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Our File Reference: 283832

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June 26, 2012

**SENT BY E-MAIL  
(ORIGINAL BY REGULAR MAIL)**

Boilermaker Contractors' Association  
P.O. Box 1190  
165 Highway 20 West  
Fonthill, ON L0S 1E0

**Attention: Grant Brooks**

Dear Sir:

**Re: Alberta Boilermakers Collective Agreement – Article 7.07(e)**

You have asked for our opinion on the enforceability of this article.

1. Section 1(f) of the Alberta Labour Relations Code defines “Collective Agreement” means an agreement in writing between an employer or an employers’ organization and a bargaining agent containing terms or conditions of employment, and may include one or more document containing one or more agreements.
2. The 2011-2015 Collective Agreement between International Brotherhood of Boilermakers, Ironship Builders, Blacksmiths, Forgers and Helpers, Local Lodge 146 and the Boilermakers Contractors’ Association of Alberta and the Canadian Model for providing a safe workplace including the 2011 Addendum are in writing and published.
3. The Alberta Boilermakers Collective Agreement was negotiated pursuant to the Registration Certificate granted to it by the Alberta Labour Relations Board. It

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means the Alberta Boilermakers' Collective Agreement is binding under Section 176 and 178 of the Alberta Labour Relations Code on "all employers actually or customarily engaged in the part of the construction industry set out in the registration certificate with whom any of the trade unions in the group of trade unions has established, or subsequently establishes, the right of collective bargaining".

4. The exclusivity to bargain collectively on behalf of the above employers has meant since the 1959 decision of the Supreme Court of Canada that "to the extent of matters covered by the Collective Agreement freedom of contract between master and servant is abrogated. The Collective Agreement tells the employer on what terms he must conduct his master and servant relations. *Syndicat Catholique des Employes de Magasins de Quebec v. Campagne Paquet Ltee* (1959) 18 D.L.R. (2d) 346 at pages 353 and 354.
5. To have an ancillary document form part of the Collective Agreement, arbitrators have looked for an expression of the parties to the Collective Agreement intentions. Their conclusion is that the most reliable expression of intention is found in a reference to the ancillary document found in the Collective Agreement.
6. Article 7.07 refers to Canadian Model for providing a safe workplace and to the 2010 Addendum to the Canadian Model.

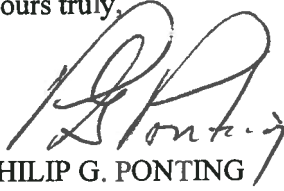
In our opinion the Canadian Model and the Addendum meet the arbitral and legislative tests for being treated as a term and condition of every employee employed by every employer covered by the Alberta Boilermaker Collective Agreement.

7. Section 4.8.2 of the Addendum provides that oral fluid testing may be permitted for incident and near miss (post incident), observation of employee conduct (reasonable cause) and Random Testing. Article 7.07(b) of the Alberta Boilermaker Collective Agreement explicitly state that Random Testing as not been agreed to apply by the Parties to the Collective Agreement to.
8. By Article 7.07(e) of the Alberta Boilermaker Collective Agreement, the parties have agreed on behalf of all employers and employees covered by the Collective Agreement that for the purposes of and following the procedures specified in Section 4.8.2 of the Addendum that for Observation of Employee (4.4) and Incidents and Near Misses (Section 4.5) and when under Random Testing (4.6) is unilaterally imposed by the Employer, the laboratory tests will be conducted using oral fluid testing.

It is our opinion that Article 7.07(e) is binding upon every employer and every employee employed under the terms of the Alberta Boilermaker Collective Agreement. It is enforceable by final and binding arbitration. Any change to Article 7.07 and specifically

Article 7.07(e) can only be made by Local Lodge 146 and the Boilermaker Contractors' Association of Alberta.

Yours truly,

A handwritten signature in black ink, appearing to read 'P. Ponting', written in a cursive style.

PHILIP G. PONTING  
PGP/sss

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