

BRITISH COLUMBIA LABOUR RELATIONS BOARD

BC FERRY SERVICES INC.
(the "Employer" or "BC Ferries")

-and-

B.C. FERRY AND MARINE WORKERS' UNION
(the "Union")

PANEL:	J. Najeeb Hassan, Vice-Chair and Registrar
APPEARANCES:	Peter Csiszar, for the Employer Steven Rogers, for the Union
CASE NO.:	2020-000358
DATE OF HEARING:	May 3, 2020
DATE OF DECISION:	May 8, 2020

DECISION OF THE BOARD

I. **NATURE OF THE APPLICATION**

1 The Union alleges that the Employer has violated a Consent Order of the Board
that was issued on April 12, 2020 (the “Consent Order”). Given the urgency of the
circumstances, the Board convened a hearing, pursuant to Rule 17C(e) of the *Labour
Relations Board’s Rules*.

2 The Union seeks a declaration that BC Ferries has breached the Consent Order
and a direction and interpretation of the Employer's obligations under the Consent
Order.

3 While there is some dispute on the facts that give rise to the Union’s application, I
am able to resolve the application without having to reconcile the parties’ differences on
the facts. During the course of the hearing, I heard from the parties orally and have
reviewed their written submissions. In the interest of providing an expeditious resolution
of this dispute, I have not recounted all of their submissions but have taken them into
consideration in rendering this decision.

II. **BACKGROUND**

4 On April 7, 2020, the Union filed an unfair labour practice complaint with the
Board, alleging that the Employer was negotiating terms of employment directly with the
Union’s members by offering layoff terms that the Union said were outside of the
Collective Agreement.

5 A significant concern to the Union, among other things, was that information
about layoffs was communicated to employees prior to being shared with the Union,
and the Union was not given an opportunity to discuss important decisions that affected
its members before those measures were put in effect.

6 The Union also filed an application under Section 54 of the *Labour Relations
Code*, regarding the layoff of its members due to impending service reductions related
to the COVID-19 Pandemic Provincial State of Emergency.

7 I engaged the parties in mediation regarding the Union’s two applications, which
resulted in the Board issuing the Consent Order.

8 The Consent Order, among other things, established a committee comprised of
two union and two employer representatives (the “Committee”). Paragraph 4 of the
Consent Order reads, in part, as follows:

4. Through the Committee, the parties agree to a consultation process on matters directly related to or flowing from the COVID-19 Pandemic, with the following terms:
 - b. Through the Committee, the Employer will consult with the Union with respect to any significant management actions that it may take to address issues arising from the Pandemic, including, but not limited to:
 - i. changes to service levels;
 - ii. changes required due to legislative enactments or policies related to the COVID-19 Pandemic which may have a significant impact on the Employer or its employees; or
 - iii. Any other changes of a significant nature related to the COVID-19 Pandemic that may impact the Employer or its employees.
 - c. The Employer will provide notice as soon as practicable to the Union of any significant managerial actions that it expects to take as a result of the Pandemic, such as those set out in paragraph 4(b) to this Consent Order.
 - d. With any matter addressed through the Committee, including notice set out in paragraph 4(c) of this Consent Order, the Employer will disclose to the Union information relevant to the impact of the managerial decisions on the BC Ferries employees, as soon as practicable, and prior to communicating that information directly to employees.
 - e. The Union will agree to keep all information received through the Committee confidential and limited to the executives of the Union and members of the Committee.

9 To their credit, the parties promptly established the Committee and it has met several times since the Consent Order was issued. The operation of the Committee has been described by those involved as a generally positive process, providing an opportunity for the parties to engage in constructive labour relations discussions about COVID-19 Pandemic impacts, which is what the Consent Order contemplated.

10 Recently, an incident occurred involving the disclosure of information about possible service and staffing changes necessitated by the very significant financial impact that the COVID-19 Pandemic is having on BC Ferries (as it has financially impacted most employers in the Province, indeed across Canada).

11 In that case, a senior manager told union members about staffing reductions that he said would occur with the presumed restoration of service later this summer. The

Committee had not yet been told about this information. The information was very upsetting to the employees, who, not surprisingly, began to contact their Union, who knew nothing about impending staff reductions.

12 As it happened, the information that the senior manager provided was not correct and disclosure of it was premature. Although the senior manager communicated the information as if it were a certainty, in fact, the decision had not yet been approved by those responsible for doing so (which explains why it had not yet been brought forward to the Committee for discussion).

13 Employees were worried about their employment security and some in the Union began to question whether the Employer was acting in good faith regarding its notice and consultation obligations under the Consent Order.

14 III. POSITIONS OF THE PARTIES

14 The Union argues that BC Ferries failed to fulfill its obligations under the Consent Order to provide notice to the Committee of significant management actions arising from the COVID-19 Pandemic. Moreover, it says that it has also failed to meaningfully consult with the Union as required by the Consent Order.

15 The Union says that the Employer is obligated to provide notice to the Committee of significant management decisions (and their impacts), “as soon as practicable” and before the employees are advised. It further says that BC Ferries must do so in a timely manner, so that the parties have an opportunity to engage in meaningful consultation.

16 The Union asserts that, while there should continue to be discussion of important issues at the local level between managers and Local Presidents (something which it made clear that it encourages and expects and that it is not seeking to limit), in order to comply with its obligation to notify and consult with the Committee “as soon as practicable” the Employer should be doing that before the information is discussed at a local level. Managers, argues the Union, should be instructed by BC Ferries not to communicate locally information about decisions that fall within the scope of the Committee until such time as the Committee has been consulted. Not only will this meet the Employer’s Consent Order obligations, following this approach will avoid future problems, as the information passed on by the managers may in fact turn out to be different once the Committee has an opportunity to engage with management.

17 The Employer says that some of the information that was shared with the employees and with the Local Union President did not amount to a significant management action; rather it was information about the impact (albeit important to the affected employees) that flowed from a significant management action that the Employer had previously shared with the Union.

18 Regarding the information about staffing reductions on restoration of service levels that was shared with employees by the senior manager, the Employer says that was an unfortunate mistake on the part of the manager and the comments were not

reflective of any action, already taken or otherwise approved, by the Employer. The Employer says that it has taken steps to ensure that it does not occur again.

19 The Employer also says that it fully understands that prior to any future significant action being taken as a result of the COVID-19 Pandemic, it must advise the Union and engage in consultation on the labour relations matters flowing from those actions and that it will do so. It argues that it is committed to working cooperatively with the Union, through the Committee, in the facilitation of workforce adjustments that may be necessary and that there are examples of the Committee fulfilling its function already. BC Ferries also says that the level of consultation is similar to the nature of the consultation process provided for in Article 12.01(c) with respect to workforce adjustments contemplated by Article 12 of the parties' collective agreement.

20 While the Employer expressed its commitment to provide notice and to consult with the Union as required by the Consent Order, it says that it is continuously engaged in business modelling of various scenarios that requires departmental review and input regarding operational feasibility prior to options being considered for approval by the Executive or for consultation at the Committee. The Employer says that it cannot be bubble-wrapped in a way that can guarantee that people, staff or bargaining unit employees will not speculate or comment inappropriately in the future. Unfortunately, it says, these type of things will happen as a result of "human nature's tendency to talk".

IV. ANALYSIS AND DECISION

21 It goes without saying that there are uncertain and uncharted waters due to the COVID-19 Pandemic for many employers in British Columbia, including BC Ferries. This is equally true for employees. Unemployment due to the COVID-19 Pandemic has skyrocketed. Those fortunate enough to have maintained employment are fearful over the continued security of their employment.

22 This, of course, means that predictable and stable labour relations, while not a cure-all, plays an important role in the maintenance of the social fabric that sustains businesses and communities. The work of the Committee established by the Consent Order is simply one example of how parties can work cooperatively to minimize anxiety and fear in the workplace when rumor and innuendo could become rampant. Equally important, is that notice and consultation provides unions with an opportunity to be heard in respect of issues of importance to their members.

23 The purposes of the Committee mirror the principles underlying consultation committees, such as those mandated by Section 53 of the *Labour Relations Code*, i.e. to "promote the cooperative resolution of workplace issues, to respond and adapt to changes in the economy, to foster the development of work related skills and to promote workplace productivity".

24 The Consent Order established a process that is premised on information sharing, timely notification and an opportunity for consultation. The benefit, for both parties, of a properly functioning Committee is that the employees will know that when

management makes important decisions that impact them, their representatives will have been consulted and will have an opportunity to attempt to influence those decisions and attempt to mitigate the impact of the decisions.

25 Consultation means more than merely being told at the latest possible minute what is going to be done. Meaningful consultation requires management to allow the Union a real opportunity to express their views and, most importantly, to have those views considered before the decision is announced to employees and/or put into effect. Of course, that does not mean that the Union has a veto over management's operation of the business; nor has the Union in this case suggested that it does.

26 Critical business decisions are, generally speaking, based on a myriad of factors and data points, some but not all of which are a derivative of labour costs. Consultation processes, such as that set out in the Consent Order, afford the Union a real opportunity to focus management's attention on the industrial relations effects of management's decisions on its members. This can only occur when the Union is able to understand, comment and offer suggestions relative to the business decisions where possible.

27 Regardless of whether the Employer and the Union agree at the end of the day regarding the decision, what is most important is for the Union to have a meaningful opportunity to be heard. The Employer and the Union, under the Consent Order, are expected to have meaningful conversations in which the Union can express concerns, provide suggestions and alternatives or raise other considerations in a respectful forum.

28 In order for the Committee to function effectively, the Employer must provide the Union with notice of its decisions and allow a reasonable period of time for the parties to engage in meaningful dialogue, raise concerns, exchange ideas and have time to review and consider alternatives raised related to the potential impact on employees. By doing so, the Union can then be in a position to explain to its members that it attempted to influence, on their behalf, the effects of decisions or actions.

29 What is a reasonable period of time for consultation depends on the particular circumstances. In many situations, time allows a longer period for consultation than in others. In some cases, the issues being discussed will be of a time sensitive nature. It is not unreasonable for the Employer to seek to respond to changing circumstances in "real time". However, it must still comply with its obligations under the Consent Order. The obligation is on the Employer to advise the Committee of any urgent time constraints and the Union has a corresponding obligation to ramp up its process to provide input more quickly than it might otherwise. Regular and open communication between the parties is key.

30 I have no doubt that the parties are capable of working cooperatively and in the spirit of the consultation process established by the Consent Order. In fact, they have demonstrated that capacity for the most part.

31 While I appreciate that, as part of its due diligence, BC Ferries must engage in business modeling and feasibility reviews that require the engagement of non-union staff at a departmental level, the Employer is obliged to ensure that those individual who are engaged in that process understand the confidentiality of such reviews. The Employer must inform those involved that the Employer, as a whole, has obligations arising under the Consent Order to engage with the Committee before any information is disclosed to employees.

32 It is unclear to what extent the middle and senior levels of management have been informed of the terms of the Consent Order. It appears that the Employer's labour relations department, its Committee members and the most senior levels of management within BC Ferries fully understand the Employer's obligations. In addition, I am convinced that the Employer's representatives on the Committee are sharing information with their counter-parts when they have information that should be shared with the Union through the Committee.

33 The problem, however, is that operational staff, (perhaps due to their role in assessing the feasibility of operational decisions), have information about potential management actions before they are approved or formally considered at the Executive level and raised with the Committee. Comments without a factual basis are disruptive. Rumour and speculation can be unsettling and should be avoided at all costs. There is no benefit to be gained if potential management actions are discussed with employees before the Executive has approved them or the Committee has been consulted.

34 In order to remedy this, the Employer shall provide a copy of the Consent Order and this decision to all managers and human resources personnel.

LABOUR RELATIONS BOARD

"J. NAJEEB HASSAN"

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VICE-CHAIR AND REGISTRAR