INTERIOR FOREST LABOUR RELATIONS ASSOCIATION

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March 19, 2018

Labour Relations Code Review Panel
Via Email: LRCReview@gov.bc.ca

Dear Panel,

Please accept this letter as our submission for comment on the BC labour code review.

The Interior Forest Labour Relations Association

The IFLRA is the primary bargaining representative for the Southern Interior forest industry. Currently we have 11 member companies, with 17 operations, who collectively employ approximately 2,900 workers in this region. Our membership consists of large multi-national companies as well as privately held companies working in the forest industry.

Our mandate not only includes representing our members in collective bargaining and assisting in contract administration, but also lobbying government for the preservation of their collective interests.

Introduction

On July 18, 2017, Premier Horgan presented a mandate letter to the Minister of Labour, Harry Bains, which, among other things directed that he ensure British Columbians have the same rights and protections enjoyed by other Canadians by reviewing the Labour Relations Code to ensure workplaces support a growing, sustainable economy with fair laws for workers and businesses.

In order to address this mandate, Minister Bains appointed a three member Labour Relations Code review panel, as you are obviously aware. It is important to remember that the appointment of the Review Panel supports commitments made by Government in the 2017 Confidence and Supply Agreement with the B.C. Green caucus. While the Review Panel is intended to be politically unbiased and independent of Government, any legislative changes will ultimately require the support of the B.C. Green caucus.

While we appreciate the opportunity to make submission on potential changes in the Labour Relations Code (the Code), we note that the Code has remained relatively constant since the 1992 revisions. The Code has received modest amendments in 2001, 2002 and 2003. In 1992, Vince Ready, John Baigent and Tom Roper engaged in a similar process under the NDP government of the day and made recommendations that were incorporated into the Code and more or less have withstood the test of time. Unlike many provincial jurisdictions, (e.g Saskatchewan, Ontario, Manitoba and Alberta) British Columbia has avoided swings in labour legislation with the changing of government. We encourage this

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Panel to exercise restraint in making any recommendations to the government that are based on the priorities of the political process as opposed to the more general principles of sound labour relations.

The Code is a key piece of legislation to enable a growing and diverse economy, encourage domestic and foreign investment and enable constructive collective bargaining. There are some provisions of the Code which currently work opposed to those objectives, in particular Section 68 (Replacement Workers). We understand that the elimination of Section 68 would not be considered by this Panel or the current government, but we raise this for a number of reasons.

Section 68 is somewhat unique in the legislative framework in Canada. Moreover, it has been interpreted literally which has resulted in BC having one of the most restrictive replacement worker prohibitions in those few jurisdictions that have these provisions. Accordingly, this is a significant benefit that trade unions have in British Columbia and it is in consideration of our unique picketing provisions, the absence of sectoral bargaining and a host of other considerations. Balancing the rights and obligations of the various stakeholders is a difficult and highly nuanced process. We raise this as a caution to move the pendulum to any appreciable degree to the left or the right.

When you consider the reforms enacted in other jurisdictions in Canada, you will note that many of the Provinces are simply leveling the table with our long standing Code provisions. This mitigates any need for any significant legislative change in BC.

Given there has been very little labour unrest since the last review, what needs to be changed?

Specific Topics

Certification Process

We understand that the NDP had a campaign promise to introduce or at a minimum consider a card based certification process. It is also our understanding that the Green party will not support any change from an open and free ballot. Accordingly, we are left with the sense that despite whatever the political objectives may be the certification vote will be a part of the future Code. In our view this is integral to the bargaining process and a fundamental right of all employees to cast a confidential vote, free from interference or intimidation.

Currently the campaign period is a maximum of 10 days and both unions and management enjoy freedom of speech to express reasonably held opinions. It is important that employees have a period of time to reflect upon their decision and to hear the argument for and against the benefits/challenges of collective bargaining. This is an appropriate structure for the acquisition of collective bargaining rights and should not be altered. Further any changes to limit employer free speech may be met with a Charter challenge.

We note in some jurisdictions that electronic balloting is being used for certification votes. We

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encourage the Board to consider this methodology as it would easier facilitate the collection of votes for shift workers and those away from work on any sort of leave.

Successorship

We understand there may be submissions to modify the successorship provisions to allow for successorship in contracted services. BC would join a minority of Canadian jurisdictions that enable a successorship where one contractor is replaced by another absent the usual criteria required in finding a successorship.

There are sound economic reasons to maintain a link between efficiency, job performance and job security. An interesting perspective can be gained by examining the impact of the Woodlands Letter of Understanding (WLOU) in the coastal forest sector. Once a company crew has been contracted out, the WLOU establishes a perpetual series of successorships as the work is contracted to one stump to dump contractor and then subsequently to another.

Absent any "skin in the game" those employees (the legacy employees) that enjoy perpetual successorship right have no incentive to innovate, be efficient or care whether their current employer is able to survive. They are content knowing that while this employer may disappear, they have job security as their seniority will be imposed on any subsequent contractor. It is difficult if not imposable to establish a joint vision, shared objectives or a sense of ownership in these circumstances. This does nothing to encourage or foster an efficient and cost effective industry. Practically, it is a human resource nightmare. Expanding the successorship provisions is a distinctly uneconomic and counterproductive measure.

Picketing

It is our submission that the balancing that was done in 1992 included the introduction of the replacement work prohibition (albeit not perhaps the literal treatment undertaken by the Board) and the restrictions on secondary picketing. Any opening up of secondary picketing would upset that balance and require the removal of the replacement worker prohibition to maintain balance.

Moreover, unlike the Replacement Work prohibition there are sound policy reasons not to expand the scope of permissible picketing. In the purposes section of the Code, in particular sections 2 (d), (e), (f) and (g) suggest that transposing a labour dispute wider than the parties immediately at odds would be contrary to the underlying principles of the Code. Further, one must be mindful of the tools the parties have to engage in collective bargaining. When the parties are at an impasse, there is the status quo or a labour dispute. The government has already intervened on the side of the trade union movement with the replacement work prohibition which significantly impairs an employer's ability to withstand a strike. There is no corresponding restriction on strikers from securing alternate employment. To further compound this inequity by providing the trade union movement with further tools to disrupt the employer would be grossly unfair and send a very poor message to investors in the province of BC. Changes of this nature would introduce significant uncertainty into the labour relations climate in BC.

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Our system of administering labour disputes has worked reasonably well. There is no need to alter the balance.

Section 54

There is no question that the objects of Section 54 are worthy and reasonable, namely to provide as much notice as possible of significant changes in the workplace. The purpose of the advanced notice is to provide an opportunity for the parties to meet and review alternative measures, or at least measure to ameliorate the impact of any significant decision. The challenge, especially in the resource sector is that changes can happen so quickly in the market that the provision of 60 days' notice is not reasonable or practical.

Currently our largest trading partner is both unpredictable and protectionist. The "America First" policy has resulted in very difficult trading relations, the imposition of countervailing and anti-dumping tariffs can and will have a significant impact on our members. This is a market force that we cannot control, we suggest nobody can predict with any certainty and has the potential to make our industry uneconomic. Our industry needs to be nimble to adjust to these changes in the market, to curtail and ramp up production when the opportunities for trade either diminish or flourish.

Accordingly, we would like to see the 60 days remain as the target notice period, but allow the Board more discretion to permit shorter notice periods and limit breaches to declarations in the appropriate circumstances.

Expedited Arbitration

Our suggestion is that any decision resulting from this process be non-precedent setting. It would be unfortunate for the parties to have significant matters determined by arbitrators foreign to the relationship, not familiar with the industry and perhaps not trusted by one or more of the parties. Given the expedited nature of the process, protections should be installed to account for the "rough justice". Therefore, the process is more amenable to discipline cases than contract interpretation cases.

Section 91 – Arbitration Decisions

Both parties have been frustrated by the delay in issuing arbitration decisions. Some delays have been clearly unconscionable. Generally, those Arbitrators lose their business once the delay in their writing becomes common knowledge. Accordingly, the market may impose the ultimate discipline for a consistently tardy Adjudicator. Nevertheless, it would helpful if the Code set some expectations as to when decisions should be delivered. Clearly the length of the deliberation is related to the complexity of the case, the number of hearing days and the scope of the argument. An expectation of a result in a simple case within 8 weeks is in our view, reasonable and inline with the community's expectations. There should be a 6 month deadline for all cases.

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Summary

Given the limited nature of this consultation we recommend further detailed consultations with the community in the event the Panel recommends specific changes to the Code, specifically prior to any amendments being legislated. It is difficult from our current perspective to anticipate where the Panel may be heading with its recommendations as such our submission may not be exhaustive.

We endorse the finding of the British Columbia Court of Appeal in its 2001 decision involving OPEIU Local 378 and the Labour Relations Board (2001 BCCA 433) in which the Court noted:

Under the Code, not only does the Board perform a managing and supervisory function in the context of the highly regulated, complex field of labour relations, but as part of its broad oversight mandate the Board is expressly charged in s. 2 with policy responsibility and development in a polycentric context, a context that demands a delicate balancing between different constituencies with different and competing interests. Through ss. 136-138, and s. 139(1)(q) in particular, the Legislature has recognized that, in discharging its oversight function, the Board is best equipped to resolve ambiguities and fill voids in the legislative language governing replacement workers in a way that makes sense in the factual context, in the context of the Code as a whole, and in the field of labour relations overall in the province.

In summary, the Code is a living document and the stewards of the Code, the Chair and Vice-Chairs are appropriately situated within the current legislative framework to maintain the focus and purpose of this critical legislation. It does not require major changes or amendments, in fact to do so would bring instability and uncertainty into our very competitive economy.

Thank you for your consideration of our observations, if you would like further information, please contact us at the number provided above.

Sincerely,

Jeff Roos
President
Interior Forest Labour Relations Association