

ONTARIO LABOUR RELATIONS BOARD

2922-09-U United Brotherhood of Carpenters and Joiners of America, Local Union 1256, Applicant v. **United Brotherhood of Carpenters and Joiners of America**, Responding Party.

BEFORE: David A. McKee, Vice-Chair.

APPEARANCES: L.A. Richmond and B. Schenck appeared on behalf of the applicant; Harold Caley, Jesse M. Nyman, Jim Smith and Daniel McCarthy appeared on behalf of the responding party.

DECISION OF THE BOARD: August 29, 2011

1. This decision deal with the merits of an application by United Brotherhood of Carpenters and Joiners of America, Local 1256 (“Local 1256”) alleging that its parent union, the United Brotherhood of Carpenters and Joiners of America (the “International Union”) acted without just cause when it made certain organizational changes to the structure of the Carpenters’ Union in Ontario, including Local 1256, contrary to sections 147 and 149 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (“the Act”). The relief sought is essentially to exempt Local 1256 from those changes.

2. Local 1256 is a local union with geographic jurisdiction in the County of Lambton. On November 3, 2009 the International Union ordered certain changes that affected the local. Broadly speaking, there were two significant changes in the manner in which Local 1256 was able to operate. It currently elects a business manager and an organizer and pays them. Under the new structure of the Carpenters' District Council of Ontario (“CDC”) the number of such persons and the identity of the persons who fill those roles is determined by the chief officer of the CDC, the Executive Secretary-Treasurer (“EST”). As a consequence, a business representative or organizer appointed to look after the interests of Local 1256 and its members reports ultimately to the CDC and specifically to the EST rather than to the Executive Board of Local 1256 and, ultimately, in an electoral fashion, to the membership of Local 1256. Second, Local 1256 will no longer be able to negotiate non-ICI collective agreements in its own name, except in those areas where it may have entered into such collective agreements before. Those collective agreements will now be made in the name of the CDC. Otherwise Local 1256 continues to exist with all other rights duties and privileges that it formerly possessed.

3. Local 1256 objects to being forced to participate in that structure in the CDC and argues that there is nothing wrong with the way it currently operates and that it has done nothing that could constitute misconduct or a failure to function well as a trade union, and therefore sections 147 and 149 of the Act prevent the International Union from making these changes. The International Union (aside from some preliminary matters that are dealt with below, and which I dismiss) argues that there was a general need for a restructuring of the Carpenters’ Union in Ontario, and that the steps it took were necessary for the long-term health of the Union, including Local 1256, and that it did have just cause to encourage and require the restructuring as it did.

4. In dealing with the issues raised in this case, it is necessary to set out the sequence of events leading to the restructuring in some detail. Local 1256 argues that the decision is flawed and without just cause on its merits, and that the entire process by which Local 1256 was required to participate in a restructured CDC failed to meet certain standards of natural justice that Local 1256 argues ought to be required of an International Union. For both reasons, Local 1256 says that the International Union's decision lacked just cause.

Organization and Organizational Change in the Carpenters' Union 1978 – 2008

5. The United Brotherhood of Carpenters and Joiners of America is an international union, like most construction unions in the Province. It is headquartered in Washington D.C. Throughout the times relevant to this decision the General President was Mr. Douglas McCarron. The Canadian Vice-President is Mr. Jim Smith.

6. The next level of organization in Canada is provincial in scope. Although Mr. Smith is the Vice-President for Canada, there is no other organizational connection among the various provinces, or none that I was advised of. Within Ontario, there have at all relevant times been local unions as the basic level of organization, and some form of Provincial body that, to some degree or other, coordinates, directs or guides the actions of the local unions. In between the provincial body and the local unions have been regional councils of local unions, the nature of which changed over time. (The United Brotherhood of Carpenters and Joiners of America has among its members a large number of construction millwrights, and some industrial members, who are organized in separate local unions that are not relevant to this decision.)

7. In this decision I have referred at times to "the Carpenters' Union" or the "Union". By this I mean to entire collectivity of the United Brotherhood of Carpenters and Joiners of America in Ontario. This is composed of the persons who are members of a local union, those local unions, the provincial and district councils with which the locals may or may not be affiliated from time to time, all of whom are ultimately members of the United Brotherhood of Carpenters and Joiners of America. It is a descriptive term only.

8. The events that led specifically to the creation of the CDC as it now exists occurred between early 2008 to the final adoption of the bylaws of the CDC by the delegates to the CDC on February 27, 2010. The process that led to this result had its origins in developments in the Carpenters Union in the 1990s.

9. In the early 1990s, the Carpenters' Union in Ontario was composed of 23 construction local unions. They were affiliated with the Ontario Provincial Council, and later with the Carpenters' District Council of Ontario, the provincial coordinating body which conducted province-wide bargaining in the industrial, commercial and institutional sector and conducted or coordinated a number of area or province-wide programs for the Union. There were four Regional Councils which predated the existence of provincial bargaining. Only the Toronto and District Council and the Lake Ontario District Council had any significant role. The Lake Ontario District Council was composed of four local unions, but those local unions acted primarily through the Lake Ontario District Council. The paid staff of the Council and four unions was employed by the Council which spoke on behalf of the four local unions as a group, made applications for certification as a Council and so on. The Toronto and District Council employed the same structure on behalf of its constituent locals, although some of them retained paid staff for some local union functions. The other two Councils were comparatively insignificant.

10. Each of local unions outside these two District Councils elected its own executive Board and one or more of its paid staff. The chief full-time officer was usually a business representative or a business manager; others would include other business representatives, secretary-treasurer, organizer, and so on. In addition, each local union would elect delegates first to the Ontario Provincial Council and later to the CDC. Aside from its statutory obligation to bargain the provincial collective agreement, the CDC did only what it was instructed to do by delegates of local unions to the CDC. The number of functions of the CDC was increased over time, but it still remained a body where policy and its mandate were determined by delegates to the CDC. There was one full-time officer of the CDC, the Secretary-Treasurer. All construction local unions, including Local 1256, are members of the CDC by virtue of the Constitution of the International Union, and the mandatory bylaws required of any local union.

11. In the 1990s, the International Union concluded that its organization was excessively top-heavy and undertook considerable consolidation of local unions and District Councils in the United States. It wished to see the same structure created in Canada, although different approaches were taken in different provinces, depending on the legislative regime. In Ontario, the presence of sections 145 through 150 of the Act significantly limited the International Union's power to act unilaterally. The history of some of this organizational change is set out in *United Brotherhood of Carpenters and Joiners of America*, [2001] March/April 491 (LODC) and *United Brotherhood of Carpenters and Joiners of America*, [2009] OLRB Rep. November/December 972 (Sault Ste. Marie).

12. At the same time, certain changes were happening within the Carpenters' Union in Ontario, much as they were among other trade unions in the Province. In 1978, the Minister of Labour designated the Ontario Provincial Council (along with the International Union) as the bargaining agent for purposes of bargaining a provincial collective agreement in the industrial, commercial and institutional sector of the construction industry. It was to do so on behalf of four Regional Councils and 35 local unions. The composition and the role of the provincial body changed over the next 20 years. The CDC was created which, for a while, operated at the same time as the Ontario Provincial Council, and then supplanted it as designated bargaining agency in June 1997. By that time the number of local unions was reduced to 21 although the four Regional Councils remained. At some point, the Ontario Provincial Council disappeared, presumably because its functions had been completely absorbed by the CDC. In the 1990s, the International Union created two District Councils to take on a new and different role.

13. The first District Council created was the Central Ontario Regional Council ("CORC") and the second was the Greater Ontario Regional Council ("GORC"), the details of which are set out below. The chief difference with respect to both of these Councils was a more centralized structure. Certain local unions were affiliated with each of the two Councils. Each local would continue to elect its own unpaid officers, such as Secretary, Treasurer, President and so on. Members of all the locals also voted on the Executive Board for the Regional Council including the Executive Secretary Treasurer ("EST"). The EST is the chief officer of the Council. That individual would hire all other staff, including business representatives and organizers as employees of the Council to provide the representation, organizing, and servicing of members for all of the local unions making up the Council. Those paid staff persons may also be elected officers but are not necessarily office holders. There are no local elections for paid staff. Some functions remain within the control of each local union, such as operating a hiring hall, some local union pension plans, and a few training programs. Real control followed a centralized model.

14. CORC was created in December 1997 to include local unions from the Toronto area, Cambridge in the west and the four locals comprising the Lake Ontario District Council to the east. The four LODC local unions were opposed and filed an application under sections 147 and 149. This application was dismissed by the Board in *United Brotherhood of Carpenters and Joiners of America*, [2001] OLRB Rep. March/April 491 (LODC). On February 1, 2002, the International Union went on to create the GORC which would encompass all of the other local unions in the Province. Local 1256 challenged the requirement that it be included in the GORC in Board File No. 3639-01-U. Litigation in that application was never completed and no final decision was ever made. Local 1256 remained out of GORC; all other local unions ultimately joined it. In addition, during the last 10 years there had been mergers of local unions within the Province, some voluntary. The four LODC locals merged into one local union, Local 397. In March 2009 the International Union, at the request of GORC, merged Local 446 (Sault Ste. Marie) into Local 2486 (Sudbury), a move that the Board found was undertaken with just cause: *United Brotherhood of Carpenters and Joiners of America*, [2009] OLRB Rep. November/December 972 (Sault Ste Marie).

15. In 2008, the CDC, in its role as provincial body, was looking at where its future lay, what challenges had to be faced and what steps it might take to address those challenges and to build on its strengths. Local 1256 portrays this as simply responding to pressure from the International Union and argued that the International Union was the driving force in what happened. There is no doubt that the International Union was in contact with officers of the CDC and no doubt forcefully expounded its own views. That does not negate the genuineness of the steps taken by the CDC and the local unions that were affiliated to it. As will be seen, there were some qualms and some disagreements, but in the end the actions were taken by those local unions, by the District Councils and by the CDC.

Events leading to the 2010 Organizational Change

16. In June 2008, the CDC held its biennial meeting. All local unions in the Province, including Local 1256, were members of the CDC. They had been members since its inception and had remained members throughout the time when its co-ordinating role expanded. Hence Local 1256 sent its delegates to the meeting. One significant resolution that was passed by all of the delegates, including those from Local 1256, read as follows:

RESOLUTION #3
on
Combating LIUNA / CLAC
Carpenters District Council of Ontario
Biennial Meeting - June 18, 19, 2008

WHEREAS there are a number of issues that have arisen that are of concern to the members of the Carpenters Union, such as the Labourers' Union's recent accreditation under the Formwork Council agreement and the signing of all employee agreements in areas of work that were traditionally done under the I.C.I. or Electrical Power sector (example, windfarms), and

WHEREAS the Carpenters are losing market share in the area of infrastructure work, such as the water and sewage treatment plants, where the government is expected to spend billions of dollars in infrastructure renewal, and

WHEREAS certain contractors are using members of rival trade unions to perform work that has traditionally been performed by members of the Carpenter Local Unions, and

WHEREAS it is critical that non-union contractors in Ontario be organized in order to ensure that members of the Carpenter Local Unions remain fully employed.

THEREFORE BE IT RESOLVED

That the delegates to this biennial meeting of the Carpenters District Council of Ontario call on the International Union to assist in combating the above concerns and that the Executive Secretary Treasurers from the two Regional Councils and the Secretary-Treasurer of the Carpenters District Council of Ontario meet with the International to move forward on these issues.

While the International Union was hardly likely to have been surprised by this request, the fact remains that it was an expression of what challenges the CDC and local unions (including on this occasion the Local 1256) saw as issues that needed to be addressed.

17. In response to this request, the International Union retained Mr. Tim Armstrong. He is a prominent figure in labour law in Ontario, and, among other things, the author of the report to the Ontario Construction Secretariat, "ICI Construction in Ontario: A Review of Competitive Disadvantage and its Measurement". That report dealt with various issues facing the construction industry in Ontario, and particularly competition from non-union workforces and the underground economy. As Mr. Armstrong said in his Notice to the delegates of the CDC, he was retained by the International Union "to provide an impartial perspective about how to address the concerns raised in Resolution #3".

18. Mr. Armstrong then asked for a meeting with the delegates to the CDC. He sent them detailed notes as to the questions that he had developed following his meetings. Some of them address directly issues that Local 1256 argues are of significance in this case: wind farms (paragraph 1(b)), market recovery results (paragraph 7), hiring hall practices (paragraph 9), non-ICI collective agreements (paragraph 10), dues to the Councils and the International Union (paragraph 12). These issues and others were on the table for discussion on August 22, 2008.

19. The meeting occurred on August 22, 2008. Initially in these proceedings, Local 1256 claimed that it had not been invited to the meeting. Ultimately it acknowledged that it had been present, but did not participate in the discussions.

20. Mr. Armstrong, in the notes to the International Union and to each of the three Councils, summarized some of the information he had received at the meeting and some additional questions and issues. He suggested meeting with them individually and arranging another meeting with the CDC delegates on October 16, 2008. I have no evidence about what took place at a meeting on that date.

21. At that point GORC (i.e., the Council composed of local unions outside of the Greater Toronto Area) began to have concerns about the direction in which Mr. Armstrong was heading. It asked for further information from the CDC about expenditures by the CDC. It addressed an email to Mr. Armstrong dated September 22, 2008 which said in part:

... it seems that the scope of the inquiry has moved far afield from that which might have been contemplated in a resolution referencing pressures created by LIUNA and CLAC.

As well, there seems to be a great deal of haste in trying to arrive at a solution for problems which are, to say the least, nuanced and long-standing.

The executives of GORC met last week to discuss both of newly expanded content of your inquiry, as well as the pace at which the matter is being moved forward. Their view was that before any meeting of the CDC delegates occurred, it was an importance that you have the opportunity to meet with employer representatives other than the somewhat selective sampling you have so far received, and that you be afforded an opportunity to meet with representatives of the GORC Locals.

In the latter regard, GORC has agreed to request that you meet with each of the senior representatives from its constituent locals. GORC will assume any costs associated with these meetings. Individuals, and their contact information, are as follows:.....

22. GORC also addressed the General President and the Vice President for Canada of the International Union on September 25, 2008 in a letter that provides in part:

It appears to us that an attempt has been made by certain persons to "manufacture a crisis" as between the two Councils, and attempts to lay the blame for that alleged crisis at the feet of our Council.

We are concerned not only that a problem has been manufactured, but that what is actually transpiring is not being communicated to those at the highest decision-making levels of our organization.

This letter is an attempt to correct the misinformation that is currently circulating, and suggest a productive way forward for the United Brotherhood in this Province.

23. On October 1, 2008 GORC addressed Mr. Armstrong by letter and sent him over 12 pages of GORC's response to the points raised in the notes he prepared for the August 22, 2008 meeting. At that point it is fair to say that GORC was opposed to any change in the status quo. Its letter to Mr. Armstrong concludes:

In summary, this Council is doing its job and has the data to back it up. That information is regularly shared with the International, and, to date, has not produced objection or concern. Other than bald, unsupported and unsubstantiated assertions, there is no evidence-based case for moving to one Council, or to moving towards province wide mobility. Such a "solution" would not solve the problem with LIUNA, CLAC or the non-union, nor would address acquiring greater market share in the construction of water treatment plants. A structure run for the benefit of, and out of Toronto, would be more likely to result in loss of market share outside of Toronto.

Our representatives look forward to meeting you next week, and to further discussion of these issues.

24. This correspondence led (according to subsequent correspondence from Jim Smith to the CDC dated February 13, 2009), to further meetings between Mr. Armstrong and virtually all of the full-time staff of GORC and meetings with other employers around the Province. These meetings are reflected in Mr. Armstrong's report.

25. In his letter of February 13, 2009 to all local unions, Mr. Smith concludes:

Thursday, February 26 [2009] has been set aside for input from delegates who may have additional information for Mr. Armstrong that has not been already submitted by their Council. The information session is scheduled from 10:00 to 4:30 and will be held at.....

As the purpose of the meeting is to gather information that has not already been made available, attendance is not mandatory. What is important is that Mr. Armstrong receives as much information as possible that pertains to Resolution#3.

26. This letter was circulated by the CDC to all the CDC delegates (including those from Local 1256), senior representatives and EST's along with another four pages of notes from Mr. Armstrong indicating issues that he thought were relevant and questions that he was posing. Once again he raised the question of whether or not local unions should be merged (paragraph 14) and whether GORC, CORC and the CDC should continue their separate existences (paragraphs 14 and 17). Local 1256 did not say whether it attended the February 26, 2009 session or not.

27. On the basis of meetings with the chief officers of CORC, GORC and the CDC, Mr. Armstrong drafted a list of questions and issues he wanted the delegates of the CDC (which of course included Local 1256) to assist him with. Mr. Bud Calligan, Secretary-Treasurer of the CDC, sent a copy of his document to all local unions and invited them to a meeting in the Toronto area on February 26, 2009.

28. This meeting occurred and each local union was given the opportunity to express its views. It appears that Local 1256 chose not to do so. Paragraphs 14 to 17 of Mr. Armstrong's notes of issues he wished to discuss dealt with the internal organization of the Union, including the merger of local unions, and the merger of the three Councils. While Local 1256 is not specifically mentioned in paragraph 14, there is a 16th local union referred to, which could only be Local 1256. Following the meeting Mr. Armstrong also received written submissions from the three Councils. Local 1256 made no submissions to Mr. Armstrong. Finally Mr. Armstrong met at a later date with members of the CDC steering committee, as well as the "full committee" of all three Councils and the General President of the International Union. It is not apparent whether Local 1256 was among the group with whom he met.

29. On May 12, 2009 Mr. Armstrong delivered his report to Mr. Smith. The details of the report are discussed below, but among its many recommendations are the merger of GORC and the CDC and the affiliation of all local unions into a single council with the centralized structure that was the way both CORC and GORC functioned. It also recommended that a number of local unions be merged, including a merger of Local 1256 with Local 1946 (London), Local 2222 (Cambridge) and Local 494 (Windsor).

30. Mr. Smith called a meeting for May 14, 2009 of the three chief officers of the three Councils to review the recommendations and to commence the work of drafting bylaws to reflect any new changes. He anticipated that there would be discussions between each Council and the

local unions within the Council. That clearly would not have included Local 1256 as it was not part of GORC. A meeting was scheduled for the CDC delegates on June 5, 2009.

31. The chief recommendations in Mr. Armstrong's report included the following: the merger of many of the 16 local unions to create 6 locals; the increase of mobility for members of each local union (essentially increasing the number of employees of each contractor with complete mobility rights to 4 within the Province of Ontario, regardless of the number of local union members hired); requiring all local unions to permit the name-hiring by employers of at least 50% of the workforce if so desired; and the merger of the three Councils and Local 1256 into a single CDC which would adopt the centralized structure of CORC and GORC.

32. I was provided with no evidence of what happened in the discussions on May 14, 2009. Although Local 1256 filed the correspondence that is quoted above, it did not have or did not seek to provide any evidence about what happened next. At some time later, GORC changed its position. At the CDC meeting of June 5, 2009, the delegates formally approved the merger of the three Councils. When that change of position happened, what discussions took place, what compromises may have been agreed to, are not before me. All I know is that after that meeting GORC was prepared to support the merged Council concept.

33. In argument, the International Union asserted that at the meeting of May 14, 2009 the officers of the three Councils rejected the recommendations with respect to the merger of local unions, the easing of mobility rights and changing hiring hall rules. There is no document or other thing filed that would indicate that sort of discussion or decision making took place. However, as proposals those three items disappeared from any discussion about changes from that day forward. If Mr. Smith was anticipating by-law proposals with respect to any of Mr. Armstrong's other proposals, those hopes did not bear fruit.

34. The CDC delegates met on June 5, 2009. The Minutes of that meeting record as follows:

Tony Iannuzzi [of CORC] reported that CORC had passed a motion to support the merger of CORC and GORC into the CDC in principle and that Local 397 had moved to Area #3. (Section 4 CDC Bylaws). Ucal [Powell of the CORC] spoke about the formation of CORC and that change is difficult but that we need to do what's best for the Carpenters Union if we are under attack, and that we need an Ontario plan for the Carpenters Union. He read a list of CORC's concerns and distributed a copy to GORC and the CDC. He wants to ensure there is full disclosure from CORC, GORC and the CDC as we move forward.

Tom Cardinal [of GORC] spoke that GORC had approved a motion to go forward with one council pending their concerns are addressed, the CDC and CORC had received a list of their concerns. Bob Schenk [Local 1256] said he will take his report to his Executive. The Secretary-Treasurer and others also spoke on the Armstrong report and the Steering Committee's report.

There was a motion to support the merger of CORC and GORC into the CDC in principle and to support one council. The motion was carried with only Bob Schenk objecting.

35. Meetings were scheduled for September 15, 2009 and October 14, 2009 by Mr. Calligan and later Mr. Mike Yorke, Secretary-Treasurer of the CDC. Both notices were

addressed to "Senior Representatives, EST's, Bob Schenk [Local 1256], Jim Smith [and] Dan McCarthy [of the International Union]" to discuss the merging of the two Regional Councils into the CDC. Again representatives from Local 1256 were in attendance but they did not assert that they participated in the discussions.

36. As a result of these meetings, Mr. Smith drafted a letter to the General President dated October 29, 2009, recommending that the International Union create a "reconstituted" CDC merging all three Councils and creating the centralized structure for the CDC. He enclosed a list of draft bylaws which would create this structure. He circulated the draft of this letter to all local unions including Local 1256 and asked for any comments. Local 1256 does not assert that it made any comments.

37. On October 26, 2009 Mr. Smith sent this letter to the General President. The final version appears to be unchanged from the draft version. Both the draft and the final letter referred to the proposed bylaws of the CDC as a compilation of the current bylaws of GORC, CORC and the CDC. President McCarron replied on November 3, 2009 approving the merger.

38. Only at that point did Local 1256 taken any formal action. On November 20, 2009 it sent its members a letter notifying them of a Special Called Meeting for December 14, 2009. The Notice states:

The sole purpose of this meeting is to discuss the issues surrounding the dissolving of the Greater Ontario Regional Council and of the Central Ontario Regional Council and the merging of both Councils' operations, jurisdiction and membership into the Carpenters District Council of Ontario which will begin operating as a Regional Council, effective January 1, 2010, which includes Local 1256 and conduct a "Secret Ballot Vote" as to whether we join in this Regional Council as per the General President's directive or whether we file a complaint at the Ontario Labour Relations Board claiming this newly formed Provincial Regional Council contravenes the Ontario Labour Relations Act.

39. In a letter dated November 30, 2009 Mr. Schenk invited both Mr. Smith and Mr. McCarron to attend this meeting:

The Executive Committee invites you and General President McCarron to this meeting to explain to the members why Local 1256 should be part of this new regional council.

40. Mr. Smith's response dated December 11, 2009 states in part:

There is no invitation for Local Union 1256 to join the Carpenters District Council of Ontario (CDCO) nor is there any need to seek the direction of the membership to join the CDCO when Local Union 1256 is already affiliated with the CDCO.

The decision of General President McCarron was the result of extensive consultation process in which you and other members of Local Union 1256 participated.

.... Local Union 1256 delegates attended a meeting with Tim Armstrong and had an opportunity for input prior to the release of his report.

The Steering Committee, formed in response to the Armstrong Report, held meetings in June, September and October with the executives of CORC, GORC and the CDCO plus senior business representatives from all carpenters/drywall locals in the province of Ontario. You were in attendance.

Through your participation in the consultation process, you have the necessary knowledge to provide any explanations required by your membership. Further, my previous experience of attending hearings with Local Union 1256 in September, 2007 was that there was neither dialogue nor genuine interest in seeking clarifications. The discussion on ULTRA is a case in point.

This application was filed with the Board on December 24, 2009.

41. The final step organizationally was taken on February 27, 2010. The bylaws that had been circulated with Mr. Smith's earlier letter had been approved by the International Union. This is apparently a constitutional requirement in the approval process. On February 27, 2010 they were formally adopted by the CDC delegates. Three delegates from Local 1256 were in attendance. The bylaws were adopted by a vote of 98 to 3.

Preliminary arguments of the International Union

42. The International Union argued two matters that are in a sense preliminary to the substantive merits of the application: that it was not the proper responding party and, second, that neither of section 147 nor section 149 applied to what the International Union had done in this case. I reject both arguments.

Proper party

43. Before the establishment of the new CDC there were three bodies, a CDC with more limited powers, GORC and CORC. Each had different functions. In his letter of November 3, 2009, President McCarron created the new CDC, which he called the "reconstituted" CDC, and which had the power of all three existing Councils. That this was at the request of, or with the concurrence of, GORC and CORC does not matter. The act of combining the functions of all three into the CDC, and the dissolution of GORC and CORC could only be done constitutionally by the International Union.

44. In addition, Local 1256 was not a member of GORC, although the International Union certainly wanted it to be. Whatever functions other local unions had delegated to GORC and CORC, Local 1256 had retained those functions, and specifically the right to elect their own full-time representatives. It did not wish to have those functions assumed by the CDC, and neither CORC nor GORC had the power to compel it to do so. It was President McCarron's letter of November 3, 2009 that specifically declared that Local 1256 was one of the local unions that are "hereby affiliated to the Carpenters District Council of Ontario", the body he described as the reconstituted CDC.

45. The International Union argues that the change was made by the CDC rather than the International Union and because Local 1256 was already a member of the CDC and it was the CDC which adopted the new bylaws on February 27, 2010. However, the CDC could not effect these changes without the prior approval of the bylaws by General Vice President Douglas Banes on December 23, 2009, the dissolution of CORC and GORC and the requirement that Local 1256 affiliate with the new CDC by President McCarron on November 3, 2009. Section 6A of the

International Constitution provides that the General President or the General Executive Board may establish a Council or Regional Council and may “permit, prohibit or require the affiliation with or disaffiliation from any Council by any Local Union”. The change would not and could not have happened without their prior approvals.

46. For these reasons I find that the International Union is a proper responding party to this application.

Application of sections 147 and 149

47. The second issue relates to the application of either or both of sections 147 and 149. Section 147 is somewhat more difficult to apply to these facts. Subsections 147(1) and 149(1) provide:

147. (1) A parent trade union shall not, without just cause, alter the jurisdiction of a local trade union as the jurisdiction existed on May 1, 1992, whether it was established under a constitution or otherwise.

...

149. (1) A parent trade union or a council of trade unions shall not, without just cause, assume supervision or control of or otherwise interfere with a local trade union directly or indirectly in such a way that the autonomy of the local trade union is affected.

48. Section 145 provides:

145. (1) In sections 146 to 150,
“jurisdiction” includes geographic, sectoral and work jurisdiction;

49. The word "includes" indicates that there may be more functions than those that constitute jurisdiction for the purposes of section 147, but if so surely they would be similar to or of the same character or category of concepts as the enumerated ones. Local 1256 did not identify a term or concept that it said had been altered by the restructuring of the CDC. It pointed to the comments of the Board in *United Brotherhood of Carpenters and Joiners of America*, [2001] March/April 491 (LODC) at paragraphs 76 to 86. While I have some difficulty in applying that analysis to all of the facts in this case, it does apply to at least one change with respect to negotiating non-ICI collective agreements, as set out below.

50. There is no question that section 149 applies. The loss of the ability to select persons who are paid on a full-time basis to carry out the functions of Local 1256 is clearly interference in, and represents a diminution of the autonomy of, Local 1256 to some degree. Indeed that is what the restructuring of the CDC was supposed to do. That constitutes an act by the parent union to "interfere with the local trade union directly... in such a way that the autonomy of the local trade union is affected". The substantive question remains under either section: did the International Union have just cause to require Local 1256 to affiliate to and be governed by the bylaws of the new CDC?

51. I conclude that both sections 147 and 149 apply in this case, although the case is fundamentally one to which section 149 applies. Section 147 deals with jurisdiction, that is the capacity of the local union to act within a particular sphere defined by geography, sector, work or

some similar area of operation. Section 149 focuses on issues of local union governance: whether the local union officers or executives may be ousted from control of the local union or whether the structure of the local union itself is altered to deal with apprehended problems. In this case the International Union's decision was essentially to alter the governance structure. The local union still continues to exist and to possess a more limited range of independent action.

52. The significant changes are: the officers who carry out the business of the local union will be appointed by the Executive Secretary Treasurer and the CDC Executive Council rather than by election by members of Local 1256; to some extent provincial policy that affects Local 1256 will be created at the level of the CDC rather than at the local level; and non-ICI collective agreements (with some exceptions) will be negotiated at the provincial, not the local level. The first two are changes in the autonomy of the local union that engage section 149. The loss of the ability to negotiate non-ICI collective agreements other than those that a local union has historically bargained is clearly an alteration of the jurisdiction of Local 1256 and falls under section 147.

Preliminary Issue of Local 1256 - Process before the Board

53. Local 1256 argues that the Board's process in conducting a consultation in this application was flawed and that the process before the Board could not arrive at a fair result in the absence of certain oral evidence. In an earlier decision I set out reasons for proceeding by way of a consultation rather than a hearing of oral evidence. Specifically there were no disputed facts and nothing that was said during the course of this hearing caused me to come to a different conclusion.

54. Local 1256 did not seek to call oral evidence of its own unless there was a real dispute about the facts it alleged. There was in fact no dispute, and no oral evidence needed to be called nor did Local 1256 argue it should have been able to call oral evidence on its own facts.

55. With respect to the case it had to meet, Local 1256 does not suggest that the events within the Carpenters' Union did not occur as detailed above. It does not suggest that Mr. Armstrong did not hold the meetings he states that he held in his report, some of which were attended by Local 1256. Rather, Local 1256 argues that oral evidence before the Board was necessary because Local 1256 had no idea of what the International Union's motivation was or what was in its mind when it made the changes. What Local 1256 really sought was an opportunity to conduct a wide-ranging discovery of Mr. Smith or Mr. McCarron in order to find some criticism of their thinking process or motivation that it has not alleged in any way.

56. While it is, of course always possible for a parent union to assert a motive on paper to conceal a different and invidious motive, Local 1256 has not suggested any such motive here. If, as it asserts, the International Union has desired to centralize control in the Union since 1995 surely during that time Local 1256 must have formed some idea of what it thinks the International Union's motivation was and is, if it believes that motivation is something other than a different view of the most efficient and successful model for internal governance. There are no rules of natural justice of which I am aware that give an applicant who has alleged no facts or improper motives the opportunity for a discovery to find out if there is something it might be able to use.

57. In the end, no matter what the International Union's motivation, and no matter how much or how little it influenced Mr. Armstrong's report, it was not the only participant in the process. With varying degrees of enthusiasm, every other local union in the Carpenters' Union in the Province agreed with the final result. It represents a consensus in the rest of the Province. If

there were a serious issue about the International Union's motivations, it would have been examined, perhaps by way of oral evidence. However, in this case, a directionless search for an unalleged motive of the International Union serves no purpose.

Did the Process adopted by the International Union itself constitute a lack of just cause?

58. Local 1256 argued that the creation of the new CDC failed to meet the requirements of the rules of natural justice and, in any event, the process by which it was created was so flawed that it could not possibly meet the standards of just cause. It bases its claim to a breach of the rules of natural justice on the assertion that members of Local 1256 have a vested right in their ability to elect their own business representatives, and that before they can be deprived of those rights the International Union must observe the basic rules of natural justice: i.e., it must give Local 1256 notice of the case against it, or the reasons that the International Union wishes to require it to be affiliated to the new CDC, and a hearing to ensure that Local 1256 has the right to be heard.

59. Local 1256 states that its claim to a "vested right" is based on Section 6A of the Carpenters' Constitution and on sections 147 and 149 of the Act. Although the Constitution is not binding on the Board, it would certainly underlie the obligations of the International Union. Section 6A provides:

The United Brotherhood is empowered, upon agreement of the Local Unions and Councils directly affected, or in the discretion of the General President subject to appeal to the General Executive Board, *where the General President finds that it is in the best interests of the United Brotherhood and its members, locally or at large, to establish or dissolve any Local Union or Council, to merge or consolidate Local Unions or Councils, to establish or alter the trade or geographical jurisdiction of any Local Union or Council, to form Councils and to permit, prohibit or require the affiliation with or disaffiliation from any Council by any Local Union, including the rights to establish state wide, province wide and regional Local Unions or Councils having jurisdiction over specified branches or subdivisions of the trade. The vested rights of the members shall be preserved* and where action is herein described is taken, the General President and General Executive Board shall preserve the membership rights of the members of affected Local Unions, *including their rights to attend and participate in meetings, to vote, to nominate candidates and to be nominated and run for office.* In connection with the foregoing, the *General President may, upon finding it appropriate, appoint a committee to hold hearings upon due notice to directly affected Local Unions or Councils, and make findings and recommendations.*

[emphasis added]

60. Aside from the reference to it in argument at the end of the case, Local 1256 made no reference to this provision in any of the material filed. Given that the Section deals with the power of the General President to merge local unions and require them to affiliate with Councils, then the "vested rights" that must be preserved clearly do not include a right not to be affiliated with the Council, or a right to continue to elect their own business representatives. As noted in Mr. Armstrong's report, Regional Councils are the norm in the United States and much of Canada. It is hardly likely that the Constitution under which this process was adopted would create a "vested right" to elect business representatives. I note as well that the vested rights specifically identified in Section 6A have been preserved. Members of Local 1256 have the right to attend and participate in meetings, to vote, to nominate candidates and to be nominated and run

for office. The structure of the Union has changed; the basic rights of members set out in the Union's Constitution have not, although they will be exercised in a way that reflects less local union autonomy.

61. I do not accept Local 1256's argument that the Carpenters' Constitution requires a hearing. The constitutional provisions on which it relies (Section 6A) do not require the General President to order a hearing. It simply provides that he may order one. Given the many opportunities for input and discussion which elicited no response whatsoever from Local 1256, there is no obvious reason why, before November 3, 2009, President McCarron should have thought to order one.

62. A more substantial claim to the assertion of "vested rights" is that the International Union must have just cause to take the actions it took given its statutory obligations under sections 147 and 149 of the Act. Trade unions are, by law, considered to be an aggregation of contracts of membership between each member and every other member. To apply the concept of vesting, which suggests a kind of proprietary right, to the statutory provisions that apply to a group of overlapping contracts is neither required by the Act, nor appropriate for the Board to impose, assuming it could do so. There is certainly nothing in the Act to suggest that sections 147 and 149 create proprietary rights.

63. This is not to say that the Board is unconcerned with process. The rules of natural justice, or the lesser obligations of fairness, do not require a formal hearing at all times. Assuming without deciding that one of these concepts applies to the decision making process, it is inappropriate to require a union to engage in a formal hearing when it is undertaking a review of its organizational structure. Decisions involving a change of governance structures requires a weighing of the relative merits of certain policy choices rather than ascertaining whether certain events did or did not occur. In the case of a removal of an officer from office in a local union for misconduct, on the other hand, something very close to a formal hearing is likely required, even if there were no such provisions in the union's constitution (there is in the United Brotherhood of Carpenters and Joiners of America's Constitution). In this case it is enough that Local 1256 was aware of the discussion and internal debate, was offered the opportunity to participate in that debate, and had the opportunity to engage in the decision making process that culminated in the making of that change. This is particularly the case where the Board has repeatedly defined "just cause" as a determination of what is "fair and reasonable in all the circumstances": see *International Brotherhood of Electrical Workers and Ken Woods*, [1996] OLRB Rep. Feb 70 at paragraph 88.

64. Sections 147 and 149 stand in contrast to the position of American caselaw on internal union affairs. In that jurisdiction, the courts do require something like a hearing, but are entirely unconcerned with the substantive result of the International Union's decision, primarily because they treat the Union's constitution as an exhaustive statement of the legal relations between the parties (see for example *Local Union No. 1075, United Rubber, Cork, Linoleum and Plastic Workers of America v. United Rubber, Cork, Linoleum and Plastic Workers of America*, (1983) 716 F. 2d 182 (USCA, 3rd Circuit)). By way of contrast, sections 147 and 149 focus on the substance of the International Union's decision, and do not limit the Board to a consideration of rights under the Constitution. To the extent that a process may affect the outcome of a decision it is important for an International Union to ensure that the process adopted is one that allows it to make a decision that is one that can meet the standard of just cause. Process obligations will depend on the type of decision made and the circumstances in which it is made.

65. Even assuming that sections 147 and 149 require some form of application of the rules of natural justice or fairness to internal union decision making, that does not mean that a hearing is invariably necessary. All that is required of such rules is that a party is entitled to put forward the facts it wishes a decision maker to consider and to be able to respond to the case argued against it. Provided those objectives are met, the form of the proceeding is not fixed. As the above recitation of events indicates, Local 1256 was aware, with the exception, perhaps, of one letter from the CDC, and of the May 14, 2009 meeting, of everything that occurred as it was occurring. It was present for and voted for Resolution #3 which commenced the entire process. It may be that, like GORC, Local 1256 did not anticipate the direction in which Mr. Armstrong's inquiry might go. However, in its application, Local 1256 commences its recitation of events with the following:

6. Since 1995, the General Executive Board of the International has engaged in a restructuring campaign whose main goal is to centralize all power and control in the Union in the person of the General President. The General President creates regional councils and thereby eradicates local unions and elected local representatives and replaces them with appointed Executive Secretary-Treasurers ("EST") of Regional Councils. Local unions who are forced into these councils lose the right to elect representatives and the right to negotiate and administer collective agreements, operate hiring halls, or carry out any other functions of a local union. Instead these functions are carried out by appointees of the EST. Local unions have the rights to elect delegates to elect the EST.... Since the EST is empowered to hire and fire representatives, all authority in the union is concentrated in a very few persons all of whom owe their position to the General President.

66. In any event, it is evident from the notices from Mr. Armstrong, and his notes that were circulated by others, that the issue of the merger of local unions (including Local 1256) and of the Councils were clearly on his agenda from the beginning. Local 1256 was provided copies of all of the notes and notices that are referred to above except for one of Mr. Calligan's letters (which was from the CDC in any event). There could be no question about where Mr. Armstrong's thinking was heading, although in the end the International Union did not go as far as he recommended.

67. Local 1256 argues that Mr. Armstrong's report makes no reference to Local 1256, that he was perhaps unaware of its existence, and that the fate of Local 1256 was never "before" Mr. Armstrong. That is not correct. There are admittedly few references to Local 1256 in the Armstrong Report. Aside from the references noted above, Mr. Armstrong refers to Local 1256 in paragraphs 44, 51, and 53 of his report, noting each time that they are affiliated with no Council other than the CDC.

68. However, one need not look far to discern the reason for that absence of many references to Local 1256. Despite many meetings to which Local 1256 was invited, and indeed attended, it chose not to say anything or to put anything on the record other than to express its opposition on the few occasions when silence might have been deemed consent. It filed no briefs or letters to Mr. Armstrong (or to Mr. Smith). There are no arguments put forward to either of them about special status for Local 1256 and no attempt to set out any of the concerns of the local union. Local 1256 simply sat back until after President McCarron had acted on the merger and affiliation recommendations. Its only action at that point was to invite the International Union to attend a meeting obviously intended to present a particular (and not especially accurate) view of what the local union was facing in preparation for seeking a mandate to proceed with litigation against the International Union. There was a wealth of opportunities to raise Local 1256's

concern with Mr. Armstrong, or directly with the International Union in circumstances where Mr. Armstrong was clearly considering the sort of things that Local 1256 now says concerned it. If there is scant reference to Local 1256 in Mr. Armstrong's report, then the local union has no one to blame but itself.

69. I do not find that the International Union failed to consider Local 1256 appropriately in the course of making its decision, or that it failed to advise Local 1256 of what was at stake in its deliberations, or that Local 1256 was deprived of the opportunity to participate in that process and make its views known. There is no absolute requirement for a hearing, and in the circumstances the process adopted by the International Union was appropriate.

Just Cause

70. Local 1256 argues that "just cause" in sections 147 and 149 are provisions that require a finding of "fault" on the part of a local union before the parent union can take any action. It analogises the section to the typical "just cause" for discipline and discharge in a collective agreement. The International Union argues that the sections do not have that meaning, and indeed have not been interpreted that way by the Board.

71. The phrase "just cause" certainly derives from the employment law context but is not determinative of the question. It does not for instance import with it a reverse onus convention to the Board proceedings that it does in collective agreement arbitration, see *International Brotherhood of Electrical Workers*, (March 31, 2011) 2011 CanLII 17827 (ON LRB), above, but has the same procedural consequences that it does in civil proceedings. The sections provide as follows:

147. (1) A parent trade union shall not, without just cause, alter the jurisdiction of a local trade union as the jurisdiction existed on May 1, 1992, whether it was established under a constitution or otherwise.

Notice

(2) The parent trade union shall give the local trade union written notice of an alteration at least 15 days before it comes into effect.

Determination of just cause

(3) On an application relating to this section, the Board shall consider the following when deciding whether there is just cause for an alteration:

1. The trade union constitution.
2. The ability of the local trade union to carry out its duties under this Act.
3. The wishes of the members of the local trade union.
4. Whether the alteration would facilitate viable and stable collective bargaining without causing serious labour relations problems.

Same

(4) The Board is not bound by the trade union constitution when deciding whether there is just cause for an alteration.

(5) If a local trade union makes a complaint to the Board concerning the alteration of its jurisdiction by a parent trade union, the alteration shall be deemed not to have been effective until the Board disposes of the matter.

...

149. (1) A parent trade union or a council of trade unions shall not, without just cause, assume supervision or control of or otherwise interfere with a local trade union directly or indirectly in such a way that the autonomy of the local trade union is affected.

Same, officials and members

(2) A parent trade union or a council of trade unions shall not, without just cause, remove from office, change the duties of an elected or appointed official of a local trade union or impose a penalty on such an official or on a member of a local trade union.

Board powers

(3) On an application relating to this section, when deciding whether there is just cause, the Board shall consider the trade union constitution but is not bound by it and shall consider such other factors as it considers appropriate.

Orders when just cause

(4) If the Board determines that an action described in subsection (1) was taken with just cause, the Board may make such orders and give such directions as it considers appropriate, including orders respecting the continuation of supervision or control of the local trade union.

72. Paragraph 2 (and inferentially, paragraph 3) of subsection 147(3) suggest fault on the part of the local union. The same cannot be said of the other paragraphs or of section 149. The rights, duties and responsibilities of the local union and a parent union under the constitution referred to in subsection 147(3) paragraph 1 are mutual, although it is more likely that the parent union's action will be subject to constitutional analysis since it is the one taking action. Paragraph 4 of subsection 147(3) does not refer to fault at all. It requires the Board to look forward and to determine what positive and negative effects the alteration to a local union's jurisdiction would have with regard to creating viable and stable collective bargaining. It also asks the Board to determine whether it is likely (since projections are inherently uncertain) that there are no serious labour relations problems likely to arise from the alteration.

73. Section 149 provides no standards at all, other than to say that the Board is not bound by the union constitution and is free to "consider such other factors as it considers appropriate." The removal of an elected officer from office before his or her term expires, or the imposition of a trusteeship for a limited time which is regarded as extraordinary under a union's constitution, are likely fact situations that strongly suggest that misconduct must be shown. However direct or indirect interference with the local union in such a way that its autonomy is affected does not necessarily raise a consideration of fault at all. A change in the internal organization of a trade union may well alter the autonomy of the local union, but the reasons for doing so have nothing to do with fault on the part of the local union.

74. The first decision of the Board to deal with the sections is *International Brotherhood of Electrical Workers*, [1996] OLRB Rep. Feb 70, although that decision dealt only with section 147 (see paragraph 3). In that case no fault could be attributed to the local union. It was extraordinarily well-organized, was better informed about its bargaining (which it managed on behalf of other local unions) and carried out those bargaining obligations fully and carefully (if understandably focussing on its own interests foremost). There is no manner in which IBEW Local 1788 failed to function efficiently. It was making a claim to the right to perform certain work rather than other IBEW locals that was well within its constitutional boundaries, and particularly a 1989 decision by its parent union about Local 1788's jurisdiction. The Board discussed the meaning of "just cause" at paragraph 72 to 90 and concluded:

89. The nature of section 147 and the factors which the Board is directed to consider under it requires that the Board not limit itself to an examination of the parent union's conduct in the decision-making process, and the factors which it considered. It may be that a parent union can do everything wrong in that respect and still end up with a decision which is fair and reasonable in the circumstances. That is, the question is not: "Could a parent trade union, acting honestly and looking at the situation and circumstances as a whole, and weighing the interests of all concerned, have reached the conclusion and made the jurisdictional decision it did?" Instead, the question is: "Having regard to the evidence before the Board, does that parent union's decision yield a result which is fair and reasonable."

90. In a proceeding under section 147 the Board is limited to considering the four factors listed in subsection 147(3). The wording of section 147 taken as a whole also suggests that the Board's power is limited to determining whether there was just cause for the alteration of jurisdiction under scrutiny. The wording of the provisions stands in sharp contrast to that of subsections 149(3) and (4) (also part of Bill 80) which also require the Board to decide whether a parent trade union had just cause to interfere with the autonomy of a local trade union, or for removing local union officials from office, or changing their duties, but allows the Board to "consider such factors as it considers to be appropriate", and allows the Board to make whatever orders or directions it considers appropriate.

75. In applying the fourth paragraph of subsection 147(3) the Board stated at paragraph 95:

95. The second question relates to the broadest and most general factor which the Board is required to consider; namely, "whether the alteration would facilitate viable and stable collective bargaining without causing serious labour relations problems." This requires the Board to consider whether a legitimate collective bargaining purpose would be served by the alteration of jurisdiction which will not create significant labour relations problems; both as between the trade union entities involved, and as between those trade unions and their employer collective bargaining partners. It is important to consider the former not only because section 147 deals with what is fundamentally an internal trade union matter, but also because such questions also involve important issues of statutory rights, and generally have an impact on collective bargaining relations with employers (which is why the latter must also be considered).

and concluded at paragraph 102:

Further, we are satisfied that changing Local 1788's jurisdiction back to what it was intended to be, and which for most of its history it was, will more probably than not facilitate viable and stable collective bargaining without causing serious labour relations problems.

76. In a brief decision four years later, *Labourers' International Union of North America*, 2000 CanLII 12252 (ON LRB), (which was never litigated to a conclusion), the Board was dealing with a challenge to the alteration of geographic jurisdiction of the local union. The Board said of sections 147 and 149:

8. The "Bill 80 amendments" were added to the Act in 1993, and focus on the internal affairs of *construction trade unions*. Those amendments do not foreclose a sensible restructuring of such unions to meet the collective bargaining challenges that they face. Construction trade unions are not frozen in the form that existed at the time that the statute was amended. Nor do local minorities have a statutory veto over trade union reorganization. On the other hand, the Bill 80 amendments do require a parent union to have "just cause" for any proposed changes, and prevent a parent union from using its institutional or constitutional clout to penalize Local unions that question the parent's authority, or seek to preserve their local autonomy.

9. The Board's job, therefore, is to balance these competing factional and institutional concerns, within the framework provided by the statute.

10. On the surface, Bill 80 appears to be about internal union affairs. But as this case illustrates, there may also be an impact on the allocation of work opportunities, as between groupings of union members. Moreover, employers may have an interest in these issues as well, because under the existing collective bargaining regime, employers are typically obliged to deal with whatever local union has jurisdiction in the geographic area in which the employer is operating. There is a province-wide scheme of ICI collective bargaining and there are often extended-area agreements in other sectors as well; but quite a bit of business is still carried on between individual companies and local unions – however those local unions are structured or restructured from time to time. So employers have an interest in the clear identification of the union entity with which they must interact.

77. In *United Brotherhood of Carpenters and Joiners of America*, (LODC) above, the Board adopted this test at paragraphs 92 to 101, although the decision turns in part on the failure of the LODC to engage in aggressive organizing in its area (see paragraph 112). It did, however, rely as well on the institutional and political challenges facing the Carpenters' Union in Ontario (paragraphs 109 to 111).

78. Finally, in *International Union of Bricklayers and Allied Craftworkers*, [2001] OLRB Rep. May/June 802, the Board said at paragraph 16:

The Board does not have a general mandate to supervise the content of union constitutions or to regulate the internal affairs of a trade union. Further, section 149 does not prohibit the use of a parent union's constitutional authority, and indeed contemplates its exercise within the limits set by the standard of just cause. Section 149 is a statutory limitation on the exercise of a private contractual power, but not one which supplants or eliminates that power. It does so as part of the statutory scheme governing the basic activities of a trade union in Ontario – organizing employees, negotiating

and administering collective agreements. Accordingly, the definition of a just cause standard which restricts the otherwise lawful exercise of constitutional authority must be drawn from the values expressed in the Act. Essentially, if the parent union's use of its "private law" power disrupts the healthy functioning of a local union in the manner in which it exercises a right, duty or privilege defined by the Act, then section 149 is *engaged*. Just cause will be found only where the parent union's actions are consistent with its own internal values, *and* likely to protect or enhance in the long run, the statutory rights, duties and privileges of the local union.

79. As noted, both sections 147 and 149 apply to the International Union's decision in this case. The absence of specific factors to consider under section 149 is a reflection of the greater variety of governance issues that may arise. As the Board said in *Labourers' International Union of North America*, above, sections 147 and 149 "do not foreclose a sensible restructuring of such unions to meet the collective bargaining challenges that they face". A general standard of "what is fair and reasonable in the circumstances" is still an appropriate formulation of what the Board should be looking for, but the content of what is "fair and reasonable" would be different depending on the context of each case and the norms of operation of any particular trade union.

Decision

80. Turning to the facts of this case, there is no dispute that Local 1256 functions extremely well as a local union. It carries out its duties diligently and meets with a high degree of success. It has a very high market share of the available work. This may be made easier by the labour relations conditions that exist in the chemical industry in Sarnia, but it is an advantage that Local 1256 has managed effectively. It has dealt effectively with challenges to its jurisdiction on the part of the Labourers' Union in the area of scaffolding. There is no suggestion of any financial dishonesty or incompetence and no issues of internal organization that create any undue or disruptive strife or fractiousness within the local.

81. This is not, however, the end of the analysis. The Act directs the Board to determine if there was just cause in the sense of whether the actions of the parent union were fair and reasonable in all the circumstances. That requires the Board in this case to look at what actions were taken and by whom.

82. There is no real doubt by any party about what the International Union wanted to do. Its "Reform Agenda" set in 1995 is discussed by Mr. Armstrong in his report (pages 15 to 17). The history of applications under sections 147 and 149, including *United Brotherhood of Carpenters and Joiners of America* (LODC), above, *United Brotherhood of Carpenters and Joiners of America*, [2002] OLRB Rep. Nov/Dec 1198 and *United Brotherhood of Carpenters and Joiners of America* (Sault Ste Marie), above, make it clear that the International Union regards a more centralized structure as a more effective means of organizing unorganized employees and administering collective agreements. In the application itself, Local 1256 refers to what it says was the International Union's agenda since 1995.

83. Local 1256's submissions frequently characterize the International Union's program in pejorative terms, but it does not at any time allege that the International Union's desire to centralize authority in the Union was anything other than a choice about how the Union should operate. It may characterize the International Union as a power-hungry and centralizing force, but it does not suggest that the International Union did so for the purposes of affecting any Ontario local, including Local 1256, in an adverse financial manner for the benefit of locals

outside Ontario. It does not allege that the International Union did so for the purposes of affecting Local 1256 in an adverse financial manner for the benefit of locals in Ontario outside of Lambton County. Its objection is that it sees no benefit in that particular model of organization. It argues that the structure is less democratic and would leave Local 1256 in a position where its members had less autonomy than they did before. This is a perfectly valid point of view; that tension between central and local centers of authority will exist in any organization of individuals: unions, voluntary organizations, political parties and trans-national businesses. A recognition of that fact does not answer anything with respect to the issue of just cause. It is worth noting only that the positions of the International Union and Local 1256 have been clear from the outset.

84. The International Union did not simply act on its own beliefs about how the Union should be organized. It is not unfair to say that it waited for the right time to act to pursue its own agenda, but even then did not act unilaterally. There is nothing underhanded about that. Unions are, if anything, highly political organizations. The International Union waited for the opportunity offered by the CDC and then sought to address the issues that the CDC saw as the primary threat to the future of the Union. Indeed Resolution #3 specifically invites the International Union to assist the Union in Ontario. The resolution calls for the International Union to assist the CDC and the two Regional Councils. If Local 1256 wanted to be treated in the same manner as the three Councils, it did not raise that desire at the time it voted in favour of that Resolution.

85. The International Union did not simply meet with three individuals and come up with a scheme which it enacted. It retained Mr. Armstrong to assist in the process. It is important to examine Mr. Armstrong's task and what he did. He did not seek to analyze data from different sources or to develop an economic model of what the general economic, labour market, and union organizing trends were in order to come up with the best abstract model for the Carpenters' Union to follow. Mr. Armstrong makes reference to meetings with contractors bound to the Carpenters' Provincial Collective Agreement (paragraph 38 of his report) but makes little reference to their views other than to confirm what he had been told by union officers. He did meet extensively with local unions and with the chief officers of the three Councils. This entire process was essentially the Carpenters' Union in Ontario talking to itself through a third-party intermediary. His report represents an impartial observer's synthesis of what the Union had been saying to itself and what he viewed, objectively, as the best conclusions he could come to arising out of those discussions.

86. His conclusion was that the Carpenters' Union would benefit from a more centralized structure. He recommended three major structural changes to the Carpenters' Union: the creation of a single Regional Council and the adoption of the centralized structure for that Regional Council; the amalgamation of several local unions; and increased mobility (especially with respect to the first four tradesmen on a job) and name-hiring. The first two recommendations are variations on the same theme.

87. Mr. Armstrong's recommendation for larger structures and more centralized authority are based on a series of conclusions. The overall focus of his report is the one that he was asked to look at: ways in which the Carpenters' Union could improve its competitive position. He saw the issues as follows:

- (a) There can be greater administrative efficiencies in such areas as the coordination of benefit plans, the delivery of services under those plans, common information technology systems, and

common training programs. This would, in his view, decrease the cost of providing those services (and thus reduce the need to recover costs from wages) and ensure that services are provided across the Province rather than in a few areas of high membership.

- (b) Increased mobility would respond to the needs of contractors with whom the Carpenters' Union has a collective bargaining relationship. Given the number of fronts on which the Union is facing competitive pressure (set out at pages 48 to 56 of his report) he concluded his recommendations were necessary to be able to provide a greater level of responsiveness to the needs of contractors. That would apply both to contractors who had collective agreements with other trade unions but whose employees might be susceptible to being organized by the Carpenters, or with contractors bound to many collective agreements including with the Carpenters' Union where those other unions have jurisdictional ambitions with respect to the work done by members of the Carpenters' Union.
- (c) Coordination of strategic organizing campaigns would be more likely to be successful, particularly in light of the obligation to apply for a province-wide bargaining unit in the ICI sector.
- (d) In the Council structure, business representatives are hired, not elected. He concluded this led to "strict accountability for their performance" to the Council. Because the EST had the power, in concert with the Council's executive committee, to hire and discharge field staff, he or she could assign specific tasks, require detailed reporting, and determine whether or not the person was actually fulfilling that function. Continued employment would depend on results rather than political support.
- (e) Finally, Mr. Armstrong saw his recommendations as an extension of what the Carpenters' Union had done over the past 20 years. Local unions have been reduced in number and combined, Regional Councils created and expanded, and more coordination of central functions such as organizing and training were coordinated, with varying degrees of success, by the central body.

At pages 87 to 88 he sets out the areas in which this increased centralized coordination would, in his view, contribute to greater success for the Carpenters' Union.

88. As Mr. Armstrong recognized, this is consistent with the International Union's "reform agenda" from 1995 which was driven by the same beliefs and led to similar results. His report, however, is not a recitation of that agenda but his conclusion based on the information he received in the course of compiling his report. However he did rely on the fact that the same issues have led the International Union in the United States to similar conclusions.

89. However, once again the International Union did not act unilaterally. It did not assert that Mr. Armstrong's report was the answer to all its organizational problems and impose all of its conclusions on every local union in the Province. Mr. Smith called a meeting of the chief officers of the three Councils on May 14, 2009. What emerged from that meeting was the resolution of the CDC on June 5, 2009 to merge the three Councils into a newly constituted CDC. Whether that was a specific compromise reached in the May 14, 2009 meeting or an agreement that Mr. Armstrong was in error in his latter two recommendations does not matter. The result was that the merger of the three Councils, while in keeping with the International Union's agenda, was one that the three Councils and their affiliated local unions (other than Local 1256) were agreed was a positive way to move forward.

90. It is again worth noting that even at the June 5, 2009 meeting, Local 1256's delegates did not choose to engage in any debate or discussion. The minutes record simply that Mr. Schenck stated that he would "take the report to his Executive", and of course voted "no" on the resolution.

91. What the local unions in Ontario had then, was a proposal that originated from the CDC's own view of the pressures it was facing. Having reviewed Mr. Armstrong's report it accepted some recommendations and rejected others. The solution fit with part of the International Union's agenda, but not all of it. No doubt the solution was actively promoted by the International Union. No doubt some local unions, particularly in GORC, were less enthusiastic than others. Whatever these misgivings and alternative views were, it was one that three Councils and the local unions, other than Local 1256, agreed was a positive step forward and one likely to benefit the Union as a whole. The proposal ultimately met with universal acceptance except from Local 1256.

92. It is also worth noting what changes were not made. Contrary to Local 1256's repeated assertions, it was not abolished or eradicated. Local 1256 continues to exist. It continues to have the right to elect its own Executive Board. The matters of major importance are in the hands of an appointed business representative or organizer, but the other voluntary activities of the local union may still be carried on. Most significantly, Local 1256 retains its geographic jurisdiction and the ability to operate its own hiring hall to send its members out for jobs within that area. The same members of Local 1256 will be sent to the same jobs in the same manner as they have been previously. The structure of ratification of the provincial collective agreement remains unchanged, and hence whatever ratification rights Local 1256 members had before, they retain now. (I heard no comment about the structure of the Negotiating Committee for that collective agreement set out in Section 41 (b) of the CDC's Bylaws. It may not represent a change, but in any event was not the subject of any complaint.) Hence it is not possible to say, as Local 1256 claims, that the change in structure completely eliminates the Local Union's existence.

93. Because of the manner in which Local 1256 framed its response, there is no competing analysis of the situation faced by the Carpenters' Union in Ontario. That is, it has disputes about the applicability of Mr. Armstrong's reasoning to Local 1256 and its situation, but it does not argue that Mr. Armstrong's conclusions were erroneous or false. At best, Local 1256's argument is that the issues analyzed by Mr. Armstrong do not apply to them.

94. The response of Local 1256 is analogous to its argument that the Act requires the consent for any change unless fault can be found. Essentially its response is "I'm all right; leave me out of it". It argues that the analysis of Mr. Armstrong does not apply to Local 1256 as the Report does not deal in detail with its particular situation. Local 1256 enjoys relatively strong

employment because of the chemical industry in Sarnia; its members are content with the way the Local Union operates; and it sees no immediate value to Local 1256 if it were to be made part of a larger structure.

95. This position is an inadequate response to the position taken by the International Union. It does not respond to the issues raised by Mr. Armstrong's analysis of the situation in Ontario. It does not respond to the organizing issues across the Province. Even assuming that its high market share in the ICI sector in Sarnia is due entirely to its own efforts (which Local 1256 is sensible enough not to claim) that does not address two obvious issues. It does not address at all the heavy engineering or residential sectors that Mr. Armstrong identifies in his report as areas in which the Carpenters' Union needs to grow. Even assuming that Local 1256 has been successful in organizing in those sectors, that does not answer a need for coordination, at least in the heavy engineering sector, in province-wide organizing campaigns or collective agreements that include Sarnia.

96. Local 1256 negotiated a collective agreement with respect to work on a wind farm. As an emerging area of work, this is clearly a significant success. It points to the fact that the CDC has adopted it as a model collective agreement for such work across the Province. Local 1256 is justifiably proud of that fact, but offers it only as proof that Local 1256 is doing such a good job that others imitate it. It is not put forward as an example of coordination with others in any way. It is equally likely that Local 1256, in pursuing its own local needs and agenda, might negotiate a collective agreement that was in conflict with the efforts across the rest of the Province. I do not suggest that Local 1256 would do so deliberately, but its position is that it is concerned only with its own interests and refuses to be required to coordinate them with, or defer them to, the needs of the rest of the Province. It is a perpetuation of the "isolated fiefdom" mentality that Mr. Armstrong identified as a barrier to progress for the Union.

97. More importantly, that sort of insular mentality ignores the dangers of isolation. Local 1256 is doing very well. If it were the only local union in the Province that had a strong presence in the market, it would not necessarily enjoy the same level of success. The strength of its bargaining power, and its claims to work jurisdiction, would inevitably be affected by the strength of other local unions with which it is affiliated. If scaffolding were done by another union everywhere else in the Province of Ontario except Sarnia, Local 1256 would likely find its jurisdictional strength significantly eroded. One need only look to the fate of Bricklayers and Independent Masons' Union of Canada, Local 1, to see the fate of a single isolated local union.

98. Local 1256 has the fifth largest membership among the local unions in Ontario (according to the figures in the Armstrong report). Perhaps because of the steadier nature of the chemical industry it enjoys fewer swings in employment than Sudbury, the fourth largest local which is dependent on the mining industry. It is hardly unreasonable to ask more fortunate locals to assist in the strengthening and functioning of other local unions within the organization.

99. In the end, the Union is not a loose confederation of independent bodies cooperating only where all consent. A decision to strengthen the Union as a whole, even if there is some cost to some local unions for the benefit of others, is a reasonable and worthwhile objective for any union. It is not enough to sit back and say, in effect, "we are satisfied with the status quo" in the face of a rational proposal for change in response to long term pressures on the Union.

100. The two significant restrictions on the autonomy of Local 1256 are the fact that members of Local 1256 would not elect their business representative and/or organizer, and the

Local would be unable to ratify and enter into non-ICI collective agreements in its own name, unless it had a practice of doing so before 2009.

101. The debate over elected versus appointed representatives is inevitably a choice of values. Does one favour the sense of local control that comes from local elections, or does one believe that appointed business representatives and organizers are more accountable and likely to perform their tasks more thoroughly if they report to a person or body that employs them as employees? The fears that an appointed representative would engage in behaviour that works to the detriment of a local union in order to curry favour from the officers of the CDC is equally balanced by the spectre of a local representative who is prepared to take action, or engage in inaction, that is detrimental to the rest of the Province or generally neglect his duties in favour of drumming up political support for the next election.

102. That debate has been over for everyone other than Local 1256 in the Carpenters' Union in Ontario for some time. Appointed representatives who are employed by a central council is the model adopted by every other local union in the Province. In this case, the decision of President McCarron to require Local 1256 to join in this model is a requirement to adopt the model that prevails in the rest of Ontario. When looking at what is fair and reasonable, the norms that already prevail throughout the rest of the Union in Ontario are significant. No matter how bitterly Local 1256 wishes to criticize the dangers of appointed representatives, such a model is a valid policy choice, and indeed the predominant one.

103. Finally, Local 1256's argument does not address the issue of how the CDC is to function if it were to remain as an independent local union. On July 5, 2009 the CDC did vote by an overwhelming majority to amend its bylaws. This was not effective until approved by the International Union, but it originates as a motion coming from the CDC. There is of course, now no provision in the CDC Bylaws that accommodate an independent local union. There is no provision in the by-laws to permit a local union to elect its own business representative. Is the CDC required to accommodate Local 1256 by passing a special bylaw for it alone? It is not a party to this application; no one sought to make it one. The vote of the CDC to change its structure was approved by a majority vote. Majority rule is the way decisions are made in the CDC, not unanimity. Since the CDC is not a party I make no finding, but it does seem highly unlikely that the Board would find that a system of majority rule was not fair and reasonable.

104. Local 1256 has at no time since June 5, 2009 sought to withdraw from the CDC. Assuming it could, it would require the consent of the International Union which might itself be the subject of a complaint from the CDC under sections 147 and 149. Presumably, Local 1256 wishes to remain affiliated, but on terms that it alone will dictate.

105. It is also an undeniable fact that the CDC is the designated employee bargaining agency. Local 1256 must bargain through the CDC, unless its designation is changed (an unlikely occurrence that Local 1256 has not sought). There is nothing before the Board in this case but it is highly unlikely that the consent of every local union is required for ratification of the provincial collective agreement, just as it is highly unlikely that unanimity among its members is required before Local 1256 can ratify a collective agreement at the present time.

106. The restriction on the ability of Local 1256 to commence organizing in a new field and execute new collective agreements in its own name did not receive any significant attention in argument. To the extent that it has a practice of bargaining non-ICI collective agreements, it is unaffected. Local 1256 did not at any point state that it had plans for organizing in a different sector. In any event, in most sectors of the construction industry (other than residential) the trend

is clearly towards province-wide agreements or at least agreements that contain common terms and conditions of employment everywhere in the Province (with local wage appendices). The possibility that one local union deciding that it will pursue its own agenda notwithstanding harm elsewhere, is a legitimate concern. On the other hand, an equally valid concern is that a central authority will pay no attention to what is needed in a local area, or at least will pay less attention to specific local needs and issues. Again that this is a policy choice in which either option is reasonable.

107. I note that the Board's experience in applications before it involving the Labourers' International Union of North America have shown a marked trend toward collective agreements negotiated by the Ontario Provincial District Council rather than local unions and certifications brought by the Council rather than by a local union. It is a policy choice that appears to have been made by one of the chief challengers to the Carpenters' Union in Ontario.

108. As the Board said in *Labourers' International Union of North America*, above, sections 147 and 149 did not freeze all union structures in the form they existed at the time those sections were made effective (May 1, 1992) absent unanimous consent or "fault" on the part of the local union. In this case, I find that the International Union had just cause to make the changes it did because:

- (a) The International Union was making a choice between competing policy choices, each of which is a rational and reasonable choice and each of which possessed strengths and weaknesses.
- (b) The rationale and the identification of issues that needed to be addressed was a logical and rational one and is grounded in a reality that is apparent to most members of the Union in Ontario. Local 1256 does not dispute that it is. It argues simply that it does not apply to them, and they are not interested in being part of any attempt to solve the problems facing the Union as a whole.
- (c) The policy choice made was one that was ultimately chosen voluntarily by every other local union in the Province and it is consistent with the norms and organizational structure of the United Brotherhood of Carpenters and Joiners of America as a whole.
- (d) The change was a significant one, but left in place much of the existing rights and practices of Local 1256, including its local union structure, and more significantly its position in province-wide bargaining and the control of its own hiring hall rules and operation.
- (e) The process for the adoption of this structure was one that involved all of local unions in Ontario. Local 1256 had the opportunity to participate throughout.

109. For all of these reasons, I find that the International Union had just cause to make the changes that it did.

Two Caveats

110. Subsection 149(4) gives the Board the power to make such orders and give such directions as it considers appropriate if the Board determines that the action was taken with just cause. Counsel advised during argument that the terms of the current Business Manager and Organizer expire on December 31, 2011. It appears they were elected for a three-year term, and hence have served since January 1, 2009. Their election was therefore before the application was filed and before the International Union issued its decisions. Although the International Union stated that its plans, at least initially, were to appoint all sitting elected officers, if they did not do so, Local 1256 might have some form of employment liability to its current officers. I therefore vary the decision of the International Union dated November 3, 2009 and direct that it be modified to the extent of adding a direction to the CDC to appoint the two individuals who currently hold office on the same terms and conditions of employment until at least December 31, 2011.

111. The second issue relates to a position that was not addressed in detail in argument, other than during the motion of the Trustees of the Local 1256 benefit trust funds to be given status as parties. By decision dated July 8, 2010, I set out the reasons for refusing them status to intervene. Nothing much more was said in argument on the main application. President McCarron's decision makes reference to local union trustees in a general fashion. The Board has no jurisdiction to regulate the operation of trust funds. I have found that the changes made organizationally to the Carpenters' Union and specifically to Local 1256 have been made with just cause and hence are effective in terms of the Union's bylaws and with respect to who is authorized to act on behalf of the Local 1256. This decision in no way affects any rights, duties or privileges that may arise from a trust agreement or declaration. They are not before me.

112. Aside from these two matters, I find that the International Union had just cause, and that its decision need be limited only in the manner as suggested above.

“David A. McKee”
for the Board