a satisfactory resolution of the issues could have been achieved by the parties who were engaged in the bargaining. It is also clear from the

evidence that while Mr. Little was sensitive to the jurisdiction issue, he, understandably, chose to seek clarification of it only from Mr. Lindstrom. Mr. Little did not go behind Mr. Lindstrom's back to seek confirmation from either the Labourers Employer Bargaining Agency or the SCA that the Kapuskasing Area bargaining had become the responsibility of the CATB and there was certainly no obligation on him to do so.

30. Local 607 was content to rely on the representation it received from Mr. Lindstrom and the CATB and did not seek to obtain any other assurance about Mr. Lindstrom's authority despite Mr. Martin discussing the Kapuskasing Area several times and despite Mr. Lindstrom's indication to Mr. Little that the SCA wanted a "break" for the Kapuskasing Area. I note in that regard that the applicant, quite properly, did not assert that the CATB had the apparent authority to bind the Labourers Employer Bargaining Agency to the agreement it had reached with Local 607 in respect of the Kapuskasing Area. Mr. Little was content to continue bargaining with Mr. Lindstrom and seek to have the Local 607 schedule apply to the Kapuskasing Area without satisfying himself that Mr. Lindstrom had been authorized to make an agreement for that area. Had Mr. Little pushed the matter early on, he might not have liked the answer he would have received.

31. Furthermore, as counsel for the responding parties pointed out, it was up to the two bargaining agencies to review and approve the agreements reached locally. There had not been a settlement reached in the ICI Agreement bargaining when Mr. Little had been explicitly told that he had to bargain with the SCA in respect of the Kapuskasing Area. The monetary issues were still being negotiated centrally. Finally, there was no suggestion made in the evidence or argument that Local 607 had been prejudiced in the positions it had taken in bargaining with Mr. Lindstrom. That is, the Kapuskasing Area issue did not affect the conduct of the bargaining between the CATB and Local 607.

32. In my view, the absence of an express mandate in respect of the Kapuskasing Area did not hamper the making of a collective agreement. In *Corporation Le Lycée Claudel, supra,* the Board wrote at page 383:

> Neither side is required to have a complete mandate at the outset. However, sufficient communication between principal and negotiator is necessary for informed progress towards a collective agreement to be possible. When matters are clearly coming to a head, as they were at conciliation and after, a clearer mandate was necessary for the employer to be found to be making every reasonable effort to conclude a collective agreement.

By June 13th, when the negotiations for the ICI Agreement were getting closer to completion, the jurisdiction over bargaining in respect of the Kapuskasing Area was made clear to Mr. Little and subsequently to Mr. Lindstrom. That is, well before the ICI Agreement was finalized, Local 607 was advised that it had to negotiate with the SCA in respect of the Kapuskasing Area. I am satisfied that a "clearer mandate" was provided when matters were "clearly coming to a head". Thus, I am unable to conclude that the Labourers Employer Bargaining Agency was not making every reasonable effort to conclude a collective agreement.

33. This application under section 96 of the Act is therefore dismissed.

34. In view of the nature of this application and the June 25, 2001 Memorandum of Settlement that gave rise to it referred to in paragraph 18 above, the parties agreed to the

consequences that would result from this decision on the merits of this application. Their agreement is set out in the decision in this matter dated April 23, 2002 at paragraph 8:

> Should this application come back before the Board for a determination on the merits, the parties have further agreed on the remedies that would result. If the Board finds that the responding parties or any of them violated the Act, then the Local 607 schedule in the Labourers' Provincial Agreement will apply to the Kapuskasing Area. If the application is dismissed, the parties are agreed that the rates applicable to Timmins with the increase that had been negotiated with the SCA shall apply to the Kapuskasing Area.

As this application is dismissed, in accordance with the parties' agreement as recorded in the Board's April 23, 2002 decision, the Board orders that the rates applicable to Timmins with the increase that had been negotiated with the SCA apply to the Kapuskasing Area. The Kapuskasing Area is defined as:

> That portion of the District of Cochrane east of the 83rd parallel of longitude and north of the 49th parallel of latitude, excluding any part of Board Area 19 (the area within an 81 kilometre or approximately 50 mile radius of the Timmins Federal Building); which for greater certainty includes that area along Highway 11 between Smooth Rock Falls in the east and Mattice in the west, including Kapuskasing, and the entire area north.

35. This panel of the Board remains seized with dealing with any issue arising out of the implementation of the order to which the parties had agreed set out in paragraph 34 above.

"Harry Freedman"
for the Board