

ONTARIO LABOUR RELATIONS BOARD

2388-09-U Universal Workers Union, Labourers International Union of North America, Local 183 on its own behalf and on behalf of its Members and Executive Board, Applicant v. Labourers International Union of North America, Joseph S. Mancinelli, Ronald A. Pink, Q.C. and Cosmo Manella, Responding Parties.

BEFORE: Charles E. Humphrey, Vice-Chair.

APPEARANCES: Doug Wray, Jesse Nyman and Durval Terceira for the applicant; James Hayes, James Robbins and Elichai Shaffir for Labourers International Union of North America, Joseph S. Mancinelli, and Cosmo Manella; Sean McGee and Ronald A. Pink for Ronald A. Pink, Q.C.

DECISION OF THE BOARD: February 22, 2010

1. This is an application under section 96 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). The general nature of the dispute between the parties is described in the Board's earlier decision relating to this matter and a request for interim relief in Board File No. 2536-09-M. The Board will not repeat that factual background for purposes of this decision.
2. This decision deals with a number of issues relating to the production of material requested by the parties. Counsel for the applicant Labourers' International Union of North America, Local 183 ("Local 183") has made requests for production to the responding parties Labourers International Union of North America ("LIUNA"), Joseph S. Mancinelli ("Mr. Mancinelli"), Cosmo Manella ("Mr. Manella") and Ronald A. Pink, Q.C. ("Mr. Pink"). The applicant's requests for production were made to responding parties' counsel in a series of letters dated December 9, 2009 (December 9 Letter), December 10, 2009 (December 10 Letter), February 2, 2010 (February 2 Letter). Counsel for the responding parties LIUNA, Mancinelli and Manella in a letter dated February 5, 2010 (February 5 Letter) requested production of material and particulars from the applicant.
3. In accordance with the direction of the Board in its January 5, 2010 decision counsel for the responding parties provided their clients' position regarding the disclosures requested in the December 9 Letter and December 10 Letter. At the hearing held on February 9, 2010 the Board heard the parties' submissions relating to the requests made in the December 9 Letter, December 10 Letter and February 2 Letter. Counsel for the applicant indicated he was not in a position to respond to the February 5 letter given the timing of its arrival. The issue of the response to that letter is dealt with below.
4. The Act gives the Board broad authority to require production of material and to consider evidence. Subsection 111(2) provides:

Without limiting the generality of subsection (1), the Board has power,

- 2 -

...

- b) to require any party to produce documents or things that may be relevant to a matter before it and do so before ordering a hearing.

...

- e) accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not.

5. The Board has often expressed the "may be relevant" standard for production as a requirement to show that the material being requested is arguably relevant to an issue in the proceedings. The arguably relevant threshold is low as the Board put it in *NCI Ottawa Inc.*, [2006] CanLII 1589 (ON L.R.B.) at paragraph 10:

The test for pre-hearing production is arguable relevance. That is, a party need only establish that a document or class of documents may have some significance in proving the case it seeks to present to the Board in order for those documents to meet the test of "arguable relevance". If a party can demonstrate some connection between the documents it seeks to have produced and its theory of the case, then that party will have established that those documents are arguably relevant and, subject to claims of privilege, ought to be produced for inspection. Thus, there is a low threshold for establishing arguable relevance.

6. The responding parties have claimed privilege from disclosure. In addition, they have argued that even if privilege does not apply the Board should exercise its discretion not to require disclosure of certain documents given the impact such disclosure would have on the current investigation being undertaken by Mr. Pink and the chilling effect such disclosure would have on the willingness of union members to come forward in future cases. That is they have asked the Board to weigh the benefits of disclosure against the harm that would be caused by disclosure in making any production order.

Privilege

7. The general principles outlined in the reasons of the Supreme Court of Canada in *A. M. v. Ryan*, [1997] 15 S.C.R. 157 are an appropriate starting point for the discussion of the application of privilege from disclosure. At paragraph 19 of its reasons the court said:

The common law principles underlying the recognition of privilege from disclosure are simply stated. They proceed from the fundamental proposition that everyone owes a general duty to give evidence relevant to the matter before the court, so that the truth may be ascertained. To this fundamental duty, the law permits certain exceptions, known as privileges, where it can be shown that they are required by a "public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth"; *Trammel v United States*, 445 U.S. 40 (1980), at p. 50.

8. This Board like a court must have as its first concern ascertaining the truth to the best of its ability. As a general principle it is only where there is some public good which transcends this overriding concern with ascertaining the truth that the Board should consider declining to hear relevant evidence based on a claim of privilege.

9. In this case the responding parties have claimed privilege from disclosure on two grounds: solicitor-client privilege and informant privilege. Virtually all of the material over which privilege is claimed relates to information obtained by or created by Mr. Pink in the course of his investigation. Given this, it is necessary to consider Mr. Pink's role and the source and nature of his authority in order to put the claims to privilege from disclosure in context.

10. Since April 17, 2009 Mr. Pink has been conducting an investigation into the affairs of Local 183. As he put it in his letter of April 17, 2009, announcing the investigation, the investigation encompasses, "the entire functioning of Local 183". Mr. Pink is conducting the investigation in his role as Special Counsel – Canada (SCC) for the Labourers' International Union of North America. Mr. Pink derives his authority as SCC from the LIUNA constitution and the LIUNA Canadian Ethical Practices Code. The Ethical Practices Code describes function and authority of the SCC as follows:

10. (1) LIUNA shall engage the services of outside counsel, after consultation with the Canadian affiliates, highly regarded for his or her integrity, Canadian labour relations experience and diligence, to serve as the legal counsel to LIUNA while serving as the SCC under the provisions of this Code.

(2) For the purposes of enforcing this Code, all of the investigative and prosecutorial powers described in the LIUNA Constitution, Uniform Local Constitution and Uniform District Council Constitution are hereby delegated to the SCC. The SCC may bring or prosecute charges for any conduct whether occurring before or after the adoption of this Code where the conduct in question is or was in contravention of the applicable standard of conduct in effect at the time of the alleged misconduct and which conduct is relevant to the continued performance of duties of any member, officer or representative. The SCC may bring or prosecute the aforementioned charges as a result of the charges filed with him, his own investigation or as a result of complaints made to him pursuant to Article 9 of this Code.

(3) Pursuant to Article IX, Section 6 of the International Union Constitution, the General President may personally or through the SCC or his representative selected and designated by the SCC inquire and investigate into the manner in which the affairs are administered by subordinate bodies, their officers or members. He may also examine the books, records, papers, accounts, securities, purported agreements or understandings and any other documents in the custody of the said subordinate bodies or any officer, official, employee or member thereof and require personal appearance of any officer, official, employee or member as he, in the judgment of the SCC, may deem necessary to such investigation or inquiry. Before any inquiries are made of any officer, representative or member whose conduct is the subject of the complaint, the member shall be advised that he need not answer any questions, provided the member understands that the Canadian Hearings Officer may draw negative inferences from the refusal to respond, and that any statements made may be recorded in writing and offered in evidence at any subsequent hearing. All members shall have the right to be represented by counsel and to have a fair understanding of the nature of the examination which is to be conducted by the SCC.

11. The LIUNA constitution in section 6 of Article IX describes the investigative power of the General President, which are delegated to the SCC, under the Ethical Practices Code as follows:

Section 6. The General President shall have the authority and power to investigate the affairs of a subordinate body when, upon information or complaint or when, in the General President's opinion, it is necessary to determine whether the affairs of a subordinate body or the activities of any of its officers or members are being conducted in violation of the Constitution.

Pursuant to said authority, the General President shall have the power, either personally or through a designated representative to investigate and inquire into the manner in which the affairs are administered by the subordinate bodies, their officers or members and to examine the books, records, papers, accounts, securities, purported agreements or understandings or any other documents in the custody of said subordinate bodies or any officer, official, employee or member thereof and require personal appearance of any officer, official, employee or member as, in the General President's judgment, may be deemed necessary to such investigation or inquiry.

In connection therewith, the General President may employ the services of a Certified Public Accountant or other services as the General President may deem advisable or necessary. After such investigation or inquiry, the General President shall take such actions as the General President may deem necessary or appropriate, including the temporary suspension of an officer or employee pending a hearing to be conducted within thirty (30) days before the General Executive Board on charges filed by the General President.

12. In considering the issues raised regarding disclosure of certain documents in this application it is also necessary to have regard to the statutory provisions under which this application has been made. The primary focus of the application is section 147 and 149 of the Act. These provisions are unique in that they give the Board a role in regulating, in certain circumstances, the treatment of a local union by its parent, that is a role in relating internal union affairs. Section 147 deals specifically with the alteration of the jurisdiction of a local union by its parent. Section 149 deals more generally with supervision, control or interference by a parent union relative to its local union. The provisions of sections 147 and 149 are also unique in that they relieve the Board from limitations contained in the union constitution in exercising its powers under sections 147 and 149. In the case of section 147, subsection (4) simply provides that the Board is not bound by the union constitution when applying this provision of the section of the Act. Section 149 provides that the Board shall consider the union constitution but is not bound by it. Both sections 147 and 149 impose a just cause standard on the treatment of a Local by its parent union. The Board's authority to regulate conduct under section 149 is reinforced by the provisions of subsection (4) which give it authority to make orders and give direction relating to the supervision, control or interference with the local by its parent even when the just cause standard has been met.

Solicitor-Client Privilege

13. The responding parties have claimed solicitor client privilege relative to some of the material which the applicant seeks to have produced. That is the claim is that there is a solicitor

client relationship between Mr. Pink and LIUNA such that for example the bills for services rendered relative to his investigation of Local 183 are privileged and not subject to disclosure.

14. The Supreme Court of Canada in *Colleen Pritchard v. Ontario Human Rights Commission*, [2004] 15 S.C.R. 809 defined solicitor-client privilege in this way at paragraphs 14 and 15:

Solicitor-client privilege describes the privilege that exists between a client and his or her lawyer. Clients must feel free and protected to be frank and candid with their lawyers with respect to their affairs so that the legal system, as we have recognized it, may properly function: see *Smith v. Jones*, [1999] 1 S.C.R. 455, at para. 46.

Dickson J. outlined the required criteria to establish solicitor-client privilege in *Solosky v. The Queen*, [1980] 1 S.C.R. 821, at p. 837, as: "(i) a communication between solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties". Though at one time restricted to communications exchanged in the course of litigation, the privilege has been extended to cover any consultation for legal advice, whether litigious or not: see *Solosky*, at p. 834.

15. In the Board's view the relationship which Mr. Pink has with LIUNA when he is conducting an investigation in his role as SCC does not attract solicitor-client privilege. This is so because in carrying out his activities, in the circumstances as they exist in this case, he is not giving legal advice but rather is conducting an investigation pursuant to authority delegated to him by the General President of LIUNA in accordance with the provisions of the LIUNA Constitution and Ethical Practices Code. That is, he is carrying out an investigative function of the General President that has been delegated to him, not acting as a solicitor. The comments of the Supreme Court of Canada in *Colleen Pritchard* in its discussion of the application of solicitor-client privilege to in-house counsel, in the Board's view, apply to the relationship Mr. Pink has with LIUNA:

20. Owing to the nature of the work of in-house counsel, often having both legal and non-legal responsibilities, each situation must be assessed on a case-by-case basis to determine if the circumstances were such that the privilege arose. Whether or not the privilege will attach depends on the nature of the relationship, the subject matter of the advice, and the circumstances in which it is sought and rendered.

16. The Ethical Practices Code describes Mr. Pink in his role as SCC, as occupying a position as legal counsel to LIUNA. That characterization of Mr. Pink's role, however, is not determinative. Whether or not he is in a solicitor-client relationship with LIUNA with regard to any particular activity or service he is providing to them depends on whether or not, amongst other things, it "entails the seeking or giving of legal advice". In this case Mr. Pink and LIUNA claim he is conducting an investigation independent of any direction from LIUNA. The activity in which he is engaged is a delegated investigative, information collection activity. Given this in the view of the Board, Mr. Pink is not giving legal advice to LIUNA nor has LIUNA sought legal advice from him relative to the issues under investigation. There may be many occasions when the interaction between LIUNA and Mr. Pink does attract solicitor-client privilege. In the Board's view, however, for the reasons indicated Mr. Pink's investigation of Local 183 is not one of those occasions.

Informant Privilege

17. Counsel for Mr. Pink argued that the Board should not order disclosure of material that would disclose the identity of persons who had provided information to Mr. Pink. Counsel approached this issue in two ways. First he argued that informant privilege founded on the four principles relating to privilege communication described in Wigmore on Evidence applied to prevent disclosure. Second, he argued in the alternative that even if the classic informant privilege does not apply the Board should consider the principles in Wigmore and the cases on informant privilege in exercising its discretion as to whether or not to order disclosure.

18. In discussing the foundation for communication or informant privilege the Ontario Court of Appeal in *Re Legislative Privilege*, (1978) 18 O.R. (2d) 529 commented as follows at paragraph 24:

It is clear that the classes of evidence which give rise to privileged communications have foundations in social policy in which the general liability of every person to give testimony upon all facts inquired of in a Court gives way to more important social considerations: Wigmore on Evidence, McNaughton Revision (1961), vol. 8, p. 531, states:

Looking back upon the principle of Privilege ... four fundamental conditions may be predicated as necessary to the establishment of a privilege against the disclosure of communications between persons standing in a given relation:

- (1) The communications must originate in a confidence that they will not be disclosed;
- (2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;
- (3) The relation must be one which in the opinion of the community ought to be sedulously fostered; and
- (4) The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.

These four conditions being present, a privilege should be recognized; and not otherwise.

19. Informant privilege based on the principles outlined in the quote from Wigmore has historically been extended to police informers and as the principle developed to communication with government and government officials. Protecting those who provide information to the police or government officials is in the view of the Board based on considerations that are not present in the case of an investigator conducting a private investigation under the terms of a union constitution. As the Court of Appeal indicates in *Re Legislative Privilege* determining when privacy will be applied to communication so as to exclude it from disclosure involves a resolution of the tension between the need to hear all relevant evidence in order that the court or tribunal can ascertain the truth and the need to give effect to "more important social considerations". That is it arises where the dichotomy is between truth-seeking and supporting "more important social considerations". It is the resolution of this tension that conditions 3 and 4 of the Wigmore analysis address.

20. The existence of "more important social considerations" is required for this dichotomy to be present. That dichotomy is evident when the choice is between the full disclosure and protecting society's interest in encouraging informers to give information to the police who are responsible for enforcing the law or in some cases government officials responsible for carrying out regulatory functions under a statute. It is in such cases where the presence of the competing "more important social consideration" is present, that based on the Wigmore analysis privilege may apply. In this case, however, it is not at all evident that protecting the identity of informants in a private investigation gives rise to a competing "more important social consideration" that can or should cause a tribunal to compromise the concern with ascertaining the truth. The manner in which a trade union chooses to regulate its internal affair is a private matter, involving private decisions, not a matter of broad public concern such as the apprehension of criminals. In this case what the responding parties are in effect asking the Board to do is to elevate protecting the identity of informants in a private process to the level of a "more important social consideration" in a way that risks diminishing the Board's ability to effectively carry out its statutory responsibility under sections 147 and 148 by potentially compromising its ability to ascertain the truth. In the Board's view acceding to such a request would not be consistent with an appropriate application of the principles outlined in the Court of Appeal's decision in *Re Legislative Privilege*.

21. In the Board's view the identity of informants or the information they have provided to Mr. Pink is not protected by communication or informant privilege. Protecting the identity of informants in a private investigation under a union constitution cannot be said to give rise to "important social considerations" such as to lead the Board to compromise the paramount concern with ascertaining the truth given its statutory mandate found in sections 147 and 149.

Exercise of Discretion

22. Even if the identity of informants is not protected by privilege should the Board exercise its discretion to prevent disclosure of their identity or information that would allow their identity to be ascertained? In the Board's view this would not be an appropriate exercise of the Board's discretion in the circumstances of this case. The Board is satisfied that given the nature of the allegations made in this case the identity of informants is arguably relevant. Given this and having regard to the nature of the inquiry contemplated by sections 147 and 149 the Board is not prepared to exercise its discretion to prohibit the disclosure of the names of informants or relevant evidence which would allow the names of the informants to be ascertained.

23. While the Board is not prepared to prohibit disclosure of the identity of persons who provided information to Mr. Pink this does not mean that the Board is not sensitive to the concerns raised by counsel regarding the potential negative effect of disclosure on Mr. Pink's investigation or the willingness of persons to come forward with information in the future. The processes for investigation and resolution of concerns or complaints regarding the functioning of local unions contained in the LIUNA constitution are worthy of protection. The Board recognizes the broad labour relations interest in fostering and supporting ethical practices within trade unions. The Board recognizes that disclosure of the identity of informants involves risks to the process and to individuals. The Board also recognizes that any safeguards it puts in place are likely to be less than a perfect solution to the concerns raised by responding party counsel. However, in the Board's view given its mandate under sections 147 and 149 and its concern with ascertaining the truth the safeguards outlined below are the best solution available to the concerns raised by the parties.

Conditions on Disclosure

24. The following shall apply to any documents of any kind which are disclosed to a party as a result of the disclosure orders contained in this decision:

- 1) A list will be prepared of the names of any individual informant that appears in any document. A number will be assigned to each person on that list. The term informant is intended to be applied in a broad sense to any union member who has provided information to Mr. Pink.
- 2) The names of any individual informant will be redacted from any document and replaced with the number assigned to them.
- 3) A copy of the list of names and numbers prepared in accordance with paragraph 1 above will be provided to each of the counsel to whom disclosure is made at the time documents are produced.
- 4) Counsel receiving any material to which paragraph 2 applies shall retain control over that material and any copies made of that material and shall not allow any person to take copies of such documents out of counsel's control.
- 5) Counsel receiving any material to which paragraph 2 applies may review such material with their immediate client advisors in order to prepare their case and obtain instructions. This includes the disclosure of the names of informants contained on the list prepared in accordance with paragraph 1 above.
- 6) In the event that counsel considers it necessary to review the material to which paragraph 2 applies or to disclose the list prepared under paragraph 1 to any person other than their immediate advisors they shall advise the Board of the need to disclose the material, to whom it will be disclosed and why disclosure is necessary. The Board will deal with any such request on an expedited basis without a hearing.
- 7) At any hearing to deal with this application the informants will be referred to by the numbers assigned to them in accordance with paragraph 1 above.

Production Orders

25. In light of the Board's finding that privilege does not attach to the material that is the subject of the production request and the decision of the Board not to exercise its discretion to exclude material from the requirement it be produced the test to be applied to a request for production is arguable relevance. As the Board indicated in the *NCI Ottawa Inc.* case referred to above what is required to meet this test is some connection between the documents a party seeks to have produced and that party's theory of the case. Given this low threshold the Board is satisfied that the following production orders should be made.

- 9 -

26. With respect to the December 9 Letter, LIUNA, Mr. Mancinelli and Mr. Manella are ordered to produce the following:

- (a) all correspondence (letters, e-mails and documents) sent from Mr. Mancinelli to Mr. Pink as Special Counsel Canada ("SCC") from October 2007 until the present relating to Local 183 and/or any of its Executive Board members;
- (b) all correspondence (letters, e-mails and documents) received by Mr. Mancinelli from Mr. Pink from October 2007 until the present, and any reports or copies of reports relating to Local 183 and/or any of its Executive Board members;
- (c) all correspondence (letters, e-mails and documents) sent from LIUNA to Mr. Pink as SCC from October 2007 until the present relating to Local 183 and/or any of its Executive Board members, including any enclosures and attachments;
- (d) all correspondence (letters, e-mails and documents) received by LIUNA from Mr. Pink from October 2007 until the present, including any reports or copies of reports relating to Local 183 and/or any of its Executive Board members;
- (e) all documents sent by Mr. Mancinelli to anyone concerning Mr. Pink's investigation into Local 183 and/or any of its Executive Board Members since October 2007 until the present;
- (f) any documents received by Mr. Mancinelli from anyone, including anyone in LIUNA, concerning Mr. Pink's investigation into Local 183 and/or any of its Executive Board Members since October 2007 until the present;
- (g) any documents in Mr. Mancinelli's possession, power or control relating to any complaint(s) by anyone against Local 183 or any member of its Executive Board from October 2007 until the present, including letters, e-mails or faxes or any other documents received by Mr. Mancinelli and any notes kept by Mr. Mancinelli of any such complaints, however received, whether in writing, orally or in person;
- (h) any documents in LIUNA's possession, power or control relating to any complaint(s) by anyone against Local 183 or any member of its Executive Board from October 2007 until the present, including letters, e-mails or faxes or any other documents received and any notes kept by any LIUNA officer, official or employee of any such complaints, however received, whether in writing, orally or in person;
- (i) any and all phone records from phones used or controlled by Mr. Mancinelli and Mr. Manella, including their business phone(s), cell phone(s), home telephone(s) or any other telephone that indicate calls made to or received by Mr. Mancinelli or Mr. Manella from October 2007 until the present. [Note: This order is made subject to appropriate arrangements being made to protect privacy and confidentiality interests of persons other than Mr. Manella and Mr. Mancinelli who may have used these phones. The Board expects counsel to deal with any issues relating to privacy or confidentiality of the conversation of

- 10 -

members of Mr. Manella's or Mr. Mancinelli's households arising out of this order. The Board will deal with any issues the parties are unable to resolve];

- (j) any retainer agreements or other agreements between Soave Strategy Group ("SSG") and LIUNA or any other entity entered into by Mr. Mancinelli; copies of bills sent to Mr. Mancinelli by SSG, including any documents itemizing the services provided; and any and all records of payment to SSG from October 2006 until the present;
- (k) any invoices or bills sent to LIUNA relating to the investigation of Local 183 and/or any of its Executive Board members from October 2007 until the present, including a detailed breakdown of all fees and disbursements from Mr. Pink and any other persons retained by him;
- (l) any diary or day-timer for both Mr. Mancinelli and Mr. Manella from October 2007 until the present; and
- (m) any and all other documents arguably relevant to the issues involved in the two applications before the OLRB in the power, possession or control of LIUNA, Mr. Mancinelli and/or Mr. Manella, including all documents upon which they may rely.

Mr. Pink is ordered to produce the following:

- (a) all correspondence (letters, e-mails and documents) received by Mr. Pink from Mr. Mancinelli from October 2007 until the present relating to Local 183 and/or any of its Executive Board members, including any enclosures and attachments;
- (b) all correspondence (letters, e-mails and documents) sent by Mr. Pink to Mr. Mancinelli from October 2007 until the present, and any reports or copies of reports relating to Local 183 and/or any of its Executive Board members;
- (c) all correspondence (letters, e-mails and documents) received by Mr. Pink from LIUNA (other than Mr. Mancinelli) from October 2007 until the present relating to Local 183 and/or any of its Executive Board members, including any enclosures and attachments;
- (d) all correspondence (letters, e-mails and documents) sent by Mr. Pink to LIUNA (other than Mr. Mancinelli) from October 2007 until the present, including any reports or copies of reports relating to Local 183 and/or any of its Executive Board members;
- (e) any documents in Mr. Pink's possession, power or control relating to any complaint(s) by anyone against Local 183 or any member of its Executive Board from October 2007 until the present, including letters, e-mails or faxes or any other documents received and any notes or recordings kept by Mr. Pink or anyone else acting under his direction or control concerning any such complaints, however received, whether in writing, orally or in person;

- 11 -

- (f) Mr. Pink's complete file concerning his investigation as SCC into Local 183 and/or any of its Executive Board members from October 2007 until the present, including any and all letters, e-mails, faxes, notes of interviews, recordings, conversations, or meetings and reports received or sent or summaries received or sent and any and all other documents relating to said investigation;
- (g) any and all phone records from phones used or controlled by Mr. Pink, including his business phone(s), cell phone(s), home telephone or any other telephone that indicate calls made or received by Mr. Pink to Mr. Mancinelli or received from Mr. Mancinelli by Mr. Pink from October 2007 until the present. [Note: This order is made subject to appropriate arrangements being made to protect privacy and confidentiality interests of persons other than Mr. Mancinelli. The Board expects counsel to deal with any issues relating to privacy or confidentiality. The Board will deal with any issues the parties are unable to resolve];
- (h) all invoices or bills sent to LIUNA relating to the investigation of Local 183 and/or any of its Executive Board members from October 2007 until the present including a detailed breakdown of all fees and disbursements;
- (i) any diary or day-timer entries from October 2007 until the present relating to LIUNA, Local 183, Mr. Mancinelli, Mr. Manella or the investigation of Local 183; and
- (j) any and all other documents arguably relevant to the issues involved in the two applications before the OLRB in the power, possession or control of Mr. Pink, including all documents upon which he may rely.

27. With respect to the December 10 Letter, LIUNA, Mr. Mancinelli and Mr. Manella are ordered to produce the following:

- (a) all other invoices or documents, written or electronic, in their possession or control related to payments made by all other LIUNA Local Unions, including all U.S. Locals, for all other investigations undertaken by LIUNA or Special Counsel since January 1, 2002;
- (b) a copy of the written agreement between Mr. Weiss and LIUNA regarding his 'departure' as trustee of Local 183;
- (c) all documents related to the "planned exchange" with labour groups in Italy in which Mr. Mancinelli was allegedly involved;
- (d) all expenses and proofs of payment related to Mr. Mancinelli's trip to Italy to receive an honour bestowed upon him and his father;
- (e) the submissions of every other LIUNA Local Union filed in response to LIUNA's jurisdictional review in 2007-2008;
- (f) all reports, memoranda or other documentation, written or electronic, created as part of LIUNA's jurisdictional review in 2007-2008;

- 12 -

- (g) all correspondence, written or electronic from LIUNA to any Local and between officers of LIUNA (including the SCC) related to LIUNA's jurisdictional review in 2007-2008 and any decisions reached or implemented as a result of said review;
- (h) all documents, written or electronic, including reports and memoranda related to the alleged 'drastic decrease' in the number of LIUNA certification applications in September 2008;
- (i) the minutes of all CECOF Board meetings from August to October, 2009;
- (j) the Minutes from Mr. Mancinelli's business manager's meeting in October 2009;
- (k) all evaluations of Mr. Routuhier, Mr. Traves and Mr. Davis;
- (l) all notices of lay-off issued to any CECOF organizer in 2009.

Mr. Pink is ordered to produce the following:

- (a) all invoices issued by Pink, Breen, Larkin to LIUNA or any of its affiliates related to Mr. Pink's "investigation" which is the subject matter of this application and all other documents relevant to establishing the costs of the "investigation" to date;
- (b) a list of all Local Unions subject to investigation by LIUNA or Special Counsel since January 1, 2002;
- (c) a copy of the written agreement between Mr. Weiss and LIUNA regarding his "departure" as trustee of Local 183;
- (d) all documents related to the "planned exchange" with labour groups in Italy in which Mr. Mancinelli was allegedly involved;
- (e) all correspondence, written or electronic from LIUNA to any Local and between officers of LIUNA (including the SCC) related to LIUNA's jurisdictional review in 2007-2008 and any decisions reached or implemented as a result of said review;
- (f) all correspondence, written or electronic between Meyers Norris Penney and Pink Breen Larkin between March 2009 and the present and all reports, letters, invoices or other documentation, written or electronic, created by Meyers Norris Penney related to Mr. Pink's "investigation" of Local 183;
- (g) all Notices to Investigate and Notices of Interview issued by Mr. Pink related to Mr. Pink's investigation of Local 183;
- (h) all documents, written or electronic, including all notes, reports video and/or audio recordings created or obtained by Mr. Pink in any interview or meeting related to Mr. Pink's investigation of Local 183; and

- 13 -

- (i) any letters, emails, video or audio recordings or any other documents received by Mr. Pink concerning the Applicant's membership meeting held on December 6, 2009 and any notes kept by Mr. Pink of any discussions with anyone concerning said meeting.

28. With respect to the February 2 Letter, LIUNA, Mr. Mancinelli and Mr. Manella are ordered to produce the following:

- (a) any and all reports, memoranda, emails, notes, transcripts, recordings or documents, written or electronic, created in preparation for, during or following and related to, the meetings held on January 13, 15 and 27, 2009 referred to in Mr. Wray's letter of February 2, 2010 paragraph 39 of Further Particulars – Schedule "A" Amended.

Mr. Pink is ordered to produce the following:

- (1) all complaints, reports, notes, transcripts, records, invoices or other documents including any invoices from Mr. Pink, LIUNA or third parties retained by Mr. Pink to the subjects of the 'investigations', written or electronic, related to the following 'investigations' of Mr. Pink:
 - (a) Investigation of Mr. Mancinelli;
 - (b) Investigation of Mr. Manella;
 - (c) Investigation of Mr. Manuel Andrade;
 - (d) Investigation of LIUNA Local 1081;
 - (e) Investigation of LIUNA, OPDC; and,
 - (f) Investigation of Mr. Pat Little.

Timing of Production

29. The material which the parties have been ordered to produce shall be provided to counsel for the applicant no later than two weeks following the date of this decision. The timing of the production is based on estimates provided to the Board by counsel for the responding parties in earlier correspondence. If a party is unable to provide any part of the material within this time frame they are directed to so advise the Board and applicant counsel promptly indicating the reason for the inability to meet the deadline and the date the material will be made available. The Board will deal with any issues relating to the timing of production on an expedited basis.

30. In the event that there are issues arising out of the implementation of these production orders the parties are to promptly advise the Board of the nature of the issue, the proposed resolution and any submissions the parties wish to make as to the decision the Board should make. The Board will deal with such issues on an expedited basis.

31. The Board recognizes that counsel have advised that a number of the requests for production describe material which either does not exist or is not in the possession of the party to

whom the request has been made. In most cases that will be a complete answer to the production request. The Board has included these requests in the production orders in order to ensure that there is no misunderstanding about parties' obligation to produce such material if it does exist.

Use of Material Disclosed

32. The Board wishes to emphasize that as in all cases the material which the Board has directed be disclosed is only to be used for purposes of this litigation and no other purpose. All parties are expected to strictly comply with this limitation on use. The Board also wishes to emphasize to all parties its expectation that the disclosure it has ordered will not result in any inappropriate actions being taken against any individual who has provided information or assistance to Mr. Pink. We are confident Mr. Pink and party counsel will make their best efforts to ensure that does not occur.

February 5 Letter - Production

33. Counsel for LIUNA, Mr. Mancinelli and Mr. Manella made a request for production and particulars to the applicant by way of a letter dated February 5, 2010. At the hearing on February 9, 2010 counsel for the applicant indicated that given the timing of receipt of the letter he had not had an opportunity to consider its contents. As a result, the Board has not dealt with the counsel's request for production and particular. In order to expedite matters the Board directs the following:

- 1) Counsel for the applicant will provide a response to the February 5, 2010 letter within five (5) days of the date of this decision. Counsel will indicate in the letter what material and particulars his client is prepared to provide and what material and particulars it is unable or unwilling to provide. Counsel will indicate why his client is unable or unwilling to provide the material or particulars and make any submission he wishes to make regarding the conclusion the Board should make regarding the disputed request.
- 2) Counsel for LIUNA, Mr. Mancinelli and Mr. Manella will provide his response to counsel to the applicant's submissions within five (5) days of receiving those submissions.
- 3) Counsel for the applicant will provide his reply to the submission of the counsel for LIUNA, Mr. Mancinelli and Mr. Manella within five (5) days of the receipt of reply.
- 4) The Board will decide the issues based on the written submissions of the parties.

Pleadings

34. In order to facilitate the hearing of this matter, the Board directs the following:

- 1) Within ten (10) days of the date of this decision the applicant shall file with the Board and provide copies to the other parties of consolidated pleadings incorporating the pleadings contained

in the original application with material pleaded in subsequent correspondence, such pleadings will be in consecutively numbered paragraphs.

- 2) Within ten (10) days of the receipt of the consolidated pleadings from the applicant counsel for LIUNA, Mr. Mancinelli, Mr. Manella and Mr. Pink shall file with the Board and provide copies to the other parties a consolidated response containing a response to the consolidated pleadings. Such response shall be in consecutively numbered paragraphs.

Scheduling

35. At the hearing on February 9, 2010 the parties discussed issues relating to a hearing scheduled for this matter. The parties indicated that they would prefer that the Board schedule a day for dealing with issues relating to the hearing process sometime in advance of the commencement of the hearing. Such day to be scheduled after production is made in compliance with any directions made in this decision. The parties indicated that they expected that the litigation of this matter would require 12 hearing days. In order to facilitate scheduling the parties are directed to advise the Registrar of their availability between March 15 and June 18, 2010 within five (5) days of the date of this decision. Given the number of hearing days required and the number of counsel involved, the parties should recognize that the Board may find it necessary to schedule hearings on days other than those provided by counsel.

Process Issues

36. The Board is conscious of the need for the litigation in this matter to proceed as expeditiously as possible. The issues raised in this litigation have the potential to affect not only the parties but those who deal with the parties in the construction industry. In addition, the Board has an obligation to use its resources effectively and efficiently. In furtherance of these objectives it is the Board's view that it is appropriate to take initiatives that attempt to streamline the litigation of this matter. In particular, the Board is interested in reducing the need to hear oral evidence on issues over which there is not any dispute or which will not affect the outcome. The Board therefore is considering requiring the following:

- 1) The applicant prepare a will say statement for each witness they intend to call describing in consecutively numbered paragraph what evidence will be given by that witness. Such will says to be provided to the Board and other parties within ten (10) days of the date that disclosure is provided under the terms of this decision.
- 2) The responding parties prepare a will say statement for each witness they intend to call describing in consecutively numbered paragraphs what evidence will be given by that witness. Such will say statements to be provided to the Board and other parties within ten (10) days of the date that the responding parties receive the will say statements from the applicant.

- 16 -

37. The Board would have regard to the will say statements in determining what evidence it considers necessary to hear in order to determine the issues in this matter. Before making a decision on whether or not to proceed in this way, the Board will consider comments from the parties regarding the use of such a process including any other suggestions the parties may have to improve the efficiency of the hearing process in this matter. Any such comments are to be provided to the Board within five (5) days of the date of this decision.

"Charles E. Humphrey"

for the Board