

REVIEW DECISION

Re: Review Reference #: R0323416
Board Decision under Review: April 8, 2024

Date: January 30, 2025

Review Officer: Kevin Rooney

Introduction and Background

The employer is a Health Authority. The worksite includes a hospital “*Campus of Care*” which is comprised of more than 10 buildings (“hospital campus”). The hospital campus has considerably more than 20 workers and required one or more joint health and safety committees (“joint committees”). Due to the diversity of work and size of the hospital campus, the employer has requested variations to the joint committee structure since at least 2001.

By way of background, in 2012, the Workers’ Compensation Board (“Board”), operating as WorkSafeBC, issued an order to the employer directing it to review its joint committee structure of worker representatives, to determine a new system of joint committees.

In December 2013, the Board issued an inspection report accepting the employer’s variation request. The 2013 order permitted the employer to have 12 local joint committees and a central joint committee. The central joint committee was tasked with overseeing the effectiveness of the local committees and dealing with sitewide issues. However, the employer disbanded the central joint committee in 2015, and made other changes to the local joint committee structure over time.

On June 17, 2020, the Board issued an inspection report which directed the employer to review the current joint committee structure at the workplace, and to further discuss and resolve concerns brought forward by the worker representatives. The inspection report stated that the end result would be for the employer and its worker representatives to determine if the current structure was appropriate, or to propose an alternate structure that would be more effective.

In November 2021, the employer and its worker representatives came to a consensus about an alternative structure, which included seven multidepartment, multibuilding joint committees and a central joint committee as a place to consider sitewide concerns, address occupational health and safety trends, oversee the effectiveness of the seven joint committees, provide supports as needed, and contribute to coordinating health and safety across the hospital campus.

On December 7, 2021, the Board issued an inspection report to the employer accepting the variation request under section 32(1)(a) of the *Workers Compensation Act* (“*Act*”). The inspection report stated there would be seven local joint committees and a central joint committee, to represent the employer’s workers on the hospital campus.

In the fall of 2022, housekeeping workers and food services workers were repatriated and became workers of the employer. These workers were not covered in the December 2021 variation order. As such, a new variation request was required from the employer.

On December 13, 2022, the employer submitted a new variation request. The employer requested eight local joint committees to represent all hospital workers on the hospital campus. The employer’s request did not include a central joint committee on the basis all of its workers were represented by one of the eight local joint committees, and because the employer had an internal system (a safety and prevention department) to address sitewide health and safety issues.

On December 16, 2022, the Board issued an order under section 32(1)(a) of the *Act* granting the employer’s request. Three unions (HE, HS, and NU) representing all, or the vast majority of the employer’s workers at the worksite, disagreed with the Board’s decision and requested reviews. One additional union, the DU, requested and was granted interested party status.

On October 18, 2023, I referred the Board’s December 16, 2022 decision back to the Board for further investigation and a new decision. In returning the matter to the Board, I directed the Board to:

- Consult with the parties to consider whether the hospital campus should be considered a single or multiple worksites, in order to determine the appropriate requirements under section 31 of the *Act*.
- Meet with the representatives of the DU and the employer to clarify whether the DU members were considered workers of the employer. If they were, the Board should consult with the parties to determine the appropriate joint committee structure to ensure health and safety interests of their members are best protected.
- The Board should further consult with the employer and representatives of the union representing all of the employer’s workers at the hospital campus and discuss whether the workers’ interests are best represented in the proposed structure or whether the central committee should be maintained.
- The Board should obtain information set out in the guideline for issuing a variation order. This should include, but was not limited to, the meeting minutes for any existing committees, injury statistics, hazard rating for each workplace involved and the types of hazards present at the workplace, as well as the most recent committee evaluation (as required by section 3.26(2) of the *Regulation*) for any existing committees.

Once the Board has completed its investigation, it was to issue a new decision to the parties.

On April 8, 2024, the Board issued an Inspection Report which found that the hospital campus would be considered a single workplace. The Board officer also determined that DU members (Resident Doctors) were workers of the employer. The Board officer noted that the Resident Doctors spent a limited amount of time at the site. They rotated to different facilities on varied schedules, many had a rotation schedule of 28 days. However, some residents might remain at the hospital campus for up to nine months.

The Board officer also found that the hospital campus was a large complex workplace and that a single joint committee was not sufficient. The Board officer found that workers' interests were best represented by eight distinct committees as set out in the employer's proposed structure and that a central committee was not required.

One of the unions (HE) disagreed with the Board's decision and requested a review. The HE submitted that the hospital campus should be considered multiple worksites. The HE also submitted that a central joint committee should be included in the variation order. The employer participated in the review and provided a written submission. The NU participated in the review as an interested party, and provided a written submission. At my request, the Board officer who issued the variation order was asked to provide comments. The comments provided by the Board officer were disclosed to all of the parties, who were provided an opportunity to respond to the Board officer's comments.

Section 20(3) of the *Act* gives me the authority to conduct this review. Section 339(2) of the *Act* requires me to make a decision on the merits and justice of the case, applying the policies of the Board's board of directors applicable in the case. The policies are found in the *Prevention Manual*. The standard of proof that applies to this review is the balance of probabilities.

Preliminary Matter

Item A3.6.2 (b) of the Review Division's *Practices and Procedures* states that one Board decision will frequently address several issues, all of which may be the subject of a single request for review. However, the person who requested the review may not be disputing all of these issues. Review Officers will normally only address the issues that have been put into dispute by the parties. In the Inspection Report, the Board officer found that members of the DU were workers of the employer. As none of the parties have disputed the Board's officer's finding on that matter, that decision stands.

Issues

The issues on this review are whether:

1. The hospital campus should be considered a single workplace.
1. The variation issued to the employer regarding its joint occupational health and safety committees should be granted.

Reasons and Decision

1. Should the hospital campus be considered a single workplace?

In the Inspection Report, the Board officer found the hospital campus should be considered a single workplace. The Board officer reached this conclusion on the basis of the factors set out in the Occupational Health and Safety Guideline G3.16, *First Aid Assessment*, which provides guidance in determining whether a workplace is a single workplace or multiple workplaces and which lists a number of factors to consider. The Board officer found that:

- The hospital campus was owned and under the control of one employer, a health authority.
- The location was not part of a larger property which might be leased to others.
- The hospital campus did not have locations controlled by one employer which were separated by locations controlled by other employers. Rather, the campus was owned and controlled by the health authority with multiple employers that may interact with each other.
- Locations of the employer were not greater than 20 minutes apart from each other.
- There were no public roadways within the hospital campus.
- There were no locations of one employer separated by physical barriers. The hospital campus was a multi-employer workplace in which different employers might interact with each other.
- Although there are many different departments within the hospital campus that reported to different Directors, the campus was under the direction of one administrative service except for the food services and facilities departments who each reported to their own Directors.

On review, the HE submits that the hospital campus should be considered multiple worksites. The campus is comprised of several different buildings across a large geographic footprint, and is separated by two public roadways. One of the buildings on the campus has a separate joint health and safety committee. The Board officer did not address the fact that there were several employers who provide services at the hospital campus. The HE submits that there is no occupational health and safety benefit to the workers at the hospital

campus for it to be declared one worksite. There was, however, a great harm done to them by declaring it to be one worksite as it has created a continuous cycle of variation requests to comply with the three-year time limit set out in G-P2-32-1.

In comments provided on this review, the Board officer reiterated that there was no public roadway that separated the locations of the employer. The Board officer noted that on September 16, 2024, the Manager of Safety and Prevention confirmed that the hospital campus was not separated by any public roadways. The Board officer noted the union had referred to BP, a separate building. The officer advised that BP had never been part of the variation for the hospital campus. It was a separate workplace, registered as a separate location for the hospital, and had its own joint committee. Finally, the Board officer noted that the campus had historically been considered one worksite for more than 30 years in variations issued to the employer.

In a response to the Board officer's comments, the HE notes that hospital campus does have operations that are separated by a public roadway. These included an eyecare centre, a skin care centre, and an arthritis centre. The HE also notes that all of these centres are represented in one of the clinic's joint occupational safety and health committee.

After considering all of the evidence on file, including the submissions provided by the HE, as well as the Board officer's comments, I am satisfied that the hospital campus should be considered a single workplace.

In reaching this conclusion, I note that the existence and scope of a workplace is not just made for the purpose of section 31 of the *Act*. As discussed in the Review Division decision #R0239320, which I acknowledge is not binding upon me, many other statutory and regulatory obligations are defined by reference to a workplace. As noted above, the Board officer relied on the Board's OHS Guidelines for the provision of first aid. That guideline identifies a number of factors which should be considered in determining the number of workplaces.

In my view, these factors support the hospital campus being considered a single workplace. In particular, I find it significant that the location is under the control of one employer; it is not part of a larger property which may be leased to others. Further, the locations are controlled by one employer and they are not separated by locations controlled by other employers, and workers can walk from one area of the hospital campus to any other location within approximately 10 minutes.

In reaching this conclusion, I agree with the HE that there is a roadway which separates some of the location of the employer from another. This roadway could be considered a physical barrier. I also acknowledge that although controlled by one employer, the location appears to have three separate administrative structures. However, in this case, each of the separate

administrative structures controls the provision of services throughout the entire workplace. Consequently, after weighing these factors, I am satisfied that it is appropriate to consider the hospital campus as a single workplace.

2. Should the variation issued to the employer regarding its joint occupational health and safety committee be granted.

Section 31 of the *Act* states that:

An employer must establish and maintain a joint health and safety committee.

- a) in each workplace where 20 or more workers of the employer are regularly employed, and
- b) in any other workplace for which a joint committee is required by order.

Section 32 of the *Act* permits variations in the committee and committee requirements through an order of the Board as follows:

- 1) Despite section 31, the Board may, by order, require or permit an employer to establish and maintain:
 - a) more than one joint committee for a single workplace of the employer,
 - b) one joint committee for more than one workplace or parts of more than one workplace of the employer, or
 - c) one joint committee for the workplace, or parts of the workplace of a number of employers, if the workplaces are the same, overlapping or adjoining.

Sections 33 to 46 of the *Act* and part 3.26 to 3.28 of the *Occupational Health and Safety Regulation* ("*Regulation*") set out the requirements for joint occupational health and safety committees, including the structure, composition, selection process for worker and employer representatives, duties, functions, rules of procedure, and joint occupational health and safety committee member education.

As noted above, following the repatriation of housekeeping and food services workers to the employer at the hospital campus, the employer requested a variation of the joint committee structure which had been approved in the Board's December 2021 inspection report. The employer requested the creation of one additional local joint committee and determined the central joint committee was not required. The employer advised that the variation request was in compliance with the *Act*, and that all of its workers at the hospital campus would be represented in one of the eight local joint committees. The employer stated the local committees would stay within the scope, duties and functions of the *Act*, and were familiar with the issues and hazards unique to their local work areas and would have adequate representation for union and employer members for each committee.

The employer submitted a terms of reference template for the joint committees, and provided e-mails from the HE, HS and NU agreeing with the variation request, on the basis that a central joint committee was added. The employer noted that all of its employees at the campus would be represented in one of the eight local joint committees. The employer stated the new committee structure met the intent of the *Act*, and hospital employees at the campus would be able to continue to address the concerns they may have at the worksite. Additionally, the employer stated the proposed local joint committee structure was in the best interest of the employees at the hospital campus and ensured all employees were represented under a joint committee. The employer advised that a central joint committee was not included in the variation request, as the eight local joint committees would represent all of its workers at the hospital campus.

As also noted above, on December 16, 2022, the Board cancelled the December 2021 variation order, and approved the employer's December 2022 variation request. The Board officer noted that she and another Board officer had attended three of the four central joint committee meetings which had taken place. It was the Board officer's observations that the central joint committee was not fulfilling the requirements found under section 36 of the *Act*, or the terms of the December 2021 variation order. The Board officer advised that the *Act* and its associated policies and guidelines, do not require or provide guidance for an employer to establish and maintain a central or overarching joint committee when there are one or more joint committees established in the workplace as required in section 32 of the *Act*. Consequently, the Board officer determined that the proposed structure found in the employer's December 2022 variation request would meet the intent and requirements described in section 31 of the *Act*.

On that review, the HE advised that it had significant concerns with the process the Board used to assess the employer's December 2022 variation proposal. The representative argued the Board made errors in facts and analysis as well as the application of law and associated guidelines in granting the variation despite the objection of workers' representative and their associated unions. The representative also noted that all four unions represented workers affected by the decision had made submissions requesting the order be rescinded. The representative argued that the safety history of the employer showed that multiple committees without a coordinating committee contributed to safety concerns being unaddressed.

The representative provides an example of a specific situation which was raised in 2020, by worker representatives. Those concerns ultimately brought worker representatives, their associated unions, and the employer together through a Board mandate to evaluate the multicommitee structure to determine if it was appropriate or to propose an alternative. The consensus in November 2021, was that the multiple committees without a coordinating committee was not

appropriate and that a multicommittee structure that included a central joint committee was necessary. This was the approach that was approved in the December 2021 Board variation order.

Following my referral of the Board's December 16, 2022 order back to the Board, and after further consultation with the unions and the employer, the Board officer issued an order to the employer to allow the variation for eight joint committees for the workplace for a one-year period.

In doing so, the Board officer noted that the employer and unions agreed that a varied joint committee structure was appropriate at the hospital campus as it was a large and complex workplace and it ensured the workers' interests were best represented. However, the Board officer noted that despite extensive consultation, the parties did not agree on the exact structure, more specifically, whether the varied structure must include an additional overarching central committee.

The Board officer noted that the guidelines stated that the Prevention Officer should ensure that there was union agreement to the proposed structure. However, the Board officer also noted that in the absence of such an agreement, the default provisions of section 31 of the *Act* would be for this employer to establish and maintain a single joint committee for this large/complex workplace and all parties agree that this would not ensure the workers' interests are best represented.

Consequently, the Board officer determined that it was reasonable to grant the variation without the unions' agreement to the proposed structure, not including a central committee at this time. The Board officer stated that the status of the central committee could be reviewed after one year, as noted in the expiry below. The Board officer determined that the variation would expire on April 8, 2025, unless cancelled by the Board. It was incumbent on the employer to apply for extension of the variation prior to that date. The request for an extension should be accompanied by, at a minimum, the most recent joint committee evaluation for each joint committee and participation and input from the representative unions.

On review, the HE representative submits that the variation order should be cancelled as it does not provide the best way to protect the rights of workers to participate in their health and safety. In particular, the representative submits that the process that was used to develop the 2021 variation was completed in collaboration with the employer and the union; however, the employer's 2022 variation request was a unilateral disbandment of the central committee. The representative notes that the process which led up to the original 2021 variation was consultative and thoughtful and was the best representation of the needs of all parties including the employer's representatives from their occupational health and safety department and operations, workers at various worksites at the

hospital campus, and their supporting provincial staff as contemplated by the legislation and policy governing the variations.

The HE representative submits that the current variation request by the employer represents the interests of the employer only. The representative notes that no worker has been consulted and confirmed that they are better represented with this decision, which was arrived at without their input. The representative states that no evidence has been brought forward from the employer to indicate that the variation proposed by the employer in 2022 represents the health and safety interests of workers better than the prior variation. The representative notes that the employer's evidence shows multiple committees do not have full worker representation and are unable to make quorum, and are without employee co-chairs and have hundreds of incomplete investigations.

The HE representative acknowledges that the *Act* and associated policies and guidelines do not require or provide guidance on the need for a central committee. However, the *Act* does allow flexibility for there to be a variation on the committee requirements, when it meets or exceeds the goals of the *Act*. The representative also acknowledges that the eight-committee structure meets the requirements under the *Act* for the employer to comply with the intent of the *Act*. However, the representative also submits that the intent of the *Act* must be considered in its entirety and includes Part 2, Division 5, 14(2)(f) to foster cooperative and consultive relationships between employers, workers, and others regarding occupational health and safety and to promote worker participation in the occupational health and safety programs.

The HE representative states that if the employer has a functional internal responsibility system, as indicated by the Board officer, then it has not used that system to raise issues and resolve them. Consequently, the representative submits that employer does not have a functioning internal responsibility system which fosters cooperative and consultive relationships between employers and workers or promotes worker participation.

The HE representative notes that the Board officer stated that none of the documents from committee meetings identified a need for a central committee. The representative submits this is not surprising considering the central committee had not been functioning. The representative notes that in the spring of 2020, the applicant's worker representatives contacted the applicant's staff with concerns about the function and effectiveness of the multiple local joint occupational health and safety committees at the hospital campus and raised site-wide concerns including the potential for violence and unsafe conditions in the tunnels connecting the site and broken elevators in common spaces, in addition to an issue about site-wide sling availability. The representative noted that this was years after the employer disbanded the central committee and it was presumably reliant on its internal responsibility system.

The representative also noted that in the spring of 2020, the issue of slings was raised in the neuro-spine unit. This issue was part of the impetus for the central committee. The employer identified a need for a site-wide system of slings. They were ordered and arrived and distributed equally across the site. The neuro-spine unit wrote a recommendation because, in their unit, many more slings were required due to the nature of the patients. The representative states that this is an excellent example of an issue that could have been brought to a central committee for discussion that would not be raised by all the joint committees because the equal distribution of slings would only affect one joint committee for whom the distribution of slings was, in fact, inequitable.

In addition, the HE representative submits that the Board officer did not do a sufficient investigation into where Resident Doctors would fit within the joint occupational health and safety committee system. The representative notes the employer was unable to report an incident of a Resident Doctor reporting to a joint committee. The representative states this is not surprising as they have not participated in any joint occupational health and safety committee.

On review, the NU representative submits that a central committee is necessary to oversee the joint committees due to the size and complexity of the hospital campus. The NU agrees with the HE submission that the Board Officer should not have granted the variation in the absence of an agreement by all of the unions on the variation structure. The NU representative also raised concerns over the effectiveness of the employers' special unit to serve as a central coordinating body for concerns raised by the 8 joint committees and its ability to action system-wide changes to respond to those concerns.

In comments provided on this review, the Board officer notes that Resident Doctors have not disputed that the joint occupational health and safety structure variation is appropriate for its workers' health and safety. The Board officer also acknowledges that all of the unions would have preferred to have a central committee included along with the eight joint committees.

The Board officer notes that Guideline G-P2-32-1 contemplates that all parties involved in the variation request are in agreement with the request. However, in the absence of an agreement, the Board officer stated that she was tasked with making a decision based on law and policy and the submitted evidence, on whether the variation request was equal to or more effective than section 31(a) of the *Act*. The Board officer noted that there was no obligation by the Board to grant a variation request. In order to do so, however, the requirement found in section 31(a) must be met. If the Board officer does not have evidence that the variation request is equal or more effective than this section of the *Act*, a single joint committee must be established in the workplace.

The Board officer also states that the eight local joint committees have the ability to make recommendations, not only to the Managers of the departments they

represent, but also to Managers of other departments where there is an overlapping safety issue that affects their workers. They would not be required to go through a central committee to send their recommendation to another department's Manager.

The Board officer advises that based on the requirements found in section 31(a) and section 32(1)(a) of the *Act*, the variation order met the intent of the *Act* and a central committee, at this time, was not required. The Board officer notes that the HE has not argued that the variation structure was not equal or more effective than section 31(a) of the *Act*.

On review, the employer submits that the Board officer properly applied both the legislation and policy in making a determination on whether to grant the employer's variation request. The employer submits that it did not dissolve the central committee in order to reduce the overall number of committees. Rather, the employer sought to redirect those resources to a new committee dedicated to exploring the concerns of some of the hospital's newest and most vulnerable workers following the repatriation of food and housekeeping services.

The employer also notes that HE's position that the approval of a variation request constitutes an error in fact, law, and policy if it has been granted despite a lack of substantial consensus between the parties, runs counter to both legislation and policy. Requiring a consensus in all instances would unduly fetter the discretion of the Board officer reviewing a variation application and effectively limit the role of the Regulator to that of a rubber stamp. It would also elevate policy over legislation in a manner that is inappropriate and not in keeping with the rule of law.

The employer states that the evidence demonstrates the central committee was failing to fulfill its statutory purpose. The minutes of the central committee's meetings were analyzed by the Board officer prior to granting the original variation. The employer notes that conversation at the central committee meetings was dominated by disputes over the terms of reference and matters not appropriately before it. Due to this overwhelming dysfunction, it was impossible for the central committee to serve any kind of central coordinating role.

The employer submits that the variation structure exceeds the requirements set out in legislation and meets the overarching goal of ensuring workers have a forum to raise common safety concerns and make suggestions to the employer on improvements. All workers at the worksite are afforded representation on the committees.

The employer also submits that it does have internal systems that foster cooperative and consultative relationships. It has a specific unit which serves as a central coordinating body for concerns raised by the occupational health and safety committees and is able to action system-wide changes to respond to

concerns. This internal unit meets regularly to discuss local occupational health and safety committee dialogue to determine whether there are overarching patterns to address at an organizational level and between all sites.

It is the employer's position that the existing committees demonstrate they are functioning effectively without central committee oversight. Further, the employer submits that the Resident Doctors have the same rights and responsibility as all of the staff. A Resident Doctor representative has been appointed by the Resident Doctors' union to participate in the hospital joint occupational health and safety committee.

I have also considered Guideline G-P2-32-1, *Variations in Joint Committee Requirements*. The Guideline provides guidance on factors that a Board officer may consider in determining whether to issue an order to vary the joint committee structure under section 32 of the *Act*. The Guideline states that section 31 requires a joint committee to be established and maintained at each workplace where there are 20 or more workers of the employer. An employer, or members of a joint committee at a particular workplace, may wish to vary this requirement to provide a structure that is more appropriate for the type of workplace or workplaces operated by the employer. Situations where this may arise include situations where there are two or more employers at the same workplace.

The Guideline sets out that varying joint committee requirements in section 31 may only be done by a Board officer. It will normally be triggered by a request from the employer, members of the committee, or the union. The request should be supported by as much relevant information as possible.

The Guideline provides that in considering the request, the Board officer's goal is to evaluate whether the proposed committee structure will be practical and equal or more effective than the structure set out in section 31. The Guideline sets out a number of factors for the Board officer to consider. This includes the nature and make-up of the workforce, and whether there should be representation from specific workplaces, as well as the nature of the relationship between the workers and employer at different workplaces. The Board officer should ensure that there is a union or workers' representative agreement to the proposed structure and that the workers' interests are best represented in the proposed structure.

After considering all of the evidence on file, including the submissions provided by the parties on this review, I have confirmed the Board's order. In reaching this conclusion, I note that section 32 of the *Act* conveys broad discretion on the Board to approve variations of the requirements under section 31 of the *Act*.

I acknowledge the applicant has expressed concerns in regard to the variation not including a central joint committee to oversee the eight joint committees

established by the variation. I also acknowledge the applicant's submission that the 2021 variation included a joint central committee which was agreed to by all parties and that the central committee was not provided a sufficient opportunity to establish its efficiency. In addition, I acknowledge the applicant's submission that there were several site-wide issues which a central committee could have been beneficial in resolving.

I note, however, that the issues identified by the applicant are several years old. I accept the employer has a separate department which coordinates with the joint committees to deal with site-wide issues. I find it significant that the issue of sling distribution was addressed by the joint committees and the employer in the absence of a central committee. I am also satisfied that the more recent information does not support a current need for a joint central committee to oversee the eight joint committees established by the variation.

In my view, the Board officer has considered the applicant's concerns as well as the employer's response to their concerns and found that the inclusion of a joint central committee is not required at this time. The Board officer found that the employer's variation proposal was practical and equal to or more effective than the structure set out under section 31. I find it significant that the other three union representatives of workers at the workplace were satisfied with the information provided by the employer and have agreed to the joint committee variation for the one-year period provided by the Board order. Consequently, I am satisfied the Board has listened to the concerns of the parties and appropriately exercised its discretion in this case.

In particular, I am satisfied that the varied joint occupational health and safety structure ensures that all workers at the hospital campus are represented through the varied joint committee structure. I am also satisfied that the employer has a specific department, which acts to coordinate and respond to worker's safety concerns identified by the joint committees. I accept the Board officer's evidence that none of the joint committees have expressed a need for a central committee to oversee their activity and, most importantly, I am satisfied that the varied committee structure exceeds what is required by legislation.

I also find it significant that the joint committee variation is temporary. It expires on April 8, 2025. If the employer wishes to continue with the variation, it must submit their request for renewal of the joint committee variation prior to the expiry date. The requirement for the employer to resubmit an application for the variation to continue, allows the parties the opportunity to discuss any continuing concerns with the varied structure.

I deny the applicant's request.

Conclusion

As a result of this review, I confirm the Board's decision of April 8, 2024.

Kevin Rooney
Review Officer
Review Division