

Teamsters Local Union No. 213

Affiliated with the International Brotherhood of Teamsters, Teamsters Canada and the Canadian Labour Congress.

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November 22, 2018

Honourable Harry Bains,

Dear Mr. Minister:

Re: Submission of Teamsters Local Union No. 213 in response to Recommendations for Amendments to the Labour Relations Code.

This letter is in furtherance of our review of your Panel's recommendations for amendments to the Labour Relations Code.

Our Union believes that the majority of the Panel's recommendations are thoughtful responses to the current labour relations environment in British Columbia. However, Teamster Local Union No. 213 (the "Teamsters") takes issue with two provisions in the panel's Report - namely the definition of construction contained in Recommendation # 10; and the absence of a much needed, separate review of the construction industry.

In the main, our Union agrees with the purpose behind Recommendation # 10—namely, changing the raid window for construction to the summer months. However, we believe that restricting the raid window to once every 3 years will have a deleterious impact on employee choice, and will encourage manipulation of contract duration by unions and companies wishing to prevent employees from exercising their rights to change unions. Employee choice is a key rationale underpinning the Code; in order to realize its operation in construction the Teamsters submit that the raid window should occur annually, instead of every 3 years.

The inclusion of a proposed definition of construction in the Recommendation # 10 of the Report comes as a disturbing and disappointing surprise to the Teamsters. We had not anticipated that the Panel would be addressing the apparent need for a definition of "construction" - nor had any of our counterparts in the labour and business communities. In fact, no submissions were made requesting the inclusion of a definition and it would appear as if the Panel proceeded unilaterally without any feedback, submissions, evidence or representations from interested parties. A unilateral action, without input, runs contrary to the expectation of "consultation" required of the Panel.

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We would submit that there are compelling public policy reasons to leave the term undefined. As you may be aware, the term was often defined and redefined in earlier versions of the Labour Code. In fact, during the mid-1980's the Social Credit Government of the day amended the definition based upon political considerations. That intervention significantly contaminated employer and employee relations and disrupted labour relations peace in the construction sector. In the subsequent 1992 review of the Labour Code, the Government wisely accepted the proposition that the term should be immune from political manipulation and left the term undefined. By leaving the term undefined, the Government allowed the Labour Relations Board to make declarations based upon (i) the need to maintain labour peace (a paramount consideration) and (ii) the evolving nature of the Construction Industry as a whole.

Worst still, the proposed definition is vague, imprecise, restrictive and fundamentally flawed. For example, it excludes excavation as an element of construction process. Another obvious omission is the failure of the Panels' proposed definition to encompass the historical inclusion of the delivery and supply of materials, implements, and manpower to, from, on and between construction projects as part of "construction" activity. This oversight undermines and eliminates the Teamsters' jurisdiction in the construction process and would appear to be explicitly designed to inflict harm on our members. Frankly, it would result in the turbulence experienced in the mid 1980's and would considerably hinder labour peace in the construction sector.

Moreover, the net result of the proposed wording would leave it vague as to when the construction process commences. Historically, the process commences at the time of the "first drop." That is the time at which materials (for example) are delivered to a construction site. Materials can be dropped off at a unionized site by a non-union entity but can no longer, thereafter be handled by a non-union workforce. The absence of clear rules undermines the public policy imperative of labour peace. It is not in the interest of employers or employees to be saddled with an imprecise definition. It is for that reason, we suspect, that neither employers nor employees requested a legislative definition of the term "construction."

Preferable alternatives to the proposed definition in Recommendation # 10.

The Teamsters submit that the continued omission of a definition of construction from the Code is preferable to the definition proposed by the Panel. If the Government determines that there *must* be a definition, the Teamsters propose that the following definition be adopted:

'construction' means the construction, alteration, excavation, decoration, restoration or demolition of buildings, structures, roads, sewers, water or gas mains, pipelines, dams, tunnels, bridges, railways, canals or other works, including the supply, shipping, delivery or transportation of supplies, equipment,

tools, manpower or other products, to, from, on or between a construction project or projects or supply sites, but does not include

- (a) deliveries that arrive at a construction project by truck and are unloaded by employees of the construction project and not the driver, or
- (b) servicing and maintenance of the premises not performed in conjunction with construction;

This proposed amendment would preserve opportunities for non-union drivers to deliver materials to a project whilst recognizing the realities of mutually negotiated non-affiliation clauses. Further, this definition would help resolve ambiguities with regards to the legal doctrine of 'first drop' and prevent potential worksite disruption or extensive litigation that arises from a vague or uncertain provision.

Failure to include the handling of products delivered to a site within the scope of a definition of 'construction' would not only jeopardize the existence of the unionized workforce that has relied on its inclusion, but would also interrupt the orderly flow of work that employers require in order to efficiently construct projects.

A separate review for the construction industry is necessary.

The Teamsters are lending their voice and support to others in the Construction Industry which have advocated for a separate and distinct Code for the Construction sector.

The Construction sector is a unique industry consisting of specialized trades which must work cooperatively and efficiently in order to ensure an orderly flow of work. Inter-jurisdictional issues must be quickly resolved; projects must be built smoothly; schedules must be adhered to; cost overruns must be minimized; and quality construction standards must be achieved. It is therefore apparent that it is in the interests of both employers and employees that there be a specialized and dedicated component within the Labour Relations framework that is dedicated to timely resolutions of issues which may arise during the term of a construction project.

We would submit that the proposed "one size fits all" approach within the Labour Code is flawed. Other Provinces have recognized the need for separate provisions to deal with the Construction Industry and we would ask that British Columbia follow suit.

This can be accomplished first, by a specific Chapter within the Labour Code which recognized the unique and specialized character of the Construction Industry.

Second, it is essential that specialized Arbitrators, Mediators, Vice Chairs and Adjudicators who are familiar with the Construction Sector be appointed to the Labour Relations Board. The appointment of individuals with experience in the sector will

result in efficient and informed decision making. Clear and thoughtful decision making will bring both stability and order to the unionized sector.

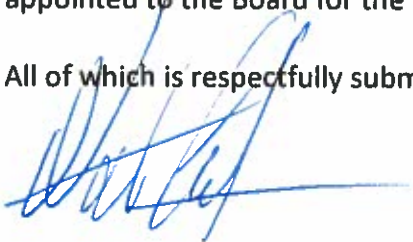
We recognize the Minister's discretion in determining whether a separate review of the Construction Industry is warranted and whether a separate Chapter within the Code is required. As much as we have outlined our preference, we wish to emphasize that regardless of the Ministers determination – it is essential that appropriate appointments be made to the Board. We note that previous NDP Governments recognized this variable and appointed Stan Lanyon to Chair the Labour relations Board. We would expect a similar approach by this Government.

The Teamsters submit that this is demonstrative of a need for a separate review of construction labour relations in BC. Barring a full review, the Minister must seriously consider the appointment of specialized vice-chairs with backgrounds and familiarity in construction labour relations.

Summary

The Teamsters submit that the Code ought to have either no definition of construction or the definition proposed in this submission. The Teamsters further submit that a separate review of construction labour relations is necessary. Failing that outcome, one or more vice-chairs with a background in construction labour relations should be appointed to the Board for the purpose of ensuring industrial stability.

All of which is respectfully submitted,



Walter Canta
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