IN THE MATTER OF A MEDIATION/ARBITRATION

BETWEEN:

BC FERRY SERVICES INC.

(the "Employer" or the "Company")

AND:

BC FERRY AND MARINE WORKERS' UNION

(the "Union" or "BCFMWU")

(INTERIM AWARD)

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| ARBITRATOR: | Vincent L. Ready |
| COUNSEL: | Eric Harris, Q.C. for the Employer |
| | Michael Walton for the BCFMWU |
| | Shona Moore, Q.C. for the Ships' Officers Component |
| APPEARANCES: | Glen Schwartz and Blaine Ellis for the Employer |
| | Jackie Miller, President, BCFMWU and Lynda Ruhl for the Union |
| HEARING: | May 16, 17, 18, 27, 28 and 29, 2004 Vancouver, B.C. |
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## I. INTRODUCTION

This Award is as a result of a protracted and complex collective bargaining dispute between BC Ferry Services Inc. (the "Employer" or the "Company") and the BC Ferry and Marine Workers' Union (the "Union"). Many of the reasons for the length of the dispute and its complex nature can be found in events which took place in 2001 through 2003.

In 2001 the new provincial government began a "Core Services Review" of its services and programs. Under this process crown corporations, such as the then British Columbia Ferry Corporation, were scrutinized. The resulting review came up with a number of conclusions about the Ferry Corporation:

- A lack of strategic planning and poor decision-making had resulted in deteriorating service and outdated vessels.
- $2 billion was required to replace aging ships and upgrade terminals over the next 15 years, but the corporation's structure inhibited access to outside capital.
- Ferry users had grown increasingly frustrated by service disruption, inefficiencies, late sailings and a lack of service and amenity choices.

To address these conclusions, the provincial government and the corporation's board of directors recommended a new governance model to

increase the organization's independence from the government and to provide a transition to alternate methods of service delivery.

This new governance model was embodied in the *Coastal Ferry Act* passed on March 26, 2003. Effective April 1, 2003, the new company, BC Ferry Services Inc., would no longer be a crown corporation but would be an independent and self-financing company. There would be a Coastal Ferry Services Contract which would be a long-term agreement (five years) between the provincial government and the new company establishing routes, service levels and fees. The *Act* also established a BC Ferry Authority with a nine member board of directors with full fiduciary responsibility. Government, coastal communities and labour would have direct input to the nominating process for the director positions.

Since the *Act* contemplates that there will be more than one ferry operator, an independent regulator, the British Columbia Ferries Commission was also established under the *Coastal Ferry Act* to regulate the ferry operator(s) and to provide consumer protection through the regulation of fares.

Immediately on its passage, the *Coastal Ferry Act* and its meaning became a source of controversy between the parties. The *Act* not only created a new company, BC Ferry Services Inc., but also created a new maintenance

subsidiary (Deas Pacific Marine Inc.) which had previously been part of the crown corporation.

Employees were transferred from the crown corporation to the new companies and the companies were deemed separate employers under the *Act.* The *Act* declared the new ferry company an essential service under the *Labour Relations Code* and further provided that any provision of the parties' Collective Agreement would be null and void if it conflicted with the *Act.* Such measures struck at the very core of a free collective bargaining regime.

The *Act* further addressed the very basis of how the new Company, as well as any other ferry operators, were to operate. Section 38(1) of the *Act* speaks to the following:

> (a) priority is to be placed on the financial sustainability of the ferry operators;
>
> (b) ferry operators are to be encouraged to adopt a commercial approach to ferry service delivery;
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> (c) ferry operators are to be encouraged to seek additional or alterative service providers on designated ferry routes through fair and open competitive processes;
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> (d) ferry operators are to be encouraged to minimize expenses without adversely affecting their safe compliance with core ferry services.

It appeared that a message was being sent to the Company as to how it was to operate, not only within a financial and operational setting, but within the confines of the parties' own Collective Agreement.

Armed with their own, and I might add "disparate", understanding of what that message consisted of, the parties entered collective bargaining in the fall of 2003. Their Collective Agreement was about to expire on October 31, 2003.

The passage of the *Act* just before the parties' collective bargaining commenced set the stage for a disruptive and vitriolic atmosphere at the bargaining table. Recognizing the need for operational change and bolstered by its understanding of the provisions in the *Act*, the Employer tabled an ambitious proposal for settlement which touched almost every provision of the Collective Agreement. The proposal contained what it viewed as a simpler and less costly hours of work system. It called for the creation of different classifications of employees, rather than the mere "regular" and "casual" classifications in the current Collective Agreement. It proposed a loosening of the Collective Agreement restrictions on contracting out (the current Collective Agreement provides for no contracting out if it results in the layoff of a regular employee).

The Employer claimed it only needed $2.7 million in annual savings from some of these proposals but the tabled package appeared to go much further than that: striking at how overtime was paid, introducing a merit-based selection system, offering compensation in the third year of the Collective Agreement only, stating that many of the classifications were overpaid based on market comparisons. It was akin to the Employer trying to wipe the slate clean, and pretend that collective bargaining had not been taking place for a number of years. It was *tabula rasa* in the extreme.

Not surprisingly, the Union responded in the expected manner and, needless to say, when I became involved in the dispute in December of 2003, there had been little or no progress made at the bargaining table. Nor was there progress made with my initial involvement. That mediation ended abruptly on the second day of my appointment and the Union proceeded to strike.

After five days on strike, the provincial government intervened and ordered an 80-day cooling off period, a complete resumption of work and my appointment as Special Mediator under the *Railway and Ferries Bargaining Assistance Act.* Ignoring the government's edict and questioning its legality, the Union remained off the job.

I met with the parties again on December 11 and 12, 2003 as a Special Mediator but both sides were fixed on their respective positions. In order to bring conclusion to the dispute and in particular to the strike, as well as restore the ferry service to the public, I recommended that the parties refer the outstanding issues to binding arbitration before me and that the employees return to work. The parties agreed and provided me with full and binding authority to settle all outstanding matters in dispute and ultimately conclude a Collective Agreement between them. As a consequence, ferry service resumed on December 12, 2003.

However, that was hardly the end to the collective bargaining dispute, or to the processes which I would have to utilize to bring conclusion to the dispute. In fact, it was merely the beginning. On January 20, 2004, I wrote to the parties describing a mixture of arbitration (interest and perhaps final offer selection), mediation and facilitation whereby certain issues would be subjected to varying dispute resolution techniques depending upon the nature of the issues. Because of the breadth of the dispute (almost every clause in the Collective Agreement had been opened) and in an attempt to narrow the issues and focus on the key issues, I requested written submissions from the parties as preparation for the future processes, including interest arbitration.

The submissions were to bear in mind certain terms of reference:

1) The principles of replication, i.e., what the parties would likely have negotiated had the strike continued

2) The provisions of the *Coastal Ferry Act*

3) The relevant provisions of the British Columbia *Labour Relations Code*

4) The economic circumstances affecting BC Ferry Services Inc.

5) The operational justification of any proposed change(s) to the Collective Agreement

6) The legitimate interests of the Employer, employees and the trade union

7) Other relevant comparable working conditions

8) The importance and necessity of good labour relations in the BC Ferry system.

The parties complied and provided me with written submissions and replies in February and March of 2004. Once I reviewed the written submissions, I realized that the parties' positions were almost identical to where they had been in December of 2003. In an attempt to narrow the issues, I requested that the parties return to negotiations to try and resolve a number of less contentious matters.

With the assistance of Irene Holden, progress was made on these matters but the more difficult issues remained outstanding. Accordingly, on May 16–18 and May 27-29, 2004, I heard evidence on what I considered to be the major issues in dispute, namely: wages and benefits; contracting out; workforce

restructuring; the parties' relationship; the selection process; recruitment and retention issues; overtime; and other compensation matters.

Having heard such evidence, I remained of the view that the crux of the dispute centered around several key issues: contracting out, hours of work, workforce restructuring, and wages and term. In my view, issues like hours of work should be decided by those who intimately understand the current system and also understand where the Employer needs to go to turn this Company around, i.e., the parties themselves. Consequently, on June 7, 2004 I issued an interim award directing the parties back to the bargaining table to conduct meaningful negotiations on these central issues.

In that award I offered some guidelines as to which issues the parties should be negotiating and what ultimately may form part of my final award. Again, with the assistance of Irene Holden, the parties met and attempted to reach agreement on these three issues. Although they were not successful in concluding a deal, the parties considerably narrowed the gap between them. However, I was still of the view that more had to be done in this regard.

On that basis, on July 22, 2004, I requested a modified position from the parties on all outstanding matters. I cautioned the parties that their revised positions on these matters should be realistic, taking into account operational necessities, bona fide comparators (those with similar operations, qualifications

and duties), and what would have been achievable had a settlement been reached at the conclusion of the strike. The parties provided their final submissions on July 30, 2004 and their replies on August 5, 2004.

## II. FINAL SUBMISSIONS

Although the parties provided modified positions in their final submissions as requested, these modified positions in some proposals increased the gap between them, rather than lessening the gap. The following is a summary of the parties' positions in their final submissions.

### The Employer

In summary, the Employer's final submission continued to be quite ambitious. It relied heavily on the *Coastal Ferry Act* and what changes in the Collective Agreement the Employer believed the *Act* required. The Employer submitted that it needed changes in the contracting out language of the Collective Agreement. It needed to restructure the hours of work and have more flexibility in the classifications of employees it employed, as well as the exclusion of certain employees. It argued that its compensation and benefits structure was too costly and had to be more competitive and reflective of its market. It proposed a new compensation and benefits structure which would reduce its costs over time.

Further, the Employer proposed a new method of seniority accumulation for the new categories of employees; vacations and leaves based on hours; merit-based appointments; mandatory substitution requirements; and a broadening of sea-time accrual opportunities to assist in career development. Finally, the Employer submitted that a longer term for the Collective Agreement would allow the parties sufficient time for the implementation and review of the significant changes it was proposing, as well as allow the parties time to create a more effective working relationship.

The Union

In its final submission, the Union argued against the Employer's interpretation of the *Coastal Ferry Act* and the requirement to make changes in the Collective Agreement - particularly when it came to the contracting out provisions. Having said that, the Union recognized a need for changes in the hours of work and categories of employees, but suggested gradual changes to both, and with increased costs attached to its proposals. The Union's submission highlighted its view of the anticipated officer shortage in the marine industry and argued that if the Employer succeeded in its proposals not only would it have problems recruiting officers, but it would also have problems in retaining the current ones. Consequently it proposed large wage increases for the officer ranks, a general wage increase for all, and increased premiums for longer hours of work.

The Union submitted that the Employer's costing model was flawed and if the Employer were to succeed in its ambitious restructuring plans, it would save money even with the Union's proposed increases in compensation and benefits. The Union rejected the Employer's other proposals on exclusions, seniority accumulation, sea-time accrual opportunities, substitution, and merit-based appointments, although it did acknowledge that the current assessment process for selections was problematic and needed review.

Finally, the Union proposed a shorter term to the Collective Agreement, arguing that such a term would be consistent with industry standards. More importantly, the Union wanted a shorter term because it believed that, as a result of the privatization of the Company, there was chaos in the workplace and positive labour relations was at an all time low. Given such an environment, the Union did not want to be locked into a long term Collective Agreement.

## III. THE ROLE OF THE INTEREST ARBITRATOR

I pause at this juncture to briefly state what my role as interest arbitrator is in a collective bargaining dispute. The role is to attempt to replicate or formulate a Collective Agreement that the parties would have negotiated had they been left on their own to do so, with the use of conventional economic sanctions such as a strike or lockout. In more colloquial terms, the interest arbitrator stands in the shoes of the parties and creates an award he/she

believes best replicates what the parties would have negotiated on their own. In that regard see *Saskatchewan Health Care Association and Canadian Union of Public Employees*, unreported, May 17, 1982, a decision made pursuant to the *Cancer Foundation (Maintenance of Operations) Act.* In that case, Mr. Justice Halvorsen stated as follows:

> In compulsory arbitration of this type it is a duty of the arbitrator to strive for a resolution of the issues which will be consistent with the result which the parties might reasonably have expected had the collective bargaining process not been interrupted by the legislation. That is, the arbitrator is not to mediate the differences, nor is he to wear the mantle of a crusader for social change and impose his notions of what is fair and just. Rather, it is his obligation to apply the evidence subjectively so that his award will reflect what probably could have been attained in a freely negotiated settlement. The award should then be consistent with labour relations realities.
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> (at 2-3)

See also *Board of Police Commissioners of the Corporation of the City of Regina and the Regina Police Association*, unreported, April 21, 1994 (Ready), wherein I stated:

> In my view, the appropriate replication approach imposes an obligation on the arbitrator to essentially stand in the shoes of the negotiators and pose the question: what settlement is possible in the current circumstances? Answering this question requires that the arbitrator view and examine the evidence, as well as examine factors such as current economic

> conditions, the cost of living index, a comparison of other police force settlements, internal comparisons (i.e., settlements between other unions and the same employer) and collective agreements negotiated generally in both the public and private sectors. This, of course, is not a complete list of factors. It is, however, typical of the factors assessed by negotiators representing each side of the bargaining table when the crunch comes and it is time to settle a collective agreement.

In its initial submission the Union presented what I consider to be a rather specious argument with respect to the principles of replication. Stated briefly, the Union asserted that it had bargained for many years with this Employer and had not agreed to changes in the Collective Agreement which would adversely change its provisions. Therefore, there is no reason to believe it would agree to such changes during the course of this dispute. Consequently, I was urged to adhere to the historical pattern and behaviour of the Union and not award any significant changes to the Collective Agreement.

However, in its final submission, the Union restricted its argument regarding the replication theory solely to its wage proposal. The Union submitted that replication was to be based on objective criteria such as the relevant labour market. From its point of view, the Union's relevant labour markets are unionized environments and marine industries in general (such as Deas Pacific Marine Inc., one of the companies created by the *Coastal Ferry Act*). It cited *Beacon Hill and the HEU* decision, March 31, 1985, 19 L.A.C., since the interest arbitrator in that decision was constrained by a piece of

legislation, just as I am by the *Coastal Ferry Act.* In this regard, the Union argued that since I do not know how the *Coastal Ferry Act* will be applied in the future, I can only rule on the terms and conditions that exist today.

The Employer, on the other hand, asserted that in utilizing the replication theory I have to be ever mindful of the *Coastal Ferry Act* and acknowledge that when I am trying to replicate a Collective Agreement which could have been reached by the parties themselves, that a Collective Agreement would not have been possible if it conflicted with, or was inconsistent with, the *Act.*

Although I am mindful of the content of the *Coastal Ferry Act,* I am particularly concerned with what was happening with collective bargaining in this province when this dispute began. I hold the view that a plausible outcome of this dispute, had it been allowed to reach its ultimate conclusion in December, 2003, would have been a legislated settlement. It is very likely that an imposed settlement would have incorporated the terms and conditions of the Employer's last offer prior to the parties' agreement to submit the dispute to arbitration and end the labour dispute.

Indeed there is ample precedent in the last three years for that type of provincial government intervention. This dispute, in my view, would have ended in a similar manner.

Therefore, in applying the principles of replication in the case at hand, I believe the more prudent approach is to deal with the present labour relations realities at BC Ferries. That is, to deal with real and substantive issues as they presently exist and issue an award accordingly. Such an award should take into consideration the collective agreement which was freely bargained by this Union and Deas Pacific Marine, but cannot ignore the present unique financial and operational realities facing the parties.

## IV. SETTLEMENT FRAMEWORK

Faced with the parties' final submissions, and my role as interest arbitrator, I forewarned the parties that this award must, and would, address those realities which include changes to the method of contracting out of work; hours of work; workforce restructuring; exclusions; and the establishment of additional categories of employees. I advised the parties I would further be awarding an equitable method of converting employees into those categories, and provisions which could more appropriately deal with employees who are affected by the fallout from these major changes.

I also advised the parties I would award a longer term Collective Agreement. I believed that a longer term agreement would allow the parties to implement the changes to the Collective Agreement contained in this award and

also allow the day-to-day labour relations to stabilize between the parties which, in the end, is in both parties' and the public's interests.

In early September, 2004 I once again met with the bargaining principals of both parties and entered into further exploratory talks with them. I did so because I still felt that their bargaining proposals and positions presented an irreconcilable gap. I advised them that it was time they faced up to the responsibilities and established a settlement framework that would meet their "real and substantive" issues and that such approach would give this board the type of arbitral guidance necessary to render an award that would more meaningfully meet their needs.

The recent talks have been extremely productive. The bargaining principals have established a defined framework which accommodates their interests, as well as those of the public. The framework provides for long term stability and takes a fresh and different approach to issues such as hours of work and job selections. To be more specific, the framework consists of a longer term Collective Agreement; general wage increases; classification increases; a different wage grid for new employees; an hours of work committee to review the operation on a route by route basis or operational area; exclusion of certain bargaining unit positions so as to allow for more efficient administration of certain operational functions; revisions to special leave and family illness leave; revisions to STIIP; the resurrection of the joint committee

on increasing productivity, reducing cost, increasing revenue and gainsharing; changes to the job selection system for certain positions; revisions to overtime and differentials; vessel designation provisions; the creation of a workforce planning committee; the introduction of seasonal employees; recognition of officer shortages; and an increase in the number of full-time regular and part-time employees from the current system.

Consequently, in issuing this award I have adopted the parties' settlement framework and have considered all of the submissions and evidence put before me over the past several months.

## V. AWARD

I therefore award the following:

### 1. TERM

Throughout these proceedings I have advocated a longer term to the Collective Agreement in order to stabilize labour relations between the parties. In their recent exploratory discussions both sides appeared to recognize the advantage of a long term Collective Agreement. Such a term would create a stable and predictable operating environment for customers and the traveling public through the 2010 Olympics. Just as importantly, a term such as this has the significant potential of stabilizing employee trust, labour relations and allows a long timeframe within which to gradually introduce some of the

changes to the operation and the Collective Agreement, such as in hours of work etc., embodied in this award. One must also take into account that almost a year of the Collective Agreement has passed – cutting into the timeframe during which industrial stability has to be established in order to ensure the ongoing viability of the Company.

For these reasons I award that the term of agreement become effective November 1, 2003 and expire October 31, 2010.

## 2. HOURS OF WORK

Currently, Article 16 of the Collective Agreement provides for several hours of work structures originally conceived to suit the needs of various parts of the organization, routes, and vessels. So, for example, there is a different hours of work clause for seven day operations (other than clerical and stores); one for clerical and stores operations; and one for Monday to Friday operations. There is an Annual Scheduled Time Off system ("ASTO") for the seven day operations in the Northern Gulf Islands; a provision for ten hour vessels; flex time provisions for clerical staff; as well as job sharing. Article 29 also provides for varying hours of work provisions for twelve hour vessels (both those where the employees live aboard and non live-aboard vessels).

The parties agree that there are problems with some of these hours of work systems and that some of them cannot meet the needs of the public

unless the Employer incurs inordinate amounts of scheduled overtime. This scheduled overtime has resulted in significant costs to the Employer ($4.23 million in 2003), and several of the routes have the overtime built into the schedules as a matter of routine.

In addition to overtime costs, many of the hours of work systems incur penalties which range from a 5% differential added to the employee's basic pay for work on a ten hour vessel, to a 27% or 29% differential for varying schedules on the twelve hour vessels. The ASTO system also incurs Scheduled Surplus Differentials ("SSD") which cost the Employer $1.15 million in 2003.

The overtime incurred may lead to Compensatory Time Off ("CTO") which, coupled with vacation scheduling and Paid Time Off ("PTO"), creates scheduling problems, according to the Employer. Further operational problems occur since many of the shift lengths cannot meet operational needs without the occurrence of scheduled overtime.

To alleviate the complex administration of the varying systems the Employer, throughout these proceedings, proposed a single hours of work system for the entire operation based on 1958 compensatory annual hours of work for Vessel and Operational Support employees and 1827 hours per year for Monday to Friday employees (basically status quo for the latter group of employees). The system has been deemed the "threshold system" and included

the creation of annual work and time off schedules, plus the elimination of scheduled overtime and various premiums.

This far-reaching proposal, the Employer submitted, would reduce its costs, allow it to take control of the operation and provide better customer service. Recognizing the magnitude of the changes to the hours of work, the Employer proposed an Hours of Work Umpire to assist the parties in resolving disputes.

Acknowledging that change is needed in the Vessel and Operational Support side of the Company, the Union initially proposed that the ASTO system be the one comprehensive hours of work system. The Employer rejected that proposal on the basis of the costs associated with the system, such as the cost of the SSDs. During the facilitation process, the Union began to bargain towards the kind of threshold system the Employer was proposing, but based its proposal on 1827 compensatory hours instead of 1958, with fewer shift patterns and fewer shift lengths. The employees would also still maintain a fair amount of flexibility in terms of time off. Again this was rejected by the Employer.

In the Union's final submission, it proposed a combination of its previous positions on hours of work. It contended that the Employer's "radical proposal" would be detrimental to its members, both financially and in terms of their

lifestyles. It further contended that the far-reaching effects of the threshold system were not known at this stage, so the parties should proceed slowly and cautiously.

In the recent framework discussions, the parties appear to have adopted a slower and more cautious approach by which I am guided. I therefore award the following Memorandum of Understanding on Hours of Work:

MEMORANDUM OF UNDERSTANDING
RE: HOURS OF WORK COMMITTEE

An Hours of Work Committee(s) comprised of an equal number of Company and Union representatives shall be formed.

The purpose of the Committee(s) will be to reduce the operational costs and improve operational efficiencies and services, through changes in the Hours of Work, consistent with customer requirements by operational area and/or route on or before April 1, 2005 or as otherwise agreed to by the parties.

Differences shall be submitted to an Hours of Work Umpire (Vince Ready or Irene Holden) who shall resolve the dispute within fourteen (14) days of receiving a submission from either party. The Umpire(s) shall have the right to determine his or her own procedures.

In resolving a dispute, the Umpire(s) shall take into consideration customer requirements and operational efficiencies relative to the impact on employees of the proposed changes to the hours of work and schedules.

## 3. DIFFERENTIALS

In association with the hours of work proposal, the Employer had proposed that Clause 7.07 relating to work on a 10 or 12 hour vessel should be deleted due to the presence of special differentials in that Clause. This Clause provides that employees who work on a 10 or 12 hour vessel would receive their normal daily rate plus the 10 or 12 hour differential that would apply otherwise.

The Employer had also proposed that the current provisions of Article 29 relating to 12 hour vessels be significantly changed to align them with the new comprehensive hours of work system.

I agree that in the current economic circumstances differentials and premiums such as these need revision. I do not agree that they should be deleted in their entirety. I am therefore awarding that Clause 29.01(d) be amended so that the 29% and 27% differentials be reduced to 10%. However, a new clause should be added to this Article which reads as follows:

> Employees currently holding these positions or an employee whose current Point of Assembly includes the above, shall be "grandfathered" for the duration of this Collective Agreement.

## 4. OVERTIME COMPENSATION – CLAUSE 18.02

Also associated with the hours of work provisions is the significant amount of overtime paid. Further, under Clause 18.02 of the Collective Agreement, all overtime worked is calculated in half hour increments. In this dispute, the Employer's position was that overtime should be paid for actual time worked with no payment for periods of overtime of 5 minutes or less per day. The Employer has not proposed a change in the rate of payment for overtime which is at double time. However, the Employer has proposed that overtime pay on a day of rest would not apply to casual, seasonal or regular part time employees.

As another example, under Clause 18.03 employees in certain circumstances not only receive overtime pay but also can receive two hours' accumulated time for each day worked. The Employer has proposed that this premium be deleted, along with myriad of others.

Nevertheless, in keeping with possible changes in the hours of work systems, and the need for efficiency and productivity, I award that Clause 18.02 be amended as follows:

> In accordance with Article 18 all overtime worked shall be calculated in one-half (1/2) hour increments, provided that employees shall not be entitled to any overtime compensation for periods of overtime of five (5) minutes or less per day.

## 5. MOU VII – JOINT COMMITTEE ON INCREASING PRODUCTIVITY, REDUCING COST, INCREASING REVENUE AND GAIN SHARING

Rather than have a completely new hours of work system, the Union had, at one point, proposed that a new Letter of Understanding be entered into under Clause 2.11 establishing a Ferry Committee of equal membership between the Union and the Employer. The purposes of the Committee were to conduct a salary and benefit survey, and an hours of work survey.

During the course of the hearing, I was impressed by the number of committees and consultative mechanisms which already exist between the parties. Indeed, the parties in past collective bargaining have put their minds to the issues at the very heart of this dispute. I speak specifically of Clause 2.12 and more importantly, Memorandum of Understanding VII. Clause 2.12 provides for the creation of Union/Management Consultation Committees – both at the senior and local levels. These committees were designed to "review matters related to the maintenance of good relations between the parties" and "correct conditions which may give rise to grievances and misunderstandings". Memorandum of Understanding VII is entitled "Joint Commitment on Increasing Productivity, Reducing Costs, Increasing Revenue and Gainsharing" and provides for the establishment of a joint committee which was to discuss "enhancing the delivery of service to the public...improving work practices, systems, and processes...and identify opportunities for revenue enhancement".

The real and substantive difficulty is that there is little evidence the parties have followed these provisions. Rather than establish a new committee to review these very important issues, I order that the joint committee found in Memorandum of Understanding VII be resurrected and a final clause added which would provide a dispute resolution mechanism to the clause and put some "teeth", if you will, into the purpose of the language found in the Memorandum. The final clause would read as follows:

> In the event the parties cannot reach agreement, the matter may be referred by either party to Vince Ready or Irene Holden for adjudication.

## 6. CONTRACTING OUT

Currently Article 14(a) limits the ability of the Employer to contract out work if such contract would result in the layoff of employees. The Employer views this provision as a hindrance to its obligations under the *Coastal Ferry Act* to take a competitive, commercial and cost-effective approach to the delivery of ferry services. Consequently in its submission, the Employer proposes deleting Article 14(a) and the restriction found within that clause.

Further, the Employer proposes that it would conduct a business analysis on all contracting out proposals with respect to contracting out of designated ferry routes and meet with the Union to discuss the proposals. The

Union would be eligible to submit its own request for proposal to perform the work. After giving it "due consideration", if the Union's proposal does not meet the Employer's requirements, the Employer submits it should be allowed to "summarily dismiss" the Union's proposal with the Union having no ability to grieve the Employer's decision. The Employer finally submits that it would meet with the Union to provide it with reasons for rejecting its proposal or to formalize a contract with the Union for the performance of the work.

Conversely, the Union does not agree that the *Coastal Ferry Act* requires the Employer to contract out in order to minimize expenses. The Union further argues that the government had no intention of interfering in collective bargaining by passing the *Coastal Ferry Act.* If it had intended to do so, says the Union, it would have plainly stated it in the *Act* or passed some other form of legislation – as it had done in a number of other collective bargaining disputes. The Union cites certain pieces of legislation which were specifically designed for that purpose: the *Health Care Services Collective Agreements Act,* Bill 15 passed in 2001; the *Medical Services Arbitration Act,* Bill 9 passed in 2002; the *Coastal Forest Industry Dispute Settlement Act,* Bill 99 passed in 2003 – to name a few.

Consequently, the Union submits that contracting out should be viewed as proper subject matter for normal collective bargaining under the *Labour Relations Code.* In keeping with its view, the Union therefore proposes in its

final submission that the restrictions on contracting out, found in the current Article 14(a), should remain. It proposes a consultative process between itself and the Employer prior to any contracting out – during which the Employer would be required to provide the Union "with sufficient information to demonstrate that the business purpose of the contract is able to meet a threshold test".

At the same time, the proposal suggests that the Union would be given the opportunity to put forward its case for keeping the work in-house. It should be noted that the Union is not interested in bidding on the work, as is contemplated in the Employer's proposed language. Finally, the Union proposes that, should a new group of employees join the bargaining unit, terms and conditions of employment be immediately bargained for them.

**Decision Re Contracting Out**

From the outset of my involvement in this dispute, I have emphasized the need for the parties to address the realities of their situation. In the Terms of Reference provided to the parties on January 20, 2004, and described in more detail in an earlier part of this award, I underlined the reality of the provisions of the new *Coastal Ferry Act* as well as the economic circumstances affecting the Company. Equally, I identified those factors which reflected the interests of employees.

In order to encourage the parties to examine their new circumstances and to reach a conclusion on this issue, I have been very candid with them. They must adjust the contracting out provisions to reflect the need to make the Company successful and competitive with other potential ferry operators. I have reminded the parties that the challenge which has been given to them by the new legislation is to work cooperatively in order to increase the efficiency of the Company so that it can withstand the challenges which may be provided with the appearance of other ferry operators.

I have satisfied myself that the Employer is dedicated to preserving the current ferry system rather than dismantling it. That is why I have placed such an emphasis on improving the relationship between the parties so that the parties can work together to support this objective.

However, I cannot ignore the possibility that the parties will be unsuccessful in working together cooperatively. After taking all of the submissions and evidence into consideration, I concluded that the provisions of Article 14 dealing with Contracting Out must be modified. In a last attempt to cause the parties to address this issue on a serious basis, I issued an Interim Award dated June 7, 2004 where I said, in part:

> Having not heard or received legal argument on the Coastal Ferry Act my comments in no way reflect my ruling on that matter. However, a simple and plain reading of the Act would leave any reasonable person

> with the understanding that the Act will have an impact on the contracting out language in the parties' Collective Agreement.
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> Whether the parties and/or myself like or dislike the legislation is irrelevant. What is relevant is that the legislation is in place and has to be adhered to as law. So the parties, as will ultimately this Board if it comes to that, have to shape the contracting out provisions accordingly.
>
> I visualize a process of meaningful consultation between the parties regarding contracting out which takes into consideration the content and purpose of the Act, as well as the impact and effect on members of the bargaining unit. The Employer should indicate its intent to the Union in order to provide the Union with the opportunity to put forward its case for keeping the work in-house. The business purpose of the contract should be able to meet a threshold test. The contracting out provisions could undoubtedly result in work reorganization, layoffs, and all of the resultant measures (such as bumping) and entitlements (recall rights) that flow from events such as these. In some cases, as well, these provisions could mean additional work opportunities for the bargaining unit members.
>
> The parties, as will this Board, have to face up to those realities and structure Collective Agreement language to deal with all of these elements in a way that meets both sides' interests. Some of these interests will be dealt with under workforce and workplace restructuring. Some of them will be covered under specific language regarding the layoff and severance provisions of the Collective Agreement. Others may be dealt with via specific memoranda, from time to time, which take into consideration the unique circumstances of a specific contract.

I have now had the opportunity to review the last positions of the parties against the terms of the direction I gave them at the end of the hearing. The

Employer has modified its position to provide a consultative mechanism as well as a business threshold test for circumstances where it is considering seeking service providers to provide ferry services on designated routes. As referred to earlier in my award, the Union's last position has added a new consultation obligation on the part of the Employer but has not provided any accommodation with respect to future contracting out.

I understand the Union's reluctance to forfeit the restriction to contract out which currently exists in the Collective Agreement. However, in order to shape the business in a certain way, the Employer needs to be able to consider all its options, and where it can prove that contracting out is the best option from a business point of view, it should be able to proceed with the contract. Having said that, it was not my intention to provide the Employer with an unfettered right to contract out bargaining unit work. Nor should the current employees bear the full impact of the contracting out. There should be protection for these employees in a variety of forms: bumping rights, recall rights, enhanced severance, etc.

Nor did I intend that the Union would be bidding on contracts but that the Union may have to consider in some circumstances, agreeing to a separate memorandum which would keep the work in-house, based on altered conditions of employment for the life of the contract. There are many creative ways to keep the work in-house and I am sure the Union is capable of putting

forward creative proposals. Finally, it goes without saying that, if a variance to the bargaining unit occurs as a result of this, the Union would be able to bargain terms and conditions for their new members. Such provisions are provided for under the *Labour Relations Code* and would be no different in these circumstances.

Consequently, I have crafted language which I believe addresses both sides' concerns. Coupled with my intent outlined in this award, I believe the language protects the interests of the Union, its members, and the Employer. Article 14 of the Collective Agreement should therefore be amended as follows:

ARTICLE 14 – CONTRACTING OUT

a. Except as otherwise provided for in this Article, the Employer agrees not to contract out work presently performed by employees covered by this Agreement which would result in the laying off of such employees.

b. Prior to any work, which is presently performed by employees covered by this agreement, being contracted out, the Employer shall determine whether the work can be done by the B. C. Ferry Services Inc. based on:

   i. its operational needs;
   ii. the capability of its work force; and
   iii. whether the work can be done in a cost effective and competitive manner, including the availability of resources.

c. Notwithstanding the foregoing provisions, where the Employer, after considering the requirements of (b) above, determines that it will seek additional or alternative service providers to

provide ferry services on designated routes, the Employer shall meet to discuss and provide the Union with the documents which constitute the request for proposal to bidders on this work. The Union shall be given an opportunity to discuss with the Employer whether the members of the Union could continue to perform the work in a manner which would satisfy Clause (b) above and the terms of the request for proposal.

d. If the Union provides a written proposal as to how the members of the Union could satisfy Clause (b) above and the terms of the Request for Proposal, the Employer shall give the Union's proposal due consideration. Due consideration shall mean that the Employer has considered the proposal in good faith and has met with the Union to provide it with reasons for its decision to reject or accept the Union's proposal.

e. In considering the contracting out of ferry services on designated ferry routes, the Employer's decision has to be made in good faith and pursuant to a bona fide business purpose.

f. Notwithstanding the above, the Employer may contract out work in emergencies.

g. If having satisfied the provisions of this Article, the Employer decides to proceed to contract out or to proceed with additional or alternative service providers to provide ferry services on designated ferry routes, employees directly affected shall be subject to work force adjustment in accordance with Article 12. The Employer shall consult with the Union through a Work Force Adjustment Committee in accordance with Clause 12.01 (c).

h. Where the Employer decides to contract out work, all such contracting out shall be awarded to unionized employers, provided the service required is available from unionized employers on terms which satisfy the provisions of this Article. In particular, it must take into account whether the work can be done in a cost effective

and competitive manner, including the availability of resources.

i. Any disputes arising from this Article will be referred to Vince Ready or Irene Holden for binding resolution.

## 7. WORKFORCE RESTRUCTURING

There are two aspects to the workforce restructuring issue. One relates to hours of work and categories of employees, and the other relates to enhanced Collective Agreement provisions in the event of a layoff.

### Categories of Employees

Currently there are only two categories of employees which exist under the terms of the Collective Agreement: regular employees and casual employees. As a result, a lot of casual employees have worked full-time hours without the benefit of full-time status. Both parties recognize that has to be corrected.

The Employer had proposed two new types of employees: regular part-time employees and seasonal employees. Regular employees would be divided into regular full–time and regular part-time. The Employer submitted that regular part-time employees would work to a fixed schedule and receive benefits and entitlements on a pro-rated basis. Seasonal employees would be utilized to fill jobs in seasonal fluctuations, and eliminate the exodus of regular and casual employees from the south to fill temporary operational needs in the

north. The Employer stated that the new seasonal category would also eliminate the need to backfill in the south during peak periods and would provide the Employer with the ability to offer work to people in local communities.

Accordingly, the Employer has proposed that Collective Agreement entitlements and benefits should relate to the category of employee and its attachment to the workforce. Consequently, regular employees would receive more benefits than casuals or seasonal employees.

Finally, since the Employer wanted to utilize the casual category as it was meant to be utilized, the Employer offered protection to the current casual employees by proposing that those casuals who, prior to November 1, 2003 were entitled to health and welfare benefits, would maintain those benefits.

Although the Union agreed with the creation of two new categories of employees, regular part-time and seasonal, that is the only point of agreement between the parties' proposals in their final submissions. The Union submitted the creation of a regular part-time position should only happen as a result of the Union agreeing to its creation. The Union's proposal provided for regular part-time employees enjoying all the benefits of the Collective Agreement, being guaranteed a minimum and maximum number of hours per month, and the ability to fill casual positions over and above their part-time regular hours. The

proposal also allowed regular part-time employees to have the ability to choose a casual assignment if it means more hours to the employee than the employee would work as a regular part-time employee.

**Decision on Workforce Restructuring**

In my Interim Award dated June 7, 2004, I said at page 9, under the heading Workforce Restructuring:

> As I said earlier, this issue is linked to both contracting out and hours of work and naturally flows from both, but in different ways. In the case of contracting out, it may result in a pre-layoff canvass of employees, bumping, placement of workers including a short timeframe for the selection of options. These are normal concepts which many industries, both public and private, have to deal with in varying economic and political times. In the case of hours of work, workforce restructuring may take the form of changing employee status, the creation of seasonal and part-time positions with their resultant definitions. All of these are natural components of workplace change and will have to be dealt with by the parties.

When the parties met in the final exploratory talks regarding this issue, they adopted a more collaborative approach to Workforce Restructuring which calls for the creation of a Workforce Planning Committee. They also agreed with the principles of grandfathering of current casuals (who already have the benefits) and proper utilization of casuals when it comes to certain benefits in the Collective Agreement. I therefore award the following Memorandum of

Understanding regards Workforce Planning based on the parties' settlement framework:

MEMORANDUM OF UNDERSTANDING
RE: WORKFORCE PLANNING COMMITTEE

The parties are committed to the ongoing determination of an efficient, productive and skilled workforce.

The parties recognize that a fair and reasonable workforce structure and balance of Regular Employees, Casual Employees and Seasonal employees are necessary to the efficiencies of the business.

On or before November 15th each year, the parties shall meet in one or more Workforce Planning Committees for the purpose of discussing and identifying workforce staffing requirements, trends and needs by operational area and/or route.

The Committees are to give appropriate consideration to past requirements relative to anticipated future plans so as to identify:

- skill shortages and training needs
- regular full time postings
- regular part- time postings
- term certain positions
- conversion of casual employees, who worked full time equivalent shifts during the preceding twelvemonths, to regular status and/or to the Staffing Pool
- termination of casual employees working less than 240 hours during the preceding twelve months.

Differences may be submitted for adjudication to Arbitrator Vince Ready or Arbitrator Irene Holden.

> In resolving any differences the Arbitrator(s) shall take into consideration customer requirements, operational efficiencies, costs and benefits relative to the appropriateness of the workforce structure and proposed changes.

**8. SICK LEAVE OR STIIP**

Amend Clauses 8.03(b)1 and (c) to delete eligibility of casual employees for STIIP. Replace with the following:

> Casual employees currently eligible for STIIP shall be "grandfathered" for the duration of this Collective Agreement.

Further, delete Clause 8.03(f) and amend as follows:

> Effective the first of the month following the issuance of this award, temporary employees shall be paid ten and one-half percent (10.5%) of their gross earnings on each pay cheque in lieu of Annual Vacations, General Holidays, Health and Welfare Benefits, applicable statutory requirements and all the other benefits and perquisites of the Agreement for which they are ineligible.

**9. SEASONAL HELP EMPLOYEES**

I award that a new Memorandum of Understanding be incorporated into the Collective Agreement which reads as follows:

MEMORANDUM OF UNDERSTANDING
RE: SEASONAL HELP EMPLOYEES

The Company may employ Seasonal Help (i.e., students) under the following conditions:

(a) Seasonal Help shall be defined as those employees hired between April 1st to October 15th (or other period as mutually agreed) of any calendar year for the purpose of supplementing the regular workforce and/or replacing regular employees compensatory time off.

(b) Seniority shall not accumulate during the designated seasonal period. In the event a seasonal employee is retained outside the designated seasonal period, his/her probationary period will commence as of the first day outside the period. Should the employee complete his/her probationary period, the seniority date will be established as of the original date of hire as a "Seasonal Help" employee.

(c) Seasonal Help employees shall be paid at 85% of the classified rate and shall not:

(i) be entitled to benefits normally granted to other employees
(ii) be entitled to any premiums or differentials
(iii) be guaranteed a minimum number of hours

(d) Seasonal Help Employees shall be entitled to overtime compensation for all work performed in excess of standard daily hours.

## 10. WORKFORCE ADJUSTMENT

The second aspect of this issue is linked to both contracting out and hours of work. As the workforce is restructured, there should be enhanced

provisions provided to employees. The current Article 12 provides for layoff and recall provisions, but does not adequately address the major changes to the Collective Agreement and the manner in which the workforce will be structured in the future.

The Employer wants increased flexibility and control as to how it will conduct business in the future. It should therefore be prepared to afford the current employee base with added protection should it choose to utilize such flexibility in the future.

The Employer attempted to address this in its final submission by creating a new Article 12 called "Workforce Adjustment" which would provide written notice to the Union of workforce adjustment; consult with the Union via a Workforce Adjustment Committee; allow the Employer to canvass the employees to see if they would be interested in retirement, placement in alternate positions, etc.; and provide displaced employees with a variety of options, including increased severance pay. In order to create a more timely process, the Employer also proposed a shorter notice period than what currently exists in the Collective Agreement (one month instead of five months), and restrictive bumping and recall rights to minimize the impact on other employees.

The Union responded by maintaining the five month notice period; consultation via a Workforce Adjustment Committee which would allow the Union to attempt to reverse the Employer's decision; employment security for twelve months following the expiration of the five month notice period; the layoff of seasonal employees prior to casuals and casuals prior to regular employees; maintenance of the current system-wide bumping ability; training and familiarization in order to qualify employees to bump; and enhanced severance for both casual and regular employees. The Union also proposed that voluntary severance and early retirement be offered to all employees immediately following the issuance of this award.

**Decision Re Workforce Adjustment**

As a consequence of my award with respect to Contracting Out and with respect to the new workforce structure, it is necessary to consider what appropriate measures should be taken in the event that employees are laid off. In the past the issue of layoffs has been somewhat dampened by the restrictive contracting out language and the presence of so many casuals.

It is therefore necessary to address the question of whether the Workforce Adjustment provisions of the Collective Agreement should be changed. On this subject, my award is as follows:

a. Article 12 relating to layoff and recall should be deleted and replaced with new workforce adjustment language.

b. The Employer will be obliged to provide notice to the Union of its intention to reduce the amount of work required to be done by the Employer, the reorganization of work, contracting out, the relocation of positions, and changes in or elimination of programs and/or services. In providing notice to the Union, the Employer shall provide full particulars. The process which flows from this notice shall be in accordance with the specific provisions of the workforce adjustment language set out below.

My intention here is to specifically provide as many possible workforce adjustment options as may be possible in the circumstances. I therefore award the following:

ARTICLE 12 – WORKFORCE ADJUSTMENT

12.01 Workforce Adjustment Committee

(a) The parties recognize that workforce adjustments may be necessary due to a reduction in the amount of work required to be done by the Employer, the reorganization of work, contracting out, the relocation of positions, and changes in or the elimination of programs and services.

(b) The Employer shall provide the Union in writing with 4 months notice of the workforce adjustment. The notice shall identify the reason for the workforce adjustment, the classification and location of employees directly affected, whether the Employer intends to implement a pre-adjustment canvass, and the nature of such canvass. This notice may run concurrent with

any notice of layoff to regular employees in accordance with Clause 12.04.

(c) The Employer will consult with the Union through a Workforce Adjustment Committee established pursuant to Clause 2.11 that shall meet within seven (7) calendar days of receipt of the notice referred to in Clause 12.01(b). Members of the Workforce Adjustment Committee shall work cooperatively to facilitate the workforce adjustment in the best manner possible for the employees affected.

12.02 Workforce Adjustment Processes

(a) The following processes are available to facilitate workforce adjustments:

Pre-Adjustment Canvass

1. At the discretion of the Employer, a pre-adjustment canvass may be implemented. The pre-adjustment canvass may be general or targeted to specific employee classifications, work groups, or work locations.

2. The pre-adjustment canvass shall call for eligible employees to decide within fourteen (14) calendar days whether they want to retire, to take early retirement, or to sever their employment. A copy of the notice to employees shall be provided to the Union.

3. A decision made by an employee to retire, take early retirement or to sever his or her employment that is confirmed by the Employer shall be final and binding.

(b) Workforce Adjustment - Regular Employees

1. Where the Employer decides not to implement a pre-adjustment canvass, or where such canvass does not result in the degree of flexibility required to meet the

objectives of the workforce adjustment, the Employer will provide regular employees with notice of layoff in reverse order of service seniority, except where such notice is specifically related to a decision under Article 14 in which case those regular employees who are directly affected will be given notice of layoff. A copy of the notice to regular employees shall be provided to the Union.

2. The notice of layoff shall be effective one (1) month from the date of issuance, unless the following occurs:

(i) the regular employee is placed in a vacant position, for which he or she is qualified, at the employee's current point of assembly,

(ii) the regular employee is offered and accepts placement into a vacant position through lateral transfer at another point of assembly,

(iii) the regular employee is offered the opportunity for training and familiarization so that he or she is eligible to work in an alternate position which is vacant at his/her current point of assembly,

(iv) the regular employee bumps a junior regular employee in a position for which s/he is qualified at the employee's current point of assembly,

(v) the regular employee bumps a junior regular employee in a position for which s/he is qualified at another point of assembly, or

(vi) the regular employee elects to sever.

3. A regular employee who bumps may not receive a promotion. However, in the event that this prevents the employee from bumping pursuant to 2 (iii) or (iv) above, the regular employee may:

   (i) bump a junior regular employee in a position that is in one salary grade level above his or her current salary grade level, subject to his/her ability to meet the requirements of the job, or

   (ii) be severed.

4. A decision made by a regular employee to accept a lateral transfer that is confirmed by the Employer shall be final and binding.

5. A regular employee who is placed into a vacant position or who bumps shall not be salary protected.

6. Relocation expenses shall not be paid when a regular employee accepts a placement into a vacant position through lateral transfer or who bumps. A regular employee who is placed into a vacant position, including one obtained through lateral transfer, or who bumps shall be required to serve a 120 working day trial period to determine his/her ability to meet the requirements of the job. An employee who fails to meet the requirements of the job at any time during his/her trial period shall be severed.

7. Should a regular employee be bumped as a result of a senior employee exercising his or her seniority rights in accordance with this Article, then that employee shall have bumping rights in accordance with Clause 2 (iv) and (v) above.

(c) Workforce Adjustment Casual Employees

1. Casual employees shall be given notice of layoff in reverse order of seniority, except where such notice is specifically related to a decision under Article 14 in which case those casual employees who are directly affected will be given notice of layoff. A copy of the notice to casual employees shall be provided to the Union.

2. The notice of layoff shall be effective one (1) month from the date of issuance, unless the following occurs:

   (i) the casual employee is offered the opportunity for training and familiarization for recall in another classification at his her current point of assembly

   (ii) the casual employee is offered and accepts the opportunity to be recalled at another point of assembly in their current classification, or

   (iii) the casual employee elects to sever their employment.

3. Relocation expenses shall not be paid when a casual employee accepts the opportunity to be recalled at another point of assembly.

12.03 Layoff

In the event of a layoff, employees shall be laid off at the point of assembly in the following order:

a. Seasonal employees shall be severed prior to casual or regular employees being laid off.

b. Casual employees shall be laid off in reverse order of service seniority prior to regular employees.

c. Regular employees shall be laid off in reverse order of service seniority.

12.04 Notice to Regular Employees on Leave

Notice to regular employees on STIIP, WCB, LTD or serving an apprenticeship shall be effective the date of receipt. The employee shall provide the Employer with seven (7) calendar days' notice of the date upon which s/he can return to work. The Employer will confirm the placement of the employee into a vacant position for which he/she is qualified at the employee's current point of assembly, or facilitate the ability to exercise the remaining options under Clause 12.02 (b) 2 above.

12.05 Severance Pay

(a) A regular employee whose employment is severed shall be entitled to severance pay of four (4) weeks' basic pay for each year of completed service and a pro-rated amount for any partial year of service to a maximum of fifty-two (52) weeks' basic pay.

(b) A casual employee whose employment is severed shall be entitled to severance pay of one (1) week's basic pay for each completed year of service and a pro-rated amount for any partial year of service to a maximum of twelve (12) weeks' basic pay.

12.06 Recall

(a) The Employer shall create a recall list that shall indicate the name, service seniority, former classification and point of assembly and current classification and point of assembly of regular employees who are laid off. A copy of the list shall be provided to the Union.

(b) Regular employees on the recall list shall return to their former classification, employment status, and point of assembly in order of service seniority when a vacancy arises. An employee on the recall list who does not accept a vacancy

when offered shall be deemed to have resigned and shall not be entitled to severance pay.

(c) A regular employee shall have his/her name remain on the recall list until:

1. s/he receives an appointment through Clause 10.07 or 10.08

2. s/he returns to her/his former classification, employment status, and point of assembly, or

3. two (2) years have passed from the last day worked by the employee; whichever occurs first.

(d) Should a regular employee on the recall list accept a casual assignment, such casual assignment shall not affect his or her recall rights under this Clause.

## 11. PERSONAL LEAVE DAYS

I award that Clauses 26.02 and 26.03 be deleted and a new Clause 26.02 entitled "Personal Leave Days" added:

(a) Effective January 1, 2005, each regular employee shall be entitled to three (3) personal leave days off, with pay, in each calendar year, to be taken at a time that is mutually agreeable to the employee and the Company, except in the following cases when the employee shall be entitled to the leave by providing the Company with as much advance notice as possible in the circumstances:

(i) serious household or domestic emergency,

(ii) attendance at a funeral involving a death not covered by Clause 26.01 to a

maximum of one-half (1/2) day for any one death, or

(iii) illness or hospitalization of a member of the employee's immediate family, as defined in Clause 26.01

Casual employees currently eligible for Special Leave shall be "grandfathered" for the duration of this Collective Agreement so as to be eligible under the "Personal Leave Days".

## 12. POSTINGS AND ASSESSMENTS

In its final submission and throughout these proceedings, the Employer argued for merit-based appointments whereby an employee would be selected to vacancies based on knowledge, ability, education, experience and past performance. Seniority would be used as a tiebreaker where these factors were relatively equal.

Currently, appointments are based on seniority but the Collective Agreement provides for a complicated and cumbersome assessment process every six months for some groups, and for others, upon request, in order to be considered for appointments.

In its final submission the Union argued against merit-based appointments stating that such a selection process was in place prior to the current assessment process and it resulted in a number of grievances. The current assessment process was an attempt to rectify that situation. Resorting

to a merit-based system would therefore result in an increased number of selection grievances. The Union, however, did recognize that the current assessment process is onerous and offered to discuss it during the life of the Collective Agreement with a view to altering the process.

Notwithstanding their previous positions, in the final exploratory talks, the parties seemed to address this issue in a more realistic manner. Therefore, I defer to the settlement framework in awarding the following.

The appointment and assessment process contained in Clauses 10.07, 10.08 and 10.09 are deleted in their entirety. Clause 10.06 is deleted and amended as follows:

> 10.06 Postings
>
> (a) Vacancies that are posted under this section shall be filled within sixty (60) days of completion of the posting period. This period may be increased with the approval of the Union, which approval shall not be unreasonably denied.
>
> (b) Regular vacancies that are to be filled shall be posted on the bulletin board(s) and electronically on the Company website for a period not less than seventeen (17) calendar days.
>
> (c) Term Certain vacancies of ninety (90) consecutive calendar days or more that are to be filled shall be posted on the bulletin board(s) and electronically on the Company's website for a period of not less than seven (7) calendar days.

(d) Postings shall contain the following information:

1. Nature of position;
2. Duration of the position;
3. Duties required;
4. Required qualifications and ability;
5. Whether shift work is involved;
6. Wage rate;
7. Closing date.

(e) The Company shall provide copies of all job postings to the Union.

(f) A regular or fixed-term employee who attends a job interview during what would otherwise be his/her regularly scheduled working hours shall suffer no loss of regular pay.

Clause 10.07 is deleted and amended as follows:

10.07 Selection Procedure

(a) Posted positions for all supervisory positions and Grade 9 or higher positions, or as otherwise agreed to by the parties, shall be filled based on seniority, qualifications and suitability, with seniority prevailing unless a difference in required qualifications and suitability is shown. In the event that the Company selects a junior applicant, the Company shall bear the onus of showing a difference in qualifications and suitability between the applicants.

(b) In the application of seniority, the sole factor shall be group seniority for Officers and service seniority for all other employees.

(c) Posted vacancies in all other bargaining unit positions shall be filled on the basis of seniority provided the employee to be appointed has the required qualifications and abilities.

(d) The Company shall post on the bulletin board(s) and electronically on the Company's website a "Notice of Appointment" for all appointments made to posted positions.

(e) The Company shall provide the Union with the required qualifications, abilities and suitabilities associated with each job classification covered by the Collective Agreement. Where the Union objects, its objections shall be limited to whether the qualifications, abilities and suitabilities established by the Company are relevant and reasonable.

I also award that the following Memorandum of Understanding regarding Job Posting and Selection be inserted in the Collective Agreement as follows:

MEMORANDUM OF UNDERSTANDING
RE: JOB POSTING - SELECTION

In order to encourage and facilitate the posting of regular job postings during the initial three years of the Collective Agreement, selection of candidates are to reflect a balance between employees already at the position location (often referred to as the Homestead) and senior employees at other locations. The parties may by mutual consent extend this process.

The intent is for the Company and the Union to exercise sufficient discretion on a "case by case and geographic basis" so as to reach a reasonable and responsible reflection of these potentially contradictory factors.

In the event the parties cannot reach agreement, differences may be referred directly for expedited adjudication to Vince Ready or to Irene Holden, in the event Mr. Ready is not available.

## 13. EXCLUSIONS FROM THE BARGAINING UNIT

At the commencement of this protracted process, the Employer proposed to exclude approximately 300 members from the bargaining unit. The Union has throughout this process strongly resisted that approach. However, in the recent exploratory discussions between the bargaining principals, it became evident that it was necessary to exclude three groups of employees in order to afford management more control over its decision making processes so it could administer certain parts of its business more efficiently. Consequently, I am awarding that these three groups be excluded from the bargaining unit. Further, I am of the view that such exclusions are appropriate to assist the Company in streamlining the administration of the current hours of work. I would normally hesitate to make such an order but the bargaining principals have specifically confirmed to me that I have jurisdiction to do so.

I therefore award that the following Letter of Understanding be introduced into the Collective Agreement:

LETTER OF UNDERSTANDING
RE: BARGAINING UNIT 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.

For the duration of this agreement, disputes with respect to exclusions/inclusions shall be referred to Vince Ready and/or Irene Holden. It is agreed that Mr. Ready and Ms. Holden will have the necessary jurisdiction to bind the parties on all exclusion/inclusion matters.

## 14. LICENSED OFFICERS AND VESSEL DESIGNATION

Throughout this dispute there has been an ongoing discussion about whether or not there was a bona fide shortage of Licensed Officers. Associated with that was the Union's argument that unless paid properly the Company would lose its qualified people. Vessel designation is part of that problem; rates of pay are another (which I address in the next section of this award). I was pleased to see that in the recent exploratory discussions the parties

addressed the issues in the following manner, and I follow their lead by awarding the same:

> Vessel Designation
>
> Effective the first of the month following the issuance of this award, the following vessels shall be designated as Intermediate on the understanding that there shall be no further designation changes during the term of this agreement, except in the case of new vessels:
>
> 1. Bowen Queen
> 2. Powell River Queen
> 3. Mayne Queen
>
> A one time lump sum payment of $250,000 along with the special wage adjustments contained in the wage rates as provided in this award as consideration with respect to this issue.
>
> MEMORANDUM OF UNDERSTANDING
> RE: LICENSED OFFICERS
>
> The parties acknowledge the unique concerns of Licensed Officers including certification, training, rates of compensation and liabilities.
>
> Further, the parties recognize the historic problems associated with the homogenous nature of the bargaining unit resulting in compression of licensed wage rates and reduction of salary levels as compared to industry and market comparators.
>
> The parties also recognize the growing shortage of Licensed Officers worldwide and the need to review incentives being offered for the recruitment, development and retention of Ships' Officers at BC Ferries.
>
> Therefore, the parties agree to meet within ninety (90) days of the issuance of this award and whenever necessary thereafter in order to discuss solutions to these concerns as well as any others identified by the

parties within the context of the Ships' Officers' Component Review Committee.

## 15. COMPENSATION MATTERS

In the submissions of the parties throughout this protracted process there existed a Himalayan gulf between them with respect to all compensation matters such as: wage increases; start rates; grade level maximum salary ceilings; deletion of the Memorandum of Understanding on Vessel Designation Overlay; and the number of wage classifications.

When I met with the bargaining principals during the final stages of this mediation/arbitration process in early September, 2004, I encouraged them to view these matters more realistically than they had in the past and to do some real soul searching as to what was realistically achievable in the current bargaining climate. Having now had the benefit of the latest discussions between the parties I am persuaded that the following compensation increases more realistically reflect the real and substantive needs of the parties in the current economic circumstances.

I have also concluded that there is a need for the parties to review the wage schedules and classifications. In the result, I am awarding a mechanism to do so.

(a) Wage rates will be adjusted in accordance with the following schedule:

Effective November 1, 2005

For positions requiring 1st Class and 2nd Class Motor Certificates (e.g., Masters, Chief Officers, 2nd Officers and Sr. Chief, Chief, 2nd Engineer) increase by 5%. For Junior licensed positions (3rd and 4th Engineers, 3rd and 4th Officers and Trades persons) increase by 3%.

Effective November 1, 2006

For positions requiring Senior License increase by 5%; and for positions requiring a Junior license and Trades persons increase by 3%; all other classifications to be increased by 1%.

Effective November 1, 2007

For positions requiring Senior license increase by 5%; and for positions requiring a Junior license and Trades persons increase by 3%; all other classifications to be increased by 1%.

Effective November 1, 2008

General increase of 2% for all classifications or wage re-opener. In the event the parties cannot reach agreement, the matter may be referred to Vince Ready for adjudication.

Effective November 1, 2009

General increase of 2% for all classifications or wage re-opener. In the event the parties cannot reach agreement, the matter may be referred to Vince Ready for adjudication.

(b) Wage Grid

(i) A wage grid* for new employees to be established as follows:

85% of the Standard Rate for the 1st year (240 days worked)

90% of the Standard Rate for the 2nd year (240 days worked)

95% of the Standard Rate for the 3rd year (120 days worked)

(ii) a rate of 85% of the Standard Rate would be applicable to seasonal employees.

* The Wage Grid would not be applicable for the Ships' Officers, Trades persons and Bridgewatchmen classifications.

(c) Wage Schedule and Classifications

The parties are to establish a Committee for the purpose of simplifying the wage classifications and establishing a Standard Wage Rate for each grade by November 1, 2005. Failing resolution, parties are to submit the outstanding issues to Vince Ready or Irene Holden for binding resolution.

I now turn to the unresolved issue which was not part of the recent framework, namely the Bridgewatchmen's rate of pay relative to certifications required by the Company. With respect to that matter I award:

There will be the establishment of a new classification called Bridgewatchman with a rate of pay 4% higher than the Deckhand classification.

## 16. COMMITTEES

I award:

> Payment of Committees
>
> All committees established by this award shall be deemed to be Article 2.11 committees for the purpose of payment.

## 17. ITEMS AGREED

All items agreed between the parties during direct negotiations and the previous facilitation process are to be incorporated into the renewed Collective Agreement. Any other article not changed by this award shall remain unchanged from the previous Collective Agreement.

I direct the parties to establish a committee consisting of equal numbers, with a maximum of three per side, to incorporate and finalize the terms and conditions of the renewed Collective Agreement consistent with this mediation/arbitration award.

In the event a dispute arises in finalizing the Collective Agreement, I shall retain the necessary jurisdiction to resolve those disputes as well as any disputes arising out of the implementation of this award.

## 18. CONCLUSION

I would be remiss if I did not commend the parties on the work that they have done in trying to improve their working relationship over the past several months. I was encouraged by their progress on the settlement framework and was also encouraged by the improvements I observed with respect to the labour relations atmosphere which the parties have developed since the publication of the last interim award. For instance, I am advised that the parties have successfully resolved a large number of grievances and policies which should go a long way to avoiding similar types of grievances and problems in the future.

I also want to thank Counsel for the parties and the bargaining principals for their candour and assistance throughout this dispute.

Because of the complexities and the nature of this dispute omissions and errors may occur. In the event that should occur, the parties should meet to resolve such matters. Failing resolution, the matters should be referred to the undersigned for binding resolution. I have made this award as an Interim Award so that I have generally reserved by jurisdiction to issue a final award. I have done so to ensure that this award is capable of implementation and that I can modify a provision of the award if I am satisfied it is unworkable or has an unanticipated effect.

Dated at the City of Vancouver in the Province of British Columbia this 15th day of October, 2004.

*Vincent L. Ready*

Vincent L. Ready

IN THE MATTER OF AN ARBITRATION

BETWEEN:

BC FERRY SERVICES INC.

(the "Employer")

AND:

BC FERRY AND MARINE WORKERS' UNION

(the "Union")

(Five Outstanding Issues)

| | |
|---|---|
| ARBITRATOR: | Vincent L. Ready |
| COUNSEL: | Glen Schwartz and Blaine Ellis for the Employer |
| | Lynda Ruhl and Eric Mayes for the Union |
| HEARING: | April 6, 2005 Vancouver, BC |
| PUBLISHED: | April 26, 2005 |

3030

Pursuant to my interim mediation/arbitration Award between BC Ferry Services Inc. and the BC Ferry and Marine Workers' Union dated October 15, 2004 (the Award), I retained jurisdiction to deal with any disputes arising out of the implementation of that Award.

The parties have held a number of implementation meetings subsequent to the publication of the Award and have made considerable progress in settling a number of issues. They have referred the following five outstanding issues to me for a final and binding decision:

1. Five Minute Overtime
2. Article 29.01 (d) – Hours of Work – Northern Differential
3. Application of Term Certain Postings
4. Personal Leave – vs. previous General Leave
5. Grievances arising from 03/04 work stoppage

I will deal with each issue in turn.

## 1. FIVE MINUTE OVERTIME

The parties disagree over the interpretation of the following language contained in my Award – Article 18.02 – Overtime Compensation:

In the result, employees who work for periods of overtime of five minutes or less shall be paid at straight time rates.

## 2. ARTICLE 29.01(d) – HOURS OF WORK – NORTHERN DIFFERENTIAL

### Position of the Union Re Article 29.01(d) – Hours of Work – Northern Differential

It is the submission of the Union that the rationale behind decreasing the 12 hour vessel differential from 29% to 10% was based on a significant error and misunderstanding. The Union points to page 23 of the Award where I referred to the "normal daily rate plus" the differential for the 12 hour vessel employees, wherein I assumed that its members were getting paid for all the hours they worked before the differential was applied. This assumption was incorrect.

It is submitted that 12 hour vessel employees receive the same rate of pay as an employee in the same classification on an 8 hour vessel. The rate of pay on an 8 hour vessel is based on 1827 hours. Employees on the 12 hour vessels work 2190 hours. Without a differential the 12 hour vessel employee would work 363 hours for free. For the straight time pay to be congruent the 12 hour vessel employee must receive 20.3% more in straight time pay.

The Union argues the 10% differential was awarded on the basis of an incorrect assumption that the 12 hour vessel employees were already getting paid for the hours they worked. Therefore, submits the Union, employees

working on 12 hour vessels are entitled to more than the basic compensation because of their working conditions. Moreover, standards in the marine industry for live-aboard vessels and other safety related occupations support that conclusion.

That said, the Union is, however, committed to a cost neutral outcome, but argues it needs the historic differential back.

**Position of the Employer Re Article 29.01(d) – Hours of Work – Northern Differential**

It is submitted that, while the Employer concurs that my Award was based on an incorrect assumption, it did, however, fully understand the costs and that the 29% was and incentive to attract employees to take northern term positions.

The purpose of the Employer's proposal was to reduce costs. While a pure mathematical calculation may show an inequity at a 10% differential, this must be offset by the fact that northern employees receive a day off for every day worked. Hence, a regular northern employee works 183 days per year, less vacation.

Notwithstanding the Employer's original intent, it is empathetic and supportive of having the mistaken assumption corrected.

**DECISION RE ARTICLE 29.01(d) – HOURS OF WORK – NORTHERN DIFFERENTIAL**

In my interim Award I recognized that, due to the volume of issues before me, there would need to be certain refinements made so as to correct any oversights. This is one such issue.

I therefore exercise my jurisdiction and award that the northern differential be paid at 29% (and 27% for the 4 on, 4 off schedule for 12 hour shifts), or such other amount upon which the parties may agree, with the understanding that the determination of the structure of the workforce rests solely with the Employer.

## 3. APPLICATION OF TERM CERTAIN POSTINGS

**Position of the Employer Re Application of Term Certain Postings**

It is the Employer's position that the new posting language, specifically Article 10.06(c) – Term Certain, was intended to give the Employer the necessary latitude in determining the structure of its workforce. Article 10.06(c) states:

> Term Certain vacancies of ninety (90) consecutive calendar days or more that are to be filled shall be posted on the bulletin board(s) and electronically on the Company's website for a period of not less than seven (7) calendar days.

The Employer submits that it maintains the right to determine the make-up of its workforce, including whether a vacancy exists. That is, if it has sufficient employees (casuals) available at a specific location, it may elect to utilize them or if it does not have sufficient employees, it may elect to either hire new employees (including seasonal workers) or post for regulars or term certains. Counsel argues that it is only after the Employer makes this determination that Article 10.06(c) comes into effect and only in those cases where the anticipated vacancy would be at least 90 consecutive calendar days, which the Employer contends must be regularly scheduled work and not intermittent or sporadic.

**Position of the Union Re Application of Term Certain Postings**

The Union submits that the inappropriate use of seasonal employees who will not receive a differential, and will only receive 85% of the classification rate, can only be identified as a means to subvert the parties' posting language and replace full wage work with cheap labour.

The Union further argues that the language contained in Article 10.06 must mean that any vacancy which meets the objective test of being 90 days or more, with a reasonable certain start and finish date, must be posted or there are no constraints on the Employer. Otherwise, the Employer could ignore that objective test with impunity and only post at its discretion. That would make the work of the Workforce Planning Committee meaningless by usurping the

direction to discuss term certain requirements each year. This would also make the posting provisions impractical and/or redundant by delaying the posting of term certains until there was an attempt to find enough seasonal employees, which failed. The Employer could even delay the posting of regular vacancies which come open during the summer.

**DECISION RE APPLICATION OF TERM CERTAIN POSTINGS**

Having carefully reviewed the submission of the parties, the Award, and the "seasonal help letter", I am of the view that the Employer's position on this issue is correct.

I agree with the Employer's position as succinctly stated at page 7 above.

This finding is in accord with the overall intent of my Award and in particular the intent of the seasonal help letter.

**4. ARTICLE 26.02 - PERSONAL LEAVE DAYS**

My Award replaced the general leave provisions of Articles 26.02 and 26.03 of the 1998-2003 Collective Agreement, with the following language regarding personal leave:

> (a) Effective January 1, 2005, each regular employee shall be entitled to three (3) personal leave days off, with pay, in each calendar year, to be taken at a time that is mutually agreeable

to the employee and the Company, except in the following cases when the employee shall be entitled to the leave by providing the Company with as much advance notice as possible in the circumstances:

(i) serious household or domestic emergency,

(ii) attendance at a funeral involving a death not covered by Clause 26.01 to a maximum of one-half (1/2) day for any one death, or

(iii) illness or hospitalization of a member of the employee's immediate family, as defined in Clause 26.01

Casual employees currently eligible for Special Leave shall be "grandfathered" for the duration of this Collective Agreement so as to be eligible under the "Personal Leave Days".

**Position of the Employer Re Personal Leave Days**

The Employer proposes reverting back to the previous general leave provisions, provided they do not apply to casuals not currently grandfathered.

**Position of the Union Re Personal Leave Days**

The Union submits that, if the previous general leave provisions are to be awarded, the language must include both Articles 26.02 and 26.03.

**DECISION RE PERSONAL LEAVE DAYS**

I award that, effective the date of this Award, the parties revert back to the language of the 1998-2003 Collective Agreement governing special leave

days which includes Articles 26.02 (Special Leave) and 26.03 (Family Illness Leave) of that Agreement. These provisions do not apply to current casuals not currently grandfathered or future casuals (as is now the case with the personal leave days).

## 5. GRIEVANCES ARISING FROM THE LABOUR DISPUTE

The parties have provided submissions regarding grievances arising from the work stoppage in December, 2003. At the time I made the recommendations to the parties to settle the dispute and refer the grievances to arbitration, I also made a recommendation, which was accepted by the parties, that there would be no recriminations by either side for any action(s) taken during the strike. Theses grievances, in my view, are caught by the no recrimination recommendation and are, therefore, dismissed.

I retain the necessary jurisdiction to resolve any disputes arising out of the implementation of this Award.

It is so awarded.

Dated at the City of Vancouver in the Province of British Columbia this 26th day of April, 2005.

Vincent L. Ready

IN THE MATTER OF A MEDIATION/INTEREST ARBITRATION

BETWEEN:

BRITISH COLUMBIA FERRY SERVICES INC.

(the "Employer)

AND:

B.C. FERRY & MARINE WORKERS' UNION

(the "Union")

| | |
|---|---|
| MEDIATOR/ARBITRATOR: | Vincent L. Ready |
| COUNSEL: | Glen Schwartz and<br>Blaine Ellis et al<br>for the Employer |
| | Jacqueline Miller et al<br>for the Union |
| HEARING: | February 8, 2007<br>Vancouver, BC |
| WRITTEN SUBMISSIONS: | Between September, 2006<br>and February 16, 2007 |
| PUBLISHED: | March 8, 2007 |

32115

# I

This is another in a series of awards arising from my appointment on December 1, 2003 as a special independent mediator to assist the parties in what must be described as one of the most difficult labour relations disputes in a lifetime of dealing with demanding disputes.

The last Collective Agreement expired on October 31, 2003. Little, if any, meaningful collective bargaining took place and upon my appointment, all of the bargaining issues remained outstanding. Mediation ground to a halt on the second day of the first mediation and a strike ensued. Following five days of strike action, the Government of British Columbia intervened with passage of the *Railway and Ferries Bargaining Assistance Act* which provided for an 80-day cooling-off period and my appointment as a Special Mediator.

The parties remained intransigent. They failed to reach agreement on any issue of substance. On December 12, 2003, the strike ended with an agreement to refer all outstanding issues to final and binding arbitration.

The relationship between the parties has long been fraught with tension. This was confirmed in a report issued by George L. Morfitt in January, 2007: *A Review of Operational Safety at British Columbia Ferry Services Inc.:*

> During our review we observed tension in the relationship between the company and the union. This situation is, in our view, largely dysfunctional and poses significant impediment to resolving operational safety issues and ensuring continuous improvements to the SMS [Safety Management System]. (p.7)

BC Ferry Services Inc. was incorporated in 2003 under the *Company Act*. Ownership of the single-issued voting share is held by the B.C. Ferry Authority established under the *Coastal Ferry Act*. The Government of British Columbia is the holder of all of the preferred shares of the Employer but has no voting interest in either the Employer or B.C. Ferry Authority.

The Employer has three wholly owned subsidiaries, one of which concerns this Award, namely Deas Pacific Marine Inc., which performs maintenance and refit operations.

The Employer operates a large and complex ferry transportation system under a service contract with the Province for vehicles and passenger transportation services to communities along the coastal waters of British Columbia. The Employer operates 36 vessels and 47 terminals on 25 routes, carrying in fiscal 2005/06 some 21 million passengers and 8.5 million vehicles on approximately 180,000 sailings.

The Employer has some 2,900 full-time employees supplemented by up to 1,500 casual and seasonal workers hired to deal with increased work load during the summer and other peak-demand periods.

The *Coastal Ferry Act* (2003), which established a new governance model for the ferry system, was an immediate cause of controversy between the parties. The *Act* not only created an independent and self-financing company (as opposed to a crown corporation) but also established Deas Pacific Marine Inc. which previously had been part of the crown corporation. Employees were transferred from the crown corporation to the new companies which were separate employers under the *Act*.

The *Act* declared the new ferry company an essential service under the *Labour Relations Code* and provided that as between the *Act* and the Collective Agreement, the *Act* was paramount.

The passage of the *Act* set the stage for a disruptive and acrimonious atmosphere at the bargaining table. The Employer tabled an ambitious collective bargaining proposal affecting all material provisions of the Collective Agreement: hours of work, classifications, contracting out, overtime, hiring, no wage increases in the first two years of the agreement. The Union's reaction was, delicately put, less than enthusiastic. Mediation ended on the second day followed by strike action. The Union ignored legislation which required a return to work. The strike ended on December 12, 2003 with the agreement for final and binding arbitration.

The dispute between the parties was mammoth, affecting almost every provision of the Collective Agreement. Following arduous hearings and intense consultation with the parties, I issued an Interim Award on October 15, 2004, bringing a measure of stability to what had been a deplorably fractious and unacceptable relationship between the parties.

Following on the October 15, 2004 Award, the parties undertook several implementation meetings and made significant progress in reaching agreement on a number of issues. On April 26, 2005, I issued an award with respect to another five of the contentious unresolved matters.

The parties have continued their discussions culminating in direct negotiations spanning the period September 6 to 8, 2006. These negotiations were productive in that they shed light on a number of issues but at the conclusion still failed to produce an agreement. I should, however, observe

that since the issuance of the October 15th Award, the parties have worked diligently to establish a labour relations framework which, in large part, recognizes the need for long-term stability and fundamental changes to the Collective Agreement. These changes and improvements are reflected in the attached Collective Agreement.

In issuing this final award, which will allow the parties to assemble a Collective Agreement (more than three years following the expiry of the previous Collective Agreement), I have taken careful note of the parties' settlement framework as well as all of the submissions which I have received and considered.

Thus, the purpose of this Award is to deal with those issues which remain outstanding and which the parties, notwithstanding recent admirable efforts, have been unable to settle and over which the parties have granted to me exclusive jurisdiction to resolve by way of final and binding arbitration. Those issues are:

A. Term and wage rate adjustments;

B. Exclusions;

C. Deas Pacific Marine Inc. ("Deas Pacific");

D. Past practices;

E. Homesteading of licensed positions;

F. Labour relations;

G. Bargaining structure.

II

**TERM AND WAGE RATE ADJUSTMENTS**

Term of the Collective Agreement shall be November 1, 2003 to October 31, 2012.

**WAGE RATES**

| | |
|---|---|
| November 1, 2003 | No change |
| November 1, 2004 | No change |
| November 1, 2005 | For positions requiring 1st Class and 2nd Class Motor Certificates (e.g., Masters, Chief Officers, 2nd Officers and Sr. Chief, Chief, 2nd Engineer), increase by 5%. For Junior licensed positions (3rd and 4th Engineers, 3rd and 4th Officers and Trades persons), increase by 3%. |
| November 1, 2006 | For positions requiring Senior License increase by 5%. For positions requiring a Junior License and Trades persons increase by 3%. All other classifications to be increased by 1%. |
| April 1, 2007 | All classifications to be increased by 2%. In addition, a lump sum payment of $1000 to all employees currently employed prior to November 1, 2003, payable on or before March 31, 2007. Further special adjustments as outlined at the conclusion of this section. |
| November 1, 2007 | For positions requiring Senior License increase by 5%. For positions requiring a Junior License and Trades persons increase by 3%. |

| | |
|---|---|
| April 1, 2008 | General increase of 3% for all classifications. |
| April 1, 2009 | General increase of 3% for all classifications. |
| April 1, 2010 | General increase of 3% for all classifications. |
| April 1, 2011 | Wage re-opener to be referred to the panel set out in Section VIII of this Award. |
| April 1, 2012 | Wage re-opener to be referred to the panel set out in Section VIII of this Award. |

**Special Adjustments**

1. April 1, 2007 – employees of Deas Pacific Marine to receive the general wage increase and lump sum payment in lieu of the July 1, 2007 adjustment of 1.9%. Thereafter they shall receive the wage adjustments as set out above commencing April 1, 2008.

2. Senior Chief Stewards and Chief Stewards to receive the 3.0% + 3.0% wage adjustment on April 1, 2007 as intended under the Ready Award and the 3.0% adjustment on November 1, 2007.

3. A new classification shall be established called Bridgewatch with a rate of pay 4% higher than the Deckhand classification. (Implemented as per the Interim Award).

4. An ERA in possession of a 4th Class Motor Certificate shall receive a 4% wage increase effective April 1, 2007.

5. Effective April 1, 2007 the wage grid shall be eliminated.

6. Effective April 1, 2007 Article 21.01 Dirty Money and Heat Money, add:

17. The cleaning of lube/oil purifiers/clarifiers.

7. Effective April 1, 2007 the rate of pay for Seasonal Employees shall be 90% of the classification worked and 95% for returning Seasonals.

III

**EXCLUSIONS**

The October 15, 2004 Award made clear the need for logical exclusion of certain positions from the bargaining unit in order for the Employer to meet its management and statutory responsibilities. Notwithstanding the exclusions granted in the October 15, 2004 Award, the Employer holds a strong view that there exists an operational and managerial need for a large number of additional exclusions. The Union is equally adamant that no further exclusions ought to be granted. I award the following:

> 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.

IV

**DEAS PACIFIC**

The Deas Pacific Marine Component Agreement shall be incorporated into Article 33 of the Collective Agreement as attached as Appendix "B".

V

**PAST PRACTICES**

The Employer wishes to terminate the myriad of practices which have accumulated over the years. The precise extent and nature of these practices is unknown. They arise in response to particular circumstances. The Union is opposed to the unilateral termination of past practices without the parties knowing their precise nature and in the absence of informed discussion as to the consequences of their cessation. The Union, not unreasonably, requested an opportunity to negotiate changes to the Collective Agreement language which is affected by past practice. I order as follows:

A. Where the Union alleges that a provision of the Collective Agreement is affected by a past practice, the parties shall meet and attempt to reach a mutually satisfactory resolution.

B. In the event the parties are unable to reach agreement, they may, by mutual agreement, refer the dispute to Vincent L. Ready or, in his absence, Colin Taylor for assistance.

C. In the event the parties are unable to reach agreement and do not agree to seek the assistance described or the assistance does not result in agreement, then the issue shall be referred to Vincent L. Ready, or his alternate, for a final and binding determination of the length of notice which the Employer must provide to the Union of its intention to terminate the practice.

VI

**HOMESTEADING OF LICENSED POSITIONS**

Throughout these lengthy deliberations, the Union has forcefully expressed the view that there are staff shortages, especially with respect to Licensed Officers and Trades. While acknowledging this concern, the Employer takes a much broader view, suggesting that the system and logistics of posting and selecting employees results in unacceptable and inefficient staffing hurdles. For example, the Employer argues that filling a regular Engineering vacancy in Tsawwassen can take months and is exacerbated when the resulting vacancy under the system becomes a Casual Engineering requirement in a remote location, in which case, the hours available are insufficient to attract the person required.

The Employer points out that the process of Homesteading on an alternative posting basis has helped considerably in staffing unlicensed vacancies since the October 15, 2004 Award and urges extension and expansion of this process to include both licensed and unlicensed vacancies.

The Union takes the position that staff shortages can be alleviated by significantly increased wages, specific classification adjustments, elimination of the wage grid and benefit entitlement for casuals.

The issue of staffing and regularization of a greater part of the workforce is both contentious and critical and I find merit in the views of both parties. Thus, this Award and the October 15, 2004 Award incorporate a number of the Union's recommendations around pay and benefits: in particular the October 15th Award provided that Senior Officers receive 15% and Junior Officers and Trades 9% in special wage adjustments. I am also persuaded that the so-called "bottlenecks" raised by the Employer do exist and that a more balanced approach to the filling of vacancies will benefit both parties. With this in mind I am awarding the following Job Posting – Homesteading language in the form of a Memorandum of Understanding to have effect from the date of this Award and to expire on October 30, 2012:

1. In order to encourage and facilitate regularization of the workforce and the timely posting of Regular, Regular Part-Time and Term Certain positions, the selection process shall reflect a balance between employees currently working at the position location (the Homestead) and employees at other locations.

2. Regular and Term Certain postings for both Licensed and Unlicensed vacancies shall be filled on an alternating basis of one Homestead position followed by one system-wide posting for each location.

3. In the event there are no available or suitable employees for a Homestead posting, the Employer may elect to source external candidates.

4. The Employer and the Union shall have the discretion to mutually agree on a "case-by-case", "geographical" or other basis to fill vacancies in an alternative manner.

VII

**LABOUR RELATIONS**

I have, in this Award and previous awards, commented on the deplorable state of the labour relations when I first entered this dispute. Since that time, I have worked with the parties to not only resolve their extraordinary dispute but to assist in the improvement of their relationship. The *Morfitt Report*, *supra*, provides a useful definition of organizational culture:

> ...the set of shared values, beliefs, norms and practices that guide an organization and are subscribed to by its members. While vision, goals and values are important to management, the issue is the degree to which they are accepted by people in the organization and play a role in the workplace. A strong organizational culture is one in which there is a vision that everyone understands. Everyone is working together because they understand what the goals are and how the organization is achieving them. (p.23)

Mr. Morfitt went on to stress the importance of the Employer and Union demonstrating willingness to work together. He then said at p.24:

> During the course of our work, we observed considerable tension in the relationship between the company and the union that is, in our view, dysfunctional. It poses a significant impediment to resolving operational safety issues and continuously improving the SMS.

Strong words from a respected source. In nautical terms, that is a warning shot across the bow.

The organizational culture must be improved and I am pleased to say that since my first introduction to this alarmingly acrimonious dispute, I have observed significant improvement in the business-like approach the parties have adopted. While it still needs improvement, these positive steps are laudable and must continue to the point of cordiality.

I must also observe that the tragedy involving the Queen of the North caused a serious setback in the relationship. One would have thought that this incident would have caused the parties to come together in a spirit of shared concerns, values and interest but, in fact, it destroyed a lot of the progress which has been made since December, 2003 and drove the parties further apart with unseemly and all-too-public charges and counter-charges.

One year has passed since the sinking of the Queen of the North yet the incident remains very much in focus. Investigations continue and with them come the consequential uncertainties, doubts and accusations. It is essential that this incident be closed as quickly as is practicable and that the parties move on. With this in mind, I urge the parties to cooperate to the fullest extent so that the investigations can be concluded with dispatch. Thereafter, it will be for the parties to continue to provide complete and unconditional cooperation in implementing whatever recommendations are made and accepted.

The Queen of the North incident has put an intolerable strain on the parties. It must be brought to an end so that the parties can move forward free of that yoke and forge a new, solid, and mutually-beneficial relationship.

Toward that end, it is ordered that any matters under the Collective Agreement, not already referred to arbitration, including any disciplinary action arising from the Queen of the North incident be referred for final and binding

determination on an expedited basis to Vincent L. Ready, or, in his absence, to Colin Taylor.

The said arbitrators shall have the jurisdiction to determine their own procedure with respect to such disputes.

VIII

**BARGAINING STRUCTURE**

It is all too clear that the current collective bargaining structure does not work. One only needs to analyze the current labour dispute to come to that conclusion. Both parties have demonstrated they are unwilling to set aside their philosophical differences in order to achieve a collective bargaining structure which meets their needs and takes into consideration the vital role which the ferry system plays in the day-to-day lives of the public which depends upon it. Indeed, the ferry-system users and the public generally have little or no tolerance for labour disruptions in this vital transportation system.

That said, during these arbitration proceedings Ms. Jacqueline Miller, President of the Union, made a compelling submission for the adoption of a new and fresh approach to collective bargaining at B.C. Ferry Services. It was, in part, modelled after the binding arbitration system adapted by Washington State Ferries and its marine unions. It is also asserted that a fresh approach to bargaining would provide for greater certainties to the Company, the employees and the public because, with the adoption of objective principles, the parties could enter into long term collective agreements and thus meet the parties' interests in longer term collective agreements.

Having carefully considered the arguments presented I have determined they have considerable merit in a more meaningful bargaining process. Therefore I award a new bargaining structure be implemented as follows:

A. A permanent collective bargaining dispute resolution panel shall be established.

B. The members of the panel are:

Vincent L. Ready
Colin Taylor
Irene Holden

The parties may, by mutual agreement, change a panel member.

C. Six months in advance of the wage re-openers and the expiry of their collective agreement, the parties shall jointly conduct a salary and benefits survey of relevant comparable employers for use in guiding the parties in reaching a new collective agreement. The survey shall be for the purpose of disclosing generally prevailing levels of compensation, benefits and conditions of employment relevant to the business of the Employer. The parties shall agree on the terms of the survey and may call upon the panel or one of its members for assistance. If agreement is not reached within twenty (20) days on the terms of the survey, then the panel will meet to set the terms of the survey.

D. No later than three (3) months before the expiry of their collective agreement, the parties shall exchange bargaining proposals and no later than fifteen (15) days thereafter, the parties shall begin collective bargaining.

E. During collective bargaining, the parties may call upon a member of the panel to provide assistance.

F. If the parties reach impasse, the parties shall enter into mediation with one or more members of the panel.

G. If the impasse persists for fourteen (14) days after mediation commences, or beyond any other date mutually agreed by the parties, all impasse items shall be submitted to the panel for final and binding arbitration.

H. In reaching its decision, the panel shall take into consideration:

i. The salary and benefits survey;

ii. The compensation, benefits and working conditions for employees as compared with the public and private sector employees in relevant comparable employment, including in states along the west coast of the U.S., including Alaska, and within B.C. in comparable positions;

iii. The economic realities of the marketplace in terms of recruitment and retention of a skilled and qualified workforce;

iv. Prevailing economic conditions in the Province;

v. The economic viability of the Employer;

vi. The interests of the users of the ferry system;

vii. Historical bargaining patterns;

viii. Cost of living;

ix. Such other factors which the panel deems relevant.

I. The decision of a majority of the panel is the decision of the panel but, if there is no majority decision, the decision of the chair is the decision of the panel.

J. The decision of the panel is binding on the parties who must comply in all respects with the decision.

IX

**THE COLLECTIVE AGREEMENT**

The Collective Agreement shall consist of this Award and the October 15, 2004 Award except where amended by the parties, as well as all matters previously agreed between the parties and contained in Appendix "A" attached, and the Deas Pacific Marine Agreement Contained In Appendix "B", attached.

I retain jurisdiction to deal with any issues arising out of the interpretation, implementation and application of this Award. My jurisdiction will also include dealing with any matters that may have been inadvertently overlooked in this Award and its Appendices.

Dated at the City of Vancouver in the Province of British Columbia this 8th day of March, 2007.

Vincent L. Ready

IN THE MATTER OF AN ARBITRATION

BETWEEN:

BC FERRY SERVICES INC.

(the "Employer")

AND:

BC FERRY AND MARINE WORKERS' UNION

(the "Union")

(Exclusions/Inclusions – Legal Principles)

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# INTERIM AWARD

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| ARBITRATOR: | Vincent L. Ready |
| COUNSEL: | Eric Harris, Q.C. and Chris Leenheer for the Employer<br><br>Sandra Banister for the Union |
| WRITTEN SUBMISSIONS: | December 19, 2008 and February 13, 2009 |
| PUBLISHED: | July 8, 2009 |

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This arbitration arises under Article 2.01 of the Collective Agreement and the Letter of Understanding (LOU) Re Bargaining Unit Exclusions/Inclusions that formed part of the interest arbitration award between these parties dated October 15, 2004. Article 2.01 and the Letter of Understanding read 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.

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....

Pursuant to the above provisions the Employer wrote the Union on February 11, 2008 advising it of the Employer's request for certain positions to be excluded.

The Union strenuously objects to the requested exclusions and thus the matter has been referred to me for a final and binding decision under Article 2.01 and the LOU set out above.

I have held preliminary meetings with the parties to determine whether or not a mediated resolution is possible in this matter and determined none was possible.

The parties have agreed to provide me with "will say" statements of their witnesses outlining the evidence they will give to support their respective positions. Subsequently, I met with Counsel for the parties and directed them to provide written submissions on the appropriate legal principles to apply to the exclusions requested by the Employer.

This award is limited to the applicable legal principles to this dispute. It is intended to guide the parties during the next step of the proceeding as established by this Interim Award.

**BACKGROUND**

The Employer manages a large complex ferry system along the coast of British Columbia. It operates 40 vessels and 47 terminals on 25 routes, carrying in excess of 21 million passengers and 8 million vehicles annually.

The Union is certified to represent certain employees of the Employer and is party to a Collective Agreement with the Employer for a term of November 1, 2003 to October 31, 2012. The current Collective Agreement was finally settled by an interest arbitration dated March 8, 2007.

The fleet operations of the Employer are separated into distinct departments, namely: Deck, Engineering, Catering and Terminal Operations. This Interim Award does not deal with Terminal Operations.

The function and composition of each of the departments *per se* are not disputed and are set out in the Employer's submission as follows:

> **Deck**
>
> The Deck department is comprised of the licensed officers on the vessels, which includes the Senior Masters, Masters, Chief Officer, Mates and the 2nd, 3rd and 4th Officers (where applicable). Also included in the Deck department are unlicensed deckhands.
>
> The Deck employees are responsible for the safe handling of all of the bridge and deck functions on the vessel during normal sailing, adverse conditions and during emergencies. These functions include ship's navigation, safety procedures, berthing and unberthing, loading and unloading of traffic and passengers, ship's husbandry, etc.

Vessels operate and are crewed 7 days a week using a watch system. Each vessel has a designated Senior Master who works on one of the watches which is an excluded management position. Many of the vessels presently therefore operate without an excluded presence on the other watches.

On the major vessels, the Master position is excluded on most, but not all vessels. On the intermediate and minor vessels only the Senior Master is excluded.

**Engineering**

The Engineering department is responsible for all of the maintenance, operation and replacement of the physical assets of the Company, with the exception of the building of new vessels.

The department has two broad areas of operation, fleet and terminal.

On each vessel there is, with a couple exceptions, a designated Senior or Chief Engineer for each watch. This position is currently in the bargaining unit. Thus there is no management presence for the Engineering department on any vessel while it is sailing.

**Catering**

Catering provides all food services and retail services on board the vessels and at some of the terminals.

There is currently no excluded catering manager on any watch on any vessel. The senior bargaining unit position for each vessel is the Senior or Chief Steward. The Senior Chief Steward works on one of the watches, and has increased responsibility for the vessel in terms of the catering operations.

**POSITION OF THE EMPLOYER**

Counsel for the Employer submits that when applying the tests for exclusion I must be mindful of the underlying purpose or rationale of excluding individuals from the bargaining unit. In that regard Counsel relies on the purpose stated by the BC Labour Relations Board in *Cowichan Home Support Society*, BCLRB No. B28/97, at paragraphs 104-106 and 115:

The broad purpose of the managerial exclusion is, as we have stated, to ensure the undivided loyalty of the managers to the enterprise. This is consistent with the arm's length model of collective bargaining that safeguards the adversarial relationship (in both labour and management's interest) and is consistent with the underlying purpose of the statutes.

If there has been any change in this view, it probably lays within the concept of undivided management loyalty. Loyalty in the labour relations means putting the company's interests first. From the union perspective, it means putting the members' interests first. By keeping managers out of any bargaining unit, their loyalty will not be divided between the functions of their jobs (the company's interests) and the interests of members of the bargaining unit. Loyalty also involves a strong degree of selflessness, and applies to all aspects of a person's beliefs and actions; this often involves envisioning the foreman as sharing the same qualities as the vice-president: competitive, individualistic and entrepreneurial. Perhaps a better reflection of today's governing values is the concept of commitment – an undivided commitment. This involves a strong adherence to both management policy and philosophy, but also conveys a relationship of continued reciprocity.

Finally implicit in this undivided commitment or undivided loyalty, is the premise that each party must have absolute confidence that its policies and strategies remain confidential, are implemented fully, and in good faith. Access by one side to the confidential labour relationship information of the other would result in an unfair advantage and ultimately bring the collective bargaining relationship into disrepute. This is immediately self-evident in regard to both the negotiation and administration of a collective agreement....

Underlying these factors is the rationale for exclusion – conflict of interest. As was originally stated in *Burnaby* and affirmed in *VGH*, the conflict of interest that is at the heart of the collective bargaining scheme is "potential conflict of interest". No actual conflict need be shown. This conflict of interest arises directly from an objective examination of the actual responsibilities and authority of the individual at issue. Further, that potential conflict of interest is simply not an internal conflict of interest that may arise by the establishment of a blended unit – a unit containing supervisors and the employees they supervise. The concept of conflict of interest within the managerial exclusion issue, is a reference to the existence of dual loyalties resulting from the duties performed for the employer and membership in a bargaining unit.

> There are two important points that flow from this which are not resolved by simply placing a particular supervisor in a different bargaining unit from those that they supervise.

Further, Counsel asserts that the fundamental test to be used when determining exclusions from this bargaining unit is that which is set out in the LOU between the parties which reads, 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 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.

Also, in the submission of the Employer, when considering exclusions from the bargaining unit it is necessary to take into account the changes in the operation over the last 20 or 30 years. More specifically, Mr. Harris points to the need for the safe operation of the vessels to underscore his point. Counsel points to the tragic sinking of the Queen of the North and the Morfitt Safety Review Report which was released in January 2007.

It is also argued that safety and security measures in marine public transportation are becoming increasingly regulated to higher and higher standards, as are the training and certification requirements for crew members. Counsel states that the Employer not only must maintain its high standards in these areas, but also must continually enhance its ability to ensure the safety and security of the travelling public and its employees. This places considerable accountability for supervisory staff on the vessels and cannot be accomplished without having a management presence on the vessels

for each department. In terms of the Deck department, given the importance of such employees to the safe operation of the vessels, increased management presence is needed to maximize safety process and procedures, and to increase accountability for these measures.

In addition to safety, the Employer argues there are increasing pressures to operate efficiently and effectively. The travelling public demand better quality, reliability and more varied services, and also expect sailings to be on time. These pressures, says Counsel, create increased challenges respecting scheduling, budgeting, staffing, performance management and employee training and development. The Employer needs its supervisory staff (the vast majority of who currently are in the bargaining unit) to be accountable for these issues to the Employer, to other employees, to the public and the shareholder.

It is also argued that employee relations issues have changed over time. Counsel states that issues such as the duty to accommodate, rehabilitation, return to work, substance abuses, discrimination and harassment have become increasingly important challenges which increase the need for management presence to investigate, make decisions, determine appropriate course of action, and then implement and monitor progress. Whether the response is disciplinary or non-disciplinary, it requires ongoing management decisions which are best made by someone with management authority and with direct day-to-day interaction with those employees who are the subject of the decisions. These operations are not routinely operating within office hours on a Monday to Friday basis at an office location, but are distributed and in motion throughout the coastal waters seven days a week in constantly changing and challenging situations requiring immediate management decisions.

While acknowledging that the current test for management exclusions used by the BC Labour Relations Board is that set out in *Cowichan* (referred to above) which requires consideration of three primary criteria or facts – discipline and discharge, labour relations input and hiring, promotion and demotion – the exclusion test in the present case described in the Collective Agreement was not intended to be restricted to the current test used by the Labour Relations Board. This is because of the unique nature of the Employer's operations which, in Counsel's view, requires a more expansive view of the traditional exclusion factors.

Mr. Harris also asserts that bargaining unit employees on the Employer's vessels work, in many cases, without a management presence during their entire shift. On the larger and major vessels, there is only one excluded master on the vessel during sailing, and in other cases there is one excluded master on one of three or four watches of the vessel. The Master is the commander of the vessel but typically is not knowledgeable in the duties of the Engineering or Catering departments and does not provide day-to-day direction of all of the Deck crew. As a result, Counsel says there is a need for management presence, not just for the ship in general, but for each department on board the vessel. These individuals exercise, and need to be able to exercise, independent decision making in the supervision of their crews.

The Employer also argues there is a need for general supervision of the staff, which goes beyond the authority to discipline or discharge, but includes the factors of day-to-day supervision, independence of operation and evaluating employee performance. These factors relate to the issue of ongoing performance management of the employees. Given the uniqueness of the operation, these factors remain relevant to the consideration of whether certain positions should be excluded from the bargaining unit.

Additionally, it is argued the factor of labour relations involvement is an important factor. Under the current structure there is no management representative on board the vessel in most circumstances, who can deal effectively with grievances arising from incidents which occur on board the vessel. Currently the "heads" of the departments are bargaining unit positions and are thus in a conflict of interest when dealing with individual grievances by employees they supervise, or related to vessel specific issues.

With respect to the tests of discipline and discharge, labour relations input, hiring, promotion and demotion, the Employer relies on the test set out by the Labour Relations Board in *Cowichan,* in particular paragraphs 107-113.

With respect to the management team concept, the Employer relies on *Vancouver General Hospital,* BCLRB No. B81/93.

Counsel asserts that the exclusion test in the Collective Agreement states that the contemporary management team test applies to applications for exclusions, and superimposed on this is the recognition of the parties that what was intended was this would be applied having in mind the responsibility of the Employer to operate a safe, reliable and customer-centered ferry system.

Further it argues that the Employer requires leadership in each of its onboard departments, who share in management's view on how to better direct employees to fulfill the objectives of the Employer.

Therefore, says Counsel, the Employer requires its onboard and shipboard management teams to work within its objectives. The only way to do that is to have individuals who share in the Employer's vision and are able to effectively implement management directives. These teams should be more involved in dealing with grievances and labour relations because they are the individuals who are most knowledgeable with respect to the employees' issues.

Further, the Employer needs to increase accountability on the vessels in terms of budgeting, performance and attendance management, and safety, and needs to build strong management teams on the vessels to ensure these matters are addressed.

Mr. Harris argues further that currently there is a potential, if not an actual, conflict of interest in that members of the shipboard and onboard management teams are either all included bargaining unit members or there is one excluded Master meeting with the "heads" of the other departments who are included in the unit. The Employer is seeking to have undivided loyalty from those individuals who supervise and direct other employees.

In summary, with respect to the management team test it is argued that when I consider the Employer's organization chart and how it operates, the management team concept in the Collective Agreement was meant to allow the Employer to address these issues through inclusion of certain positions into management to avoid the conflicts of interest that naturally arise from having bargaining unit members exercise management authority over other bargaining unit members, and was not meant to be as restrictive as that set out in the Labour Relations Board jurisprudence.

**POSITION OF THE UNION**

On behalf of the Union, Ms. Banister asserts that the tests for management exclusions and the management team concept, which have been developed and refined by the Labour Relations Board over many years (including case law between this Union and this Employer), are the legal principles which should be applied to the Employer's application for exclusion.

Those principles, argues Counsel, are supported and emphasized by the language contained in the LOU between the parties wherein it states:

"...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". Thus, I must give effect to the clear language of the agreement.

Further, in the submission of the Union nothing in the language of the LOU suggests the relevant principles are modified in any way from those developed by the jurisprudence of the Labour Relations Board.

With respect to the "Traditional Management Responsibilities Test, it is submitted that the term "traditional", as it is used in the LOU, must be related to the existing and lengthy Labour Relations Board jurisprudence on this issue. In that regard Ms. Banister relies on the history of that jurisprudence captured in *Highland Valley*, BCLRB Letter Decision No. B289/98.

With respect to the Employer's submission regarding its reliance on the ten factors set out in the *British Columbia Ferry Corporation*, BCLRB No. 65/78 as guidance for this board, the Union argues that that is not good law – law which was limited by the *Vancouver General Hospital* decision at p. 52:

> ...individuals who work independently, and who may perform some of the functions set out in the B.C. Ferry test, still may not be managers. The effect of this is to allow more employee involvement (e.g., setting policy) without the fear of losing such individuals from the bargaining unit – indeed, the very value of the involvement of such individuals is that they are from the bargaining unit. Conversely, an individual may be involved in only one or two of the B.C. Ferry criteria and be excluded – discipline and discharge, or labour relations input. An evidentiary hearing to decide managerial exclusion under Section 1(1) is therefore a more focused exercise. The absence or presence of factors other than discipline and discharge and labour relations input will still be relevant. However, the weight to be attached to these other factors will only be to tip the balance in a close call.

> The result is this: first, the employer, in establishing its management structure, will know which managerial powers to properly delegate to ensure that those managers fit comfortably within its management structure. An employer's delegation of these powers and responsibilities must, of course, be bona fide. Any obligation which amounts to a mere "sprinkling" of powers and responsibilities, in an effort to achieve a managerial exclusion, will not find favour with this Board. Second, the B.C. Ferry test will be adapted to non-traditional workplaces, such as professional settings but not limited to them. Third, this adjustment will narrow the test for exclusion, giving greater weight to the factors of discipline and discharge and labour relations input. Fourth, the remaining factors in the B.C. Ferry test will not be given significant weight in the exclusion of employees when the other two factors are absent. Fifth, employees can be delegated responsibility in the other areas, and would most likely remain in their bargaining units – i.e., supervision per se is not a ground for exclusion. Sixth, the management team concept will not be used as a ground for exclusion of first level supervisors who may perform administrative or supervisory duties.

It is further submitted that the BC Ferry test for managerial exclusion was whittled down by the Labour Relations Board in *Cowichan* where the Board limited the relevant factors for consideration in exclusions to be discipline and discharge, labour relations input, and hiring, promotion and demotion.

As Counsel put it:

> The goal of *Cowichan* was to provide a straightforward test for managerial exclusions that would eliminate costly and time-consuming litigation before the Board. However, as noted in *Highland Valley*, the internal inconsistencies within that decision caused the aim of that decision to fail to be realized in a practical sense; that is, the decision did not eliminate or limit the number of lengthy, contentious inclusion/exclusion hearings being brought to the L.R.B. Thus, the L.R.B. took another opportunity to consider the law on managerial exclusions and set out its policy in *Highland Valley*, at paragraph 98a:

## POLICY SUMMARY ON MANAGERIAL EXCLUSIONS/SUPERVISORY UNITS

A. Managerial Exclusion/Employee Status

1. One of the fundamental purposes that guides the Board is stability in collective bargaining. The Board has supported that goal by interpreting the definition of employee in Section 1(1) of the Code in a way that preserves the arms length relationship in collective bargaining. It does so by granting employers the undivided loyalty of the senior people responsible for ensuring that work is done and that the collective agreement is adhered to while at the same time ensuring that the leadership of unions is not dominated by individuals from senior management.

2. The other fundamental purpose that guides the Board is access to collective bargaining. The Board has supported that purpose in its acknowledgement that Section 29 of the Code represents a statutory recognition of the fact that the need for exclusion of senior management from employee status does not lead to the denial of access to collective bargaining for "supervisory" employees.

3. A determination as to inclusion in or exclusion from employee status is based on a measurement of the potential conflict of interest. An objective examination of the actual responsibilities and authority is necessary to determine this issue. If the potential conflict of interest is sufficient to justify the need to grant to the employer the undivided loyalty of the individual in question, the individual is excluded from employee status under the Code.

4. The two factors of discipline and discharge, and labour relations input, carry the greatest weight in determining whether there is sufficient conflict of interest to justify exclusion from the Code due to managerial status. The only other factor that would materially assist the Board is that of hiring, promotion and demotion to the extent it is not already covered by the first factor.

5. In measuring the factor of discipline and discharge the test of "effective determination" is used in deciding whether there is sufficient potential conflict of interest to justify exclusion from employee status.

6. The measurement of the relevant factors as well as the application of the test of "effective determination" must be done in a way that accurately reflects the contextual realities of particular organizational and managerial structures. An example of this is the Board's approach to professional workplaces and the recognition that a lower incidence of disciplinary activity in less adversarial workplaces does not lessen the weight to be given to the factor of discipline and discharge.

7. If the measure of potential conflict of interest leads to the exclusion from employee status under the Code no further issues need to be decided concerning the individual in question.

It is also argued that in setting out its policy with respect to managerial exclusions cited above, the Labour Relations Board intended that "effective determination" with respect to discipline means, at least in the majority of cases, the sanction imposed by the worker whose status is in question must be substantially the discipline ultimately imposed. That is, if an employer relies on a worker's power to discipline as evidence of conflict of interest such that the worker should not be included in the bargaining unit, then the Employer must be prepared to show the worker's power is real. In other words, the Employer cannot rely on powers and duties granted to workers to exclude them from the bargaining unit if those powers have no workplace reality.

With respect to the Management Team Responsibilities Test, it is submitted by Ms. Banister that this test has rarely been used and even more rarely accepted since the 1977 amendment to the definition of "employee" in the *Labour Relations Code*, and further, the Labour Relations Board has consistently held a claim for exclusion under the management team concept will rarely be appropriate and/or successful.

In sum, Counsel asserts the management team concept may be invoked to exclude a worker from the unit only where that worker does not meet the

definition of "employee" under the *Code*. Under the contemporary test, it has no other practical application.

In reply to the Employer's submission, Ms. Banister asserts that many of the issues raised under the guise of "legal argument" are at least factual disputes and, at worst, irrelevant. As an example, Counsel points to the Employer's assertion that some individuals need to be able to exercise independent decision making and supervision. This, she says, is in no way a legal argument. It is rather a factual claim which the Union strenuously disputes.

Further, it is submitted that the organizational chart submitted by the Employer in support of its position for exclusion is inconsistent with the law in *Vancouver General Hospital*, where the Board went on to hold any assessment must be based on conclusions of facts.

With respect to the Employer's argument that changes both within its organization and within the industry over the past 20 years requires a more expansive and liberal approach to management exclusions, the Union says it has two major concerns with the Employer's position.

First, the Union takes umbrage with the Employer's characterization of issues like safety, accommodation, human rights, workplace safety and efficiency as "new" concerns. Rather the Union argues safety and efficiency have been paramount operational concerns for decades and remain so.

Second, the Employer offers no legal basis for its claim that the presence of such concerns requires the application of a more expansive approach to exclusions. In sum, the Union argues that the Employer's submission completely fails to acknowledge the fact that the whole purpose of the changed Labour Relations Board policy in *Cowichan* and *Highland Valley* was to provide

greater flexibility in determining inclusions and exclusions in light of these very types of workplace realities.

It is argued further that the Employer has provided no legal argument or authority to suggest the test set out in *Cowichan* and clarified in *Highland Valley*, is no longer appropriate in the current labour and economic climate and, as a result, why that approach should be replaced with the more expansive approach advocated by the Employer. Put another way, Counsel submits that the decisions in *Cowichan* and *Highland Valley* were designed to be flexible and deal with new and differing workplace realities. Those tests remain good law and ought to be applied in the present case.

Finally, with respect to the Employer's argument concerning the issue of applying the management team concept in a manner which does not make the excluded positions eligible to belong to a secondary bargaining unit, it is submitted by the Union that the Employer provided no legal basis for this argument. Again, Ms. Banister relies on jurisprudence set out in *Highland Valley* and *Cowichan*. Moreover, in the submission of the Union given the long history and characteristics of the Union's bargaining unit, the issue of supervisory bargaining units does not arise.

**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 (AG) 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.

**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. <u>Exclusion of Certain Positions</u>

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?

**SUMMARY**

As stated earlier in this Interim Award, I have considered it important for the parties to be aware of the principles upon which the final arbitration award may be based. I am mindful of the fact that the publication of this Interim Award may create an opportunity for the parties to resolve these issues in a voluntary manner. I am available to meet with the parties to attempt to either narrow or resolve the outstanding issues if the parties are prepared to engage in such a process.

If the publication of this Interim Award does not move the parties to a voluntary solution, I will continue to follow the procedures established in this award.

My office will be in contact with Counsel for the parties to set dates for each of the Departments.

Dated at the City of Vancouver in the Province of British Columbia this 8th day of July, 2009.

Vincent L. Ready