Ontario

ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0429-21-R**

United Food and Commercial Workers Canada, Local 1006A, Applicant v **Ryding Regency Meat Packers Ltd.**, Tri-Pet Holdings Incorporated, Truharvest Meats Inc., and 2805463 Ontario Ltd., Responding Parties

OLRB Case No: **0625-21-ES**

United Food and Commercial Workers Canada, Local 1006A, Applicant v **Ryding Regency Meat Packers Ltd.**, Tri-Pet Holdings Incorporated, Truharvest Meats Inc., 2805463 Ontario Ltd., and Director of Employment Standards, Responding Parties

OLRB Case No: **0675-21-ES**

Clifton Fisher, Applicant v **Ryding Regency Meat Packers Ltd.**, Truharvest Meats Inc., Tri-Pet Holdings Incorporated, and Director of Employment Standards, Responding Parties

Employment Practices Branch File No: **0008240-CL000**

OLRB Case No: **0676-21-ES**

Fei Jin, Applicant v **Ryding Regency Meat Packers Ltd.**, Truharvest Meats Inc., Tri-Pet Holdings Incorporated, and Director of Employment Standards, Responding Parties

Employment Practices Branch File No: **0008242-CL000**

OLRB Case No: **0677-21-ES**

Frank Rizzo, Applicant v **Ryding Regency Meat Packers Ltd.**, Truharvest Meats Inc., Tri-Pet Holdings Incorporated, and Director of Employment Standards, Responding Parties

Employment Practices Branch File No: **0008245-CL000**

BEFORE: Patrick Kelly, Vice-Chair

APPEARANCES: Micheil Russell, Michael Hancock, Jonathan Lobo and Don Taylor for United Food and Commercial Workers Canada, Local 1006A; Jonquille Pak, Dilpreet Grewal, and Chuck Oulton for Truharvest Meats Inc. and 2805463 Ontario Inc.; Ben Contini for Tri-Pet Holdings Incorporated; James LeNoury, Jason Wong, and Wally Sinjakewitsch for Chris Fisher, Fei Jin, and Frank Rizzo; Madaleine Chin-Ye and Gráinne McGrath for the Director of Employment Standards; no one appearing for Ryding Regency Meat Packers Ltd.

DECISION OF THE BOARD: June 23, 2022

1. Board File No. 0429-21-R is an application filed with the Board pursuant to subsection 1(4) and section 69 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, as amended ("the *LRA*").

2. Board File No. 0625-21-ES is a referral to the Board by an arbitrator, filed pursuant to section 101 of the *Employment Standards Act, 2000*, S.O. 200, c. 41, as amended ("the *ESA*"). This application raises the issue of whether Ryding Regency Meat Packers Ltd. ("Ryding Regency") and/or Tri-Pet Holdings Incorporated ("Tri-Pet Holdings") and/or Truharvest Meats Inc. ("Truharvest Meats") and/or 2805463 Ontario Inc. ("2805463 Ontario") are to be treated as one employer for the purposes of the *ESA*.

3. Board File Nos. 0675-21-ES, 0676-21-ES and 0677-21-ES are three applications for review of an Order to Pay that have been filed with the Board pursuant to section 116 of the *ESA*.

4. The preliminary issue to be determined in this decision concerns whether the Board must stay these proceedings pursuant to subsection 69.3(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("the *BIA*"). The participating corporate responding parties argue in favour of the stay, whereas the applicants and the Director of Employment Standards ("the Director") submit that no stay under the *BIA* is warranted.

5. First, some context. As pointed out by the Board (differently constituted) in a decision in these matters dated January 14, 2022[1], at all relevant times Ryding Regency has been bound to a collective agreement with the United Food and Commercial Workers Canada, Local 1006A ("the UFCW"). Ryding Regency ceased operations in or around September, 2019. The employees represented by the UFCW were subsequently laid off. The UFCW filed a grievance on October 15, 2020, in which it alleged that Ryding Regency had failed to pay statutory termination pay and severance pay to those employees.

6. An arbitration hearing was held before Arbitrator William Marcotte on June 1, 2021 and June 14, 2021 to adjudicate the grievance. By award dated June 14, 2021, Arbitrator Marcotte allowed the grievance. He determined that Ryding Regency had failed to make the required payments of termination pay and severance pay under the *ESA* to the employees represented by the UFCW. Arbitrator Marcotte directed Ryding Regency to pay the sum of $1,515,203.60 to the UFCW in accordance with an Appendix attached to his award.

7. Arbitrator Marcotte noted in his award that the UFCW had asserted at the hearing that Ryding Regency, Tri-Pet Holdings and/or Truharvest Meats Inc. and/or 2805463 Ontario should be treated as one employer as defined by subsection 4(1) of the *ESA*. As noted above, having regard to section 101(1) of the *ESA*, Arbitrator Marcotte has referred that question to the Board.

8. The applications in Board Files No. 0675-21-ES, 0676-21-ES and 0677-21-ES have been filed by three former non-union employees of Ryding Regency ("the three individual claimants") and are based upon Orders to Pay made by an Employment Standards Officer (or "the ESO") in which the ESO determined that neither Truharvest Meats nor Tri-Pet Holdings is related to Ryding Regency as defined by subsection 4(1) of the *ESA*. In these proceedings, the three individual claimants ask the Board to declare that both Truharvest Meats and Tri-Pet Holdings are related to Ryding Regency for the purposes of the *ESA*.

9. On or about June 15, 2021, the day after Arbitrator Marcotte issued his award, Ryding Regency filed an assignment into bankruptcy under the *BIA*. Schwartz Levitsky Feldman Inc. was appointed as the trustee of the estate of Ryding Regency. As of the date of the hearing of this stay motion, on April 21, 2022, Ryding Regency was not a discharged bankrupt. As a result of the above referenced filing of Ryding

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[1] *United Food and Commercial Workers Canada, Local 1006A v Ryding Regency Meat Packers Ltd.*, 2022 CanLII 3511 (ON LRB), at paragraphs 5 through 9.

Regency's assignment into bankruptcy, Truharvest Meats, Tri-Pet Holdings, and 2805463 Ontario assert that these proceedings must be stayed in accordance with the provisions of subsection 69.3(1) of the BIA. As indicated, the UFCW, the three individual claimants, and the Director disagree.

10. On August 23, 2021, the UFCW filed an application for certification against Truharvest Meats, which by that date was operating a slaughterhouse and meatpacking business at the same location in which Ryding Regency had operated. By way of a decision dated September 24, 2021, the Board granted the UFCW interim certification for a bargaining unit of employees of Truharvest Meats that closely resembles the bargaining unit for which the UFCW held bargaining rights at Ryding Regency. Apparently, the UFCW and Truharvest Meats have entered into collective bargaining, but as the date of the hearing of this motion to stay, no collective agreement had been reached.

11. Earlier in 2021, on February 18, the three individual claimants, in this proceeding filed claims with the Ministry of Labour, Training, and Skills Development ("the Ministry") for termination and severance pay under the *ESA*. On June 1, 2021, approximately two weeks before Ryding Regency filed an assignment into bankruptcy, an Employment Standards Officer ("ESO") issued Orders to Pay #0008240-OP001, 0008242-OP001, and 0008245-OP001 against Ryding Regency for termination and severance pay owing to the employees. However, as I have indicated, the ESO determined that neither Truharvest Meats nor Tri-Pet Holdings were related to Ryding Regency pursuant to section 4 of the ESA and refused to issue related Orders to Pay against those companies.

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12. Subsection 69.3(1) of the *BIA* states in part that: ". . . on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy."

13. Section 69.3 applies in respect of all creditors, including unionized employees with claims provable in bankruptcy for outstanding termination pay and severance pay as against the debtor.

14. The participating responding party corporations submit that the LRA and ESA applications in these proceedings qualify as proceedings

for the recovery of claims provable in bankruptcy, and are therefore stayed by virtue of the *BIA*.

15. The purpose of this federal legislation has long been recognized as providing for the orderly and fair distribution of a bankrupt's assets amongst creditors: see paragraph 12 in *Re Cohen*, 1948 CanLII 282 (ON CA). Specifically, the purpose of the stay provisions of the *BIA* is to prevent proceedings by a creditor that would give that creditor an advantage over others in the collection of its debt from the bankrupt (see *Re Cohen*, *supra*, at paragraph 12; and *msi Spergel Inc. v. I.F. Propco Holdings (Ontario) 36 Ltd.*, 2013 ONCA 550 at paragraph 40).

16. The Supreme Court of Canada and Ontario Court of Appeal have recognized the importance of a purposive approach to stays of proceedings in accordance with the *BIA*, noting that a true conflict must arise between the provincially regulated rights and the purposes of the *BIA* in order for a stay to issue. For example, in *GMAC Commercial Credit Corporation - Canada v. T.C.T. Logistics Inc.,* 2006 SCC 35 (CanLII), [2006] 2 SCR 123, the Supreme Court of Canada commented, in keeping with the language in subsection 72(1) of the *BIA*[2], that the federal legislation is not intended to extinguish legally protected rights unless those rights are in conflict with the *BIA*. Further, at paragraph 43 in *Crystalline Investments Ltd. v. Domgroup Ltd.*, 2004 SCC 3 (CanLII), [2004] 1 SCR 60, 2004 SCC 3 the Supreme Court of Canada stated, "federally regulated bankruptcy and insolvency proceedings cannot be used to subvert provincially regulated property and civil rights." And in *Romspen Investment Corporation v. Courtice Auto Wreckers Limited*, 2017 ONCA 301 (CanLII), the Ontario Court of Appeal, relying upon *GMAC Commercial Credit Corporation*, *supra*, commented at paragraph 37 that "courts should not unduly inoculate insolvency proceedings against the legitimate exercise of labour rights simply because the assertion of those rights represents an inconvenience to the receivership process."

17. The Board's approach to the issue of stays of proceedings has evolved over the years. That was signalled in *Union of Needletrades, Industrial and Textile Employees, Local 1938 v. George Hancock Textiles Ltd.*, 2005 CanLII 1740 (ON LRB) ("*Hancock*") where, at paragraph 29 of the decision, the Board stated:

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[2] Subsection 72 (1) of the *BIA* reads: The provisions of this Act shall not be deemed to abrogate or supersede the substantive provisions of any other law or statute relating to property and civil rights that are not in conflict with this Act, and the trustee is entitled to avail himself of all rights and remedies provided by that law or statue as supplementary to and in addition to the rights and remedies provided by this Act.

> 29. The cases in this area appear, upon the first review of them, to arrive at inconsistent results. Previous Board decisions have stayed proceedings such as these. However, some recent Court decisions have not stayed proceedings similar to these. The Board finds that these cases can be reconciled on the basis that the proceeding is stayed if allowing the proceeding to continue would be disruptive to the purposes of the BIA. If allowing the proceeding to continue could have the effect of granting the applicant an advantage in the collection of its debt that is inconsistent with the distribution of the bankrupt's assets to all of the creditors as required by the priorities and procedures set out in the BIA, the cases rule that the proceeding in question is a proceeding "for the recovery of a claim provable in bankruptcy" and therefore the proceeding is stayed. Where it is found, as a fact, that the proceeding in question does not include a claim for the recovery of a debt against the bankrupt, but rather only seeks to bind the successor employer to the collective agreement the union had with the bankrupt employer, the Courts have not stayed the proceedings. In these cases, the Courts have stated that allowing the proceeding to continue would not be disruptive to or inconsistent with the purposes of the BIA. It should be noted that in these Court decisions, the Board has generally previously stayed the proceeding and required the applicant to go to the Court to seek leave to proceed.

18. The *Hancock* decision concerned a related employer/sale of business application under the *LRA* and a referral from an arbitrator under the *ESA*. Ultimately, the Board found that the matters before it amounted to a "proceeding for the recovery of a claim provable in bankruptcy" within the meaning of section 69.3 of the *BIA*, because an order of the Board declaring a sale of business or declaring that the respondents were one employer under the *LRA* would permit the applicant to seek to recover its claims against the bankrupt respondent as well as the non-bankrupt respondents. In arriving at this conclusion, the Board placed considerable reliance upon prior decisions in which the Board had adopted a "gatekeeper" role in respect of the *BIA* and Court orders made pursuant to the *BIA*, such as *Carpenters & Allied Workers, Local 27 United Brotherhood of Carpenters and Joiners of America v. Page Flooring Enterprises Inc.*, 2002 CanLII 3544 (ON LRB) and *Industrial Wood & Allied Workers of Canada (I.W.A. Canada) v. Spectrum Supply Chain Solutions Inc.*, 2002 CanLII 29612 (ON LRB).

19. Tri-Pet Holdings, Truharvest Meats Inc. and 2805463 Ontario urge the Board to follow the reasoning and result in the *Hancock* decision and the other Board decisions that informed it. But this argument runs

up against *United Food and Commercial Workers Union, Local 175 v MGI Packers Inc*, 2011 CanLII 46575 (ON LRB), in which the then Chair of the Board announced a "more nuanced approach" and appeared to reject the reasoning in *Hancock* and the cases upon which it relied. That matter involved a related employer/sale of business application under the *LRA*. One of the late-added respondents took note of the status of another late-added respondent as an undischarged bankrupt, and sought a stay of the proceeding pursuant to section 69.3 of the *BIA*. The Board expressed doubt at paragraph 12 of the decision that "a mere claim by a union to preserve its pre-existing bargaining rights with a successor employer (bankruptcy notwithstanding) can be said to be that of a creditor, against the debtor or the debtor's property, for the recovery of a claim provable in bankruptcy." This, the Board observed, is even more doubtful in circumstances where the union resolves not to seek relief against the bankrupt respondent. The Board flatly rejected any prior line of reasoning in Board jurisprudence positing that even when a trade union renounces at the outset any intention to seek remedies against the bankrupt predecessor the Board may still stay the related employer/sale of business proceedings.

20. At paragraphs 17 and 18 of *MGI Packers,* the Board stated:

> 17. To remain consistent with the purposes of the BIA, there is no need for such a heavy-handed approach as staying all section 1(4) and/or section 69 proceedings at the outset merely because it involves a predecessor employer that may or may not be in bankruptcy. The delay (or further delay) inherent in a leave application to the Bankruptcy Court ought not to be automatically imposed on a representational claim for bargaining rights with a successor employer which even the Courts concede is the exclusive jurisdiction of the Board (although the Board concedes the irony of such an observation in this case).
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> 18. Rather, a more nuanced approach can be adopted that is consistent with the purposes of the BIA and the successor rights provisions of the Act (which is the exclusive jurisdiction of the Board as noted by the Courts). There seems to be no reason why the Board cannot proceed with the section 69/1(4) declaration at least insofar as it relates to the declaration of the bargaining rights against the successor corporation. If the trade union or the applicant claims further or additional relief which may involve actually recovering funds or requiring some payment from the bankrupt (for example, a section 133 application that seeks to obtain an order for the payment of monies), then the impact of the BIA and the necessity of a stay and compelling

> the union to seek the approval of the bankruptcy court can be considered. The fear that a section 69 and/or 1(4) declaration may be the "launching pad" for claims against the bankrupt once the 69/1(4) relief has been granted (which may or may not come to pass – and which relief is not necessarily an issue at this stage of the proceedings) does not justify staying or refusing to entertain any section 69 or 1(4) application at the outset when all that may be sought is a declaration concerning bargaining rights applying to a successor employer. That is certainly not what the Courts have directed the Board to do. If that eventuality does come to pass, and such a claim is actually made, it can appropriately be dealt with at that time.

21. The themes in *MGI Packers* were reprised in *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 787 v Logue Mechanical Services Inc.*, 2016 CanLII 44016 (ON LRB). In that case, the trade union was bound to collective agreements with Logue Mechanical Services Ltd. ("Logue"). Grievances arose against Logue and were successfully litigated before the Board, but the monetary relief ordered against Logue by the Board remained outstanding at the point that Logue appeared to become insolvent and transferred its operation to Austech Mechanical ("Austech"). The trade union brought a sale of business application under the *LRA* seeking two declarations, one declaring that Austech was bound to the collective agreements to which Logue had been bound; and a second declaration that Logue and Austech were jointly and severally liable for the amounts previously ordered by the Board against Logue in the grievance proceedings. Austech objected on the basis of Logue's filing for bankruptcy and the application of a stay under section 69.3 of the *BIA*. Following the filing of the trade union's application and Austech's response, Logue filed for bankruptcy and the trade union filed a proof of claim in the bankruptcy of Logue for the outstanding amounts ordered by the Board.

22. The Board granted the first declaration, but not the second. With respect to the first declaration, the Board stated at paragraph 22:

> 22. I believe the remarks I made in *M.G.I.*, *supra*, are equally appropriate and applicable here. I think this is a perfect example of what I referred to as a "more nuanced approach" is to be applied. At least insofar as issuing a declaration that Austech is bound to the collective agreements as the successor to Logue, I see no obstacle in the *BIA* or the bankruptcy proceedings of Logue (what the implications of this are or whether Austech ought to be ordered to pay the amounts in the prior Board decisions, I

> discuss below). In other words, I do not believe the *BIA* operates as a stay insofar as such a declaration with respect to the bargaining rights of the Union vis-à-vis Austech. As made clear by the Nova Scotia Court of Appeal in *Saan Stores*, the Board in *Hancock Textiles*, or the Supreme Court of Canada in *T.C.T. Logistics*, not only is the question of whether a trade union's bargaining rights flow through to a successor employer within the exclusive jurisdiction of the Board (a specific legislative assignment of jurisdiction – no matter how wide the bankruptcy jurisdiction of the Bankruptcy Court), but whether Austech is bound to the collective agreements going forward from the demise of Logue in no way hinders the operation of the *BIA*. There is no remotely compelling argument to be made that this interferes in any way with the orderly sorting out of the remains of Logue (and certainly Austech made no such attempt). In fact, this is even more irrefutable when Austech itself essentially concedes (as even the facts not in dispute virtually incontrovertibly point to) that it is the successor and does not really oppose that declaration. To be as blunt as possible, I see no persuasive reason, from even a bankruptcy point of view, and certainly not from a labour relations point of view, why Austech should get a "free ride", i.e., be allowed to operate free from or without the collective agreements binding upon it for the indefinite and indeterminate period of time it takes to sort out the financial remains of Logue – as it has been doing. Accordingly, pursuant to section 69(2) of the *LRA*, the Board declares that Austech is bound by the collective agreements.

23. Regarding the second declaration, the Board stated at paragraph 34:

> 34. I do not doubt the Board general jurisprudence that pursuant to section 69 of the *LRA*, the successor steps into the shoes of the predecessor for all purposes – benefits and liabilities – good and bad. However, what is happening here is not a limitation or omission in the consequences of a successor declaration – but rather an intervening event, the bankruptcy, and an intervening statute, the *BIA* and section 69.3(1) of the *BIA*, and the impact of that intervening event and statute. What the Union seeks here is not just a declaration that the seniority earned working for the predecessor company also applies to the successor company (like *Emrick Plastics*, [1982] OLRB Rep. June 861 at para. 18), or even in a simple sale that the purchaser company is bound by a liability of the predecessor company (including a prior arbitration award like in *Seneca)* – which may very likely be governed by the general Board successor

> jurisprudence. Rather with its second declaration, the Union appears to seek, in my view, something precariously close to a "remedy against the debtor or the debtor's property", or "commenc[ing] any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy" – which is prohibited by section 69.3(1) of the *BIA* without the permission of the bankruptcy court. Unlike the representational claims of the Union in any successorship which is the exclusive jurisdiction of the Board, here this appears to be and "smells" too much like interference (if not an attempt to gain a priority outside of the bankruptcy) in the orderly and fair distribution of a bankrupt's property among the creditors of the bankrupt (of which there are likely more than just the Union) and which is both beyond the expertise and jurisdiction of the Board.

24. Finally, the Board has more recently dealt with the question of a bankruptcy-related stay in the context of an application for review under the *ESA*. The proceedings in *Istuary Innovation Group and Associated Companies, and Netint Technologies Inc. v Director of Employment Standards* arose out of an Employment Standards Officer's decision to issue a related Order to Pay ("Order") against Netint Technologies Inc ("Netint"). Netint was one of several entities found to be a related employer of 119 employees under section 4 of the ESA. Netint appealed the Order and sought a stay of the proceedings on the basis that the employer, Network Intelligence, was bankrupt. Netint argued, as do the corporate responding parties in this matter, that the Order related to the recovery of funds through a claim for payment of a debt owing from a bankrupt.

25. In dismissing Netint's preliminary objection, the Board commented that the purpose of the *BIA* and its stay provisions is central to determining if a proceeding is stayed. In deciding that the proceedings were not stayed, the Board noted at paragraph 15 that there was no risk of a "disruption to the orderly and fair distribution of the bankrupt's assets" or risk of the employees gaining any advantage in the bankruptcy of Network Intelligence. The Board determined Netint, a solvent entity, was improperly using the bankruptcy of an allegedly related entity to "fend off claims for amounts that it allegedly owe[d]," (paragraph 16), acknowledging the independent liability that the Order created against it as a related employer.

26. *Netint* and the present case differ in that the ESO here came to a different conclusion with respect to the relatedness of Ryding Regency (the equivalent of Network Intelligence in *Netint*) and Truharvest Meats and Tri-Pet Holdings (the equivalent of Netint). As a result, the instant

proceedings are an appeal of an ESO's *lack* of issuance of related orders to pay against the alleged related companies. However, I see no reason why this variation at first instance should change the stay analysis before the Board. The test for a stay remains the same either way.

27. The participating responding parties say that the *Netint* case is distinguishable on the facts. They have a point. In *Netint*, the bankrupt, Network Intelligence, was not a party in the application for review under the *ESA* (although, as pointed out by the Director, that is somewhat of a red herring because Network Intelligence was found at first instance by the Employment Standards Officer to be related to the rest of the many other corporate entities in that matter, and, depending on the outcome of the application for review in that matter, Network Intelligence, in theory remained exposed to the same joint and several liability under section 4 of the ESA). And here, there is the added feature of the UFCW's related employer application under the *LRA* in which the union seeks a declaration that all the corporate responding parties, including Ryding Regency, are one employer.

28. Regardless of the extent of *Netint*'s factual similarity or disimilarity to the case at hand, *Netint* represents another step in the Board's evolving approach to *BIA* stays of proceedings. That approach reflects a view that solvent entities ought not to be permitted to use the *BIA* stay provisions to fend off claims by alleged employees (and their representatives on their behalf). While allowing the UFCW's members and the three individual claimants to recover from Ryding Regency would be inconsistent with the purposes of the BIA and give them an advantage in the distribution of Ryding Regency's assets that would conflict with the *BIA*, recovering from the alleged related employers would not. The remedies sought by the UFCW and the three individual claimants would not involve recovering funds from or requiring payment from the bankrupt, and in fact they have foresworn recovery against Ryding Regency for the monetary claims they say they are guaranteed under the minimum standards statutory scheme. In my view, that puts an end to the arguments advanced by the participating corporate responding parties, which arguments are in the main influenced by the outcome in cases that were decided up to and including the *Hancock* decision in 2005, but not thereafter.

29. Counsel for Truharvest Meats advanced an additional argument. She submitted there was no labour relations purpose to be resolved by these proceedings in relation to her client because the UFCW has won certification against Truharvest Meats for a bargaining unit that is essentially the same bargaining unit that existed at Ryding Regency. In counsel's submission, there is a new labour relations reality now

established and no need to revive the old collective agreement as between the UFCW and Ryding Regency. This overlooks two points. First of all, at the time this motion was heard, Truharvest Meats and the UFCW had not reached a collective agreement, although they were in bargaining. Reaching a collective agreement is not guaranteed. It can take a long time, and there are means under the *LRA* whereby bargaining rights may be terminated before a first collective agreement is ever reached. Once the parties settle all the terms, the collective agreement must be ratified. Only then do the terms and conditions of a collective agreement come into effect. The UFCW and Truharvest Meats are not at that stage. Secondly, the three individual claimants are not employed by Truharvest Meats, are not in the new bargaining unit nor entitled to whatever terms and conditions the UFCW and Truharvest Meats may negotiate into a collective agreement. Therefore, there is still a purpose to this litigation.

30. Accordingly, for the reasons above, these proceedings are not stayed by the provisions of the *BIA*.

31. Whether or not these proceedings ought to be consolidated is not an issue that Board need decide now. However, I direct that all these matters should be assigned to one panel of the Board for determination.

"Patrick Kelly"
for the Board