

IN THE MATTER OF AN ARBITRATION

BETWEEN:

BC FERRY SERVICES INC.

(the “Employer”)

AND:

BC FERRY AND MARINE WORKERS’ UNION

(the “Union”)

(Exclusions/Inclusions)

ARBITRATOR:

Vincent L. Ready

COUNSEL:

Eric Harris, Q.C. and  
Chris Leenheer for  
the Employer

Sandra Banister for  
the Union

HEARING:

May 21 and August 26, 2008,  
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Vancouver and Richmond, BC

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## **INTRODUCTION**

Over a long period of time, the parties have demonstrated extraordinary persistence and preoccupation over the issue of exclusions from the bargaining unit.

Almost 30 years ago, the issue was placed before the Labour Relations Board. Since that time, despite the decision of the Board at that time, exclusions have been a continuing concern of the Employer.

In 2004, while I was acting as a Special Mediator under the provisions of the *Railway and Ferries Bargaining Assistance Act*, the issue of exclusions became, in my view, one of the most important issues raised by the Employer. During that mediation, I was unable to achieve a resolution of the issues.

As a consequence, in my Interim Award delivered on October 15, 2004, I ordered an amendment to Article 2.01, as follows:

### 2.01 Bargaining Unit Defined

The bargaining unit shall be comprised of all employees of the Employer except those positions currently excluded and those positions which may be excluded by the following process:

- A. With effect from April 1, 2007, the Employer shall advise the Union in writing of new or additional positions at or below the level of Manager which the Employer believes must be excluded from the bargaining unit.
- B. The Employer shall provide the Union with the applicable job descriptions and such further information which the Union reasonably requires in order to reach a conclusion with respect to the requests for exclusion.
- C. The Union is entitled to challenge all excluded positions in accordance with the Collective Agreement.

D. Any disputed requests for exclusion shall be referred to Vincent L. Ready, or, in his absence, to Colin Taylor for final and binding resolution in accordance with the parties' agreement to grant exclusive jurisdiction to do so under the October 15, 2004 Award.

I also ordered the establishment of the following Letter of Understanding (LOU):

Letter of Understanding

Subject: Exclusions/Inclusions

It is recognized that the composition of the bargaining unit relative to the principles of exclusions and inclusions by the Labour Relations Board has and continues to change and that the October 13, 1999 "Consent Order" issued by Rod Germaine no longer facilitates reasonable and effective relations.

The 1999 "Consent Order" is repudiated and further exclusions/inclusions shall be determined on an assessment of the Traditional Management Responsibilities Test (e.g., hire, fire, demote, confidentiality, industrial relations input, etc.) and/or the contemporary test of "Management Team" responsibilities.

Consistent with this understanding, currently included positions in Human Resources, Crewing and the position of Assistant Terminal Manager shall be excluded from the bargaining unit on the basis of their industrial relations affects.

Current employees affected by this Letter shall retain all options under the Collective Agreement for a period of six (6) months. This period may be extended by mutual agreement on a case by case basis.

Notwithstanding this Letter, included persons may continue to substitute into excluded positions as determined by the Company.

These changes were the product of informal discussion with each party, through the direct mediation process and in the ultimate arbitration itself. As with many mediation-arbitration processes, the resulting arbitration award

reflected all of the interactions between the parties and the Arbitrator. There can be no doubt, that the agreement of the Employer to agree to defer consideration of the exclusion issue was on the basis that new provisions in the Collective Agreement were to be established.

On February 11, 2008, the Employer wrote to the Union advising it of the Employer's request that certain positions within the bargaining unit be excluded from the bargaining unit. The Union did not agree with the request and, therefore, the matter was referred to me for a final and binding decision under Article 2.01 of the Collective Agreement and the LOU as set out above.

Once again I attempted to mediate the issues arising from the Employer's request but, again, I was unable to achieve an agreement.

I then obtained the agreement of Counsel to a process to be followed to have the matter decided through arbitration. The parties agreed to first deal with the requested exclusions in the Deck Department, the Engineering Department and the Catering Department and to defer to a later date the remaining departments.

In order to hear the evidence with respect to the work performed by employees in the positions at issue, the parties agreed to proceed by way of Will Say Statements to be produced in advance of the oral hearing, and to then limit the actual hearing to the cross-examination of witnesses.

The parties also agreed that, in advance of the hearing, they would make written submissions to me on the legal principles to be applied in this arbitration. It was agreed that I would then deliver an Interim Award outlining the legal principles which should be taken into account by the parties when introducing evidence at the hearing and in making Final Argument.

The parties filed their respective submissions on the legal principles and I issued an Interim Award on July 8, 2009. In that Interim Award, I first dealt with procedural issues as follows:

### **PROCEDURAL RULING**

I have carefully reflected on the able submissions made by Counsel for the parties. I also have reviewed the “will say” witness statements as well as my direct knowledge of the circumstances which have brought us to where we are today.

During the course of completing the interest arbitration dated October 15, 2004, it was evident that the issue of the appropriate representation of management employees on the vessels and in the terminals was central to the Employer’s position. After extended discussions with the parties and negotiations between the parties, a solution emerged which is captured by the changes to Article 2.01 and the establishment of the Letter of Understanding on exclusions/inclusions which are quoted earlier in this Interim Award.

Because of my involvement with the parties, it was decided that any dispute with respect to exclusions/inclusions would be referred to me for a final and binding resolution. It was also agreed that a previous Consent Order which existed with respect to this subject would be “repudiated”.

A new test was established for exclusions/inclusions as follows:

...shall be determined on an assessment of the Traditional Management Responsibilities Test (e.g., hire, fire, demote, confidentiality, industrial relations input, etc.) and/or the contemporary test of “management team” responsibilities. (Letter of Understanding)

Therefore it was apparent that these new provisions move the parties away from the traditional approach of raising such matters before the Labour Relations Board. It has been confirmed to me by the parties during these proceedings that I have the full jurisdiction to make decisions on these matters within the framework created by the provisions referred to above.

I have asked myself the question as to why it would have been agreed to appoint me to conduct this arbitration rather than to have the Labour Relations Board deal with the issues. I have concluded that the answer lies in the understanding that my extensive involvement with the parties should help me to understand the relationship between the parties, the consequences of change, how the organization operates, the unique structure of the work performed by employees of the Employer, the special challenges associated with operating a modern ferry system and the need to guide the implementation of any changes resulting from this process.

It is for these reasons that I established the procedures described earlier in this Award. I selected the ship board departments as the first areas to examine. Therefore an examination of terminal operations has been deferred. I asked for the production of “will say” witness statements to be produced and exchanged in order to define the basic evidence of the parties.

I am now prepared to determine the procedures which will be followed in bringing this part of the arbitration to conclusion.

1. This interim arbitration Award will establish the legal and interpretive principles I will consider in assessing the evidence. It is important that these principles be outlined in order to guide the parties in dealing with the evidence and in preparing final Argument.

At this stage, I have not reached any final conclusions with respect to the exclusion of specific classifications. I also reserve the right to place different emphasis and weight on the principles described later in this Interim Award based on my findings with respect to the evidence.

2. My office will be in touch with Counsel to establish dates for three separate hearings. These hearings will be restricted to the cross examination of the witnesses who previously provided the “will say” witness statements. Two days will be allocated for each hearing. The hearings will take place in the following order:
  - (a) deck
  - (b) engineering
  - (c) catering

3. Upon the completion of these hearings, I will establish the process of having the parties file final written submissions. Those written submissions should address the evidence of the parties relative to the legal principles established in this Interim Award.
4. Prior to issuing my final Award on these three departments, I will meet with the parties to discuss the process of implementation of my Award. If the parties are unable to agree on a detailed plan of implementation, I will decide on the plan of implementation and reserve the necessary jurisdiction to deal with any implementation issues or any other matters which were not foreseen.
5. Upon the completion of this matter, I will establish a similar process to conclude the terminal operation issues.

I then outlined the legal principles under which the Arbitration would be decided, as follows:

### **LEGAL PRINCIPLES**

The employees of the Employer who work on the ferry vessels work in a complex environment involving significant technical skill requiring constant awareness of the operating environment, safety conditions and the comfort and safety of passengers. The issue which must be resolved is the justification and necessity for the presence of excluded employees on the vessels in order to respond to the above-described challenges.

In carrying out my responsibilities in this arbitration, I intend to be faithful to the expressed and implied intentions of the parties which helped establish the content of my Interest Arbitration Award.

I will set out the principles below which will be used by me in completing my final Award.

1. Exclusion of Certain Positions

One of the provisions of the Interest Arbitration Award was that previously included positions in Human Resources,

Crewing and the position of Assistant Terminal Manager would be immediately excluded due to “their industrial relations effect”. It was therefore considered appropriate to exclude those positions immediately as the employees who held those positions represented management sufficiently in their relationships with the Union and its members so that they would have a conflict of interest by remaining in the bargaining unit. I understand that this included approximately 70 positions.

As I consider this immediate exclusion to be relevant to my decision, I expect the parties to compare and contrast the positions which are at issue in this arbitration to the positions which were excluded as described above. In other words, I would request that the parties address the similarities and differences between the positions which were excluded above from those positions which remain outstanding.

2. The 1999 Consent Order

The Letter of Understanding re Exclusions/Inclusions states as follows, in part:

It is recognized that the composition of the bargaining unit relative to the principles of exclusions and inclusions by the Labour Relations Board has and continues to change and that the October 13, 1999 Consent Order issued by Rod Germaine no longer facilitates reasonable and effective relations.

The 1999 “Consent Order” is repudiated and further exclusions/inclusions should be determined on an assessment of...

This change in approach must, in my view, be given significance as the acknowledgement contained in this passage is very clear. This language means that the parties would not be well served by continuing to operate under the Consent Order.

The Consent Order is contained in an arbitration Award between the parties dated October 14, 1999 ([1999] BCCAAA No. 405). The Award was agreed to by the parties and created an extensive Memorandum of Agreement with a

number of Appendices. The Memorandum captured the resolution of a number of outstanding grievances and provided a future exclusion process between the parties.

The excluded positions identified in Appendix A and the included positions identified in Appendix B were shore-based positions in the corporate Human Resources areas. Appendix C established a procedure where employees in newly excluded or included positions would elect in writing not to become either excluded or included. Appendix D contained a procedure to deal with future exclusions and Appendix E dealt with the issue of temporary exclusions.

I will expect the parties to address in their final arguments the issue of why the parties agreed that the Consent Order “no longer facilitates reasonable and effective relations”. I also would ask the parties to address the beginning phrase which provides as follows: “It is recognized that the composition of the bargaining unit relative to the principles of exclusions and inclusions by the Labour Relations Board has and continues to change...”. What was meant by these words? Do the words mean that the parties were intending to establish their own regime distinct from the jurisprudence of the Labour Relations Board?

As I consider the answers to these questions to be relevant to my decision in this matter, I would also ask the parties to answer these questions in their final argument.

### 3. Positions At or Below the Level of Manager

In Article 2.01 of the Collective Agreement which arose from the interest arbitration, there is the following provision under paragraph (A):

With effect from April 1, 2007, the Employer shall advise the Union in writing of new or additional positions at or below the level of Manager which the Employer believes must be excluded from the bargaining unit.

I consider that it is important to determine what is meant by the “level of Manager” and who would be below the level of “Manager” who may be suggested for exclusion.

I would ask the parties in the final argument to address the question of what significance there is to the provision that the excluded positions could be below the level of “Manager”.

4. The Traditional Management Responsibilities Test and the Management Team Responsibilities

The Letter of Understanding re Exclusions/Inclusions reads in part:

...shall be determined on an assessment of the “Traditional Management Responsibilities Test” (eg. hire, fire, demote, confidentiality, industrial relations input, etc.) and/or the contemporary test of “Management Team” responsibilities.

It appears clear to me that I am able to examine the application of both tests and can rely on only one of the tests if I so decide. The manner in which this provision is written also appears to be different from a simple reference to current Labour Relations Board jurisprudence.

In final argument, I would expect the parties to address how to define both tests and the appropriateness of selecting one over the other or whether they can be utilized in a complimentary manner in reaching my decision.

The parties have made submissions with respect to the approach currently adopted by the Labour Relations Board in examining inclusions or exclusions from the bargaining unit. The issue must be addressed as to whether the words “Traditional Management Responsibilities Test” was intended to replicate the current state of the jurisprudence of the Labour Relations Board or whether it is different. In other words, why was the word “traditional” used if it was intended to be the modern approach of the Labour Relations Board?

Secondly, what is the contemporary test of “Management Team” responsibilities? The parties have made submissions with respect to the utilization of the management team concept by the Labour Relations Board. Was it intended by the parties that the use of the Management Team concept was restricted to the manner in which the Labour Relations Board has previously utilized such a concept, or was it simply a reference to the current manner the Labour Relations Board approaches such issues?

These questions are fundamental to my jurisdiction. Therefore, it is essential that these principles be interpreted and applied properly.

The submissions made on behalf of the Employer rely on the *Vancouver General Hospital* case, BCLRB No. B81/93. The Union argues that the principles contained in that decision have been substantively narrowed by the Labour Relations Board in the *Cowichan* and *Highland Valley* cases.

It is obviously central to my responsibility in this matter to come to a conclusion between these competing approaches. I am prepared to say at this time that the language in the Letter of Understanding, as quoted above, appears to be intended to direct me to not adopt the current approach of the Labour Relations Board to the issue of inclusions and exclusions. I, therefore, expect to receive submissions from the parties as to how far I should depart from the current practice at the Labour Relations Board.

5. Safety

The Employer in this case takes the position that I must take into account the changes in the operation of the fleet over the last 20 or 30 years.

I have been referred to the report by George L. Morfitt, FCA issued in January of 2007 entitled "Review of Operational Safety of British Columbia Ferry Services Inc."

I have reviewed this Report which contains a very helpful summary of the challenges in safely operating a modern ferry system. Mr. Morfitt emphasized the importance of establishing an appropriate safety management system and a commitment to operational safety. In order to carry out such policies, he emphasized the importance of the consistent application of the safety management system in the organization, the need for investigation and follow up of safety issues, the need for the training and retraining of operational personnel and the need of a thorough investigation of incidents.

It is my view that my decision should serve to reinforce the need for taking all appropriate steps to monitor safe operations.

In final argument, I expect the parties to address the issue of what relevance the issue of safety has to the management of the vessels. In other words, is there a need for excluded personnel in the departments on the vessels in order to ensure the appropriate standards are maintained and that the training required is accomplished in a proper way?

I anticipate the Union will argue that its members are fully conscious of the need for safety and that this does not justify any management exclusion. On the other hand, I anticipate the Employer will argue that exclusions are the means by which management will have the ability to be accountable for the continued safe operations of the fleet.

6. Nature of the Operations

I have received considerable material during the course of these proceedings and through the “will say” statements with respect to the nature of the vessels themselves and the systems required for their operation. The Morfitt Report also provides a useful place to see the number of different ways in which the vessels have added new technologies and systems for the maintenance of safe operations of the vessels. The issue is whether it is inherent in the change in the nature of the vessels that there is a need for a broader management presence on the vessels.

It is a common experience in industrial undertakings that there is a management presence associated with large capital assets. This is not a coincidence but it is based on the need to manage the assets in an accountable manner. Similarly, the size and complexity of the vessels provide higher customer service standards. Is it necessary that representatives of management be present on the vessels in order to maintain accountability with respect to customer service? By looking at other businesses which emphasize customer service, is it commonly the case that a management presence is present in order to maintain the high level of customer service required? Are “Manager” exclusions justified by an examination of the experience of other employers?

7. External Authorities

The materials I have reviewed demonstrate that the Employer is responsible to a number of external authorities. Under the *Coastal Ferry Act*, mechanisms exist with respect to the review of the efficiency of the ferry system. I would expect the parties to address in closing argument the issue of whether there is a relationship between the need for efficient operations as anticipated and required by the *Coastal Ferry Act* and the presence of management level authority on the vessels.

Similarly, the safety management system involves the adoption of the International safety standards. It also involves the audit of safety systems from time to time. There is also the overriding responsibility of the Employer to satisfy Transport Canada with respect to fleet operations.

As Mr. Morfitt said at page 43 of his Report:

Any operational systems such as marine transportation must ensure that it can operate safely and in compliance with relevant regulations, codes and standards and with any internal company requirements. In this regard, operational safety depends to a great extent on the marine transportation system having staff who are qualified – not only with tickets or certificates, but with competencies such as skill, knowledge and experience, and training for the exacting requirements of the system.

I would expect the parties in final argument to address the issue of whether the need to respond to external authorities creates the justification for the presence of management authority on the vessels.

8. Vessels at Sea

The Employer employs senior fleet operations, engineering operations, customer care and food and retail personnel who are not on the vessels at all times. It is evident from the “will say” statements and from other information I have received, that the vessels, while in operation, currently do not have excluded managers present in each of the three departments on board the vessel.

The question is whether it is relevant to my task to consider the fact that the vessels are operating on many occasions without the active presence of any excluded employee. Decisions need to be made with respect to the operations and safety and customer service levels on a constant basis. Decisions must be made with respect to the conduct of employees. How much consideration should I give to the absence of senior management oversight in the above described circumstances when considering the exclusion of representatives of the three departments on the vessels?

Following the receipt of the Interim Award dated July 8, 2009, the Union made application to the Labour Relations Board under Section 99 of the *Labour Relations Code*, on the basis that my decision was inconsistent with the principles expressed or implied in the *Code* and that it was denied a fair hearing.

The Labour Relations Board issued the decision of Vice-Chair Wilkins on November 9, 2009. The Vice-Chair said in part:

Similarly, the Union says the Arbitrator determined that the repudiation of the 1999 Consent Order must be significant to the issues before him. I find there is no determination to this effect in the Interim Award. The Arbitrator raises the issue in the Interim Award, and asks the parties for their submissions. It is open to the Union to convince the Arbitrator in its submission that this approach is incorrect or that he ought not take this approach. There has been no denial of a fair hearing because the Arbitrator has asked the parties for submissions on the issue of the repudiation of the 1999 Consent Order. There is no final determination in the Interim Award on the issue. Since the Arbitrator has asked for submissions the Union's claim that it has been denied a fair hearing is also premature.

The Union argues the Arbitrator has decided in the Interim Award that he does not have to follow Board jurisprudence with respect to inclusions and exclusions. The Union argues that such a finding is inconsistent with the principles expressed or implied in the *Code*. The Arbitrator notes, that on his reading of the Letter of

Understanding, it “appears” the parties are directing him not to adopt the current approach of the Board to the issue of inclusions and exclusions. He then invites submissions from the parties on the issue. I conclude the Arbitrator still has an open mind on the issue of whether the parties have asked him in the Letter of Understanding to depart from the approach of the Board. Furthermore, the Arbitrator is asking the parties to address submissions to him on the issue. In my view, the Arbitrator is sharing his thoughts with the parties concerning the documents before him and inviting their submissions on his thoughts. Consequently, the Union’s application in this regard is premature. If the Union feels the Arbitrator is incorrectly interpreting the Letter of Understanding, it has the opportunity to persuade the Arbitrator he is wrong. Given that the Arbitrator has asked the parties for submissions on the issue, it would be premature for the Board to intervene at this time.

The Union argues the Arbitrator has indicated in the Interim Award that he believes he may exclude people from the bargaining unit who are “employees” within the meaning of the Code. In reading the section of the Award the Union points to in support of its argument, it is clear to me that the Arbitrator has not made a decision to the effect the Union says he has. The Arbitrator informs the parties of an issue and then asks the parties to address, in final argument, what significance there is to the provision which says the excluded positions could be below the level of Manager. Again, the Arbitrator is not re-characterizing the issue without seeking submissions, nor has he come to a final determination. In asking for submissions on the issue the Arbitrator has demonstrated an open mind and is providing guidance to the parties concerning how to direct their submissions.

With respect to all of the arguments the Union has raised, it is clear to me on reading the Award that the Arbitrator has asked the parties for further submissions on all of the issues complained of in the Union’s application. This indicates to me that the Arbitrator’s mind is still open and has not yet come to final determinations. Consequently, the Union’s argument that the Interim Award is inconsistent with the principles expressed or implied in the Code is premature, as is its contention that it has been denied a fair hearing. The Arbitrator should have an opportunity to receive and consider the submissions he has asked for and to decide the issues in a final award before the Board is asked to intervene.

With respect to the Union's Section 2(e) argument, I find the approach which promotes conditions favourable to the orderly, constructive and expeditious settlement of this dispute is to allow the Arbitrator to make a final ruling on the issues before him after hearing the submissions of the parties. To intervene at this point would be contrary to the Board's approach of deference to the arbitral process and contrary to its policy with respect to preliminary or interim awards. I find the Interim Award does not fall into the exceptional category of preliminary or interim awards which the Board will review prior to the issuing of a final award.

I would not normally comment on a decision of the Board in the course of making my Award, however, it is important that I confirm that the Board was correct in its conclusions. Until I heard the evidence and reviewed the final arguments made by the parties, I had not reached a conclusion on whether any positions should be excluded from the bargaining unit. The Interim Award, as part of an expedited process agreed to by the parties, was simply intended to focus the parties on the issues as I saw them at the time.

## **BACKGROUND**

As set out earlier in this Award, Article 2.01 of the Collective Agreement and the Letter of Understanding: Subject – Exclusions/Inclusions are the source of my jurisdiction. I agree with the Union that I do not see the approach I should take to those issues as being disconnected from the policies applied by the Labour Relations Board.

The *Labour Relations Code* contains a definition of employee as follows:

“employee” means a person employed by an employer, and includes a dependent contractor, but does not include a person who, in the board's opinion,

- a) performs the functions of a manager or superintendent, or
- b) is employed in a confidential capacity in matters relating to labour relations or personnel;

The Board routinely determines whether individuals fall within the definition of employee, quoted above, in order to determine whether they are included or excluded from a bargaining unit created under the *Code*.

The Union made extensive submissions to me with respect to the policies of the Board in determining who is included and who is excluded from the bargaining unit. It referred to the following decisions: *British Columbia Ferry Corporation*, BCLRB. No. 65/78; *Vancouver General Hospital* BCLRB No. 81/93; and *Canadian Home Support Society*, [1997] BCLRBD No. 28, as well as certain others. I have read and carefully considered these authorities, as well as the authorities relied upon by the Union with respect to the test to be applied with respect to the concept of “management team”.

I also have considered *West Forest Timber Ltd. and International Woodworkers of America, Local No. 1-405*, BCLRB No. 47/87; *Hertz Canada Limited and OTEU, Local No. 378*, BCLRB No. 107/94; and *British Columbia Ferry and Marine Workers Union*, BCLRB Letter Decision No. B146/2003 which are relied on by the Union for the proposition that an employee previously determined to be within a unit will only be permitted to be excluded where circumstances have changed such that the employee’s presence in the unit is no longer appropriate.

Having considered these and other authorities, I wish to commence the analysis on the basis of the decision of the Board in the 1978 Decision. Because that Decision is between the parties who are before me, I have considered it carefully.

In that case, the Employer applied for the exclusion of Master, Chief Officer/Master, Senior Chief, Chief Engineer, Second Engineer/Chief Engineer

and Chief Steward. In our case, similar positions are sought to be excluded as well as certain others.

At that time, the Board recorded that it was apparently the first occasion on which a provincial labour relations board had conducted an in-depth examination of the duties and responsibilities of whether senior ships' officers should be excluded from a bargaining unit.

The Board then went on to describe the labour relations history and relied in part on the history of the fleet as described in *B.C. Ferry Corporation*, [1977] 1 Canada LRBR 526. The Board also reviewed the growth of the fleet from the 1960's until the date of the decision.

The Board found that Masters (Major Vessels) were to be excluded from the bargaining unit. Relying on an "observation" made in the course of the hearing by one of the senior officials of the Corporation that "...there is a substantial difference in the responsibility of a Master of a Minor Vessel and the Master of a Major Vessel", and as a consequence of this observation, and following a review of the material before it, the Panel found that the Officers of Minor Vessels (MV0V5, MVON) are "employees within the meaning of the Code" (pp. 8-9). The Board therefore did not give further consideration to the role of Master of Minor Vessels or Chief Officer/Masters.

With respect to the position of Senior Chief Engineer, the Board found that "It was common ground that the Senior Chief has a coordinating role between the Superintendent of Engineers and the Chief Engineers within his scope, and that he has particular responsibilities during refit. Otherwise, he has the same responsibilities as a Chief Engineer in working a regular shift, and may be required to assist other Chiefs from time to time" (pp. 11-12). The Board did not consider further the differences between the Senior Chief Engineer and the Chief Engineer.

With respect to the position of Chief Engineer, the Board found at page 44:

The Chief Engineer has limited supervisory responsibility and no authority to hire or promote. His disciplinary powers are limited, for while he apparently possesses the power to suspend there is no evidence that he has exercised it; otherwise, his disciplinary acts take the form of recommendations. His substantial technical responsibilities are met in part without having to direct work through others. However, in the overall sense he operates with a reasonable degree of independence, reporting to the Master only on unusual events. He has no significant responsibility for supervising subordinate supervisors as his staff is essentially technical in nature. Regarding labour relations input, he deals with occasional grievances at the first stage but otherwise has little involvement. He is seldom required to make formal ratings of staff but will do so upon request. He has the power to order overtime but seldom exercises it. As to policy setting, while he has engaged in some experiments in this line together with the Master, these were unsuccessful and have been discontinued. He has no power to authorize leave.

While the Chief Engineer's position is one of considerable responsibility it is not of the character of a manager or superintendent within the meaning of the Code and accordingly, we find him to be an "employee".

As the position of Chief Engineer was not considered appropriate to be excluded, the Board simply assumed that the Second Engineer/Chief Engineer should not be excluded.

With respect to the position of Chief Steward, the Board found at page 43:

The Chief Steward exercises significant responsibilities at the level of supervision. He has no power to hire or promote. As to discipline, he has no power to dismiss, and should he recommend dismissal of a subordinate it is our appreciation that he would

seek the Master's approval before proceeding. He has the power to issue warnings and reprimands, and may act to suspend following consultation with the Master, although there is no evidence that he has exercised the latter authority. Operating as he does within procedural constraints and routines set down by the Catering Department, he has limited opportunity to exercise independence (this will vary according to the incumbent). Apart from the Second Steward, he has no subordinate supervisors. His labour relations input is essentially restricted to interpreting the collective agreement from time to time. While he evaluates the performance of his subordinates on a day to day basis, it is infrequently that he performs any formal evaluation. He has the power to order overtime and exercises that power from time to time. He makes no contribution to the setting of management policy and has no power to authorize leave.

In view of the foregoing and notwithstanding his significant supervisory role, we are satisfied that whether or not he is employed to exercise the functions of a manager or superintendent the evidence is that he does not exercise them to the extent necessary to justify his exclusion. Accordingly we find him to be an "employee".

The position of Senior Chief Steward did not exist at the time of the Board's decision and was therefore not considered.

During the course of the oral hearing in this matter, Lynda Ruhl gave evidence on behalf of the Union. Her Will Say Statement, which she adopted in evidence before me, stated as follows:

7. The factual history of the ferry system is accurately explained in *BCFC and BCFMWU*, [1978], BCLRBRD No. 65, [1979] 1 Can LRBR 116: Tab 1.

8. That decision resulted from an application to the Labour Relations Board by the Employer seeking, essentially, the same exclusions (although the wish list is now expanded) BCF [BC Ferries] now seeks from Arbitrator Ready. The Labour Board determined that only Masters (Major Vessels) were properly excluded and that Master (Minor Vessels), Senior Chief Engineers, Chief Engineers, Second Engineers/Chief Engineers, and Chief

Stewards were employees and, therefore, properly included in the Bargaining Unit.

9. In 1985 the Ministry of Highways transferred to the BCF its salt water ferries. This included Route 17 – Little River Powell River, which had one Senior Master outside the Bargaining Unit. All others remained in scope.

10. Over the years the Company has, on numerous occasions, approached the Union for exclusions.

11. Throughout the years the majority of exclusions have occurred through discussion and agreement of the parties. In some cases the Company has been able to persuade the Union the requested position met the Labour Board's test for exclusions.

12. In 1986 approximately 10 Masters and Senior Masters on the Northern Gulf Island Routes were excluded by agreement between the Union and the Employer.

13. In 1996 there was a further agreement to exclude two additional Masters.

14. Sometime between 1996 and 1999 all Senior Masters on the remaining vessels (largely the Southern Gulf Island Route) were excluded by a Consent Order of the Labour Relations Board.

15. For a short period of time in 1999 the Company, unilaterally, created job titles, deemed them excluded and hired people into the positions without any notification to the Union. When the Union became aware of the situation, a policy grievance was filed resulting in the consent order of Rod Germaine October 13, 1999: Tab 2.

16. In the last round of bargaining the employer sought the exclusion of approximately 300 positions from the Bargaining Unit. The Vince Ready Interim Award, April 15, 2004, granted approximately 200 exclusions, consisting of the Crewing Department, Human Resources Department and the Assistant Terminal Managers: Tab 3.

17. I believe the reason Mr. Ready excluded the Assistant Terminal Managers (now referred to as Terminal Managers) is because the Company persuaded him they needed a management presence on shore seven days a week during the ships' operational hours. While they may have initially used the exclusions that way,

today, in some cases (for example, at the Duke Point terminal) the Terminal Managers leave before the first or last ship of the day has sailed.

As stated above, in 1999, Arbitrator Germaine issued a Consent Award which established the terms of a Memorandum of Agreement regarding the resolution of certain outstanding grievances with respect to exclusions from the bargaining unit. This process apparently assisted in the resolution of the status of a number of shore-based “managers”.

Additionally, as stated in evidence by Ms. Ruhl, the Interim Arbitration Award dated April 15, 2004, created a significant number of exclusions, consisting of employees in the Crewing Department, the Human Resources Department and the Assistant Terminal Managers.

The foregoing history demonstrates that, while the Board in 1978 reviewed many of the positions at issue in this arbitration, since then it has essentially been the parties who have determined the matter of which positions should be excluded from the bargaining unit.

What I find significant is that the parties, by agreement, have subsequently excluded all Senior Masters as well as Masters on other vessels. Additionally, it is significant to me that the parties agreed to such exclusions without the involvement of the Board and by reaching different conclusions from those previously determined by the Board.

In this context, the Employer urges me to find that I should decide the issues before me solely based on the terms of the Collective Agreement rather than being bound by the policies of the Board. In what I would characterize as an alternate argument, the Employer argued that the Board will respect the agreements of parties with respect to the issue of inclusions and exclusions if

the agreements fit reasonably within the flexible policies which the Board would have applied to the issue.

As stated earlier, I reject the Employer's argument that I should proceed solely on the basis of the parties' agreement and practices with respect to the issue of exclusions. However, at the same time, I consider that what the parties have agreed to through various processes was done on the basis that it was appropriate, in the unique circumstances of the ferry system to exclude such positions.

I have read a number of authorities provided to me by the Employer on this issue, including: *Automotive Electric (Canada) Limited*, [1976] BCLRB 26; *Government of the Province of British Columbia*, BCLRB No. C80/87; *Canadian Newspaper Company Limited*, BCLRB No. 22/85; and *B. C. Ferry and Marine Workers Union*, BCLRB Letter Decision No. 146/2003. These authorities support the position of the Employer in this alternative argument as described above. In particular, in the *Government of the Province of British Columbia* decision quoted above, the Board stated:

The Council has stated both in its policy memoranda and in subsequent cases that it will respect arrangements agreed to by the parties as to which persons should be included or excluded from a bargaining unit, provided the agreed exclusions/inclusions fit reasonably within the framework established by the Council. As indicated, that framework is a flexible one which is responsive to changing work and management practices (see *British Columbia Ferry Corporation*, [1979] 1 Can LRBR 116), where Vice-Chairman Peck (as he then was) outlined the history of the management exclusion). By respecting these negotiated agreements, the Council is able to facilitate the collective bargaining process and lend support to its policy of encouraging negotiation and settlement of exclusionary issues. The Council has stated that its resources must be an avenue of last resort in disputes of this kind (see *Cranbrook and District Hospital*, BCLRB No. 82/76).

There is one other issue which should be raised at this point. In Article 2.01.D. of the Agreement, it is stated:

Any disputed requests for exclusions shall be referred to Vincent L. Ready...for final and binding resolution in accordance with the parties' agreement to get exclusions jurisdiction to do so under the October 15, 2004 Award.

In the Letter of Understanding quoted at the outset of this Award, the final paragraph reads:

For the duration of this Agreement, disputes with respect to the exclusions/inclusions shall be referred to Vince Ready...It is agreed that Mr. Ready...will have the necessary jurisdiction to bind the parties in all exclusions/inclusions matters.

I have taken the position from the outset of these proceedings, with the agreement of the parties, that not only do I have the jurisdiction to determine whether a position should be excluded, but I also have the jurisdiction to establish the implementation process for any such decision. This is different from the jurisdiction of the Board which is generally restricted to determining the issue of whether the position should be included or excluded. Accordingly, at the end of this Award, I will set out the procedures and approach which will be used by the parties to implement the terms of this Award. I also will remain seized of any disputes which arise from implementation.

In considering all of the foregoing, I have decided to make the decisions I am required to make by considering the following factors:

- b. The language of Article 2.01 and the Letter of Understanding;
- c. The decision made by the Board in 1978 with respect to exclusions of ship board licensed officers;

- d. The agreements reached between the parties with respect to the subject of exclusions;
- e. The evidence in these proceedings;
- f. The policy framework used by the Board in deciding such issues.

In balancing these factors, my intention is to remain faithful to my understanding of the Board's policies as they should apply to the circumstances of the ferry system as it has evolved over time.

### **THE DECK DEPARTMENT**

In the Deck Department, The Employer seeks an award to exclude the following positions:

#### **Position**

Masters
Chief Officer
Master
2nd Officer

In considering these positions, I have reviewed the evidence of the following witnesses called by the Union:

- Lynda Ruhl, Business Agent with the Union
- Captain David Badior, ASTO Mate/Relief Master in Alert Bay

- Captain Bob Antoniuk, Master of the Queen of Capilano
- David A. Kattler, Second Officer, North Coast Operations and a Relief Second Officer

The Employer called the following witnesses to give evidence:

- Captain Jamie Marshall, Vice President, Fleet Operations and Training
- Captain Steve Poole, Former Marine Superintendent
- Captain Chris Frappell, Marine Superintendent
- Captain James Pomphrey, Senior Master on the Coastal Celebration
- Captain Hardeep Grewal, former Senior Master on How Sound Queen

With respect to the legal role of the Master of a ferry vessel, the evidence I heard was consistent with the decision of the Board in 1978. That is, by law and tradition, the Master of the Vessel is in charge of the vessel and has the responsibility for the safe operation and management of the vessel. The Board also found that, even if the Employer placed a separate representative of management on board the vessel, such a person would be subordinate to the Master. Even though the Master may receive direction and guidance from their representative departments, while on board the vessel, the Master is in charge.

The evidence of Captain Marshall outlined the size of the current fleet of vessels. The Employer operates 39 vessels on 25 routes through 47 terminals. The fleet ranges from the Nimpkish and Mill Bay Ferries which are the smallest vessels to the largest vessels known as the major vessels. On the major and large vessels, the Senior Master and most of the Masters have been excluded from the bargaining unit. On the intermediate and minor vessels, only the Senior Masters are excluded.

The Senior Master on all vessels is responsible to take a watch on one of the operational watches. They are also responsible for the overall operation of the vessel. On the major vessels, the other excluded Masters also stand operational watches.

In the North Coast operational area, on certain of the vessels, namely, the Northern Adventure and the Queen of Prince Rupert, all of the Masters are excluded. On the other vessels, only the Senior Master is excluded.

Therefore, the first issue before me is whether the included Masters on the larger, intermediate and minor vessels should be excluded from the bargaining unit.

Captain Marshall, in his Will Say Statement, which he adopted in his evidence before me said the following:

33. The Master has overall responsibility for the operation of the vessel on their watch. The Master has supervisory authority over all personnel on the vessel including employees in other departments. The primary source of the Master's authority is found in the *Canada Shipping Act* which defines the Master as the person in command and charge of a vessel. The Master has ultimate authority over the vessel while the vessel is at sea. In a crisis situation, this authority overrides any authority of land based management within BCF, including that of the Chief Executive Officer of the Corporation. The Master commands an asset worth tens of hundreds of millions of dollars. The Master has complete control of the vessel and all persons and property on board.

34. Although the master is within the Deck Department, in terms of reporting and the fact that the licensed officers fall within the responsibility of the senior management of Deck Division, the Master has, by virtue of the *Canada Shipping Act* and BCF's operational structure, overall responsibility for the entire vessel. That said, the Master does not exercise supervision in the sense of

day-to-day direction over the deck employees, as this is typically left to the Chief Officer and the Second Officer to carry out. Similarly, day-to-day direction over the Engineering and Catering Departments are left to the Chief Engineer and Chief Steward.

35. Before sailing, the Master must be assured by the officers and crew that the ship is up to strength and the vessel secure. The Master will discuss these matters with the Chief Engineer, Chief Steward, and Chief Officer. Once at sea the Master concentrates on the safe navigation and operation of the vessel, but should be notified of unusual occurrences or emergencies so that his/her authority may be exercised as required.

36. BCF currently expects that all Masters provide such overall supervisory function over the operation of the vessels they are commanding. A ferry system such as BCF is vastly different from a land based employer. Our employees work on vessels that are at sea and without immediate supervision from any land based management. In the case of our intermediate and minor vessels, the crew is in control of a multi-million dollar asset and in charge of the safety of the travelling public, their shipmates, and their property and do so without any immediate management supervision.

39. The Master should be involved, however, in all decisions relating to discipline of employees on board their vessel, and should be involved in any final decisions to terminate an employee. However, up to termination, the department heads should be immediately handling those matters.

Captain Poole, in his Will Say Statement, which he adopted in his evidence before me, said the following:

20. The Master upholds all statutes, regulations, and laws that govern the operation and safety of the vessel and those around him. He has direct oversight of all departments on the vessel to ensure the same laws, statutes and regulations are not being compromised by those under his command.

21. The Master is directly responsible to ensure the crews under him are properly trained and competent to carry out their duties at all times.

22. The Master is BCF's representative on the vessel and takes direction from the Marine Superintendent. He provides leadership and mentorship to all supervisors and crew on the vessel.

23. The Master is responsible for upholding all BCF policies and administering them appropriately.

24. The Master is responsible for operating the vessel to maintain all financial efficiencies, and maintains the time schedules for operation of the daily operation.

25. The Master should be assisting the Senior Master in controlling the financial budget for the vessel.

26. While the vessel is operating the Master, as commander of the ship, can deliver discipline immediately without question. For example if someone attends work under the influence of drugs or alcohol, the Master can decide to not allow that employee to sail. However, the Master is typically involved in overseeing the overall ship's operation and is not involved in the supervision of the crew. This is left to the "department heads" or the Chiefs of each department.

27. On the Kwuna, the exempt Senior Master has input into the budget of the vessel. The bargaining unit Masters have little to [do] with the budget building process, although they should be involved as they are the ones making decisions that can significantly impact whether the vessel operates within the budget. For example they make decisions that affect fuel consumption and whether overtime is worked which impacts those costs items.

Captain Antoniuk, is a Master on the Queen of Capilano, which is an intermediate vessel, which runs between Horseshoe Bay and Bowen Island. He acknowledged that as Master, he is fully responsible for the safety of the crew and passengers and for the safe navigation of the vessel under BCF Fleet Regulations, the *Canada Shipping Act* and Regulations, and the IMO Codes and Conventions (ISM;SOLAS).

There therefore appears to be no significant dispute on the evidence as to the legal responsibilities of all of the Masters. On the other hand, significant

differences emerged in the evidence of the eight Senior Officers who gave evidence before me with respect to the management duties performed by the included Masters.

Captain Marshall, the Vice President, Fleet Operations and Training, said that there was a need for an increased management presence on the vessels and the fleet for safety, the expectations of the public, the management of employees and the ever-changing statutory and regulatory obligations. He said that employee issues had changed over time, giving rise to the duty to accommodate, rehabilitation issues, substance abuse issues, discrimination and harassment issues and violence in the workplace.

During cross-examination, Captain Marshall outlined the performance management training provided to Masters as well as the courses in management development and coaching for business success which are also available to Masters.

Captain Marshall also stated in his evidence that a Master, whether excluded or included, is responsible for discipline and performance issues on his watch. He also said that the Master is in command of the whole vessel.

Captain Marshall also gave evidence with respect to his experience that certain included Masters resist involvement in management issues and have a real hesitation to exercise discipline.

Captain Pomphrey is the Senior Master on the Coastal Celebration which is one of the major vessels. He gave evidence that the Senior Officer on a vessel constitutes the head of the Shipboard Management Team which has the following responsibilities:

30. The shipboard management team meets on a monthly basis and generally the agenda includes the following:

- a. Accident and injury trends,
- b. Watch management meeting reviews,
- c. Operational issues, outstanding and new,
- d. Refit planning,
- e. Route management issues,
- f. Shipboard maintenance,
- g. Inter-departmental issues,
- h. Recent operational directives,
- i. Incident and accident reviews and reports,
- j. Audit Reviews,
- k. Vessel Defects,
- l. Review of VISOR Reports,
- m. Controlled Manual Reviews (All sections reviewed annually),
- n. Safety Management System reviews/defects, and
- o. Any other business.

31. At times these meetings can be difficult given that the Senior Master or the Master is the only management representative. At times it is hard to sell the management perspective and explain where management is coming from with new initiatives or policies. Very often I must carefully choose my words when contentious issues are raised and discussed. There is still an “us and them” mentality that can make routine management of the day to day business awkward.

32. Scheduling of many administrative duties always creates a challenge as hours of work must be considered. Meetings outside the regular hours of work incur overtime and those held aboard are bound by operational schedules. Agendas are often condensed

to meet these time constraints. The ability to meet for short periods before or after a shift, or carry out an administrative task ashore generally involve discussions around start and stop times. Spontaneity in dealing with the ship's business is lost and I believe tends to leave issues unresolved and overlooked.

During cross-examination, Captain Pomphrey also expressed concern about certain Deck Officers avoiding dealing with discipline and performance issues.

Captain Grewal gave evidence as to his experience when he was Senior Master of the Howe Sound Queen, which is a minor vessel. In his Will Say Statement, which he adopted in his evidence before me, he said:

19. All of the above duties are the duties of the Master. However, in my opinion the bargaining unit Masters only complete a bare minimum of operational requirements. Only if asked do they assist the Senior Master, but there is resistance to performing anything out of the ordinary.

20. For example, although they have the authority to spend money, they have no real accountability. It would be of great assistance if they participated in the budget, and had accountability for their own budget for their watch.

22. In another situation we had where a deckhand was wearing a union insignia on his hat instead of the uniform hat. The Master on his watch did not deal with it, nor did the Chief Officer. I was not informed of it and the Marine Superintendent ended up having to deal with it.

23. I find that the bargaining unit masters resist performing the supervisory parts of their jobs, in that they do not manage performance or deal with discipline. Instead it either goes without something being done about it, or I have to deal with it if I become aware.

24. As Senior Master, the other Masters are supposed to report to me. However, they don't see me as their boss. They see me as a Captain with a ticket on a watch, with additional paperwork to do. I'm unable to schedule regular meetings with the Masters because

they typically will not attend after their shift or on days off, or if they do will claim overtime.

Captain Frappell, the Marine Superintendent for Southern Islands, gave evidence. In particular, in his Will Say Statement which he adopted in his evidence before me, he said:

11. The job descriptions of the Master are set out in Employer's Book of Documents, Tabs 11 and 12.

12. The Master is the commander of the vessel and is responsible to the vessel's patrons, crew and owners for the safe and efficient operation of the vessel. The Master oversees all vessel operations with respect to the safety and compliance with statutory and corporate regulations and has the authority to take overriding action for the best interests of the passengers, crew, vessel and environment.

13. The Master's principle duty is to oversee the navigation and operation as commander of the vessel. This will include: hands on conning (ie. control of the ship), establishing professional marine standards, developing and training subordinates, establishing policy and procedures, liaising with shore based managers and regulatory authorities, budget development and implementation, accident prevention and investigation, annual reviews of corporate policy, record keeping, developing emergency contingency plans, job interviews and assessments, discipline meetings and grievances, interpreting and applying the collective agreement, and supporting the goals of the corporation.

14. The Master liaises with the heads of the departments (Chief Officer, Chief Engineer and Chief Steward) to ensure operations are being conducted safely, efficiently and in a timely manner.

15. The Master is the company representative on board the vessel.

16. The Master is responsible for the safety and well being of the ship's personnel.

17. The Master makes the final decisions on emergency responses.

18. The Master, as commander of the vessel, should be involved in all disciplinary matters related to the crew of the vessel, regardless of the department. Excluded Masters take on this responsibility, while bargaining unit Masters resist taking on this responsibility and are not always able to carry out this role effectively. The crew need to see the Master of the vessel as the manager of the crew. This does not happen with the bargaining unit Masters as they do not take on the responsibility and accountability of being a manager.

During the cross-examination of all four of the witnesses called by the Employer, it became evident that certain of the Employer's witnesses were reluctant to identify specific Officers who allegedly were not carrying out their duties due to their relationship with other members of the crew. Each of them tenaciously held to their views that Masters and other senior officers who are included in the bargaining unit, were in some cases reluctant to carry out the duties expected of them in managing other employees. Much of the cross-examination of the witnesses was directed to trying to establish that the included officers did, in fact, perform the duties expected by the Employer.

My concern about this reluctance of the Employer's witnesses was alleviated, when I heard the evidence called by the Union.

Captain Badior, the former President of the Ship Officers Component of the Union was called to give evidence. He has recently accepted a management position with the Employer. In his cross-examination, he outlined the circumstances when he had been involved in discipline and absenteeism issues while working as a Relief Master in Alert Bay. He agreed it was appropriate for Masters to take disciplinary action as part of their responsibilities. He also confirmed that he had been involved in the clearance of deck officers to sail on a vessel and it was appropriate that Masters be involved in this activity as part of their duties. He said that, from his experience, some officers have difficulties

in seeing these duties as their responsibility and that some officers felt a conflict in some circumstances.

Captain Antoniuk acknowledged in his evidence that he had taken courses in the workplace including Supervisor 1, 2, and 3, and Respect in the Workplace. He agreed that B.C. Ferries has become increasingly regulated and that there are higher levels of oversight than when he started with B.C. Ferries in 1990.

He agreed that Masters were responsible for the clearance of other Officers and the evaluation of officers. He said that he and his Mate take responsibility for the discipline of the crew and he would like to receive more training to become even more involved. He also acknowledged that some officers feel uncomfortable to pull clearances of officers. He also acknowledged that the Master has a responsibility to oversee the operation of the whole vessel, including the Engine Room.

David Kattler also gave evidence on behalf of the Union. He is a Second Officer and a Relief Chief Officer in Northern Coast operations. He stated in his Will Say Statement, which he adopted before me:

10. As Senior Officer of the Watch (“OOW”) it falls on me to direct the Junior Officers and Deckhands who may be on watch at the time. The duty of Senior OOW rotates throughout the day between one of the two Second Officers and the Chief Officer.

11. I disagree with the suggestion that Bargaining Unit supervisors neglect or hesitate to supervise or discipline. As Senior OOW I have initiated and followed through with discipline involving members of the Deck Department. However, the process has always involved Employee Relations (“ER”) and the watch Master as per the Company’s policies.

12. BCF does not provide supervisory training to sufficient numbers of employees and fails to follow-up on the training it does

provide. The Company has a Supervisory Skills Course but does not use it adequately.

13. That course is one of the best courses I have had the opportunity to attend. It teaches participants his/her supervisory type and how to deal with other personality types. This course is the single most effective tool I utilize to supervise the crews I work with. It has enabled me to identify a crew member's strengths and weaknesses, and work with them. This training is a vastly underutilized tool available to the Company to increase the effectiveness of supervisors. All the participants in my class advised the course would be more effective if it included a refresher segment to ensure the participants are being effective in the work place and to hone and improve their skills once they are back in the work place. This does not happen.

14. BCF provides no discipline training. Even though I am expected to be the supervisor and involved in the disciplinary process, I have received no training in this area in 28 years of service. Ironically, it has actually been my involvement with the Union which has empowered me in how to properly and effectively handle disciplinary matters.

15. As Second Officer I have input, either through or with, the Master or Chief Officer in the completion of appraisals for Deckhands and Junior Officers. This involvement extends to the 'clearing' process, the process by which new crew members (be it officers or ratings) are assessed on their ability to perform their required job functions. The quality and quantity of appraisals and clearances varies depending on the individual involved in performing them. This is true with respect to both the Bargaining Unit Officers and Exempt Masters.

16. We have not been provided any training in conducting and/or completing performance appraisals. If enhancing the responsibilities, performance management and the effectiveness of the Officers is the objective I suggest that excluding Officers will not achieve it. Empowering the Officers by giving them the tools of training, periodic refresher training, resources and time would be far more effective.

17. Performance management includes the ability to communicate with who you need when you need them. With today's technology we on the vessel are constantly in touch with shore based management and personnel, via cellular phone, VHF radio, satellite telephone or satellite internet communication.

However, due to the way BCF deploys its Exempt staff ashore this is not always possible. Despite the large number of Excluded staff the Prince Rupert office is staffed by only one individual and more often than not is (it) seems he is not in the office, but is in meetings someplace.

18. In my experience there are greater demands on the Officers on the Bridge on the Northern Routes (Prince Rupert – Skidegate and Prince Rupert – Port Hardy) due to various factors including, but not limited to, extreme weather factors, navigational challenges – including winds, tides, fineness of required navigation, and the nuances of working on a live aboard vessel. Adding additional managerial/administrative duties to these Officers would jeopardize safety.

21. As Second Officer (and as relief Chief Officer) I have participated in many Shipboard Management meetings at the request of the Master. I have always found these meetings to be cordial and professional, if not friendly. It has always been my experience that the participants at these meetings wanted to do the correct thing for the ship, the crew, the environment, and the company. Additionally I can categorically state that I have never seen a conflict based upon union/management bias.

In his cross-examination, Mr. Kattler confirmed that he had taken the Company courses Supervisor 1, 2 and 3, Peer Violence, Budget Management and others.

I am not ignoring the other evidence of the Union and Management witnesses contained in their Will Say Statements. I have considered all of their evidence in considering this issue. I have specifically considered the evidence of the Union witnesses that Marine Superintendents and Human Resources personnel play significant roles in approving levels of discipline as well as the issue of whether the Officers have the time or the training to carry out their full management duties.

In the totality of evidence, I have concluded that all of the currently-included Masters, other than those working on minor vessels, do not fall within

the definition of employee under the *Labour Relations Code* and therefore should be excluded from the bargaining unit.

I do not consider that the Masters on the minor vessels should be excluded from the representation by the Union due to the size of the crew complement, as well as the shorter distance the vessel travels and the number of passengers and vehicles on board those vessels. Typically, a Master and a Chief Officer, as well as two deck hands and one Chief Engineer and an Engine Room Attendant are sufficient to constitute a watch on a minor vessel. There is also typically no catering provided on those vessels. Each vessel has an excluded Senior Master who takes one of the watches.

As I am not persuaded that certain Masters should be excluded, I am also of the view that other Deck Officers below the level of Master should not be excluded. The Employer strenuously argued in particular for the exclusion of Chief Officers on the basis that they exercise much of the management responsibilities during a watch. However, I do not consider that it is essential for the proper operation of the vessels for there to be two Deck Officers on a watch excluded from the bargaining unit.

My reasons for finding that Masters other than those sailing on minor vessels should be excluded include:

a. On a traditional analysis of their duties, I find that they regularly perform, or should regularly perform, those duties which are considered by the Labour Relations Board in these circumstances as excluding an employee from a bargaining unit. In particular, they have the responsibility to actively manage and determine the acceptability of officers sailing on their vessel and to take disciplinary action on their watch. They are also expected to understand and evaluate the performance of shipboard crew. They also perform other

ancillary duties necessary to the orderly maintenance of the vessel, as well as their statutory duties.

b. I can see no difference in the quality and content of the work and responsibilities between those Masters who are currently excluded from the bargaining unit and those Masters (other than those serving on minor vessels) who are currently included in Union membership. These vessels are large vessels with significant crew sizes and, in my view, there are no significant differences in their responsibilities.

c. As stated earlier in the Award, the parties themselves on a number of occasions have added Senior Masters and Masters to the excluded list. I accept the argument of the Employer that this factor is significant and that the Labour Relations Board is deferential to the agreements of the parties if the agreements fit reasonably within the flexible policies which the Board would have applied to the issue, if they had considered it.

d. I cannot see how the currently included Masters on vessels other than on the minor vessels should be excluded from the Shipboard Management Team. They operate, as stated above, within a similar framework of responsibility to other Masters who are excluded and, therefore, should be full members of that Shipboard Management team.

e. The routes on which the Major and Intermediate vessels operate are generally larger and more complex than those operated by the minor vessels. This emphasizes the importance of the reinforcement of the Shipboard Safety Management System and safety generally on those vessels, as well as the number of other decisions which may be required while the vessel is at sea. This is a unique factor which is highly relevant to having a management presence on these vessels on all watches.

f. I am also satisfied that there has been a substantial change in the role of the Master on major large and intermediate vessels from the description of the role of Masters in the 1978 decision of the Board.

g. The nature of the operations themselves and the size and complexity of vessels also engage issues of efficiency and performance for the vessels and the importance of satisfying the expectations of the travelling public.

h. There is agreement among the witnesses that there exists more external review of the operations of the fleet than previously existed.

i. I am also persuaded as a secondary but important factor, that there exists a conflict of interest between the included Masters, who are the subject of my Order, and other Deck Officers and employees of the vessel. I have found that this exists with certain Masters on a review of all of the evidence. I am persuaded that, on a reading of the decision in the *Cowichan Home Support Society* BCLRB No. B28/97, the Board considered the issue of a potential conflict of interest as evidence of dual loyalties between duties performed for the employer and membership in a bargaining unit.

For all of these reasons, I find that all of the Masters in the Fleet, other than those sailing on a minor vessel (except for the Senior Master of those vessels) should be excluded from the bargaining unit.

### **THE ENGINEERING DEPARTMENT**

In the Engineering Department, the Employer has applied to exclude the following positions:

**Position**

Senior Chief Engineer/Chief Engineer
First Engineer

In considering these positions, I have reviewed the evidence of the following witnesses called by the Union:

- Gordon Letkeman – Senior Chief Engineer of the Coastal Inspiration
- Peter Jansen – First Engineer and Relief Chief Engineer on the Queen of Oak Bay and the Queen of Capilano and the Bowen Queen which constitute a large and two intermediate vessels
- Chris Way-Nee – Chief Engineer on the M.V. Quinsam, a minor vessel

The Employer called the following witnesses:

- Mark Collins, Vice-President, Engineering, for B.C. Ferries
- Wayne Ralph – Engineering Superintendent, B.C. Ferries

The Engineering Department is responsible for the maintenance and repair of the physical infrastructure of B.C. Ferries. This includes vessels, terminals and buildings. Mr. Collins has reporting to him, as Vice-President, a Director of Fleet Operations, and eight Engineering Superintendents. The Engineering Superintendents are shore-based and are the immediate supervisors of the Senior Chief Engineers.

At the present time, there are no excluded Engineers on any of the vessels. As Mr. Collins said in his Will Say Statement which he adopted in his evidence before me:

11. Each vessel operates on the watch system. There are one to four watches depending on the route and schedule. Each vessel when sailing has a Chief Engineer per watch. There is also a Senior Chief Engineer for each vessel who also stands a watch.

12. Presently, the only management presence for the vessels is the engineering superintendents who are shore based and have limited time to be on the vessels within their responsibility. The superintendents each have a number of vessels typically within a class or geographic area for which they are responsible.

13. The Engineering Crew can range from one Chief Engineer on the smaller vessels; four to five on the large and major vessels; and eight to ten on the Northern live aboard vessels. The crew complements are set out at Employer's Book of Documents, Tab. 8.

14. The Northern live aboard vessels operate on a 14 days on 14 days off schedule. It is very difficult for shore based engineering management to view these crews given this schedule. Instead they operate in isolation without management most of the time.

15. Many of the larger vessels also have a "graveyard" crew that works at night doing regular maintenance and small repairs. During this watch on some vessels there is no Chief Engineer and the First Engineer is the senior crew member supervising the work. On other smaller vessels there may be a Chief Engineer on graveyard as those crews typically don't have First Engineers. Again, there is no management presence on the vessel during these shifts.

While Mr. Collins was describing the duties of the Chief Engineer, he said the following, as included in his Will Say Statement:

22. The Senior Chief Engineer has to make sure his Chief Engineers are fit, competent and capable of carrying out their duties. He is responsible for formulating, in conjunction with Engineering Superintendent, an effective asset management strategy for the ship. He has to make sure the Chief Engineers are adequately carrying out the asset management strategies that he promulgates.

23. The Senior Chief Engineer is the team leader of the ship's engineering staff and must ensure there is a consistency of

practice across all watches. For example, it's the Senior Chief Engineer's responsibility to ensure adherence to the asset management strategy by all watches.

24. The Senior Chief Engineer is responsible for the control of engineering expenditures of the vessel. This can be considerable, ranging from several hundred thousand dollars annually on small vessels, up to several million dollars annually on large vessels.

25. Above all the Senior Chief Engineer has to make sure the engineering personnel under his direction are in all respects ready to perform their duties safely and competently.

Mr. Collins also described the role and duties of the Chief Engineer in his Will Say Statement, as follows:

16. The Chief Engineer is responsible for the safe operation of the vessel while he has the watch. He is responsible to make sure the equipment and the structure of the ship are in all respects ready for operation.

17. The Chief Engineer is responsible to communicate to the other department heads on board, namely the Master and the Chief Steward. He is also responsible to communicate all relevant issues about the vessel to the Chief Engineer relieving him.

18. The Chief Engineer is responsible to make sure the members of his watch are ready and fit for duty and have the appropriate training and competencies and certificates to do the job.

19. The Chief Engineer is also responsible to make sure the asset management strategy put forth by the Senior Chief Engineer is carried out. The Chief Engineer must advise the Senior Chief Engineer of the condition of his asset and assist the Senior Chief Engineer in the formulation of the asset management strategy.

20. The Chief Engineer has financial responsibility in that he controls expenditures on his watch. The Senior Chief Engineer has spending authority to \$25,000 per transaction, and the Chief Engineer to \$5,000 per transaction. Typical transaction includes supplies for the repair and maintenance of ship systems, parts and consumables, and services from contractors.

21. The Chief Engineer reports to the Senior Chief Engineer of the vessel. While sailing the Chief Engineer reports to the Master for all issues related to the safe operation of the vessel and any other safety related matter, and to the Engineering Superintendent for all other issues.

Mr. Collins also went on to describe the relationship between the Engineering Department and the Master on a vessel. In his Will Say Statement he said:

32. The Master may be considered the “general manager”, in that they have overall authority and responsibility for the vessel. However, they require departmental managers reporting to them in order to effectively manage the vessel. There are several reasons for this:

- i. On short-run ferry operations such as BCF, the Master is not normally able to visit the engine room for anything more than brief, infrequent periods. Therefore the Master is not in a position to closely manage engine room staff and be aware of emerging issues.
- ii. The Master usually does not have the required qualifications or experience to assess the performance of the engineering crew or their adherence to engineering standards, policies and procedures.
- iii. The Master does not usually have the necessary formal and technical qualifications to make technical decisions about the operation of ship’s systems.

33. Therefore the Master must rely on the Chief Engineer and the First Engineer to ensure the engineering crew are operating vessel systems correctly, following proper policies and procedures, and working safely.

34. The Company cannot rely solely on shore based excluded management to manage the Engineering department onboard the vessel. This is because shore based Engineering management are only able to attend the vessel at infrequent intervals. The Engineering Superintendent must rely on the Chief Engineer and the First Engineer, who have the full time, day to day presence

onboard, to manage the staff for appropriate performance and proper conduct.

35. Shore based management have multiple ships to manage and cannot adequately monitor performance or discipline issues onboard a single vessel. Engineering Superintendents must rely on the Chief Engineer and First Engineer to evaluate ship board staff performance. This frequently places Chief Engineer and First Engineer in a conflict situation with fellow union members when matters of job performance and discipline arise. As a result, issues involving the safe and effective operation of the vessel may go unreported to management.

36. The operation of ships with engineering staff requires supervisors with well developed leadership skills. This means individuals in senior positions must be able to develop their teams, set positive examples, assess performance and carry out corrective action when required. It also requires individuals who are prepared to make decisions for the overall safe and effective functioning of the Company even when such decisions may not serve the interest of any one individual. In my view, supervisors can exercise such leadership only when free from the imperatives of organized labour.

37. When issues arise with the quality of leadership onboard a vessel, the Company is frequently unable to take prompt action to remedy the situation. As a result, safety, operational and morale issues exist for longer than they should. An example of this is a SCE with ineffective leadership skills was too long in this leadership position. Eventually serious technical and competence issues arose on the vessel, culminating in a serious safety incident with the ship.

38. Safety is a primary factor in our operation, and we need a management presence to ensure the department is operating safely. This is because:

- i. BCF has a significant number of regulatory bodies to comply with, such as Transport Canada, BC Safety Authority, WorkSafe BC, Health Canada, Dept of Fisheries and Oceans, Cdn Coast Guard, and Environment Canada. Senior Chief Engineers, Chief Engineers and First Engineers deal with these bodies on behalf of the Company. It is important these bodies are advised of the full company position on critical matters, uninfluenced by labour relations matters. For example, in the past there have been times when engineers

have directed regulators to issues on a vessel that resulted in operational disruption. If handled by management such issues can usually be resolved with a phased approach that does not disrupt service.

- ii. Senior Chief and Chief Engineers are also in possession of sensitive internal company information (such as financial or environmental data) which may be open to misinterpretation by regulators if not presented in the correct context. In my view, organized labour imperatives can provide an incentive for personnel to present sensitive information to regulators in inappropriate ways.
- iii. Engineering typically has more hazards in our work environment than other departments, i.e. electrical, elevators, hazardous substances, heavy objects, rotating machinery and fire load. It is important that the senior Engineering personnel onboard provide strong leadership and example in order to prevent injuries and ensure the safe operation of the ship. At present we have some senior engineers who do not fully embrace safety initiatives, leading to a less safe environment for our staff.
- iv. Organized labour imperatives may also cause personnel to suppress critical safety information from the Company's knowledge. Unionized personnel have an incentive to put protection of the individual's job or reputation ahead of reporting of critical safety information. Suppression of such information can cause safety issues to exist longer than they should. An example of this is a Chief Engineer known to have a sleep disorder but which was not reported to the Company.
- v. Organized labour rules sometimes prevent the Company from taking timely action on competence issues which lead to critical safety issues.

In Mr. Collins' Will Say Statement he stated that he had experienced a number of situations where he had witnessed Chief Engineers and First Engineers not carrying out the roles they are expected to carry out. In his cross-examination, he was extensively questioned on the specific incidents which he stated he had witnessed.

Wayne Ralph is an Engineering Superintendent for B.C. Ferries, responsible for six Fleet Vessels: Queen of Nanaimo, Queen of Burnaby, Queen of Tsawwassen, the Island Sky, the Howe Sound Queen, and the Skeena Queen. The engineering crews on these vessels range from four to five on the large vessels and two on the minor vessels. The majority of the vessels operate on a 3-watch system but some smaller vessels only have a 2-watch rotation.

On each of the vessels for which Mr. Ralph is responsible, there is a Chief Engineer on each watch and each vessel also has a Senior Chief Engineer. In his Will Stay Statement which he adopted in his evidence before me, he said as following with respect to the duties of the Chief Engineer:

17. The Chief Engineer is in charge of the asset maintenance and management of the vessel on a daily basis, ensuring reliability of performance of the machinery and the effective deployment of the staff to ensure safe and reliable operation. This includes the effective implementation of maintenance strategies and production of the maintenance plan.

18. The Chief Engineer is responsible for ongoing analysis of machinery conditions and parameters, adjustments to equipment, including fault diagnosis and rectification.

19. The Chief Engineer is the technical onboard representative of the vessel, and is responsible for advising the Master of technical reliability particularly in crucial areas of safety where the Master requires input and recommendations before proceeding under less than perfect operating conditions.

20. The Chief Engineer is responsible for completing corporate documentation and filing monthly machinery and other reports. They are the “onboard” representative for the Engineering Department as a whole, advising Engineering Superintendent, and Vice President on vessel status in cases of technical difficulties, providing input and solutions for effective resolution.

21. The Chief Engineer is responsible for monitoring employee performance as well as providing direction, coaching and guidance for all staff.

22. The Chief Engineer must liaise with other departments onboard providing a high level of customer service, as well as dealing with outside and internal service providers ensuring timely completion of work including delivery of service reports, ensuring worker safety, and follow through on warranty claims for poor service, making equipment selection decisions involving overhaul, replacement and disposal.

23. The Chief Engineers will liaise with regulatory bodies on technical matters, including the submission of data and reports ensuring regulatory bodies have confidence in the safe operation of the vessel.

24. The Chief Engineers also assist the Senior Chief Engineer in preparing the vessel's budget, though they are not accountable for it. This is so despite them having authority for the approval of financial expenditures.

With respect to the duties of the Senior Chief Engineer, he stated in his Will Say Statement as follows:

26. The Senior Engineer reports to the Engineering Superintendent on all aspects of the vessel operation, maintenance and refit strategies. They are responsible for the onboard approval of long range maintenance plan and development of the "Planned Maintenance" regime for the vessel.

27. The Senior Chief Engineer acts as the vessel representative at the corporate level and reports back to the crew on relevant issues.

28. The Senior Chief Engineer is responsible for the administrative functions of the vessel, including development, implementation and approval of the "Vessel Specific Manual".

29. The Senior Chief Engineer is the vessel representative for internal and external vessel system audits, and responsible for the effective close outs of deficiencies noted.

30. The Senior Chief Engineer develops the vessel maintenance budget including the labour and maintenance budget for the vessel. These are then approved by myself. The Senior Chief Engineer is responsible for daily budgetary decision making and reporting of expenditures and forecasts, however I have had struggles getting this done by the incumbents.

31. The Senior Chief Engineers should be dealing with performance issues, attending fact finding investigation meetings and making recommendations for discipline and other performance issues for the entire engineering staff. Again, I find that there is resistance on the part of the Senior Chief Engineers, and the Chief Engineers, to take on this responsibility over their fellow union members.

Mr. Ralph also stated that, in his view, the Senior Chief Engineers and the Chief Engineers should be responsible for assisting in the development and the implementation of the budget for the Engine Room and be accountable for managing and reporting on it.

He also said that someone in the Engine Room must be responsible for managing overtime and other variable costs associated with the operation. He also gave evidence of examples where certain work had not been managed properly by the Senior Chief Engineer or the Chief Engineer. He also stated in his Will Say Statement as follows:

48. In my view cost effective management decisions are best done at the "coal face". Superior performance management can only be achieved through direct face to face communication with subordinates on the job site. The employees need to see their Senior Chief, Chief, and First Engineers as managers, and be accountable to them in their performance on a daily basis.

49. I find that I spend approximately 50% of time or more dealing with issues that should be dealt with by onboard supervisors. I have to deal with fact finding investigations and I'm involved in performance management issues that should be dealt with on the ships. I am not on the ships and am not in the best

place to deal with employee issues related to performance or misconduct.

50. If I did not have to deal with these issues I'd be able to devote more time to the duties of my position. I would be able to develop much clearer strategic objectives for the vessel and the staff, including acquisition of funding for capital improvements and new equipment. I could better plan and schedule refits and use of dry-docks through visitation of facilities and building improved relationships with suppliers.

51. Additionally, I would be able to develop improvements in training, safety and education through investigation of course suitability, assignment of resources and developing feedback for course improvement. I'd be able to actually investigate and gain effective resolution of invoices, poor service support and warranty claims through investigation with suppliers and contractors ensuring the best value for the corporation in all instances.

Mr. Ralph said that the Chief Engineers and the First Engineers should be directly involved in making decisions to discipline subordinate staff. They should be more involved in the hiring of Engine Room assistants above the entry level. They should supervise the work of the rest of the Engineering crew. He stated he has directed the Senior Chief Engineers to evaluate their crews but that it has not been fully completed. He said the Chief Engineers/First Engineers develop vessels' specific policies for the Senior Chief Engineer.

In his cross-examination, Mr. Ralph was also extensively cross-examined with respect to the circumstances where Senior Chief Engineers and other Chief Engineers had not carried out their management duties or resisted taking responsibilities. As was the case with the Deck Officer, the Union devoted much of its cross-examination refuting the evidence of the management witnesses that Engineers were reluctant to accept responsibility.

Gordon Letkeman was called by the Union. He had served as the Commissioning Chief Engineer of the Coastal Inspiration, one of the Fleet's new

class of major vessels. In his Will Say Statement which he adopted before me, he said:

5. SCE and CE constantly monitor employee performance and take appropriate corrective action. Our authority is limited to pulling clearances and making recommendations to Human Resources ("HR").

11. As SCE, I am responsible for creating and maintaining an annual operating budget for the Ship. The budget is then vetted and approved by the Engineering Superintendent. The budget includes machinery maintenance and repair, lubricating oil (and disposal of dirty oil), and labour while the Ship is in operation. I recently submitted a budget to the accounting department of just over 1/2 million dollars for approval. Every month I must go online and account for any variances; positive or negative.

12. I am, as are all SCE in my experience, accountable as we must justify the variances.

15. As SCE I attend many meetings, most of which seem to occur on my days of rest. If I attend a meeting on a rest day I am compensated with Earned Days Off (EDO) at straight time. I have tried to schedule meetings on weekends with Management but they refuse to work their day of rest. I understand part of that decision results from the fact that Management do not get overtime compensation, but they must also realize that my days off are just as important to me as their days off are to them. Now that I am 50 years old, I am beginning to notice that the recovery time, after working a shift of mornings (5 days of waking up at 0300), is longer.

The balance of Mr. Letkeman's Will Say Statement generally deals with the lack of support for him carrying out his supervisory duties or the oversight of his work by the Engineering Superintendent.

During cross-examinations, Mr. Letkeman agreed that both the Senior Chief Engineer and the Chief Engineers wear a uniform and rarely wear coveralls. He acknowledged that on the larger vessels the First Engineer organizes the work and has control of the systems.

He said that the Chief Engineer of the watch is responsible for the vessel for mechanical issues so that if the First Engineer has problems, the Chief Engineer is there to assist. Beyond that, the Chief Engineer conducts managerial work including emails and handling work orders. He also attends to crew issues. He acknowledged that in his work on the Coastal Celebration, he had been responsible for the budget and reporting variances.

He stated that he would be responsible for discipline if there was any misconduct among the crew and he acknowledged he was responsible to ensure the crew were competent to do the work during the familiarization process. He also acknowledged he had the authority to remove clearances and attend fact-finding meetings; he had supervisory duties in the Engine Room; and he had taken several Company courses related to coaching and supervision.

In the course of his work, Mr. Letkeman also agreed he had written letters of discipline personally.

Mr. Letkeman also acknowledged he had attended Senior Chief Engineering meetings about Company Policy, Refit Schedules and to hear certain guest speakers. He acknowledged he would see an Engineering Superintendent on a vessel once every few months and that no one else was there representing Management other than him and the Chief Engineer on his vessel on a regular basis.

Mr. Letkeman also acknowledged that if he makes an engineering judgment as to the safe operation of the vessel, he would tell the Captain and the Captain would accept what he says. He acknowledged that his pay as Senior Chief Engineer was similar to the pay of Masters.

Peter Jansen is a First Engineer and Relief Chief Engineer from Horseshoe Bay and works on the Queen of Oak Bay, the Queen of Capilano and the Bowen Queen. In his Will Say Statement which he adopted before me, he said:

6. In my experience at BCF that there is no formal performance assessment procedure. Having said that, it is also my experience that Senior Chief Engineers (“SCE”), CE and First Engineers (“1st E”) routinely assess the performance of their teams and provide feedback as required on a regular basis.

7. Except for a few individuals, there have been few instances where progressive discipline was required and personally I’ve never had to go to that length.

8. Senior Engineers (SCE, CE and 1stE) deal with most issues as they arise on the ship, and we do not need to be excluded to deal with ordinary personnel issues such as lateness. We deal with letters from crewing requesting confirmation that an individual was late or did not show up for work. Only the most serious incidents require intervention from Human Resources (“HR”) or the Engineering Superintendent.

9. Senior Engineers routinely make decisions as to the overall safe and efficient running of our vessels and do so without regard to the fact we are all Union members.

10. The Company Will Says imply that all Union members see themselves on an equal footing with no regard for the authority of the Senior Engineers. This is simply not the case. There is a hierarchy of authority somewhat unique to the marine industry which is respected by all.

12. Senior Engineers would never promote someone who was incompetent. After working with an individual for a number of years and thus having knowledge of that persons abilities and limitations, the last thing a Senior Engineer would do is to promote such an individual by withholding the negative aspects of their assessment.

15. Engineers are responsible for ensuring the environment is protected. We put our tickets on the line every time we run the Oily Water Separator (OWS), take on fuel or dispose of sludge via a

truck brought on board. We simply will not use any OWS equipment on board the vessels that does not operate within the specifications and regulations, as that would be a criminal act, under the *Migrating Bird Convention Act*.

In his cross-examination, he acknowledged that 40% of his time he works relieving as a Chief Engineer. He acknowledged he has only had to discipline employees two times in 1 1/2 years while he was working as a Chief Engineer. He acknowledged he understood that as Chief Engineer he was responsible for discipline and monitoring the work of other engineers. He acknowledged that as Chief Engineer, he would follow-up with letters from the crewing department about people who are late and that he was responsible to do so. He also indicated that if someone was seeking clearance for a higher position and they needed more training, he would inform the Chief Engineer. He said it would be valuable for the Company to have the Senior Chief Engineer involved in hiring. He confirmed that there was a reluctance of Engineers to attend meetings on their days off.

Chris Way-Nee gave evidence on behalf of the Union. He is a Chief Engineer on the M/V Quinsam which is a minor vessel. In his Will Say Statement which he adopted before me, he said as follows:

6. The Senior Chief Engineer ("SCE"), minor vessel, coordinates work between watches to ensure the satisfactory operation and maintenance of mechanical, electrical and propulsion systems, safeguards the structural integrity of a minor vessel, and supervises staff.
7. The SCE's reporting obligations are solely to the Engineering Department in that he reports relevant issues to our department. The Excluded Senior Master normally addresses the ship as a whole.
8. The CE is responsible, as the ships technical manager, for planning and developing contingencies and procedures designed to manage the physical assets of the vessel, and ensuring the safe,

efficient and cost effective operation and maintenance of the machinery, equipment and the physical integrity of the hull.

10. CE deal with performance issues on a daily basis. I issue orders on the running of machinery and operation of the engineering department every day, and apply corrective action (up to a verbal warning) when necessary. It is only when an issue reaches a certain point (for example, if the verbal warning has not achieved results) an incident report or near miss report is completed. Upon review of these reports the Excluded Senior Master or Engineering Superintendent decide whether to initiate a fact finding investigation form which disciplinary action could result.

14. The Senior Engineers ("Sr Eng") work closely with their crews and while we are well positioned to make recommendations we are not in the best position to make decisions about discipline. All decisions regarding discipline are made by shore based Management.

16. I take exception to the statement that SCE or CE do not take responsibility for performance management of junior crew members. I personally just completed training an ERA (junior engine room staff) for many hours as part of the watch keeping engineering training program, including having him assigned for training on a large vessel to complete sections not available on this ship.

18. Completing performance appraisals is part of the CE job description. If, as suggested in Mr. Collins' Will Say, a CE refused to perform that function, a fact finding investigation should have been started and a letter of expectation given to that CE. If that has not occurred, then management did not perform its function.

41. Sr Eng are responsible for ensuring safe work practices within our department. This is a responsibility we take seriously and Sr Eng are quick to take corrective action with respect to any unsafe situation or work practice.

42. SCE and CE always enforce lock out procedures. I am not aware of any situation where a Sr Eng has been disciplined for failing to enforce lock out procedures.

In the balance of his Will Say Statement, Mr. Way-Nee expressed his concerns with respect to the manner in which Engineering Superintendents conducted their duties and his view that Engineers are fully prepared to carry out their duties as assigned by the Employer.

In his cross-examination, he said that on the small vessels, most Engineers wear coveralls because the Engineering Assistant is not an Engineer. However, the Chief Engineer on the minor vessels must carry out the management functions and the email requirements are similar. He acknowledged that he had the responsibility to ensure others in the Engine Room were working competently, regardless of the size of the vessel.

Mr. Way-Nee also acknowledged he has taking training on harassment awareness. He has the responsibility as Chief Engineer to carry out performance appraisals. He also acknowledged that the Engineering Superintendent would be on the vessels he operates on every two to three months. He acknowledged that he understood that Senior Chief Engineers had significant responsibility for the budget.

I have concluded that, based on all of the evidence, Senior Chief Engineers on all vessels should be excluded from the bargaining unit as not falling within the definition of employee under the *Labour Relations Code*.

I have also concluded that Chief Engineers, other than on minor vessels, should be excluded from the bargaining unit as not falling within the definition of employee under the *Labour Relations Code*.

The Chief Engineers on the minor vessels are assisted only by an Engine Room Attendant. When the Senior Chief Engineers on those vessels are excluded, I consider that the primary management functions in the engine room on those smaller vessels are performed by those Senior Chief Engineers.

My reasons for reaching these conclusions include:

- a. I find the Senior Chief Engineers and effected Senior Engineers perform those duties which are considered by the Labour Relations Board in these circumstances as excluding an employee from a bargaining unit. They are involved in determining the competency and fitness of Engineers; they take disciplinary action on their watches and they are involved in budgeting and managing significant expenditures on behalf of the Employer.
- b. Most of the vessels are large and complex and whether in regular operation or during refit the Senior Chief Engineers and the effected Chief Engineers have significant authority in determining the safety and seaworthiness of the vessels.
- c. There is no doubt that these Engineers are working in a more complex and regular environment than at the time of the 1978 decision of the Board.
- d. These Engineers regularly make decisions in consultation with the Master which affects the efficient operation of the vessel and in satisfying the expectations of the travelling public.

### **THE CATERING DEPARTMENT**

In the Catering Department, the Employer has applied to exclude the following positions:

<b>Position</b>
Senior Chief Steward
Second Steward

In considering these positions, I have reviewed the evidence of the following witnesses called by the Union:

- Christel Gehring – Senior Chief Steward on the Queen of Surrey
- Sally Fox – Chief Steward on the Queen of Oak Bay
- Heather December, Second Steward on the Queen of Surrey
- Richard Goode, Acting President of the B.C. Ferry and Marine Workers Union

The Employer called the following witnesses:

- Barbara Britton-Wilson – Director of Catering Operations for B.C.Ferries
- Tim Hunter – Catering Superintendent, South Coast, for B.C. Ferries, now working as Manager of Catering Operations

As stated in the Will Say Statement of Barbara Britton-Wilson, which was adopted by her in evidence before me:

9. The Catering Department works closely with both the Deck and Engineering Departments; all three are integral to the success of a ship. The Catering Department is responsible for all of the food, beverage, retail, janitorial and revenue earning operations onboard the vessel.

10. Not all vessels in the BCF fleet have a catering staff. Currently, there are 19 vessels with catering services onboard ranging from small snack bars to complex buffets and retail outlets.

11. Currently in the summer (peak season) catering employees numbers can reach as high as 1200. Typically during non-peak season we are responsible for approximately 800 full time and casual employees. We have shift patterns and Watch rotations that vary from 14 days on/14 days off – 12 hour days – 2 Watches,

to 8 days on/4 days off – 8 hour shifts – 3 Watches, to 5 days on/5 days off – 10 hour days – 4 Watches. The catering crew complements for each vessel are set out at Employer’s Book of Documents, Tab 8.

12. Managing the catering labour component at BC Ferries is complex and must be scrutinized daily to ensure we have the appropriate level of staff for licence to sail as well as providing service all the while staying within operational expenditure budgets.

13. On each vessel that has a catering crew there is a Chief Steward on each watch. The exception is the Queen of Chilliwack in the winter where one Chief covers the three watches and the Queen of Capilano, Queen of Cumberland and Bowen Queen where there are only 2 employees in catering.

14. There is also a Senior Chief Steward for each vessel, who also works a watch. The Senior and Chief Stewards are included in the bargaining unit. There are no management employees in catering on the vessels.

15. The annual Catering operating expenditure budget is approximately \$58 million. We have the largest expenditure budget in the Company outside of fuel due to labour. The Catering budget is comprised of labour, non-labour material and supplies, and contracted services (maintenance) and support (regional services). The annual catering revenue budget is approximately \$85 million.

16. I have three excluded superintendents who report directly to myself. Their areas of responsibility are South Coast; Central Coast; and North Coast, North Islands and South Islands (Minor Routes).

17. The superintendents are responsible for building vessel maintenance budgets, “Crews not on board” budgets and their own regional services. They also oversee the development of operational budgets in which Senior Chief Stewards are now participating in the planning and reporting. At this point the Senior Chief Stewards are only responsible for the expenditure side and are not accountable for variances, including those they could be affecting through their performance and decision making.

In describing the duties of the Chief Steward in her Will Say Statement, Ms. Britton-Wilson said:

19. The Chief Steward is responsible for managing the catering business onboard the vessel.

20. The Chief Steward is responsible for all revenue generating outlets, customer service, handling customer issues, concerns, requests, incidents and ordering of all goods sold.

21. The Chief Steward is responsible for the deployment of the catering crew.

22. The Chief Steward is responsible for safety in all areas of catering, including reporting defective equipment.

23. A large part of their responsibility is onboard cash management, where on a daily basis catering can generate anywhere from \$2,500 to \$35,000 in an eight hour shift.

24. The Chief Steward ensures employees are scheduled and managed, and that hours of operation are complied with according to policy. They are also responsible for approving scheduled overtime.

25. The Chief Steward is responsible for performance and attendance management of their watch crew.

26. Some Chief Stewards feel it is not their responsibility to “watchdog” their crew. They are reluctant to do absence reviews when they do their performance reviews. Some Chiefs don’t take performance management as serious as they ought to. The performance forms are completed but I have little confidence that accurate assessments are being reported. Typically we are unable to use performance reviews as a deterrent in selecting employees for promotion because they don’t reflect deficiencies and this is a result of the review being “cookie cut” and tracking of performance throughout the year is not done and therefore not included in the formal review process.

27. The Chief Stewards are expected to handle the first steps in discipline, but presently this is very minimal. If an employee is late, the Chief Steward is expected to do the initial fact finding and

interview with the employee, then report findings and recommend discipline if appropriate.

28. Chief Stewards frequently lack the time or understanding of the need to review historical records of discipline on any given employee. They often treat a fact finding as a first offence and therefore miss the opportunity to be progressive in the discipline hierarchy. This is a constant source of frustration for both Human Resources and the Catering Superintendents.

29. The Chief Steward is also the primary contact for public complaints onboard the vessel. The public should be able to speak to a member of management when bringing forth complaints, but this is not generally possible within the current organization.

In describing the duties of the Senior Chief Steward, she said in her Will Say Statement as follows:

31. The Senior Chief Steward is responsible for building their vessel budget for the three watches combined. They participate in the shipboard management team and do walkabouts with the Chiefs of the other departments for safety.

32. Senior Chief Stewards are expected to build the refit plan with the Senior Chief Engineer and are expected to be on the ship during the refit.

33. The Senior Chief Stewards are responsible for communication and consistency across the watches. Senior Chief Stewards are provided with administration time to ensure they are not always attached to an operational Watch and unable to achieve the overseeing of all 3 or 4 Watches. The Senior Chief Stewards are expected to ensure compliance to standards and must attach themselves to the other Watches. This typically is done on their days of rest (or not at all because of conflicting schedules.)

34. Senior Chief Stewards are also encouraged to use administration time to perform the following reports: variance/forecasts – monthly, 5 Top Waste Items – monthly, activity reports – monthly.

35. Senior Chief Stewards are responsible for following up on accidents and incidents, risk assessments, site safety meetings,

planning annual refits and attending the actual refit. All of which takes them out of the normal day to day operation and into more administrative functions.

36. The Senior Chief Stewards are expected to do performance reviews of the watch Chief Stewards and ensure the Chief Stewards are completing performance reviews on all three watches. However, as above with the Chief Stewards, there is reluctance on the part of the Senior Chief Stewards to be a “watchdog” over their crews.

In her evidence Ms. Britton-Wilson stated that in the Catering Departments on all vessels operated by B.C. Ferries, none of the employees are excluded from representation by the Union. Therefore, all Senior Chief Stewards, Chief Stewards and Second Stewards are currently represented by the trade union.

With respect to the need for a management presence in the Catering Department on the vessels, her Will Say Statement said as follows:

47. There are three distinct departments onboard most BCF vessels, The Deck, Catering and Engineering Departments. Each department has a need for a management presence.

48. The Master may be considered the “general manager”, in that they have overall authority and responsibility for the vessel. However, they require departmental managers reporting to them in order to effectively manage the vessel. There are several reasons for this:

- i. On short-run ferry operations such as BCF, the Master is not normally able to visit the passenger areas for anything more than brief, infrequent periods. Therefore the Master is not in a position to closely manage catering staff and be aware of emerging issues.
- ii. The Master usually does not have the required qualifications or experience to assess the performance of the catering staff or their adherence to catering standards, policies and procedures.

iii. The Master does not usually have the necessary formal and technical qualifications to make decisions about revenue generation, waste management, customer service, service recovery, Hazard Analysis Critical Control Points (HACCP) or food safety.

49. Therefore, the Master must rely on the Chief Steward and the Second Steward to ensure the catering crew are providing the level of service we expect, are following proper policies and procedures, and working safely.

50. The Company cannot rely solely on shore based excluded management to manage the Catering department onboard the vessel. This is because shore based Catering management are only able to attend the vessel at infrequent intervals. The Catering Superintendent must rely on the Chief Steward and the Second Steward, who have the full time, day to day presence onboard, to manage the staff for appropriate performance and proper conduct.

51. Shore based management have multiple ships to manage and cannot adequately monitor performance or discipline issues onboard a single vessel. Catering Superintendents must rely on the Chief Steward and Second Steward to evaluate ship board staff performance. This frequently places Chief Steward and Second Steward in a conflict situation with fellow union members when matters of job performance and discipline arise. As a result, issues involving the safe and effective operation of the vessel may go unreported to management.

52. The operation of ships with catering staff requires supervisors with well developed leadership skills. This means individuals in senior positions must be able to develop their teams, set positive examples, assess performance, and carry out corrective action when required. It also requires individuals who are prepared to make decisions for the overall safe and effective functioning of the catering department both in terms of occupational safety and food safety. Chief Stewards need to be able to respond effectively and in a timely manner to requirements that result from "Health Canada" inspections. In my view, supervisors can exercise such leadership only when free from the imperatives of organized labour.

53. When issues arise with the present limitations of leadership onboard a vessel, the Company is frequently unable to take prompt

action to remedy the situation. As a result, safety, operational and morale issues exist for longer than they should.

54. Safety is a primary factor in our operation, and we need a management presence to ensure the department is operating safely. This is because:

- a. BCF has a significant number of regulatory bodies to comply with, such as Transport Canada, BC Safety Authority, WorkSafe BC, Health Canada, Dept of Fisheries and Oceans, Canadian Coast Guard, Environment Canada and Health Canada. Senior Chief Stewards, Chief Stewards and Second Stewards should deal with these governing bodies that apply to Catering on behalf of the Company. For instance, it is important that Health Canada be advised of the full Company position on critical matters such as food borne illness incidents or product recall or food tampering incidents and most importantly from a food handling health perspective catering supervisors must report employee serious illness such as Hepatitis.
- b. Organized labour imperatives may also cause personnel to suppress critical safety information from the Company's knowledge. Unionized personnel have an incentive to put protection of the individual's job or reputation ahead of reporting of critical safety information. Suppression of such information can cause safety issues to exist longer than they should. For example Chief Stewards may be reluctant to advise the Company of harassment in the workplace resulting in poisonous conditions and unacceptable behaviour which takes the focus off of food safety and passenger comfort.
- c. Organized labour rules sometimes prevent the Company from taking timely action on competence issues which lead to critical safety issues.

55. A challenge BCF faces are collective agreement constraints that can allow people with uncertain competence to obtain jobs which may be beyond their skills and abilities. Usually BCF is not able to do anything about it. This may not be insurmountable in lower ranks but poses real challenges at senior levels of the organization, such as Senior Chief Stewards, Chief Stewards and Second Stewards who are expected to understand the full scope of our business and adopt good business practises that support the ability to achieve increasing revenue targets. Employees who

obtain a senior position in catering simply through seniority do not necessarily understand the complexity of operating an \$85 million dollar business.

56. It may be argued the “suitability” process of the collective agreement does give the Company the ability to assess competence; however, the so called “test” being used in Catering does not have enough “teeth” to make it effective. The use of performance reviews has limitations given that most performance reviews completed by Chief Steward’s lack the critical critiquing that is needed to select effectively.

57. I see an increased need for management in catering on the vessels because at present Senior Chief Stewards, Chief Stewards and Second Stewards are not held accountable for onboard labour and non-labour expenditures. Certainly they are expected to stay within budget, however, there are no consequences if they exceed what is in their budgetary plan. They are also not accountable for achieving revenue targets.

58. In our industry, BCF is relying more and more on ancillary revenues which are not controlled by the Commissioner. For the most part Chief Stewards are not filled with a sense of urgency to improve either performance, customer service or achieve targets as they are not responsible for overall results. It is also difficult to encourage Chief Stewards to understand the business as a whole and not simply look at each individual Watch. This past year we were challenged by a number of Chief Stewards who felt it was not necessary for them to attend the annual Catering, Food and Retail meeting where messages about revenue performance, past achievements etc. are delivered by the senior executive. The Chief Stewards saw no relevance of this information as it was beyond the scope of the one Watch they see as their only area of responsibility. This limited view of the business limits our ability to introduce new programs and deliver improved, expanded service.

In summary, her evidence was that the Chief and Second Stewards are responsible for overall supervision, training, familiarization and mentoring. Chief Stewards can be involved in fact finding meetings and attend the meetings at the initial step. Chief Stewards participate in reviewing new hire applications and interviews and promotions in certain classifications. Chief

Stewards have the authority to make decisions although some defer to their Superintendent.

Ms. Britton-Wilson's further evidence was that Chief Stewards are not involved in grievance meetings at this time but they are responsible for evaluating performance. Her evidence was also that Chief Stewards are not responsible for setting policy.

During her cross-examination, she indicated that the Chief Stewards are involved in building the budgets and in establishing the early scheduling of employees. She said that Chief Stewards are involved in the development of employees, the training of employees and in team building but some do not correct bad or deficient behaviour. She said some Chief Stewards don't document or reassess for deficiencies or create a performance plan for employees. She indicated that the Chief Stewards have received training and performance management training and she said Chief Stewards have been doing performance reviews for 18 years.

During her cross-examination, she identified a number of Chief Stewards who had not carried out their responsibilities as expected. She said there is a reluctance on the part of certain Chief Stewards to follow through with supervision of attendance and other issues. She said there are many examples of written warnings being issued by a Chief Steward or a Senior Chief Steward.

She said the Senior Chief Stewards are allocated 12-15 days a year to deal with reviews, attendance management and refit. There is no cap to this number. It depends on what they need. If they need time, they are allocated time for administrative purposes. Chief Stewards do monthly variance reports, deal with safety issues, deal with performance appraisal issues, and fact-finding investigations. Chief Stewards plan annual refits and do other duties for which they are provided administrative time.

One of the principal responsibilities of the Senior Chief Steward and the Chief Steward is to improve the generation of revenue in the Catering Department. They do this by a number of methods and initiatives that they administer. The Senior Chief Stewards hold meetings with the Second Stewards to build their team and to deal with issues like targeting waste, the maintenance of controls over money, prevention of theft, as well as other things.

The Catering Department holds meetings of Senior Chief Stewards for the purpose of discussing the operations and planning for the Catering Department.

The selection of Senior Chief Stewards is done using the suitability criteria established in the Collective Agreement.

As stated by Tim Hunter in his Will Say Statement which he adopted before me:

9. My duties as Catering Superintendent include, but are not limited to, the following: I am responsible for managing the catering services on my route to ensure they comply with our safety and environmental objectives and responsibilities; for ensuring that the highest level of customer service is attained, which includes monitoring onboard standards; mentoring Chief Stewards and providing professional guidance to all employees under my area of responsibility; developing, managing and reporting on both administrative and vessel budgets, and ensuring that the route manages within its budget, and meets or exceeds revenue generating targets; managing the disciplinary process for catering staff, and ensuring that Chief Stewards are following up on disciplinary matters, and that policy is applied in a fair and consistent manner; and asset management.

10. Despite the fact that I do not closely supervise the crews on a daily basis, I am left to deal with a significant amount of

employee management. A disproportionate amount of my time is spent either directly involved in, or coordinating, fact finding investigations, interviews and meetings, and being involved in attendance management.

11. As the only exempt Catering Manager in my region, I am responsible for delivering all suspensions. The Chief Stewards will deliver discipline up to a written warning, but their responsibilities end short of suspension. This means that in some instances, I will travel a total of four hours (Tsawwassen to Swartz Bay and return), for what is generally a 15 minute meeting (e.g. delivering a one day suspension).

12. If I was not constantly engaged with these daily employee management issues, I would be able to focus on doing inspections, ensuring onboard catering standards are being complied with, and that consistency across the watches applies, and focus on more strategic planning, all of which is where more of my time should be focused.

With respect to the duties of Chief Steward, Mr. Hunter stated in his Will Say Statement:

14. The Chief Steward is responsible for managing the catering outlets onboard the vessel.

15. Chief Stewards can be involved in fact finding and providing recommendations to myself and Employee Relations. As noted above, the Chief Stewards can apply a letter of expectation, or written warning, but decisions around suspensions are typically my responsibility (in conjunction with employee relations). The level of engagement in the disciplinary process varies amongst the Chief Stewards: some are quite comfortable with the process, while others are either uncomfortable with it, or resist the responsibility, as they feel a conflict in applying discipline to another bargaining unit member. The Chief Stewards should, in my opinion, have the authority to recommend and deliver suspensions, up to and including termination. The value of having the onboard supervisor involved in the suspension process is significant, inasmuch as the suspension would not be seen as being applied "remotely", but would rather be embedded in operations, and the affected employee would realize that his or her performance would be scrutinized in the context of this discipline

(whereas there may be situations at present where the supervisor is not aware of a suspension, or at least is not aware of the reasons behind a suspension).

16. Chief Stewards are involved in preparing performance evaluations on their crew. They do this twice a year. The first is a mid year evaluation and the second is a formal evaluation at the end of the year. They will also make recommendations respecting hire back for seasonal and casual employees who work summer watches.

17. Chief Stewards sign off on scheduled (budgeted) overtime; the Catering Superintendents sign off on all unscheduled overtime.

18. Senior Chief Stewards work with the catering superintendents to develop the operational budgets, and manage these budgets as well as report out on them in monthly variance reporting sessions. The responsibility for the budgets, however, lies with the Catering Superintendents. In other words, if the route is significantly over budget at year end, the Senior Chief Stewards are not held accountable for this variance, it is the Catering Superintendents who take responsibility.

19. Crewing Incident Reports (or CIRs), are bulletins issued by the crewing officers whenever a crew member is late for a shift, or misses a shift (a “no show”). These are managed jointly by the Chief Stewards and myself; typically the CIR will be issued, I will send an email out to the relevant Chief Steward to ensure they hold a meeting with the employee, provide a summary of this meeting, and also indicate where they feel we need to go with the employee (i.e., do they need a letter of expectation, written warning, etc.). Some Chief Stewards are very comfortable with this process, others less so. In calendar year 2007, my office closed out around 150 CIRs. Managing these incidents consistently is a critical component of progressive discipline, and is a large workload, involving coordinating meetings with Employee Relations, determining the disciplinary history of each individual on a case by case basis, guiding the Chief Stewards through effective (and appropriate) composition of warning letters, and moving repeat offenders through the disciplinary curve. Having an onboard exempt supervisor, tasked with managing these incidents for their respective business unit, would certainly streamline the process.

20. The Chief Stewards are our onboard customer service ambassadors, and are tasked with ensuring that everything

possible is done to ensure the customer has a positive sailing experience with BCF. To this end, they have service recovery tools at their disposal, including authorization of complimentary use of various facilities onboard the vessels, vouchers for food services that can be used at a later date (e.g. they may be working on a V Class vessel, but may issue a voucher for a free buffet meal on the S Class vessels, as the passenger may indicate they are returning on one of the S Class vessels at a later date).

With respect to the duties of the Senior Chief Steward, Mr. Hunter stated in his Will Say Statement:

22. Senior Chief Stewards are the onboard “business managers” for each of the major vessels, and are responsible for ensuring that there is consistency across the watches in terms of standards, crew development, effective utilization of the assets in the catering areas, and performance management of the watch Chief Stewards. They work with the Catering Superintendents to build the operational budgets for their vessels, but, as indicated above, are not ultimately responsible for these budgets.

23. Senior Chief Stewards have an active role in attendance management; typically Employee Relations will call upon the Chiefs and Senior Chiefs to sit in on attendance management meetings during the yearly cycle of meetings. The Chiefs are also tasked with including an attendance review during their performance management meetings (done with employees twice a year). In these latter cases, it is my opinion that issues regarding attendance are not tackled as effectively, or aggressively as they need to be. Rather, the issue is deferred to the larger scope of attendance management meetings, which Employee Relations coordinates, and which is largely viewed as a “management-driven” initiative. The core of attendance management should sit in operations, and having exempt managers onboard the major vessels would ensure that these meetings occurred more frequently, that attendance issues are surfaced and dealt with as they arise (and not deferred to a perceived external process), and there would be accountability for ensuring that this process occurred.

24. As indicated above, Senior Chief Stewards are involved in building the operational budgets, and report out on them monthly. The Senior Chiefs can significantly impact the budgets. For

instance, a proactive Senior Chief Steward who establishes minimum/ordering parameters for the materials and supplies can reduce the overall cost to the operation by a significant amount, thereby impacting budget. For example the materials and supplies budget for a typical S Class fiscal year is in the \$300,000 range, so savings on a percentage basis can be quite substantial amounts: i.e. a 7% savings would be \$21,000.

With respect to the need for on-board management presence in his Will Say Statement, Mr. Hunter said:

29. A management presence onboard the vessels would allow the Senior Catering Management Team (i.e., the Director and Superintendents) to develop Key Performance indicators and BPOs around the overall corporate objectives that the exempt employees would be held accountable to. This could include objectives around safety, Workers' Compensation, attendance management, STIIP (Short term illness and injury), revenue generation, fiscal accountability (management of budgets), all of which affect the division's bottom line, and would improve the financial viability of operations. It would, in short, allow us to manage our business much better.

30. Tying into the statement above, labour and productivity would in most cases be much more closely monitored by an exempt manager onboard the vessels, as they would be aware of their budgetary targets around straight time labour, overtime, etc., and would manage this on a daily basis (a good example would be that the responsibility for signing off on unscheduled overtime would then fall in the hands of the onboard exempt manager, who would have regular discussions with the onboard team around innovative ways to mitigate overtime costs).

31. Promotion to Second Steward, Chief Steward, and Senior Chief Steward is an issue right now, as the reluctance to do frank or critical performance evaluations (as the supervisors performing the reviews are bargaining unit), leads to senior applicants for managerial positions who have reasonable performance reviews obtaining the positions, despite the fact that they may have significant performance issues. As promotion is currently based on "senior qualified", unless there is something significant on file (e.g. a performance evaluation that identifies key areas that this individual needs to improve in, prior to being prepared to take on a

senior role), the Superintendents are bound by the Collective Agreement to award the job. This leads to situations where, to link this issue to some points made above, a Steward may impact the bottom line by over ordering, simply because the position they have been promoted to, through seniority, is above their capacity to perform.

32. As noted above, I travel four hours for relatively minor disciplinary meetings (1 day suspensions). The Senior Chief Steward, Chief Steward, or Second Steward, should they be exempt, could easily take these on, as well as more advanced meetings.

In his cross-examination, Mr. Hunter was extensively cross examined with respect to the role of Catering Superintendent and the relationship to the Senior Chief Stewards. The cross-examination also was related to discussing the issues of whether Senior Chief Stewards and Stewards had in fact carried out the responsibilities expected of them.

The Union called Christel Gehring to give evidence. In her Will Say Statement which she adopted in her evidence before me, she stated that as Senior Chief Steward on the Queen of Surrey:

6. I am responsible for the day to day operation of the Catering and Passengers services on the Queen of Surrey on "C" watch.

7. I report directly to the Catering Superintendent regarding the day to day Catering operation and to the watch Captain and Senior Master regarding occupational and operational safety.

8. I supervise a catering crew of 13 to 20 depending on the license requirements.

9. In addition to supervising my crew, I also coordinate, supervise and assist the Senior Catering Staff on the other crews (two CS, 3 Chief Cooks, 3 Second Cooks, 3 Second Stewards and numerous relief Supervisors) to ensure a standard operation on all three crews.

10. I am in daily contact with the Supervisors on the other watches either by email (copied to my Catering Superintendent), phone or in person. This daily communication is necessary for me to fulfill my current job description.)

11. As the SCR I take my mentorship role very seriously. I have mentored many Supervisors.

12. Each month I conduct inspections of the passenger services decks of the vessel on each watch. Through these inspections, and in consultation of the watch CS and Chief Cooks, I am able to adjust our performance. We have developed a respectful and cooperative team.

13. In my role as SCS, I regularly “stand a watch” as CS, taking responsibility for maintaining the standards set by BCF and all other regulatory bodies to provide for the safety and comfort of our customers and catering crew.

14. I am in charge of Passenger control in the event of a safety incident.

15. I have taken every opportunity (to) educate myself for my position as SCS. Much of this training was achieved from sources outside of BCF.

16. I have also learned many of the skills and knowledge necessary to supervise employees through my union experience. The union also developed my leadership skills through workshops and schooling.

17. SCS fulfill the discipline role that BCF has established which is limited to initiating and participating in fact findings, attending management meetings, and making recommendations for discipline.

18. The Catering Superintendent has the final determination on discipline.

19. I participate in fact findings and attendance management meetings for the catering crew on the Queen of Surrey which are arranged either by me or by the Excluded Managers. I follow the interview template provided to me by Employee Relations Department (“ER”) and I revise it to fit the occasion. ER edits my revision. I send my notes and recommendations to the Catering

Superintendent, who has the final determination. Letters documenting the meetings are sent out from the ER department.

20. Holding fact findings onboard has proven very disruptive. They should be scheduled off the ship, as recommended by ER, but that will cause more challenges to timely discipline. Meetings are currently sometimes scheduled many weeks after the event as I sometimes cannot get relief for myself or others.

21. I pass on any serious issues to the Catering Superintendent and to the ER Managers.

22. I disagree with the employer's suggestion that Bargaining Unit Supervisors are reluctant to evaluate objectively and apply discipline as required. I have personally initiated discipline many times in my career. I have witnessed others do so as well.

23. It is not necessary for a Manager to present an employee with a letter of discipline. I presented a suspension letter myself after consultation with ER: Tab 1. In that case I recommended a three-day suspension but Management decided one day was appropriate. ER gave me a template for the discipline letter. ER made changes to my letter and returned it to me for my signature.

24. Only recently did the employer provide a fact-finding course to give us some skills for proceeding with disciplinary issues. In years past there were workshops and courses for Supervisors. These courses are no longer available so the new Supervisors have not had this training.

25. Supervisors can and do perform disciplinary functions without being excluded. Our Union constitution recognizes and supports our supervisory functions (Article 6 section 6 BCFMWU constitution). There are no "organized labour imperatives" preventing us from fulfilling this role.

26. CS do late interviews and request the employee's history from crewing if it has not been provided automatically. Recently, the Crewing office began automatic reporting of historical data concerning late infractions. This information used to take days to receive and, therefore, late interviews were not done in a timely manner.

38. I conduct all performance interviews for my watch (and with the Chief Cook for the galley positions) twice a year. I perform casual performance interviews jointly with other CS. Together with

the employee, we set goals to improve performance, to develop the employee and set a monitoring timeline for improvement if required.

39. This is no small feat. Considering operational requirements, shift work, time off, sick time etc., it often takes weeks to accomplish. Consequently, we are rarely able to achieve appraisals on 100% of the crew.

40. The employer has not provided consistent training for this important function. While I have had extensive training in this area, others have had none. The Chief Cooks have not received any training except what their CS has provided. The CS include their Chief Cooks and Second Stewards in the performance appraisal interviews as part of the mentoring process.

41. I have never witnessed any Supervisor being reluctant to complete objective performance evaluations. I have witnessed frustration due to not being able to schedule them for some reason or other and not being fully confident in completing them. They require training.

42. In 1997 and 1998 I took part in developing the performance and attendance management program and taught workshops to the Catering Supervisors on Routes 2 and 3. Now ER is supposed to give Supervisors a one-day workshop but not all Supervisors have received that workshop.

43. I agree that attendance management should be part of the performance interviews we complete twice a year but, unfortunately, HR's policy with respect to the role of CS and the process we are to follow changes with each new HR group. We have had a new HR team every few years which reinvented the wheel. While the process has been improving, some employees have fallen through the cracks even though they were identified to Management years ago.

44. At one time CS were tasked to perform attendance management meetings and were asked to identify to the Catering Manager any employees who required progressive discipline. Although we did so, there was inconsistent follow-up by the Manager. One of the problem employees I identified retired recently having spent most of her career off sick.

45. If some CS (and I believe those people are few and far between) are not supervising their crews, doing absence reviews,

and/or are weak in the area of performance management, the Catering Superintendent and SCS should address those employees to raise their performance to the required level. Taking them out of the Bargaining Unit will not magically increase their skills; training and setting goals will.

46. The CS complete the Assessment Form BCF has designated, which is very generic. If BCF's goal is no "cookie cutter" assessments, Management needs to develop a better form that encompasses the key areas of performance and behaviour.

47. "Some" CS have not had the training to fill out these forms or to perform a performance interview. For reasons of time, lack of training and our shift system the assessments may not be as in-depth as Catering Management would wish. Being excluded will not change this problem.

48. Although the Catering Superintendent is supposed to appraise the CS, many CS have not received appraisals for many years. Only recently has it been made a company priority.

49. The learning curve for Supervisors has been substantial in the past 10 years. I rarely contact my Superintendent unless I require his permission or input, but I have many years experience. If some Supervisors are subjecting the Superintendent to daily communication, approval and questions they obviously need support and direction. If the Catering Superintendent is belaboured by issues that should be dealt with onboard, those issues should be directed back to the SCS and watch CS as appropriate.

50. Union Supervisors, with proper training and mentorship, can and do closely monitor and manage the Catering Staff. There is no question that it is difficult for the on watch Supervisors (SCS, CS, Chief Cooks, Second Cooks, or Second Steward) to deal with performance issues and documentation in a timely manner due to time constraints and customer demand.

51. SCS have conducted performance or attendance management of problem employees for years with no change or conclusion because of the lack of time and support from ER. Our focus is operations. We have numerous daily routines to accomplish. We cannot accomplish these administrative tasks unless we are provided more time and/or support.

52. CS are direct operational supervisors and their job duties and requirements have increased so much in the last 10 years that it is virtually impossible to accomplish all operational requirements and administrative tasks. The CS must maximize employee performance to accomplish the company goals and objectives no matter whom Crewing sends aboard the vessel. The workload is huge. We carry thousands of passengers every 8 hours. Every hour we have a new load of customers who demand attention. Time constantly works against us. It is extremely challenging to accomplish all tasks effectively. We prioritize yet simply do not have sufficient time for all required documentation. This is not a time management issue, it's a workload, scheduling and hours of work issue.

53. CS have only four administrative days a year and the Senior Chief gets a couple every month. Excluding CS from the Bargaining Unit will not increase the hours available to complete all necessary tasks.

54. The condition of our ship speaks for itself. We are constantly being complimented by the Excluded Managers and our customers. I am there to support and guide through performance coaching and constructive criticism. My aim is to inspire those I work with to continuously better themselves, to reach their goals and meet the company's expectations.

58. I have been invited to Nanaimo twice now to work with the Manager to input data into the budget. Each time there was a new system with no preparatory explanation of the changes in the program. Therefore, I had to make quick unprepared decisions regarding input.

59. When, for example, we "build" the budget for the Queen of Surrey catering and passenger services, I do not get to input how much I think I need, it's already there from last year with a small increase. Budgeting labour hours is tricky. This year we were given a different formula to figure out the required crew size. It took me awhile to catch on but I got all the spaces filled in, then Stuart, my boss, fine tuned it. Several days later I got a notice to finalize my budget and send it in. This required me to go on the computer program, take ownership and press the second button so the CPs could review and authorize the budget. When I went to press send I found Elaine Mackerracher, the budget guru, had already taken ownership and sent it. I do not have any control.

60. Although my current job description says I am to plan and coordinate menus, I have no training or qualifications to do so and, in fact, I have no control over the menu. Menus are planned and coordinated by the Quality Control Superintendent.

61. I discuss with the Catering Superintendent any defects requiring attention at refit and assist in developing the Statement of Requirement. I cannot authorize any modifications.

62. I explain variances monthly on a variance report and predict forecasts with the assistance of the Catering Superintendent.

63. I answer to these variances at my performance appraisal and throughout the year. That is accountability.

67. I verify all hours worked and the category of work to ensure all codes are correct. I create daily timesheets on my crew. I return these timesheets to Crewing, with a copy to my Superintendent, for approval.

68. I monitor and report our waste management plan monthly. The Queen of Surrey has been on target from day one of this program. We have saved many dollars by working as a team.

69. To alleviate overtime we have developed a system to keep only certain required positions at the end of the day to ensure cleanliness and safety. At watch change we crew down to minimum crew as per license to avoid all crew getting OT if the ship is not on schedule.

70. We crew down on our last trip if the traffic is light and our customers don't require all services to be available. We have developed into a lean revenue generating machine and we are getting better all the time. Making my position exempt would not result in any closer monitoring of crewing levels.

72. Our revenue targets have been set increasingly high and for the most part we have succeeded in attaining them. We have been doing better and better each year. However the current world economy has affected every business. It is not because Supervisors aren't excluded.

73. Bargaining Unit Supervisors have been working with Management to build the catering business. Cutting costs, production planning, and waste managing became our mantra.

We work with our crews to develop plans to keep costs down and revenue up.

84. In 1996 I was asked by Management to be a Subject Matter Expert for the assessment process to develop the list of competencies, skills, knowledge levels and training required of Supervisory Stewards. I was part of the assessment panel for several years which travelled the fleet assessing Catering Supervisors. BCF discontinued that program so there is currently no objective assessment program.

88. I have participated in the hiring process with ER. The Manager always has the last say even when I question the ability or skills of the candidate. In many cases, HR overrides our recommendation and hires people the Supervisors have rejected.

89. Once I firmly told ER, "it is him or me". ER then hired that individual for the Deck department. After countless complaints from all the Deck Supervisors he was shuffled to the Engine room. The Engineers tell me they are getting little support from Management dealing with this employee.

90. This year we were asked to pick the Seasonal Employees to hire as casuals. I conferred with as many Supervisors as possible to reach an objective decision. It was clear to us that three were not suitable and we gave reasons for our recommendations. ER challenged us to rethink our recommendations, citing the substantial cost of training and ultimately, told us they "would do". We stood our ground and these employees were not hired, although one was kept as seasonal.

97. It is already difficult for the SCS to complete all the required administrative duties and be a watch CS as well. My Second Steward must do much of my daily work so I can complete my SCS duties. I have to give up my days off to work on the other watches as required in my job description. I already answer my phone at home and deal with ship issues on my own time. The Manager told me to take admin days but getting relief in the summer was impossible. I wish I had recorded every time I used my own time to accomplish the job. I did it to develop our supervisors to support them in their decisions and to achieve the company's goals. I am going to retire within five years and know that these people require much support and training.

98. The elevated responsibility in the new job description can only be accomplished if extra time is given to complete the tasks.

Unless the SCS is extra to the watch, the job just will not get done. If the Catering Superintendents cannot get the job done with 100% internet connectivity and a secretary how can we be expected to do it plus do the job as a watch CS?

In her further examination-in-chief, Ms. Gehring confirmed she had prepared a suspension letter and held a fact-finding meeting and that she had prepared other letters relating to discipline. She agreed that since preparing her Will Say Statement, she had worked on the development of the labour budget. She also agreed that she explained monthly any variance from the budget. She agreed she had been involved in interviews for promotion and had made recommendations that an employee is not suitable for promotion. As a consequence of her advice, two employees were denied promotion.

In her cross-examination, she agreed she had been involved in some very good opportunities for training and had developed a training program. She agreed that the Catering Department is interested in performance management. She agreed she had been taking a course on addiction awareness and completed Corporate Trainer Level 1, Harassment Awareness, Resolution of Conflict in the Workplace, Respect in the Workplace, Supervisory Skills 1, 2, 3, which can take several days for each level. In fact, she agreed that the Supervisory Skills training is a total of twelve days.

Ms. Gehring also agreed she helped Barbara Britton-Wilson develop courses, in particular, the Supervisory Manual. She agreed that she was responsible for maintaining discipline with support from Human Resources and the Catering Superintendent. She said the role of Human Resources was to ensure consistency and fairness and that she appreciated that assistance. She said she and the Chief Steward are responsible for addressing attendance issues when brought to her attention by Crewing and, if an employee is late, she would deal with it.

She was cross-examined with respect to her role in fact finding in disciplinary matters and the reports she had prepared supporting her findings. She indicated she can access employee files from Employee Relations when she needs them. She acknowledged she had recommended a 3-day suspension with respect to an individual employee and she had signed the ultimate letter of suspension. She received some pressure from the Union over having signed a suspension letter.

Ms. Gehring said she needed administrative days for conducting performance evaluations and for training. She agreed that she had a significant responsibility to manage the budget through Maximo, a software program.

When referred to her concerns about the imposition of discipline in her Will Say Statement, she had expressed concern about a lack of support from management. In her cross-examination, she agreed the support from management had been better in recent years. She said she had no current complaints about the support from management to carry out disciplinary action. She agreed there is more business-related activity to generate revenue for Chief Stewards than there used to be in maximizing revenue from Managers and managing costs and in reacting to volume of passengers.

Ms. Gehring agreed she was responsible to ensure that performance reviews were conducted on the vessel. She agreed she had a responsibility to crew up or crew down, depending on the volume of passengers. Sometimes this requires the permission of the Master. She agreed that her opinion should be given more weight in the selection process of employees and that she would want more involvement in the selection process if given the information to do so.

She said the Second Stewards are more apparent on the vessel and carry a radio. She agreed that they have the authority to correct behavior and to mentor and provide feedback.

She agreed that she would take on additional responsibilities as contemplated by the Company, if she was provided the training, support and the time.

Sally Fox, who is the Chief Steward on the Queen of Oak Bay, gave evidence on behalf of the Union. In her Will Say Statement which she adopted in her evidence before me, she stated:

5. I supervise, organize and administer all functions of shipboard Catering and Passenger Services onboard the vessel. I ensure that the safety of passengers, crew, company property and high standards of customer service are always maintained. I am responsible for overseeing the Catering business onboard, including all revenue generating outlets and customer service. I am responsible for customer issues, concerns, requests and incidents.

6. While working the A.M. Shift, I am responsible for ordering all of the food products sold. Once a month I am responsible for ordering all cleaning and first aid supplies.

7. I am responsible for the deployment of the Catering Crew. I arrive at work well before my start time to ensure crewing has scheduled the correct number of qualified employees; for example, cashiers, cooks, and a designated Occupational First Aid (OFA). I also ensure the catering facilities are safe, in working order and clean for the oncoming crew and customers.

8. I am responsible for safety in all areas of the Catering Department which includes training employees on safety aspects of all catering equipment, safety related to passenger control in emergency and non emergency situations, and ensuring employees perform their duties in a safe manner.

9. I am responsible for onboard cash management during my shift.

10. I am responsible to ensure the vessel is safe, clean and ready to go for the oncoming crew. Rarely, I will arrange for non-scheduled overtime for one or two employees for one increment to ensure the vessel is ready for the oncoming watch. This overtime is justified on the timesheets and approved by shoreside Management.

11. I do the performance assessments and attendance management of my crew.

12. I have had little formal training or mentoring on these tasks so I reference the Performance Management Manual for assistance.

13. I take performance reviews very seriously. I view them as a positive vehicle to highlight employees' strengths and identify areas where improvement is needed. As part of the performance assessments, I always review the employee's absence record.

14. To properly complete performance reviews is very time consuming task. Also, it is often difficult to find time to consult with my Second Steward which is required to complete the review. Although due to time constraints, performance reviews are late, they are always completed.

15. Never once, have I received negative feedback from my Managers or from HR that my employee appraisals look like they have been "cookie cut". In fact I have received praise from my Superintendent for doing such thorough appraisals.

16. If necessary I coach employees throughout the year in any areas requiring improvement.

17. I always handle the first step of performance management with respect to Catering Department employees. I perform the initial fact finding, interview the employee, and report my findings to Employee Relations, to the Senior Chief Steward and to the Catering Superintendent.

18. Although I am involved in discussing whether further discipline is warranted, decisions regarding discipline, both with respect to whether to issue discipline and the appropriate degree of discipline, are made by Employee Relations.

19. Sometimes Employee Relations does not follow my recommendations with respect to discipline. A recent example

occurred with a new hire who was still on probation. I recommended the employee not be retained due to his absenteeism and lack of accountability. Instead, Employee Relations decide to issue a one-day suspension and extended his probationary period to 150 days. When I questioned the reason, I was told Employee Relations had determined that amount of discipline was appropriate given the cost of the investment the Company had already made in this employee. I was told by Rob Corbett, the Director of ER, to draft a letter giving him a one-day suspension and extending his probation to 150 days. Mr. Corbett made some changes to my draft and told me to put it out under my signature. I was surprised as I had never before been instructed to issue a letter of discipline under my name: Tab 4. Previously all letters were issued by ER.

20. I am the primary contact for public complaints onboard the vessel. I have had years of experience in this area and I am very competent. I have designed a "Sally's Technique" and mentor and coach all new hires, employee and junior supervisors accordingly. As the very last resort on a complaint I can't rectify, I will offer contact information to our Customer Relations Department. In reality, this only happens two or three times a year.

21. Most of the complaints which arise are from problems the passengers have had on shore which were not dealt with before they boarded the vessel.

22. In our Department employees must pass a "suitability process" before being appointed to a position and we conduct regular performance reviews. Therefore, if Management feels there are employees in senior positions who have received promotions strictly through seniority, Management must accept responsibility for having determined that those employees were suitable and, further, for the lack of training, mentoring and follow-up by Management and/or the Employee Relations Department. I am not aware of any regular Chief Stewards who are not adequate to the task.

23. As a Chief Steward on the Queen of Oak Bay, I am accountable for onboard labour and non labour expenditures. I accept that responsibility and carry it out effectively and conscientiously.

24. I do not accept the suggestion in the Management Will Says that there are "no consequences" if we are not accountable. As a responsible, accountable Chief Steward I strive daily to achieve the

revenue targets laid out by Catering Management. That is one of the expectations of my job. No one has ever suggested I do not fulfill that expectation; I do and all the other Chief Stewards I have worked with do as well.

25. While I do have a role in determining the number of catering employees on my watch, I always ensure the Master, my Senior Chief Steward, and the Catering Superintendent are aware of my decisions on crew size. They have the right to veto those decisions if they do not agree with me, but they have always agreed with me. I make decisions regarding the size of my catering crew based on instructions from the Catering Superintendent and Senior Chief Steward to reduce the crew if warranted by low passenger counts. I also have the ability to pick up extra employees as necessary but I must always ensure the monies generated in my department warrant the employee costs.

26. Our Senior Chief Steward emails all the Chief Stewards monthly with the current revenue reports including past, current, and future budget targets so that we are aware of the revenues generated by our department. We can then manage additions to crew levels in line with revenue. I have to make sure we do not have too many crew compared to the passenger load. I am fiscally responsible and must ensure a balance between monies generated, passenger counts and crew workloads. Consequently, the size of my crew ranges from 13 to 23 employees depending on our crew profile levels and add ons. I always seek agreement from the Master before adding or reducing employees as this may affect our licence on board. I will always email my Senior Chief Steward and Catering Superintendent, after the fact, to advise of any changes I have made in the crew profile.

31. On the vessel, the Excluded Captain is our onboard Manager and he has the overall authority and responsibility for the vessel. I always keep the Captain informed of all incidents and my planned response to ensure he is aware of everything occurring on the vessel and so that he has the opportunity to change or add to my response plan.

32. The Captain relies on the Chief Steward and Second Steward to ensure the Catering Crews are working safely and are following proper policies and procedures. If, at any time, the Captain gives an order or requests anything I immediately comply.

33. When issues arise, I deal with the issue to the best of my ability. I always act promptly. If I am able to deal with the issue I

do so then report my actions. If I am unable to resolve an issue I would immediately refer the situation to my Captain. If I require support or assistance from my Catering Superintendent or the Employee Relations Department I ask for it. Safety, operational and morale issues are dealt with either by me, or if necessary by my Captain immediately and never exist longer than they should.

34. If my Captain has to make a decision regarding the Catering Department, he has access to all the relevant manuals in the Chief Steward's office. I would assist the Captain in finding the relevant manual, policy and/or procedure and relay any history of similar decisions that I am aware of in the Catering Department.

35. I would never withhold any performance or safety issues from either the Captain or Catering Management. Performance issues could affect safety on the vessel. It is in my best interests, as well as those of the crew and passengers, to ensure a safe work environment. I would never compromise that. I have never felt that I was in a conflict when addressing these issues.

36. The Chief Stewards on the Queen of Oak Bay strive to improve performance, customer service and achieve revenue targets. We do not need to be excluded to fulfill these expectations.

In her cross-examination, Ms. Fox described the courses she has taken, including Resolving Conflict in the Workplace and others.

She stated she does performance assessments and manages attendance. She said she does the performance assessments quite formally in April and does a follow up which is more informal in November. She has given negative assessment to crew members. She is involved in fact-finding and disciplinary investigations. She is accountable for onboard labour including crew down and crew up and she strives to advance revenue targets.

Ms. Fox stated she is in communication with the Captain on a daily basis in determining the number of crew members required for the voyages. She communicates with Engineering with respect to temperature and the

maintenance condition of equipment. She agreed she was part of the shipboard team with the Master and Engineering.

Heather December gave evidence. She previously was a Second Steward in Langdale and, at the time of giving her evidence, was a Second Steward on the Northern Adventure. She gave evidence in her Will Say Statement of the role and responsibilities of Second Stewards. She said she had taken as much Company training as was possible, including Supervisory Skills Level 1, 2 and 3 and Performance and Attendance Management training. She said she has not had any occasion to discipline as the circumstances have not arisen. She also stated she does performance coaching and behavior modification as part of her responsibilities. She can get involved with individuals who are chronically late, if requested by the Chief Steward. She stated she makes recommendations with respect to hiring. She also stated she plays a role in training new hires.

Richard Goode gave evidence on behalf of the Union. He is the Acting President of the B.C. Ferry and Marine Workers' Union and has been employed since 1993 as a Deckhand/Engine Room Assistant. He gave evidence with respect to the performance of the Supervisor's role in the Company and the consequences of exclusion of witnesses from the bargaining unit.

I have concluded that, based on all of the evidence, the Senior Chief Steward and Chief Stewards should be excluded from the bargaining unit as not falling within the definition of employee under the *Labour Relations Code*.

As there are only limited vessels in the fleet which are large enough or have the passenger capacity to justify the provisions of catering services, my finding only relates to the vessels which provide catering services other than the Queen of Capilano, the Queen of Cumberland and the Bowen Queen where there are only two catering employees on those vessels at any given time.

My reasons for reaching these conclusions include:

- a. I find the Senior Chief Stewards and Chief Stewards perform the duties which are considered by the Labour Relations Board in these circumstances as excluding an employee from a bargaining unit. They are involved in hiring, and evaluation and discipline. They are also involved in planning and budgeting the catering services and can affect the revenue of the Employer through the efficiency of their management of the catering staff.
- b. The catering services have evolved and changed significantly since the 1978 decision of the Board.
- c. The Senior Chief Stewards and Chief Stewards must work in conjunction with the Master and the Chief Engineers to ensure that the catering area operates efficiently and contains the requisite number of crew to meet the operating conditions of the vessel.

Based on all the evidence with respect to the Catering Department, it is my conclusion that most of the Senior Chief Stewards and the Chief Stewards are carrying out the duties which would exclude them from the definition of “employee” under the *Labour Relations Code*. It is significant that the Union’s witnesses, as well as the Employer witnesses seek an enhancement of the responsibility and authority for Senior Chief Stewards and Chief Stewards in managing the Catering Department on the vessels.

As was the case with respect to the Deck Department and Engineering, the Union, during cross-examination of the Employer’s witnesses, devoted significant attention trying to demonstrate that the Senior Catering Officers do carry out the responsibilities as directed and expected by the Employer.

**CONCLUSION**

I have reached the decisions described in this Award on the basis of the analysis as described in this Award. I have not found it necessary to consider certain of the issues identified in my Interim Award because of agreements reached by the parties.

In particular, the parties agreed that I did not need to consider the issue of the significance of the exclusions of Assistant Terminal Manager positions as well as the decision to exclude certain further positions in Crewing and Human Resources. Also, it was agreed that I would not consider the significance of the words “at or below the level of Manager” in Article 2.01(A) of the Collective Agreement. The parties also agreed not to call evidence with respect to the significance of setting aside the October 13, 1999 Consent Award of Rod Germaine, but the issue would simply be a matter left for Argument. Similarly, the parties agreed that the question raised by me in the Interim Award that it is a common experience that there is a management presence associated with large capital assets would be left to Argument.

In summary, I have considered the issue of exclusions by applying the other principles identified in my Interim Award in the manner described throughout this Award.

I remain seized of any dispute arising with respect to the implementation of this Award.

**IMPLEMENTATION**

Finally, I feel compelled to briefly deal with the implementation procedure for the newly-established excluded positions which I will refer to hereinafter as the “Implementation Plan”. In my Interim Award I said that I would meet with the parties prior to determining the process of implementation

of this Award. I intend to do so, but I wish to make certain remarks at this time.

While I do not view it as a proper arbitral role at this time to establish the Implementation Plan *per se* as I do not have sufficient evidence before me to do so, I do, however, deem it necessary to establish guidelines and principles to be followed by the parties. I therefore direct the following.

1. The Employer should establish a structured Implementation Plan with input and suggestions from the Union within 60 days after the publication of this Award.
2. Further, it is my view that the parties should establish and adopt guiding principles to govern the posting, assignment and transfer into the excluded positions. These principles should be established in a manner that will minimize disruption, provide consistency, and facilitate retention of employees.

Therefore, as a guide I would direct the Implementation Plan establish an appropriate mechanism of communication to the Union and employees of the various steps of the Implementation Plan as it is put into effect.

3. Establish a general time frame for implementation, i.e., the sequence of vessel and routes affected at each stage of implementation.
4. Establish a framework to deal with assigning employees into the excluded position as well as a procedure to deal with employees who are not offered and/or do not accept an excluded position and/or who cannot be offered a bargaining unit position within his or her department at their existing point of assembly.

5. Establish a time frame within which employees assigned to an excluded position, and who later wish to can return to the bargaining unit, as well as establishing the conditions upon which they will return to the bargaining unit.

The foregoing are, as stated earlier, guiding principles and are surely not an exhaustive list of matters which may arise in implementing the transition. However, as noted in the award, these parties have had a long and fruitful history of bargaining numerous exclusions and implementing the transition of same.

I will retain the necessary jurisdiction as mediator/arbitrator to deal with and settle all matters or disputes arising out of the implementation process.

It is so awarded.

Dated at the City of Vancouver in the Province of British Columbia this 9<sup>th</sup> day of September, 2010.



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Vincent L. Ready