



May 29, 2015

Nickerson Roberts Holinski & Mercer
100, 7712 104 Street
Edmonton, AB T6E 4C5
Attention: David Mercer
Fax: (780) 425-0272

United Food and Commercial Workers
Union, Local No. 1118
Attention: Peter Frost
4, 7464 50 Avenue
Red Deer, AB T4P 1X7
Fax: (403) 341-3810

Chivers Carpenter
101 - 10426 81 Avenue NW
Edmonton, AB T6E 1X5
**Attention: John Carpenter/
Kara O'Halloran**
Fax: (780) 439-8543

United Food and Commercial Workers
Canada Union, Local No. 401
#102, 2635 37 Avenue NE
Calgary, AB T1Y 5Z6
Attention: Doug O'Halloran
Fax: (403) 250-3412

Burnet, Duckworth & Palmer LLP
#2400, 525 8 Avenue SW
Calgary, AB T2P 1G1
**Attention: Richard Steele/
David de Groot**
Fax: (403) 260-0332

Health Care and Service Employees
Union (CLAC), Local No. 301
14920 118 Avenue
Edmonton, AB T5V 1B8
Attention: Derek Schreiber
Fax: (780) 451-3976

Dentons Canada LLP
2900 Manulife Place
10180 101 Street
Edmonton, AB T5J 3V5
Attention: Joseph Hunder
Fax: (780) 423-7276

Overwaitea Food Group Limited
Partnership
19855 92A Avenue
Langley, BC V1M 3B6
Attention: Major Brar
Fax: (604) 513-5125

OUR VISION...

The fair and equitable
application of Alberta's
collective bargaining laws.

OUR MISSION...

To administer, interpret
and enforce Alberta's
collective bargaining laws
in an impartial,
knowledgeable, efficient,
timely and consistent way.

501, 10808 - 99 Avenue
Edmonton, Alberta
T5K 0G5

Tel: 780-422-5926
Fax: 780-422-0970

308, 1212 - 31 Avenue NE
Calgary, Alberta
T2E 7S8

Tel: 403-297-4334
Fax: 403-297-5884

E-mail:
alrbinfo@gov.ab.ca

Website:
www.alrb.gov.ab.ca

- RE: An application brought by the Health Care and Service Employees Union (CLAC), Local No. 301 affecting Overwaitea Food Group Limited Partnership and United Food and Commercial Workers Canada Union, Local No. 401 and United Food and Commercial Workers Union, Local No. 1118 – Board File No. GE-06833**
- RE: An application brought by Overwaitea Food Group Limited Partnership affecting Health Care and Service Employees Union (CLAC), Local No. 301 and United Food and Commercial Workers Canada Union, Local No. 401 and United Food and Commercial Workers Union, Local No. 1118 – Board File No. GE-06834**
- RE: An application brought by United Food and Commercial Workers Union, Local No. 1118 affecting Overwaitea Food Group Limited Partnership – Board File No. GE-06841**

RE: An application brought by United Food and Commercial Workers Canada Union, Local No. 401 affecting Overwaitea Food Group Limited Partnership – Board File No. GE-06841

[1] North of downtown Fort McMurray, near where the Clearwater River joins the mighty Athabasca, is an exit ramp off Highway 63 for Thickwood Boulevard. This road travels up a sizable hill into the neighborhood of Thickwood Heights where more than twenty percent of the urban population resides. Befitting such a large community, there are many retail stores and offices, schools and public spaces for its residents. Amongst this civic bustle, on Signal Road, is a Save-On-Foods grocery store. More than 130 people earn their living in the "Thickwood Store". This decision is about those workers.

Background

[2] For many years, Canada Safeway Ltd. ("Safeway") was the operator of the Thickwood Store.

[3] Since 1979, the employees of the store have been represented by the United Food and Commercial Workers Canada Union, Local No. 401 ("Local 401") and the United Food and Commercial Workers Canada Union, Local No. 1118 ("Local 1118") (collectively, the "UFCW Locals").

[4] Local 401 is certified as the bargaining agent for a unit of employees of Safeway described as: "All employees employed in the stores in the greater Fort McMurray area except those in the meat, delicatessen, and fish departments". Local 1118 is certified as the bargaining agent for a unit of employees of Safeway described as: "All employees in the meat, delicatessen and fish departments in the stores in the City of Fort McMurray".

[5] Of the 131 unionized employees in the Thickwood Store, 99 employees are in the Local 401 bargaining unit and 32 are in the Local 1118 unit.

[6] In June 2013, the retail grocery market in western Canada changed significantly when Sobeys Inc. ("Sobeys") entered into an agreement with Safeway Inc. to acquire all of the assets of Safeway. At the time of this acquisition, there were 93 Safeway stores in Alberta. Two of these stores were in Fort McMurray - the Thickwood Store and a store downtown on Franklin Avenue.

[7] Sobeys' acquisition of Safeway was subject to regulatory approval by the Competition Tribunal of Canada. After four months of review, Sobeys and the Competition Tribunal reached a consent agreement that Sobeys would sell or divest itself of 23 retail stores in British Columbia, Alberta, Saskatchewan, and Manitoba, resolving various competition concerns in certain Canadian marketplaces. Shortly after, in November 2013, Sobeys acquired Safeway's assets, including those in Alberta.

[8] Local 401 and Local 1118 were each subject to a collective agreement with Safeway, ending March 22, 2014. In January 2014, Local 401 and Local 1118 each served a Notice to Bargain on Safeway.

[9] The Thickwood Store employees were notified that their new employer, Sobeys, was required to sell off some stores. They soon came to learn that Sobeys was not to be their employer for much longer. In February 2014, the Overwaitea Food Group Limited Partnership

("Overwaita" or the "Company") purchased the Thickwood Store from Sobeys, along with two other non-unionized Alberta stores (one in Cochrane and one in Canmore).

[10] Overwaita has a long history of operating retail grocery stores in British Columbia and Alberta. It currently operates 144 stores in the two provinces under the Save-On-Foods, Overwaita Foods, Cooper's Foods, Urban Fare, PriceSmart Foods, and Bulkley Valley Wholesale banners. Overwaita has been a part of the Alberta retail grocery market since 1990. It now has 32 Alberta stores operating exclusively under the Save-On-Foods banner.

[11] The Health Care and Service Employees Union (CLAC), Local 301 ("CLAC 301") has been the voluntarily recognized bargaining agent for Overwaita's Alberta employees since 1990.

[12] CLAC 301 and Overwaita are subject to a collective agreement with a term ending August 31, 2014. Section 2.01 of the collective agreement indicates CLAC 301 is "the sole bargaining agent for the purposes of collective bargaining for all employees employed in the retail operations of Save-On-Foods in the Province of Alberta, save and except Store Managers, Managers, Pharmacists, and Dietician Consultant and any person above the rank of Senior Specialist".

[13] There are approximately 3238 employees in the CLAC 301 bargaining unit for Save-On-Foods.

[14] In March 2014, relying on its voluntarily recognized province-wide bargaining rights with Overwaita, CLAC 301 asserted bargaining rights over the employees working at the three Alberta stores that Overwaita recently purchased from Sobeys. In response, Overwaita agreed to recognize CLAC 301 for the Cochrane and Canmore stores.

[15] In April 2014, communications ensued amongst the parties regarding the Thickwood Store. The UFCW Locals each challenged CLAC 301's assertion of bargaining rights. They took the position Overwaita is a successor employer to Safeway and as a result the collective agreements of Local 401 and Local 1118 apply to the Thickwood Store and Overwaita must bargain with them.

[16] Overwaita took possession of the Thickwood Store on April 23, 2014. Two days later, after re-branding and realignment, the store was opened as a Save-On-Foods store. The Thickwood Store is now one of three Save-On-Foods stores in the Fort McMurray area, along with the store on Franklin Avenue and a recently opened store in the Stoney Creek neighborhood. CLAC 301 represents the employees at these two other stores.

[17] On the day the Thickwood Store reopened, CLAC 301 applied to the Board under section 46(2) of the *Labour Relations Code* (the "Code") seeking to clarify its rights, privileges and duties relating to the store. CLAC 301 asks the Board to declare: (i) the appropriate bargaining unit for the store is CLAC 301's province-wide unit; (ii) the appropriate bargaining agent is CLAC 301; and (iii) CLAC 301's collective agreement with Overwaita is in force.

[18] Local 401 and Local 1118 each applied to the Board as well. The UFCW Locals ask the Board: (i) to declare Sobeys the successor employer to Safeway and Overwaita the successor employer to Sobeys; (ii) to amend the certificates to recognize Overwaita as the successor employer; (iii) to amend the certificates to properly reflect the bargaining relationships that exist as a result of the successorship; (iv) to direct Overwaita to bargain with the UFCW Locals

pursuant to the Notices to Bargain that were served; and (v) to declare Overwaitea's collective agreements with Local 401 and Local 1118 to be in force and binding upon those parties as of the date Overwaitea became the successor employer.

[19] Overwaitea opposes the applications of the UFCW Locals. Overwaitea takes the position CLAC 301 should inherit the representational rights to the employees in the Thickwood Store, as the province-wide bargaining unit makes the most labour relations sense, and consequently the CLAC 301 collective agreement should apply.

[20] At the commencement of the hearing into these applications, Overwaitea, CLAC 301, and the UFCW Locals all agreed Overwaitea is the successor employer as it relates to the Thickwood Store effective at the time of Overwaitea's acquisition of the store. That left the Board to determine whether a single-store bargaining unit remains appropriate for each of Local 401 and Local 1118 so that they may continue to represent employees in the Thickwood Store, or whether those employees should become part of CLAC 301's voluntarily recognized province-wide bargaining unit.¹

[21] After carefully considering all of the evidence and submissions of the counsel, the Board (Smith, Konkin, Ploof) concludes Overwaitea is bound to the collective agreements between Safeway and the UFCW Locals in respect to the bargaining unit employees working in the Thickwood Store. Our reasons follow.

Positions, Law and Analysis

[22] The parties agree the facts establish Sobeys succeeded Safeway as the employer of the employees of the Thickwood Store and Overwaitea has now succeeded Sobeys. The parties' agreement is supported by the evidence that control, management and supervision of the Thickwood Store passed from Safeway to Sobeys and then from Sobeys to Overwaitea. Accordingly, as relating to the Thickwood Store, the Board is in a position to declare that Sobeys was the successor employer to Safeway, and Overwaitea is the successor employer to Sobeys effective the date Overwaitea assumed control of the store's operations.

[23] The parties ask the Board to determine what rights, privileges and duties flow as a result of the successorship. CLAC 301 submits the UFCW Locals seek different bargaining units from those certified and by consequence the initial presumption in the sale of a business that a pre-existing bargaining unit is appropriate until proven otherwise does not exist. Overwaitea argues the presumption is dispensed with when a bargaining unit the size of the Thickwood Store is proposed to be subsumed into a successor employer workforce that is vastly larger. By extension, with the presumption gone, CLAC 301 and Overwaitea submit the Board should assess the appropriateness of the bargaining unit on the factors relied upon by the Board when certifying units, such as community of interest, bargaining history, viable bargaining structures, the avoidance of fragmentation, and any agreement of the parties.

¹ The incorporation of the small UFCW bargaining units into the much larger CLAC 301 bargaining unit in the event the two units are consolidated would likely occur as a result of the Board's "80-20 rule" (see Board's Information Bulletin #21), where no representation vote is typically required where one union has represented an overwhelming majority of the employees in the consolidated unit. However, the 80-20 rule only operates once the Board has found the consolidation of units to be appropriate, so it does not govern the Board's decision on the continuing appropriateness of the single store units.

[24] The UFCW Locals dispute this approach. They argue that, in the sale of a business, existing bargaining rights are maintained if those rights remain workable from a labour relations perspective.

[25] In Information Bulletin #21, "Successor Employers", the Board states the following:

In a successorship affecting the continued appropriateness of the bargaining unit, the Board begins with the presumption that the unit continues to remain appropriate until it is satisfied that the unit is no longer appropriate. While it may determine that a unit remains appropriate, the Board may amend the unit description to reflect the new circumstances.

[26] In *Kelly Douglas & Company Ltd. (Re)*, [1974] B.C.L.R.B.D. No. 8 (at para. 21), the British Columbia Labour Relations Board commented on the presumption of continuing appropriateness as follows:

Of course, there are special features of Section 53 situations which must be taken into account. For example, in exercising our discretion to determine the appropriateness of a unit for collective bargaining under Section 53(3), we will not necessarily follow the same precedents used in original applications for certification covered by section 42. Special weight must be given to the fact that there was an identifiable group of employees who chose a union which bargained successfully on their behalf. That choice should be preserved as far as is reasonably possible. ... Still, though, it must be possible to draw a rational and defensible line around the special unit to be preserved.

[27] Adams in *Canadian Labour Law*, 2d ed., looseleaf (Toronto: Canada Law Book, 2014) at 8.330 describes the remedial power of labour boards regarding successor employer applications as follows:

Upon a sale, labour legislation places the successor employer in the same bargaining capacity as its predecessor and the predecessor trade union continues to be the bargaining agent of the employees now working for the successor in a "like" bargaining unit, until a labour board declares otherwise. However, relief may be sought from a board when the purchaser's and vendor's businesses are integrated, and consequently their employees are intermingled – making the collective bargaining structure fragmented and unworkable. In such circumstances, there may exist two rival unions representing employees doing the same work, competing to remain the sole bargaining agent for all of the employees. In such a case, boards have the remedial power to change the boundaries of the bargaining unit, to determine which agent is more representative so that an appropriate structure for collective bargaining can be established and to amend the provisions of the surviving collective agreement.

[28] At 8.350, Adams describes the approach of labour boards when two union groups are intermingled:

When intermingling involves the merger of two groups of unionized employees, a board will look to the existing bargaining structure to decide if maintaining these separate units can be justified. The boards note that the choice of the employees

regarding their bargaining agent should be honoured, unless to do so would undermine rational collective bargaining. Balanced against this recognition of the employees' wishes is the preference for single, all-employee units. Where a conflict arises between these two policy goals, the interest of maintaining industrial peace prevails and undue fragmentation is avoided. The criteria to be applied in determining what is the appropriate bargaining unit are not identical to those used in certification proceedings. While the boards may indeed consider these certification criteria, priority must also be given to the existing bargaining rights to the extent that they can reasonably be accommodated within the new employment structure. Thus, a bargaining unit which would be inappropriate on a certification may nonetheless prevail if it has proved itself workable in the circumstances.

[29] On what is meant by a "like" unit, the Board stated in *South Peace Health Unit No. 20 SNAA v. Mistahia Regional Health Authority et al.*, [1996] Alta. L.R.B.R. 362 at 377:

Where appropriate, the Board will preserve like units to those existing before the successorship. "Like units" have been identified as being units which continue to be appropriate and which can be identified by a rational and defensible boundary to distinguish them from other units or groups of employees of the employer.

[30] In *Peace Hills Emergency Medical Services Ltd. and Guardian Ambulance Ltd. v CUPE Local 3197*, [2013] Alta. L.R.B.R. LD-044, this Board had occasion to comment on how it approaches determinations regarding the appropriateness of a bargaining unit following the sale of a business:

[42] The general purpose and intent of s.46, the preservation of bargaining rights, has informed the exercise of the Board's discretion under s. 46(2). The Board is reluctant to deprive employees of their choice of bargaining agent or to interfere with rights that may have accrued over many years under collective agreements.

[43] *Royal Alexandra Hosp. v. U.N.A. Locals 33 and 129 et al* [1993] Alta. L.R.B.R. 473 involved the merger of two hospitals. The merged hospital continued to operate out of the two facilities. The parties agreed that a sale had occurred pursuant to s. 46(1). A disagreement existed about whether to create a single bargaining unit of auxiliary nursing care employees for the two facilities. The Board decided that two bargaining units continued to be appropriate. The Board began by acknowledging that the intent of s. 46 is to preserve rights of employees and trade unions gained under the *Code*. At p. 482, it stated:

Bargaining rights, once granted, should have some permanence. The employee's choice of bargaining agent should prevail unless it would undermine rational collective bargaining. Sometimes, however, established rights must give way to a more viable bargaining perspective.

[44] The Board identified a number of factors that were relevant to its decision including:

- the degree and nature of intermingling

- characteristics of the current units
- characteristics of the employer's operations
- career mobility
- special considerations.

[45] The evidence before it showed that only one of the close to 400 auxiliary nursing care employees was affected by the transfer of departments between the two facilities. No rotation of employees between the two facilities was contemplated. The Board found that both units were of significant size and had a long history of collective bargaining. While the employer would be required to engage in two sets of negotiations with these employees, it was already engaged in five sets of bargaining. Accordingly the Board concluded that preserving the existing bargaining units made labour relations sense.

[46] The Board has not established a bright line test for the degree of intermingling or the extent of labour relations difficulties that must exist before granting consolidating bargaining units under s.46(2). In *HSAA v. CRHA at the Alberta Children's Hospital et. al.* [1997] Alta L.R.B.R. 549, the Board said at page 555:

...Where we have a discretionary power to alter bargaining structures, it appears to us to be most in keeping with the spirit of the legislation to apply that discretion considering all of the facts in the case. So, for example, when the Board is presented with a successor employer application claiming amendment of the bargaining structure as consequential relief, there should not be one, hard-and-fast rule about the degree of intermingling present that we will require before concluding the existing structure is inappropriate. ...

[47] In *CUPE 3203 v. Horizon School*, [1995] Alta. L.R.B.R. 439, the Board summarized its approach to section 46(2) this way (at page 447):

Typically, ... in a successorship proceeding, bargaining rights are not altered, added to, or diminished unless factors such as business integration and employee intermingling have made the collective bargaining structure fragmented and unworkable.

[48] Similarly, in *Central Web Offset Ltd. (Re)* [2011] A.L.R.B.D. No. 8 the Board explained the rationale behind its approach of maintaining a "like bargaining unit" on successorships at paragraph 37:

The general approach that labour boards follow in successorships is that a union stands to become bargaining agent for employees of the successor business in a like bargaining unit to its existing one. This is not always possible in a complex successorship where only a part of the predecessor's business is transferred, or the transferred business is grafted onto an existing business that is different in scope or that is organized in a significantly different

way. But the general rule demonstrates a preference for maintaining the *status quo* where that is possible. This is motivated by considerations of industrial stability, a belief that boards should be slow to alter collective bargaining configurations that have operated successfully in the past. And it is motivated by fairness, a recognition that every determination of the appropriate bargaining unit has tactical significance because it dictates the voting constituency within which employees' desire for continued collective representation will be measured.

[31] CLAC 301 and Overwaitea advocate for an approach that would effectively dispel the presumption of continuing appropriateness in circumstances such as this, and that the Board should proceed to assess the appropriateness of the unit on factors typically relied on in certifications. However, our review of the cases confirms the Board's consistent approach with respect to the sale of a business is to give special weight to the existing bargaining rights of the employees in question in recognition of the fact they chose a union that has successfully bargained for them in the past. With the mindset those long-standing rights are not to be easily removed or altered, consideration is then given to whether a sensible and defensible boundary can be drawn around the unit to preserve rational collective bargaining. The cases do not suggest the presumption of continuing appropriateness disappears when a small bargaining unit is proposed to be subsumed in a significantly larger bargaining unit. Nor do the cases indicate the Board determines whether the existing unit continues to be appropriate in the exact form certified. The starting point of the Board's analysis remains one that prioritizes the preservation of the *status quo* for a "like" unit, unless that is unworkable from a labour relations perspective. The Board has the authority and flexibility under section 46 to cancel or amend certificates as reasonably required by the circumstances.

[32] Accordingly, we start from the principle the existing bargaining rights of the UFCW Locals for the Thickwood Store employees remain intact, unless the proposed two units in the Thickwood Store are unworkable from a labour relations perspective.

[33] We accept the *status quo* of two UFCW units in a single store, in a region where Overwaitea has two other stores whose employees are represented by CLAC 301, is not ideal. But is it unworkable? Single store units in the retail grocery business are not overtly unusual or *prima facie* inappropriate. Labour boards have previously accepted single store units whether by way of certification or the sale of business provisions (see for example: *Oshawa Wholesale Ltd.*, [1965] O.L.R.B. Rep. February 584; *UFCW, Local 401 and Freson Market Ltd. (Re)*, [1995] Alta. L.R.B.R. 491; and *UFCW, Local 175 v. New Dominion Stores Inc.*, 1986 CanLII 1582 (ON LRB)).

[34] The proposed "like" unit here is easily defined and there is no indication the employee group in the store has been altered during the successorship by transfers out of the existing bargaining units or there has been a significant introduction of new permanent employees who may have different loyalties. As a result, the four walls of the store would be, at first blush, a defensible boundary.

[35] Overwaitea and CLAC 301 assert the integrity and rationality of that boundary cannot be defended. We turn now to that question, considering on the evidence such factors as intermingling and integration, the characteristics of the employer's operations and the existing bargaining units, career mobility issues, and any other relevant considerations.

Intermingling

[36] Mr Bordeleau, the Vice-President of People for Overwaitea, testified the Company's general approach to developing its team members is that if one wants to 'move up', one has to 'move'. In other words, for personnel who wish to join the managerial ranks, Overwaitea values having the freedom to transfer them from store-to-store to provide the individual with a better understanding of various marketplaces and in-store leadership styles. Mr Bordeleau indicated an excluded (managerial) employee typically works in five different stores before becoming a store manager. If a bargaining unit employee aspires to move up in the Company, they usually work in two to three stores before entering the ranks of management. He said moving from store-to-store typically begins at the Customer Service Specialist level.

[37] Employees work out of a 'home' store although they are occasionally assigned work in other stores on a temporary basis for special tasks or projects of limited duration, such as a store opening. An example of this occurred in the Thickwood Store in April 2014, when 15 bargaining unit employees (6 from UFCW Local 1518 in British Columbia and 9 from CLAC 301) along with 30 excluded employees were assigned to prepare the store to re-open as a Save-On-Foods operation. We heard evidence the UFCW Locals cooperated in permitting bargaining unit employees from other stores and locals to temporarily move into the Thickwood Store for its reopening.

[38] With respect to training, Mr Bordeleau described a multi-faceted approach where an individual employee could access various internal courses and on-line courses, and courses specific to management. He said training effectively commences on day one and much of it is "hands-on". Other than a two-day "Emerging Leaders" workshop that typically is hosted in CLAC 301's Edmonton office, there was no specific evidence of city, region or province-wide training programs regularly being run with employees gathering together from multiple stores. There was also no evidence employees from multiple stores assembled for region-wide or province-wide meetings.

[39] Mr Bordeleau stated sales had been markedly down in the Thickwood Store in the four months following its re-opening as a Save-On-Foods but acknowledged a number of contributing factors unrelated to the UFCW Locals, including: historically lower summer sales; a new Save-On-Foods store opening in Fort McMurray shortly after the Thickwood Store re-opened; customer loyalty to Safeway; and, the lack of an air miles program in the Thickwood Store. Mr Bordeleau suggested the Company has been hampered by the single-store status of the Thickwood Store in that it cannot move people into the store to improve it, nor move others out for training in other stores, given the seniority provisions at play. Mr Bordeleau did acknowledge the Company had recently moved a senior, top-performing Store Manager into the Thickwood Store from Edmonton.

[40] On the movement of employees from store-to-store, the CLAC 301 collective agreement has a Letter of Understanding (#6) providing the Company with the ability to assign employees to another store but this expressly affects only full-time employees in the Edmonton area. Another Letter of Understanding (#11) allows the Company to lay off employees when a department within a store or region closes and the laid off employee may bump employees with less seniority in that store or region. We did not hear any evidence regarding the extent to which Overwaitea relies on these provisions.

[41] Overwaitea did place into evidence records detailing the transfer history of its Alberta employees over the preceding two year period. In its submissions, Overwaitea emphasized the

history of 10 persons who transferred to different stores anywhere from 2 to 14 times in their individual journey up the ranks from Senior Specialist (or higher) to Assistant Store Manager. The Company relied on these records as reflective of its approach to developing managers and to show the extent of employee movement amongst its stores. The Company argued without this type of flexibility to move personnel its ability to compete in a highly competitive marketplace would be impaired.

[42] There is no questioning it is a priority for Overwaitea to move managers, and those aspiring to be managers, from store-to-store. However, our own review of these records indicates that of the 3238 Overwaitea bargaining unit employees in Alberta, roughly only 11% (if calculated on the scope of the CLAC 301 collective agreement) transferred from one store to another. The transfer rate is approximately 15% if calculated on the scope of the UFCW agreements. Further, less than one percent transferred out of the bargaining unit into management.

[43] In considering these records, we note they do not clearly spell out whether a transfer occurred by company edict or employee choice. Nor do the records definitively indicate 'non-aspirational' employees (i.e. employees not seeking to advance to management) are regularly rotated from store to store.

[44] We accept an employee may wish to move to another store, and possibly a new position, in order to advance in the Company. There are other reasons as well why an employee may wish to move stores, whether for personal or work-related reasons. However, we think there is an important distinction to be made between an employee who elects to move versus one who is transferred by Company dictate. An employee who chooses to move is differently motivated and likely prepared to accept the change and challenges ahead in exchange for benefits they perceive await them. To the extent we can comment on the import that should be ascribed to these transfer records, the evidence that assists us came from Mr Bordeleau who acknowledged a transfer out of a store and a move out of the bargaining unit is generally a matter involving individual choice. This leaves us with the strong impression that most of the 11 - 15% who moved from store-to-store did so for their own 'aspirational' reasons. From a labour relations perspective, this intimates at a different inter-personal dynamic in the workforce, one that is likely far less peppered with the potential for conflict than might exist when two units of employees are truly integrated.

[45] The impact, if any, of preserving the *status quo* falls squarely on the Thickwood employees, in particular as it relates to their mobility to advance in the Company. We comment on career mobility below.

[46] Simply put, the evidence does not show extensive, persistent, day-to-day operational intermingling such that if the *status quo* is preserved significant numbers of employees from different bargaining units will be regularly working side-by-side or significant labour relations difficulties will result.

Integration

[47] Mr Bordeleau testified the company achieves efficiencies through its centralized operation in Langley, British Columbia. The Langley hub has more than 500 employees handling such things as operations (including corporate programs, hours, store standards, and transfers/promotions), business development, information technology, supply chains,

merchandising, human resources (including payroll and benefits), and legal matters for its 144 stores and more than 16,000 employees across Alberta and British Columbia.

[48] Overwaitea's core executive team are located in the Langley office and set the standards and the logistical course for store operations. Specialists are also based in the Langley office, except for an Alberta field team comprised of labour relations and department specialists. Sales and other data from individual stores is received in Langley for analysis. For example, the flow of freight to each store is regularly monitored to determine the appropriate freight lane for that store, with the goal of maximizing the efficient distribution of product. Productivity is also assessed on a store-by-store basis. Each store is expected to follow programs and strategic plans formulated in the Langley office and employees are advised about programs and plans through store meetings and the distribution of employee booklets.

[49] Overall, the evidence we heard about the Company's operations left us with the impression each Overwaitea store is, despite the over-arching and centralizing influence of the Langley hub, a relatively contained business unit. While Mr Bordeleau indicated centralization permits consistencies to be passed on to the consumer, there was no compelling evidence centralization has a significant influence on matters relating to employee relations.

[50] To test this impression, we looked to CLAC 301's collective agreement with Overwaitea. The Company stated the CLAC 301 agreement reflects how Overwaitea works and we agree it is a reliable touchstone for understanding the Company's approach to operations and to matters involving its personnel. From our review, the following provisions tended to confirm our impression each store is a functioning cell within the larger corporate host:

- Management rights are described as for "the store" (3.01);
- Union activities in a store require the approval of store management (5.01, 5.02(c));
- Grievances are handled within the store by the Department Manager and Store Manager until the last step before arbitration (7.01);
- Job vacancies are posted in the store where the vacancy occurs and only Senior Specialist vacancies are required to be posted province-wide (12.01);
- First priority for the filling of a vacated Customer Service Specialist position is done in-store (12.01);
- Employees who wish to move to another store must provide their Store Manager with a Letter of Intent or, for Senior Specialists, a transfer request (12.02);
- Vacation scheduling is approved based on the operational needs of the store (19.06);
- Joint Labour Management meetings are regularly held in each store;
- A Labour Management committee reviews that store's structure on an annual basis;
- Dual department (LoU#1) and cross department work may be implemented in each store (LoU #14);
- Wages may be elevated beyond collective agreement rates on a store-by-store basis (LoU #11); and,
- If a store is struggling the agreement may be amended with changes only affecting the store in question (LoU #13).

[51] Overall, and on balance, the evidence does not strongly or clearly indicate the day-to-day operation of an individual store is deeply interfused with the operations of other stores, whether across town or in the next region. While Langley has certain residual decision-making authority, local management provides meaningful input and has some measure of autonomy. While each store is subject to business targets, programs, and procedures set by the Langley

office, the evidence also suggests stores are run and their viability monitored as separate units. Some policies and rules (as captured in team member guides for example or as permitted by the collective agreement) are tailored for certain locations or bargaining groups.

[52] The evidence did not convince us there is a level of business integration in Overwaitea's operations that would give rise to significant labour relations difficulties in the operation of a single store stand-alone unit. To the contrary, we think Overwaitea is well-situated to manage the challenge.

Overwaitea as Employer

[53] Mr Bordeleau acknowledged Overwaitea is a sophisticated employer. It operates under multiple banners and administers a number of collective agreements and benefit plans with different bargaining agents. This includes six of its BC stores having two bargaining units with separate unions and this has provided Overwaitea with familiarity managing more inclusive bargaining units. Overwaitea has successfully grown its business within this complex labour environment in two provinces with varying nuanced legislative frameworks.

[54] Overwaitea entered into evidence grievances filed by the UFCW Locals regarding disputes that have arisen in the Thickwood Store since the Company assumed control of the store. The Company argued the grievances reflect the inherent difficulties of a single-store structure. Mr Bordeleau acknowledged however in cross-examination it is not surprising to see transitional issues arise when a new employer takes over and that it is appropriate and reasonable for unions to bring forward their concerns in this fashion. He was not aware of any residual "confusion" or "chaos" in the store. We were made aware the Company has an experienced labour relations department that deals with such matters and there was nothing in the evidence to suggest the grievances were not being appropriately addressed.

[55] We acknowledge preserving the status quo will place challenges on the Company, including certain administrative burdens. However, there is nothing in the evidence to suggest Overwaitea lacks the business savvy, technical capacities, or labour relations expertise to successfully manage the Thickwood Store as a stand-alone entity.

Career Mobility and Other Considerations

[56] Overwaitea and CLAC 301 warn the employees of the Thickwood Store will be isolated within their store and this will seriously impact their career development in the Company. We accept, as currently structured, a Local 401 or Local 1118 employee in the Thickwood Store would enjoy no portability of their seniority should they move to another store. And given the broader scope of each of their bargaining units, the cold reality is a Local 401 or Local 1118 member with managerial aspirations will have to make the decision earlier in their climb up the unit ranks as to whether they wish to leave for a career in management. But again, these are choices for the employee to make. To the extent the *status quo* might leave obstacles for the individual employee to deal with regarding career mobility, the ingenuity and goodwill of the parties in collective bargaining may solve many of them. In any event, there is a lack of compelling evidence at this stage of the parties' relationship for us to suppose employee mobility will be a persistent, lingering concern. If over the course of time the employees of the Thickwood Store find life within the confines of their single store units unduly restrictive, as it might relate to employee movement, career mobility, collective bargaining strength, or any other reason, there are options for relief available to them under the *Code*.

[57] Overwaitea and CLAC 301 argued the more sensible route to preserving the industrial peace is for the Board to subsume the Thickwood employees into the province-wide CLAC 301 unit which they say is a long-term, stable industrial relationship. We were reminded during the hearing of long-standing differences between CLAC 301 and the UFCW Locals and the recent attempts by the UFCW Locals to organize Save-On-Foods stores. However, there was no meaningful evidence of ongoing unrest. We found the intimation of future inter-union conflict should the *status quo* be preserved speculative and unhelpful and we choose not to tilt at labour relations windmills.

[58] Further, while no employees testified, the Board did receive petition evidence from 56 employees of the Thickwood Store indicating their desire to continue to be represented by the UFCW Locals. While not necessarily directive of any outcome, we find the petitions countervail the opinions asserted by Overwaitea and CLAC 301 as to what is in the best interests of the Thickwood employees.

[59] In the sale of a business, the principle that the *status quo* is preferred (if the situation is shown to be workable) is informed by considerations of industrial stability. As stated in *Central Web*, the Board should be slow to "alter collective bargaining configurations that have operated successfully in the past", and because fairness recognizes "every determination of the appropriate bargaining unit has tactical significance because it dictates the voting constituency within which employees desire for continued collective representation will be measured". The Thickwood employees have been represented for more than 35 years by the same bargaining agents who have negotiated for them terms, conditions, and benefits of employment in successive collective agreements. On balance, we think industrial stability is better served in this case by the employees being left in "like" units. By doing so, any desire for continued collective representation they may wish to express can be more meaningfully and accurately measured.

[60] In summary, these other considerations do not reveal significant labour relations difficulties present in this instance or that the situation is "unworkable".

Conclusion

[61] For the reasons set out above, we find and so declare that Sobeys was the successor employer to Safeway and Overwaitea is the successor employer to Sobeys. We further find the two site-based units at the Thickwood Store, represented by Local 401 and Local 1118, are workable from a labour relations perspective.

[62] Accordingly, pursuant to section 46 of the *Code* and as relating to the Thickwood Store, we declare:

- 1) Local 401 is the bargaining agent for all employees at the Thickwood Store except for those working in the meat, delicatessen and fish departments;
- 2) Local 1118 is the bargaining agent for all employees in the meat, delicatessen and fish departments at the Thickwood Store;
- 3) Effective April 23, 2014, Overwaitea became bound to the collective agreement between Local 401 and Safeway and the collective agreement between Local 1118 and Safeway as though Overwaitea had signed them; and,

- 4) Overwaita is bound by any *Code* proceedings and obligations between the UFCW Locals and Safeway including the Notices to Bargain served by Local 401 and Local 1118.

[63] Consequently, pursuant to section 46 we hereby order:

- 1) A new bargaining certificate issue to Local 401 recognizing the "Overwaita Food Group Limited Partnership" as the Employer for "All employees at the Thickwood Store except those in the meat, delicatessen and fish departments";
- 2) A new bargaining certificate be issued to Local 1118 recognizing the "Overwaita Food Group Limited Partnership" as the Employer for "All employees in the meat, delicatessen and fish departments at the Thickwood Store"; and,
- 3) Overwaita commence collective bargaining with the UFCW Locals pursuant to its obligations under section 60 of the *Code*.

[64] The Board reserves jurisdiction to address any further remedial or implementation issues that may arise from this decision.



Ian J. Smith
Vice-Chair