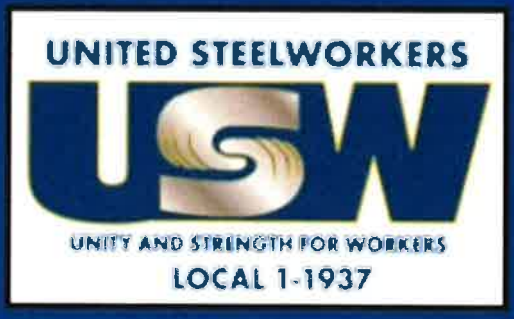

UNITED STEELWORKERS LOCAL 1-1937

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SUBMISSION TO:
THE LABOUR RELATIONS CODE REVIEW COMMITTEE
MARCH 16, 2018

RE:CHANGES TO THE BC LABOUR RELATIONS CODE

UNITED STEELWORKERS
USW
UNITY AND STRENGTH FOR WORKERS
LOCAL 1-1937

UNITED STEELWORKERS, LOCAL 1-1937

Affiliated with AFL-CIO-CLC

SERVING MEMBERS THROUGHOUT COASTAL BRITISH COLUMBIA

March 16, 2018

Re: Labour Relations Code Review Panel

Dear Panel Members,

Workers in every industry in both the private and public sector have suffered due to the complete imbalance of the BC Labour Code over the past sixteen (16) years which favours employers over workers.

The coastal forest industry is one of those industries where workers have suffered the most. From a non-union forest worker exercising their legal right to organize only to be intimidated and given false information, to organized workers losing their jobs due to poor successorship rights that don't allow their collective agreement rights to continue with a new land owner or steward, and to everything in between, workers are seeking fairness and balance in the Code.

We know central labour bodies such as the BCFED or our own USW District 3 will cover more issues than we do in this submission and their submissions are important. Our submission we believe is equally important and hits on some key issues that coastal forest workers feel are long overdue to be addressed in a meaningful way. Some of the issues we address may be unique to coastal forest workers (of which there are many both organized and unorganized); we hope you will give your time and consideration to these important issues.

We also appreciate the opportunity to address them with you in writing and in person at the regional meetings that have been set.

Yours Sincerely,

Brian Butler
President

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BB/cm
USW 1-1937

Who are the United Steelworkers Local 1-1937?

United Steelworkers Local 1-1937 is an amalgamated Local Union that proudly represents 6500 men and women in all sectors of the economy, but primarily in the forest industry. Our Local Union resides inside a large geographic area that encompasses all areas of coastal British Columbia including all of Vancouver Island, all coastal islands including Haida Gwaii and the mainland coast from the Alaskan State border south to the Washington State border.

Background:

The coastal forest industry has completely changed from the stable industry it was from the 70's through the 90's. In the early 2000's the provincial government appointed Don Munroe to facilitate binding mediation to end a coast-wide forest industry strike. This appointment led to the industry being changed from one of stable integrated forest companies (Fletcher Challenge/BCFP, Doman, Pacific, Macmillan Bloedel / Weyerhaeuser) to one where licensees were allowed to contract out their work to woodlands contractors, many of whom had never worked in a Unionized environment or under a collective agreement. This new model for the coast of BC has been extremely detrimental to labour relations.

While too many to list, we will identify some its detrimental effects here:

Bargaining:

Prior to 2003, the vast majority of forest companies bargained in an accredited organization, known as Forest Industrial Relations (FIR) while coastal Local Unions of the IWA/USW bargained as a single unit. Since that time, all major coastal licensees have left industry wide bargaining under FIR and have bargained independently. To try and hold sector bargaining together, and for the benefit of good labour relations, the Union has operated on the basis of asking contractors to sign "me too" agreements. Under these agreements, contractors can forego bargaining and simply agree to work under the terms of the largest collective agreement on the coast, which is currently between Western Forest Products (WFP) and United Steelworkers (USW) Local 1-1937. The problem with this approach is that the contractors are asked to voluntarily sign the "me too" agreement; it is not required that they do. Serious labour relations problems and many labour disputes would result if every small contractor decided to bargain independently. Currently, the vast majority of contractors sign the same WFP agreement via a "me too" agreement. Those that don't are larger companies that have collective agreements that virtually mirror the WFP agreement.

Enforcement:

The enforcement of collective agreements becomes increasingly difficult when the number of independent contractors in the forest sector increases as it has done since 2003. As already mentioned, small contractors are less sophisticated and have, in many cases, very little knowledge of the collective agreement and the provisions within it. Moreover, it is easier to isolate and intimidate workers the smaller the contractor is; where there is no longer strength in numbers, workers are more easily prevented from exercising their rights. The combination of less sophisticated and sometimes very aggressive employers has led to the number of grievances skyrocketing, notwithstanding the numerous violations that occur on a daily basis that are not advanced to arbitration because they are unreported or because no members are willing to testify as a result of intimidation. Even in clear cut violations of the collective agreement, which are numerous, the contractors (many backed by the licensees who are not supposed to be involved in grievances) drag out grievances to arbitration that in the past were easy to resolve. We have also experienced several cases where the contractors have arbitrators rule against them and they simply ignore the award. When they are forced back to the arbitrator and made to sign a consent award, they later ignore the consent award. This type of action by an employer was unheard of prior to the change to the coast contractor model.

Organizing:

A workers' right to join a Union is also very much impacted in the contractor model now in place on the coast. Contractors that are Unionized are avoiding the Union by setting up a second company that is owned by the same people, uses the same equipment and shares the same employees. They promise Unionized workers that they can go work for the nonunion side if there is no work at the Union side, which some workers may see as a benefit, but in reality they are working often with no overtime provisions and rely on the benefit layoff coverage of the Union side.

Also, even with nonunion contractors that are standalone operations, the small size of the contractors makes organizing difficult, especially if they hire retired Union members who are collecting their pension and would have to stop their forest industry pension if they were to go to work in a Union operation.

We would now like to turn to several provisions of the Code, which we feel need to be revised or repealed.

SUCCESSORSHIP RIGHTS (Section 35)

The USW seeks changes to the currently one-sided Labour Relations Code, so that workers retain successorship rights and their collective agreement rights when forest tenure reform and forest tenure transfers are acted on by government.

One glaring inequity that coastal forest workers have suffered is under Section 35 of the Labour Relations Code, where workers have not been granted successorship rights (with their collective agreement rights intact) in the many cases when government reformed forest tenure and/or transferred forest tenure rights since 2001.

It is only fair and equitable that when forest lands change hands, and those same forest lands continue to be harvested by a new owner or licensee, that workers should have successorship rights and their collective agreement rights maintained.

In numerous cases during the previous government's time in office, lands were transferred out of Tree Farm License's (TFL's) and into BC Timber Sales (BCTS). Unionized workers have been stripped of their jobs (successorship) and their collective agreement rights because it was deemed a "business" was not sold to the new steward of the Crown Land.

The current language of Section 35 of the BCLR Code states "If a business or a part of it is sold, leased, transferred or otherwise disposed of, the purchaser, lessee or transferee is bound by all proceedings under this Code before the date of the disposition and the proceedings must continue as if no change had occurred". In the forest industry in BC, the Crown forest tenure is the primary asset of the business yet it is not viewed as being the business (or even a part of the business) to trigger successorship under Section 35. The forest industry is a unique and renewable industry that does not operate like a normal business and as such should have protections unique for its workforce when new management of the major asset (the Crown forest tenure) is put in place. It should not matter if the new entity harvesting the Crown forest tenure buys logging equipment from the previous entity, has its own logging equipment or hires a contractor to harvest the timber; successorship rights need to apply to protect the workforce.

The USW believes, by extension of the foregoing, successorship rights for workers should not be lost when government resolves matters of First Nations treaty rights or when the government makes land settlement agreements with First Nations. We have

the same belief regarding the transfer of forest land between licensees as well as when contractors sell Bill 13 rights to licensees.

These type of settlements, should not be made on the backs of unionized workers, who have been the only stakeholder that have had their rights taken away when the previous government negotiated settlements that removed a defined forest land area or cubic metre volume of timber from a TFL or Timber Supply Area (TSA) or through BCTS.

Our Union has long held a commitment supporting reconciliation and strongly believes in more equitable opportunities for all workers, including First Nations workers, and therefore wants to see all parties dealt with fairly in the process of reconciliation. Why should workers lose their jobs when the group gaining rights to the forest land will be hiring a contractor to harvest the forest themselves?

It is without a doubt that the loss of jobs in coastal BC forests due to the lack of successorship rights has been significant for unionized workers and has had detrimental effects for themselves, their families and the rural communities in which they live.

Applying successorship rights to transfers, sales or settlements involving Crown tenure promotes continuity and security for the workers and their families and provides the same for the community and small businesses that succeed when taxes and disposable income remain in the community. It is often found that employees of nonunion contractors who bid for work through BCTS or from a licensee are far more transient than the workforce that is tied to the land base by certification or those protected by their employer's Bill 13 rights.

We urge the panel to recommend changes to Section 35 of the code to ensure that forest workers' rights to work and rights to their collective agreement continue when their working land base is transferred, sold or made part of a settlement to another party, even if no logging equipment or non-timber assets are acquired as part of the transaction.

We also would urge that you recommend that successorship rights should apply to any BCTS lands that were once harvested by Unionized workers when they are put up for bid under BCTS and where they are removed from the BCTS program and reintegrated with existing or new TFL's in the future.

COMMON EMPLOYER (Section 38)

The treatment of Common Employer Applications from Unions at the BC Labour Relations Board has been one-sided in favour of employers for too long.

Where the USW has made application in instances of a "double breasted" employer ("one union operation and one nonunion operation owned by the same principle and closely tied") which routinely transfers equipment and employees between the two operations, we have been unsuccessful in convincing the LRB that they should be treated as a single employer. Why?

While we don't have a definitive answer, it may be and is widely believed to be that over the past sixteen (16) years the balance of the board discretionary decisions tilts largely in favour of employers through appointments made by the previous "business friendly" government.

The language of Section 38 states "If in the board's opinion associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or a combination of them under common control or direction, the board may treat them as constituting one employer for the purposes of this Code and grant such relief, by way of declaration or otherwise, as the board considers appropriate". This language leaves too much discretion to the board in our opinion and needs to have some clear guidelines to ensure fairness.

The reason why employers in the forest industry double breast their company is very clear; they wish to avoid the Union collective agreement in areas where they believe they don't need a Union affiliation to bid for the work.

We urge the panel to find balance and fairness by amending Section 38 to add some certainty by adding particulars that demonstrate common employers and limiting the discretion in Common Employer cases. Areas that can add some certainty in relation to the forest industry are when both businesses are in the same industry, regularly share or transfer equipment between businesses and transfer employees between businesses.

MEMBERSHIP CARDS - AUTOMATIC CERTIFICATION (Section 24)

It is our belief that if workers truly have the right to choose to belong to a Union then that right should not be infringed on by employers having the right to dissuade them from belonging to a Union.

As it is now, workers have to choose to belong to a Union twice. Once when they decide to belong to a Union and sign a check off card acknowledging they want to be represented by a Union, and a second time in a secret ballot vote once the employer is made aware of the work force's desire to join a Union and has had significant time to pressure the worker to not join a Union. This is wrong. When a worker buys fire insurance, no one later makes wild statements that fire insurance is a waste of money and that you should not buy it and then mandates that they have a secret ballot vote on whether they truly wanted to have fire insurance in the first place. It's nonsensical.

In this day and age, there should be a clear path for workers to freely and easily access their right to join a union; it should not be a choice fraught with fear, intimidation and threats to their job security. Otherwise, their right to freely join a Union is not really their right.

It is clear that the number of successful applications for certification has dropped significantly since the code contained a provision for automatic certification in the 1990's. It is clear that, as by its design, the elimination of the automatic certification provision has drastically and negatively affected the right of workers to organize.

We also wish to point out that all organizing drives are not the same. It is much different organizing a Union in a University, for example, than it is to organize a Union in an industrial setting such as a logging operation, manufacturing plant or in a remote location. Organizing etiquette in a professional setting is much different than in blue collar workplaces where it is common for workers to face many forms of threats to their job security.

We ask that the panel recommend the restoration of a system of Union certification on the basis of card signing rather than relying solely on the secret ballot votes. If there is truly freedom of association in our Province then let's give workers that right.

EMPLOYER "FREE SPEECH" PROVISIONS (Section 8)

The previous government did many things to support its friends in business. One of the most glaring things they did in support of business and to unbalance the Labour Code was the expansion of "free speech" rights under section 8. This provision, as interpreted by the Board, has operated to allow employers to hold captive audience meetings and to extend their anti-union messaging during organizing drives for the sole purpose of reducing the number of successful organizing campaigns. It should be pointed out that these were rights given to employers that were not given to the Union. The answer of how to fix this inequity is not to give the Union the right, but to take the ability of the employer to coerce and intimidate workers away. While coercion is prohibited by the Code, our experience is that this is precisely what s. 8 permits.

In one recent organizing campaign in our Local Union an employer had mandatory captive audience meetings in which the workers were told the Union dues would be over $300 per month, the operation would have to close due to the financial pressures and that the Union would demand mandatory drug testing of the workers if it were to get in (these statements were actually made).

It is our hope that the panel will recommend that Section 8 be stricken from the Code.

CONCLUSION

For the past sixteen years, our Local Union and Unions in general have had no voice when it comes to the Labour Relations Code or any of the many amendments made to it over that time. This lack of inclusion was hardly the format for sound or fair labour relations in our opinion.

Despite this, we are very hopeful that government (through the LRB Review Panel) will finally hear workers' voices. We believe it is necessary for you to hear from all sides prior to making fair and balanced recommendations to the Minister of Labour. We are also hopeful that this will not be the last time that all stakeholders are heard and only marks the first of many times the Code is reviewed to ensure fairness for workers.

Finally, if there are any issues that we have addressed in this document in which the panel would like more clarity on, please ask.