

In the Matter of a Claim for Justification

Pursuant to Article 4, Section 9 of the Constitution of the Canadian Labour Congress

ATU Local 113

CLC ID # 002-2017-J-ATU

This case commenced with a letter from Brother Bob Kinnear, President/Business Agent, on February 1, 2017 to the Canadian Labour Congress (CLC) seeking justification for Local 113 of the Amalgamated Transit Union (ATU) to change unions.

This triggered a series of contentious events that resulted in discussion and letters between the CLC and the ATU. The CLC President, Brother Hassan Yussuff and Assistant Chris MacDonald met with ATU officials, including Brother Paul Thorp, President of ATU Canada, on February 8th in Toronto. The meeting was unsuccessful in resolving the issues surrounding the dispute. These proceedings are documented in correspondence between the parties. For brevity sake here I will not review the very serious issues in detail as they are well known to the parties involved. On February 13th, I was appointed as Investigator/Mediator to this dispute.

Background

The investigation found common ground on some early factual details. They disclose a growing political rift between Brother Kinnear and ATU International President Larry Hanley. Brother Hanley was first elected President in 2010 with support from Brother Kinnear and the Local 113 delegation. In the period of 2012-2016, tension grew between them. Brother Hanley asserts that Brother Kinnear kept Local 113 members away from all international activist training in the United States and grew increasingly more critical within Local 113 of the ATU. Also, Brother Hanley maintains that Brother Kinnear often proclaimed that Local 113 can look after itself while boldly proclaiming a leadership role for Local 113 within Canada.

I have accepted much of Brother Hanley's description of divergence with Brother Kinnear in the 2013-2015 period wherein he outlined a series of events where Brother Kinnear resisted bringing Local 113 into the Canadian Council of the ATU.

In July 2016, matters turned for the worse at the ATU Canada gathering in Kelowna, BC. A major debate was underway to have a \$3/month per member per capita increase (approved in 2013) rebated in full to Canadian ATU locals. The discussion was lively and at one point Brother Hanley told the delegation "you Canadians are

divisive and unintelligible” (or words very close to this). The quote here is taken from Brother Kinnear’s February 1st letter to the CLC.

Brother Frank Grimaldi, Local 113 Assistant Business Agent-Transportation, (and author of the resolution calling for the rebate) walked out of the meeting. Brother Kinnear says that he asked for calm and respectful debate to continue. Brother Hanley subsequently apologized, privately to Brother Grimaldi, for his remarks. The news of the Kelowna comments were later conveyed to the Local 113 membership, further increasing the tensions.

Brother Hanley asserts that Brother Kinnear then “launched a campaign to destroy the union.” It is apparent that Brother Hanley’s ill-chosen words in Kelowna became a topic of discussion within the ATU Local 113 membership.

In relevant political developments, Brother Kinnear at times, with the majority support of Local 113 delegates, would shift his priorities for elected office, sometimes at short notice. In doing so, he had loyal supporters and a growing list of enemies. After years of opposing Local 113 being a member local of the Canadian Council of ATU, he subsequently ran successfully for President of ATU Canada. He also wanted to retain the President of Local 113 position through re-election. Both are full-time positions. After pressure to choose only one, he stepped down from the ATU Canada post and was re-elected President of Local 113.

The political tensions between Brother Kinnear and Brother Hanley took another sharp turn for the worse in 2016. In December 2015, Brother Kinnear was re-elected President of Local 113 for another three-year term. An appeal of the election was sent to Brother Hanley in March of 2016. In June of 2016, Brother Hanley overturned the election with his reasons printed in a multi-page insert (in the edition distributed to Local 113 members) in the regular ATU newsletter last summer. Although Brother Hanley had grounds to rule as he did, again the news of the overturning of the election result launched hostile discussion, at least from those members who had voted for Brother Kinnear. He then went on to win another election held for President of Local 113. This second election was held in the summer shortly before the International tri-annual Convention held in Toronto in the first few days of October.

In an announcement made at the Convention, Brother Kinnear, with the support of the Local 113 delegation, stood for election for the position of International Vice-President of the ATU. His father, Brother Larry Kinnear, had previously held the position. The Canadian locals caucused and endorsed Brother Kinnear for election by a strong margin over another Local 113 member, Brother Emmanuel (Manny) Sforza. By this point in 2016, most ATU delegates were of one opinion or another of Brother Kinnear’s ambitions.

To disclose the hostility between Brother Kinnear and his opposition, the campaign leaflet of Brother Sforza is revealing:

“Bob Kinnear is passing around cash like he’s part of the 1%. Trinkets, hockey tickets, Blue Jay tickets, food, and booze, all in the hope of influencing and getting your vote. This is what we have been fighting against – the corrupting influence of money and politics in our union. Local 113 has among the highest dues in our entire union – is this the result of corruption?”

“It is time to say ‘no’ to big money trying to influence our union. We wouldn’t close our eyes to the corruption of money in government, just like we shouldn’t in our union.”

Brother Sforza was elected International Vice-President with the clear support of many USA delegates. The delegates have their right to vote for whom they will. Brother Kinnear’s Canadian supporters were dissatisfied with the outcome as they had expected that the usual unofficial respect for a Canadian caucus decision would have been enough. It was not. Brother Kinnear was defeated for whatever reasons motivated the delegates. The political divide between Brother Kinnear and the ATU leadership was very wide.

The Local 113 Meetings – October 2016 – January 2017

Shortly after the Convention, Local 113 held its regular executive and membership October meetings. Discussions were held addressing the fallout. Members spoke openly about dissatisfaction with the International ATU. Minutes of the October meeting disclose, in part, some of the discussions from the floor including two Executive Board members who said Brother Hanley attacked Brother Kinnear at one of the evening caucuses during convention. One member is recorded as saying “why belong to the International,” allegedly to strong applause. Brother Grimaldi is recorded as saying “...Brother Hanley was out of line” with his comments at the Convention and ATU Canada in Kelowna. Brother Kinnear spoke as well with a closing comment: “We will have discussions about where we are going.”

The executive meeting passed a motion to withdraw from the ATU CAN/AM Conference (another ATU voluntary structure) and also discussed withdrawing from other caucuses in a response to the developments at the International Convention. I accept this evidence here from several members of the Executive Board as to the nature of the Local 113 withdrawal. It was not a discussion to withdraw Local 113 from the ATU itself. No one, it is alleged, defended the ATU at these October meetings.

A notice of motion to withdraw from the CAN/AM Conference was tabled at the November membership meeting. It was discussed at the December meeting and voted on.

Near the end of the January 2017 meeting, a discussion took place again demonstrating contempt from some members about the bitter developments of the past International convention. Critical comments were also made about the intervention by Brother Hanley to order a second vote for Local 113 President in 2016. One Executive Board member is quoted as saying “we want an apology” from

Brother Hanley. One member calls for a letter to be written to Brother Hanley requesting payment for the costs of holding the second election.

Brother Kinnear was critical of Brother Sforza's campaign literature (quoted previously) and "challenges anyone if they think that this (literature) is true." One member asks "what happened with your relationship with Brother Hanley?" Brother Kinnear states that "I was not willing to kiss his ass. It started with the meeting to increase the per capita tax for education." The meeting adjourned without any motion passed on this discussion.

The CLC received Brother Kinnear's letter on February 1st, 2017.

Brother Kinnear Withdraws Complaint

At 10:54am (EST) on the 17th of March, Brother Kinnear sent me an e-mail stating: "I, Brother Kinnear, want to inform the Canadian Labour Congress (CLC) that I am withdrawing any and all complaints about ATU International under any section of the CLC Constitution....thanking you in advance...Bob Kinnear."

At about the same time, Brother Hanley advised me, during a telephone interview I was conducting at the time, that he had received an e-mail stating that Brother Kinnear had resigned.

On the morning of March 17th, I had a 90 minute telephone interview with Brother Larry Hanley, ATU International President. He had wanted to respond to the specific allegations contained in Brother Kinnear's February 1st letter. He was fully at ease with the questioning and gave forthright explanations of his role in the issues at hand as well as the history with Local 113. He stated that many issues were Brother Kinnear's own doing in not asking for assistance while isolating Local 113 from the resources of the International ATU.

Local 113 grew to having increasing discord with the International Union. President Hanley was within his rights to allow or deny requests from Local 113 for assistance. \$50,000 was given for the Toronto Transit Riders campaign. There is an absence of other written requests. Nevertheless, Local 113 was left to go alone in various other campaigns and legal challenges.

At 11:42am, I forwarded my e-mail from Brother Kinnear to relevant ATU senior officials at Local 113, ATU Canada and the International union including Brother Hanley, to invite their comments on this development. None were received until March 20th.

Over the weekend of March 18th and 19th I tended to a few loose ends that I had commenced earlier during the investigation. I was surprised to see that Local 113 had unilaterally put out a press release in the afternoon of the 17th stating that the investigation had ended. This was done without verifying their announcement with me.

Investigation Incomplete

As this proceeding draws to a close with this report, I wish to advise that several areas of the investigation remain incomplete after being brought to this abrupt ending with Brother Kinnear's withdrawal of this proceeding. Investigative work ceased on March 20th.

The Will of the Membership (over 10,000)

This is an area that is too early in the investigation to determine. The ATU states that 13 of 17 Executive Board members were re-instated with "Confirmation of Commitment" reinstatements.

Further, "95%" of 53 stewards signed on according to the trustee, Brother Manny Sforza, when I met with him and Brother Paul Thorp on February 16th.

One Executive Board Member, Sister Jody Kerr, resigned rather than sign the form offered by the trustee.

On February 21, another Executive Board member, Brother Tony Barbosa, resigned. Also, on February 21, Judge Penny of the Superior Court of Ontario ordered a temporary injunction against the trusteeship of the Local. The Local has largely functioned with the Executive Board and stewards maintaining services to the members.

It is alleged that abnormal book offs of dozens of stewards has taken place leading up to the March 19th membership meeting. It is further alleged that they are verbally giving out misinformation about "decertification, loss of the collective agreement and pension benefits in the event of disaffiliation from the ATU." These misleading communications are designed as a fear tactic and do not contain what accurately occurs in a transfer of bargaining rights in this CLC process. Also, a petition in support of remaining with the ATU is alleged to have received minimal support. Again, the investigation has been cut short to get to the bottom of these allegations.

We also have Judge Penny's conclusions in his February 21st temporary injunction ruling setting aside the trusteeship:

"It is clear that the purpose of trusteeship is to quell dissent."

"I find that International has used the trusteeship to silence opposition and to spread misinformation to the members."

"The result of all these factors is to deprive the membership of open and informed debate on the matters that the Supreme Court of Canada has said were clearly the right of the members to discuss."

The Judge's findings are most valid.

It is impossible to determine the will of the membership in these circumstances and with further examination having been terminated.

The ATU Response

Without going into all of the details, the ATU ignored sound advice from the CLC President's Office on February 2nd against placing the local into trusteeship. On late February 2nd, this took place which led to severe differences between the ATU and the CLC, all of which is a matter of record.

From February 3-7, every "loyal" Executive Board member and steward individually signed a document addressed to the CLC stating their opposition to Brother Kinnear's February 1st letter and also requesting "that the Canadian Labour Congress take no further action in response to suspended President Kinnear's letter."

This was in parallel with ATU officials lobbying the CLC not to pursue the justification process. Further, they labelled the episode a raid and that the Article 4, Section 9 provisions are being used as cover for a raid. They have vigorously argued this position throughout. They consistently argued at higher affiliate levels and to myself, that the CLC Section 9 process is a "farce."

Already mentioned is the allegedly sanctioned fear campaign with rank and file members with loss of pensions, collective agreement, even wages or jobs in the proceeding. In fairness, I have yet to verify if these allegations are true, due to the end of further investigation.

On the matter of cooperation with my role as investigator, the ATU provided me with lists of Executive Board members and stewards contact information. Many Executive Board members were questioned individually by me and seemed cooperative except in the instance of the Secretary-Treasurer, Brother Kevin Morton, who declined to provide me copies of the October-January meeting minutes. He suggested I obtain meeting minutes from a lawyer not involved in this investigation. This was done only after Brother Hanley declined to intervene on legal grounds.

Another example of the lack of cooperation in the investigation from ATU was experienced with Brother Manny Sforza. I had asked him for a list of questions that he had prepared for verbal questioning of Executive Board members prior to having them sign the ATU commitment document. I further requested disclosure on whether any other additional documents were signed by Executive Board members. He has failed to provide this information through four requests over 16 days.

The consequences for any Executive Board member declining to support the ATU during these questions would result in suspension without pay from their full time Local 113 elected positions. Sign or else! One board member resigned and three others were suspended until February 21st when the temporary injunction was handed down by Judge Penny.

The ATU has made it clear that further proceedings will be carried out with select supporters of the justification attempt. I have twice suggested to the International President that a commitment of no retribution be taken by the ATU against its members in this situation. He has declined to do so, labelling them "Unifor conspirators."

I will forward this issue of retribution against workers to the CLC for further discussion and resolve. I fail to understand how an affiliate can engage in retaliatory measures for members having accessed CLC Constitutional rights. I do not find express wording in the Disputes Article prohibiting retribution against members, but I believe that this is inferred in the justification process. Why create such rights without protection? The affiliates that crafted the justification process six years ago might be able to definitely answer the question if reprisals of any nature are prohibited.

In the meantime, it sounds apparent to me at time of writing that the ATU will take repercussions against workers for their support of Brother Kinnear's February 1st letter. I have argued, without success, that the healing that is necessary in Local 113 to move forward "in unity" is not well served with "cleansing" from office. It is my hope that future CLC disputes procedures will confirm that such punitive actions are indeed from a bygone era.

Unifor's Role

Under Article 4, Section 9h v. e) of the CLC Constitution, I am to determine "whether there is interference from another organization."

Much is made of the February 7th media statements by Unifor President, Brother Jerry Dias, including a press conference with Brother Bob Kinnear.

Further, there is the allegation of Unifor's financial assistance to Brother Kinnear. The facts here become unnecessary to detail here as Brother Dias has admitted to Unifor's financial, moral and public support for this justification proceeding. This was done during a 20 minute telephone call with me on March 9th.

He said that Brother Kinnear approached him in the week leading up to the February 1st letter. He said that Brother Kinnear was fairly certain that Local 113 would be trustee after filing for the justification process. (This would explain the very public e-mail of February 2nd in preparation for trusteeship that was copied to two senior Unifor staff.)

Unifor stands in violation of Article 4 Section 9, b) in not contacting ATU Canada or the CLC when approached by Brother Kinnear.

Unifor's (admitted) support for financial and public commentary is a violation of the CLC Constitution. I leave the CLC to determine the appropriate response to these violations.

A footnote here: I find it ironic that in the ATU's many vigorous efforts to terminate the CLC justification process (which was unrelenting February 3rd through March 20th) that this finding on Unifor's involvement would be absent without this report. I will not speculate further on the ATU's motives for their adamant drive to terminate this investigation, attacks on the CLC President and suggesting that I "heal the CLC."

Was Brother Kinnear Alone?

One of the arguments advanced by the ATU in their attack against the CLC invoking the justification process was that Brother Kinnear was the sole applicant signing his February 1st letter.

This is akin to a preliminary objection apart from the merits of the dispute. I concluded earlier that he did not act alone after witnessing abundant evidence that there were Executive Board members in support of the move. Some remain so positioned today. Others may have shifted their allegiance to the ATU after the February 3-7 discussions with the trustee that they were out of their full time jobs and suspended without pay unless remaining loyal to the ATU.

I have interviewed several other ATU members who very much want a vote to disaffiliate from the ATU (and be bound by the outcome). There are also the minutes of the October 2016 – January 2017 membership meetings wherein dissatisfaction with the ATU was discussed without Executive Board members defending the ATU. It is unmeasured how many applauded the member who asked: "Why belong to the International?"

I have concluded that Brother Kinnear was representing "a group of workers" as called for in Section 9 a). That is what presidents of labour organizations do, they speak for their members.

Further, there is no need for a formal executive or membership vote to apply for the justification process (as the ATU argues is missing in this case). Section 9 does not require formal votes to proceed. Most, if not all, Section 9 cases commence without any such requisite formalities.

The final word on the acting alone issue, as ATU has expressed, is that there would be no thought of retribution to those members who supported Kinnear if there was sincerity to this notion of Brother Kinnear acting alone.

Was the CLC involved in a Raid?

The ATU has steadfastly maintained throughout this investigation that Brother Hassan Yussuff, President of the Canadian Labour Congress, was implicated in a plot with Brother Kinnear and Unifor to invoke the Disputes Article to maneuver ATU Local 113 into Unifor.

As such, the ATU has called this justification process “a farce” (as expressed to me by Brother Hanley on March 17th) and by e-mail March 20th “this Article 4 was inappropriate from the beginning” and “you now suggest that we join your pretense that this was a legitimate Article 4.” Similar attacks from ATU officials on the CLC and this Section 9 proceeding have been omnipresent throughout these past eight weeks. This behaviour is, at a minimum, deficient with all affiliates’ commitment to the Article 4 provisions.

As these allegations against the CLC are most serious, I interviewed Brother Yussuff on the record on the afternoon of March 17th. He states emphatically that he never had such a conversation with Brother Kinnear. He went on to explain that Brother Chris MacDonald takes calls to the CLC on this process and that it was Chris who took a call from Brother Kinnear in January about the process. Brother Hassan went on to describe that he has consistently applied the process as set out in the Constitution. Brother MacDonald explained the process to Brother Kinnear as he does in all cases.

Brother Yussuff further stated that it is “far from the truth that I was involved” and denied any collusion on this file.

Brother Yussuff went on to say that he “wants the process to work” and “they (ATU) do not understand the process and my handling.” He says that his job is to ensure “the integrity of the process” and that workers have a process and, further, that “you cannot retaliate against the workers in the process.”

ATU also alleges that Brother Kinnear said that he “had a deal with Hassan to take Local 113 out of the International.”

I spoke with Brother Travis Oberg, President of ATU Local 987 by telephone on March 5th. Brother Oberg told me that Brother Kinnear told him this in September 2015 at the ATU Canada Founding Convention. He claimed that Brother Kinnear prefaced his comment by saying that this would be a result if he was not elected President of ATU Canada. He further claimed that Brother Kinnear also went on to say that “he would hide (local) money from the International.” Brother Oberg also said that “I took it with a grain of salt as Bob was elected President of ATU Canada that Friday.”

Brother Kinnear stated “absolutely not” when I asked him for his response. He went on to describe that he would not have had such a conversation with a local official outside of Local 113.

I have concluded that this conflicting evidence proves little. The time frame (2015) is inconsistent with the events that have arisen since last October. If any such conversation did occur, it was bravado that was “taken with a grain of salt.” In any event Brother Yussuff denies any such conversation with Brother Kinnear.

In conclusion, I accept Brother Yussuff's explanation of his role in this process. I understand that he has already explained this to the Canadian Council of the CLC. I'm confident that he will continue explaining his handling of this issue whenever necessary.

An important observation arises from Brother Yussuff's firm advice to the ATU on February 2nd to ATU Canada President Paul Thorp and ATU lawyer Robert Molofsky (in head office) to avoid trusteeship as a response to the February 1st letter. Further, Brother MacDonald states that both ATU officials clearly understood this advice.

However, at a hastily arranged Local 113 Executive Board meeting on the evening of February 2nd, at least six pro-ATU Executive Board members called for President Hanley to impose temporary trusteeship of the Local. Brother Sforza was present at this meeting. With prompt efficiency, Brother Hanley placed the local under trusteeship by letter of February 2nd, naming Brother Sforza as trustee.

CLC President Yussuff was left with a decision on how to handle the ATU trusteeship. On February 3rd he ruled that ATU Local 113 would have their protections under Article 4 suspended along with suspending the justification process. On February 10th Brother Yussuff re-instated Article 4 protections to ATU.

The point here is that the ATU conspiracy theory against the CLC makes little sense. It was the ATU that brought about the trusteeship, contrary to Brother Yussuff's advice. Brother Yussuff would not have offered such advice if he was part of a plot against the ATU. The ATU decided not to follow the advice, thus proceeding with trusteeship, subsequent legal costs in court, all the while maintaining a narrative that a CLC conspiracy was underway. The ATU has to take responsibility for their own decision on trusteeship; taken without regard to their Article 4 commitments and the CLC's advice to cooperate without retaliation.

Summary

- With the March 17th withdrawal of Brother Kinnear's proceedings with the CLC, this case ends with the filing of this report.
- The request to grant justification for a CLC Article 4 Section 9 vote to disaffiliate is dismissed as Brother Kinnear has withdrawn the claim for justification.
- Unifor stands in violation of the CLC Constitution for its interference in this dispute. The CLC will determine what response is appropriate.
- The ATU has failed to cooperate fully with the justification process by ceaseless attempts to discredit the CLC and calls for the process to terminate. To a much lesser extent, during this investigation as described earlier is two specific instances of refusals to cooperate by withholding requested information.
- President Yussuff and the CLC were not involved in any plot to assist Brother Kinnear, or Unifor, in this justification process.

Recommendation

The CLC is advised to make such amendments to Article 4 to expressly set out protections that are given to workers who support a claim for justification in Article 4. This is best crafted by consensus by the affiliates.

In the meantime, we have Brother Yussuff's interpretation, under his authority contained in Article 15 (2), that workers have access to the justification process without reprisal. Trusteeship is not only inconsistent with the affiliates' obligations to the Article 4 provisions but is also retaliatory.

In Solidarity,



Barry Thorsteinson
CLC Investigator/Mediator

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