REPORT AND RECOMMENDATIONS

OF THE

INDUSTRIAL INQUIRY COMMISSION

Delivered to the Honourable Steven MacKinnon
Minister of Employment, Workforce Development and Labour

Pursuant to Section 108

of the

Canada Labour Code

on

Longshoring Labour Disputes at Canada's West Coast Ports

Submitted by
Vincent L. Ready, Chair
Amanda Rogers, Member of the Commission

May 8, 2025

Industrial Inquiry Commission on West Coast Ports: Final Report
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Note to the Reader

The information contained in this report does not necessarily reflect the position or views of the Minister of Labour or the Government of Canada.

Letter to the Minister

May 8, 2025

The Honourable Steven MacKinnon
Minister of Employment, Workforce Development and Labour for Canada

Dear Minister:

Re: Industrial Inquiry Commission Pursuant to Pursuant to Section 108
of the *Canada Labour Code* on Longshoring Disputes at West Coast Ports

Please find enclosed the final report and recommendations of our Industrial Inquiry Commission examining the underlying issues in longshoring disputes on Canada's West Coast.

We trust this fulfils our terms of reference and wish to express our appreciation for the opportunity to complete this interesting and important work. Please let us know if we can be of any further assistance in future.

Yours truly,

Vincent L. Ready
Chair

Amanda Rogers
Member

Attachment

List of Abbreviations

AIB	Anti-Inflation Board
AMFA	Aircraft Mechanics Fraternal Association
B.C.	British Columbia
BCMEA	British Columbia Maritime Employers Association
CA	Collective Agreement
CIRB	Canada Industrial Relations Board
CLRB	Canada Labour Relations Board
CN Rail	Canadian National Railway
CO	Chief Operations
CPKC	Canadian Pacific Kansas City
CUPE	Canadian Union of Public Employees
DFR	Duty of fair representation
FETCO	Federally Regulated Employers – Transportation and Communications
FMCS	Federal Mediation and Conciliation Service
HEA	Halifax Employers Association
ILA	International Longshoremen's Association
ILWU	International Longshore and Warehouse Union
M&M	Retirement Allowance Agreement
MEA	Maritime Employers Association
TEU	Twenty-foot equivalent unit
U.S.	United States

Executive Summary

Canada's ports play a vital role in the basic functioning of the Canadian economy and in connecting Canadian farmers, natural resource industries, manufacturers, consumers, and workers to global markets. The West Coast ports specifically are critical to Canada's economic infrastructure, handling a significant volume of Canada's total goods trade, including an average of $800 million worth of cargo a day and 25% of the nation's total traded goods annually.

In July 2023, a labour dispute between the International Longshore and Warehouse Union (ILWU) Canada and the British Columbia Maritime Employers Association (BCMEA) at West Coast ports ground Canadian imports and exports to a halt. Given the significant impact on Canadian businesses and the public, the Minister of Labour committed to initiating an Industrial Inquiry Commission (Commission) under section 108 of the *Canada Labour Code* to make inquiries into the cause of ongoing labour instability in the West Coast ports and to recommend structural changes to facilitate the free collective bargaining process between the parties.

It is irrefutable that the history of labour disputes at the West Coast ports—including the more recent lockout of ILWU Local 514 by the BCMEA in the Fall of 2024 while the work of the Commission was ongoing—exacerbated concerns about Canada's reputation as a reliable trading partner and caused economic harm to Canadian workers, communities, and within the broader supply chain. Given the interconnectedness of Canada's supply chain, even a short disruption can have a dramatic ripple effect on industries across the country including rail, trucking and numerous others. Once cargo is diverted to an alternative port, there is a risk that business may not return to the West Coast ports quickly, if at all, once normal operations resume. The need for reliability in Canada's ports has only been intensified by recent tariffs on Canadian products introduced and threatened by U.S. President Donald Trump, which are set to dramatically change the nature of importing and exporting in Canada.

There are entrenched challenges and evolving dynamics in West Coast ports that necessitate thoughtful attention and action to ensure the rights of union members to negotiate the terms and conditions of employment are appropriately balanced with the rights of employers to run their businesses, and the national interest in port stability. As discussed in detail in this report, the issues facing the parties are complex, going beyond traditional disputes over wages and benefits to include contentious matters including future job security in the face of increased automation and the dramatically changing roles of longshore workers resulting from significant technological advancements in the industry.

The drive for profitability and more efficient work practices in ports has led longshoring employers to pursue what are viewed by unions as unpopular bargaining demands that cause parties to lock horns over challenging and polarizing issues. However, multi-dimensional competition spans the entire logistics chain, involving various actors, including shipping lines, terminal operators, and ground transportation services, which means external operators have a significant impact on how ports structure their operations and put additional pressure on the efficiency of cargo handling operations

The Commission's Terms of Reference are predicated on recognition that steps must be taken to decrease the likelihood that a labour dispute shuts down port activities given the serious impact of such a disruption. There is an urgent need to adapt to the changing global marketplace that poses a very real threat to the livelihood of longshore workers if the West Coast ports are not competitive and reliable. There is no magic solution for finding the appropriate fulcrum point between the interests of labour and the need for stability and efficiency in the ports; however, in balancing these interests, the parties must cooperate and be flexible, recognizing their responsibility.

Recognizing that the right to strike is a fundamental right under the *Canadian Charter of Rights and Freedoms* that cannot and should not be taken away for non-essential workers, the following recommendations are proposed to promote better and more stable labour relations in the West Coast ports:

- **Recommendation 1:** That the right to strike/lockout be preserved for the longshoring industry in Canada.

- **Recommendation 2:** That the *Canada Labour Code* be amended to include special mediator provisions as detailed in this report.

- **Recommendation 3:** A British Columbia-wide geographic certification (excluding Westshore Terminals and Trigon Pacific Terminals) is the most appropriate bargaining unit for longshore workers.

- **Recommendation 4:** An appropriate framework for collective bargaining in accordance with the broad certification recommended in this report needs to be established.

- **Recommendation 5:** The parties to the geographic certification should be a council of trade unions comprised of the ILWU Canada longshoring locals with members working for BCMEA members and Local 514.

- **Recommendation 6:** The government enact legislative changes or new legislation required for a geographic certification.

- **Recommendation 7:** No changes to the internal governance or decision-making processes of the parties.

The findings and recommendations presented in this report offer a roadmap for achieving lasting stability and prosperity at West Coast ports and emphasize the importance of modernizing collective bargaining practices to foster greater collaboration between labour and management.

The success of these recommendations hinges on the willingness of stakeholders to embrace change and work together toward a common goal. This requires open dialogue, mutual respect, and a commitment to finding solutions that benefit everyone involved and the national interest.

All parties – labour, management, government, and the broader community – are urged to seize this opportunity to build a stronger, more competitive, and more sustainable future for West Coast ports and for Canada as a whole.

1. Introduction

On April 22, 2024, the Honourable Seamus O'Regan, Minister of Labour and Seniors, appointed the undersigned as an Industrial Inquiry Commission (Commission) pursuant to section 108 of the *Canada Labour Code* (the *Code*).

A year earlier, in August 2023, a 13-day longshoring labour dispute in British Columbia's (B.C.) ports had ground Canadian imports and exports to a halt. Given the significant impact on Canadian businesses and the public, the Minister committed to initiating a process under section 108 of the *Code* to make inquiries into the cause of ongoing labour instability in the B.C. ports and to recommend structural changes to facilitate the free collective bargaining process.

To that end, in October 2023, independent industrial relations experts Anthony Giles and Kevin Banks were engaged by the federal government to identify key questions to be answered and to propose terms of reference for a more comprehensive review of this important issue. Giles and Banks concluded that the B.C. ports represent a unique case study that requires deeper examination, recommending the Commission be given broad terms of reference to delve into the question of labour stability on B.C.'s waterfront[1]. Thus, the present Commission on longshoring labour disputes at Canada's West Coast ports was appointed to undertake an examination and make recommendations that will help provide greater stability in industrial relations in the ports while maintaining the integrity of the collective bargaining process.

The Commission wishes to recognize the contribution of Giles and Banks to the present inquiry. Their 2024 report did much of the heavy lifting to summarize previous inquiries, survey the academic literature, and provide detailed descriptions of existing collective bargaining models in longshoring. This report builds on the foundation laid by Giles and Banks but focuses on the development of recommendations pursuant to the Commission's Terms of Reference[2].

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[1] Banks, K. and Giles, A. Report to the Federal Minister of Labour on Issues Requiring Further Study in Collective Bargaining in Longshoring in the West Coast and Other Ports in Canada. 18 January 2024.

[2] The list of recommendations are found at Appendix A.

In a news release announcing the Commission, the federal government made clear that:

> …the goal of this Inquiry is stability. Canada is a reliable trading partner to the world. That is a good thing for every employer and worker in this country. But our credibility depends on the stable operation of our supply chains. We must do everything we can to preserve that stability[3].

The instability in B.C. ports was demonstrated during the Commission's work when longshoring foremen represented by the International Longshore and Warehouse Union (ILWU) Local 514 were locked out by the British Columbia Maritime Employers Association (BCMEA) on an industry-wide basis. In the view of the Commission, the recent B.C. lockout further highlights the need for changes to the structure and framework of collective bargaining in the ports.

1. 1. Terms of Reference

The Commission's Terms of Reference are to examine with the active involvement of the parties, the structure, and the processes of collective bargaining between the BCMEA and the ILWU Canadian Area, including but not limited to:

1. the unique application of geographic certification on the West Coast
2. their coverage of employers and employees
3. whether a tiered bargaining structure distributing issues between central and other tables would be appropriate
4. whether reforms to the internal governance and decision-making structures of the parties could assist in reducing the likelihood of work stoppages; and

[3] Employment and Social Development Canada. *Minister O'Regan appoints Industrial Inquiry Commission on longshoring disputes at Canada's West Coast ports*. [Gatineau, Quebec]: Employment and Social Development Canada, April 2024. https://www.canada.ca/en/employment-social-development/news/2024/04/minister-oregan-appoints-industrial-inquiry-commission-on-longshoring-disputes-at-canadas-west-coast-ports.html.

5. whether there may be voluntary collective bargaining dispute resolution processes, ad hoc or standing, such as mediation-arbitration that might assist the parties in resolving recurring issues arising between them

and recommend in a final report to the Minister of Labour whether any changes should be made and, if so, how they could be implemented, including through the application of or amendments to the *Canada Labour Code* provisions concerning the structures, rights, responsibilities, and obligations of parties to collective bargaining. The final report shall be submitted to the Minister no later than beginning of May 2025.

1. 2. Industrial Inquiry Commission Process

On June 18, 24 and 27, 2024, the Commission sent out letters to the parties and other stakeholders involved in or affected by longshoring bargaining either requesting or inviting submissions.

We received 24 responses from a variety of organizations including, most importantly, the BCMEA, ILWU Canada, and ILWU Local 514 – the parties to longshore bargaining on Canada's West Coast. We are thankful to all those who took the time to reflect on the Commission's Terms of Reference and submit their thoughtful input on these important topics.

Following receipt of these initial submissions, the Commission held meetings with the parties and other stakeholders and persons with direct knowledge relevant to bargaining in the West Coast ports including the B.C. Ministries of Labour and Transportation and Transport Canada amongst others. The Commission also requested, and received, additional submissions from the parties[4].

[4] A full list of all submissions received is at Appendix B.

The Commission is grateful to the parties for their full participation in, and commitment to, the Commission's process. We met with them separately on a number of occasions to gain a greater understanding of the complex and challenging issues confronting them in bargaining. We also met with the parties together, when the Commission toured the Lower Mainland B.C. ports along with union and employer representatives and their legal counsel, where we learned more about the important work performed on the waterfront. The Commission also visited the Halifax ports to speak with the longshoring parties there and to learn more about port operations there and overall.

During these visits, we gained valuable insight into longshoring operations and a much greater understanding of port activities and challenges. We were impressed with the dedication and work ethic of all those we observed and met and are thankful to everyone who welcomed us during these site visits and who took the time to help us understand the work done at the ports. We specifically would like to thank, in no particular order, the following people who were so generous with their time and perspectives: Ronald Pink, KC, Counsel for Halifax ILA Council; Kevin Piper, Chair ILA Council; Brian G. Johnston, K.C., Counsel for Halifax Employers Association; Richard Moore, President and CEO of Halifax Employers Association; Rob Aston ILWU Canada, Bob Dhaliwal, Secretary Treasurer, ILWU Canada; Craig Bavis and Rebecca Kantwerg, Counsel for ILWU and Agnieszka Kalinowska; Sébastien Anderson, Counsel for ILWU Local 514; Mike Leonard, President and CEO of BCMEA; Jack Vogt, Vice President Labour Relations of BCMEA; and Tom Roper, K.C. and Sabrina Anis, Counsel for the BCMEA.

We also met with longshore representatives in Montreal and San Francisco, and wish to thank Patrick Murphy, ILA Vice President; Dominik Prud'homme, Secretary Treasurer Le Syndicat des Débardeurs (CUPE Local 375); Terry Wilson, ILA 273, President and Business Agent; Chris Gosse, President ILA 1953; Martin Lapierre, President CUPE 375; Wanda Robinson, ILA Local 1341; Elizabeth Raincourt-Bond, President ILA Local 1657; Donald Beerworth, Business Agent, ILA Local 1657; Albert Batten, VP ILA; Michel Murray, Representative CUPE Local 375. We would also like to thank Robert "Bobby" Olvera, Jr., ILWU International President and Lindsay R. Nicholas, ILWU International General Counsel & Executive Administrator.

The Commission met with the Federally Regulated Employers – Transportation and Communications (FETCO)—an employers' association comprised of federally regulated firms within the transportation and communications sectors and would like to express our sincere thanks and gratitude to those organizations – notably, from FETCO Michael Abbott, Air Canada; Derrick Hynes, FETCO; Ken Johnston, Purolator; Stephanie McGuire, CN Rail; Amanda Sarginson, Nav Canada; Reno Vaillancourt, Bell; and Nathan Cato, CPKC Rail.

The willingness of participants to share their experiences and perspectives has greatly assisted our work, and this comprehensive engagement process has provided us with crucial insights and a well-rounded understanding of the maritime industry's current state and challenges. Once again, we thank all those who contributed including government employees from the various ministries and departments who assisted us in our work.

In addition to information gathered and submitted during the consultation process, the Commission conducted its own research into how collective bargaining is structured in ports around the world and the global ports with the greatest labour stability. As part of this process, the Commission researched how longshoring certifications and labour negotiations work in other ports both inside and outside of Canada, looked at tiered bargaining structures in other industries, and into elements of dispute resolution models in Canada and abroad to help formulate our recommendations.

2. The Importance of Canada's Ports and Particularly the West Coast Ports

Canada's ports play a vital role in the basic functioning of the Canadian economy and in connecting Canadian farmers, natural resource industries, manufacturers, consumers, and workers to global markets for all manner of traded goods. Their economic importance to the country has increased over time, as Canadians have become more dependent on imports to meet domestic demand for a wide range of consumer goods, intermediate business inputs, advanced technology products, and many other items. Also, Canada's two-way trade with offshore markets—markets where seaborne trade dominates the flow of goods—has risen, in tandem with

the rapid growth of China, South Korea, India, and other Asia-Pacific economies, and the expansion and further economic integration of the European Union (E.U.)[5].

Canada's national port system—a key part of the nation's larger gateway and transportation economy—generates upwards of $50 billion in output annually[6]. This figure includes the direct impact of port operations as well as related indirect and induced economic impacts. More than 70,000 Canadians are employed at Canada's ports, with their average annual compensation exceeding $70,000[7]. Adding in the indirect and induced effects of port operations along the supply chain and on the broader Canadian labour market, total employment supported by the country's ports stands at approximately 213,000[8]. A data point worth noting is that for every 1 million tonnes of cargo handled by Canadian ports, more than 300 jobs are created and supported in the "hinterlands"—i.e., beyond the port facilities themselves[9].

There can be no question that B.C.'s ports, particularly the Port of Vancouver and the Port of Prince Rupert, are critical to Canada's economic infrastructure, handling a significant volume of Canada's total goods trade. According to a 2021 economic impact study commissioned by the BCMEA, the B.C. ports facilitate an average of $800 million in daily transactions, contributing to approximately $290 billion in annual trade[10].

Canada's West Coast ports handle an average of $800 million worth of cargo a day, 25% of the nation's total traded goods annually. The Port of Vancouver is the largest port in Canada. It is about the same size as the next five largest Canadian ports combined and is Canada's gateway to

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[5] Nye, J., Powell, N. and Leachet, C. "Trading Places: Canada's Place in a Changing Global Economy." *RBC Economics*, 21 March 2021, https://thoughtleadership.rbc.com/trading-places-canadas-place-in-a-changing-global-economy/. Accessed 27 July 2024.

[6] Data obtained from the Association of Canadian Port Authorities website: www.acpa-aapc.ca.

[7] Ibid. This includes jobs such as terminal operators, longshore workers, people employed in shipping, port-related rail transportation and trucking, and jobs in freight forwarding and port-related logistics.

[8] Ibid.

[9] Ibid.

[10] British Columbia Maritime Employers Association. "Economic Impact Study,' conducted by *InterVISTAS*, 9 September 2021, https://www.bcmaritime.com/wp-content/uploads/2021/12/BCMEA-2020-Economic-Impact-Study-FINAL-Exec-Summary.pdf.

over 170 global trading economies, handling approximately $305 billion in goods sustaining 115,300 jobs, $7 billion in wages, and $11.9 billion in GDP across Canada[11].

Transport Canada describes the Port of Vancouver as the largest port in Canada in terms of overall cargo tonnage, but also for key types of cargo such as containers, grain, coal, and potash. Home to 29 terminals, three Class 1 railways, and numerous off-dock warehousing and transload facilities, the port complex handles among the most diversified range of cargo in North America and is Canada's most important overseas trade gateway, handling over:

- 3.1 million twenty-foot equivalent units (TEU);
- 150 million tonnes of cargo, representing about $240 billion in goods; and
- 2,600+ foreign vessel calls per year[12].

Transport Canada calculates that $1 of every $3 of Canada's trade in goods outside North America is handled in the Port of Vancouver and that 115,3000 jobs are supported by marine and port activities there, generating approximately $7 billion in wages and $11.9 billion in annual economic impact across Canada[13].

According to Transport Canada, the Port of Prince Rupert is the third largest port in Canada by value of goods traded, in 2023 handling over:

- 0.7 million TEU;
- 23.5 million tonnes of cargo, representing about $60 billion in trade; and
- generating over $1.4 billion in annual economic activity.

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[11] Data obtained from the Port of Vancouver website: https://www.portvancouver.com.

[12] Transport Canada. Transport Economic Analysis. *B.C. Ports Labour Disruption: Transportation System Monitoring Brief.* [Ottawa, Ontario]: Transport Canada, 11 December 2024.

[13] Ibid.

According to Transport Canada, 3,700 direct jobs are supported by marine and port activities in Prince Rupert[14]. The port is also a direct link to inland markets in North America with its terminals served by Canadian National Railway (CN Rail) and is a popular stop for large cruise ships sailing along the western coast, accommodating around 81,300 cruise passengers in 2023.

B.C. ports are vital for Canada's trade with international markets and facilitate both the export and import of various goods. The ports generate a substantial number of jobs, both directly and indirectly. This includes employment for longshore workers, logistics companies, shipping lines, railway systems, manufacturers, and the broader supply chain. Incidentally, about 66% of cargo arriving at the Port of Vancouver is moved by rail to final destinations in Canada or in the United States' (U.S.) Midwest[15]. More generally, the ports promote investment in infrastructure, such as road and rail networks, which benefit not only the ports but also the surrounding communities and businesses and support tourism through cruise ship operations. Thus, the economic and strategic impact of the B.C. ports extend far and wide.

If Canada – and specifically B.C. – cannot reliably and consistently handle the goods being imported and exported through the ports, a real fear exists that shippers could make permanent alternate arrangements with ports in Tacoma, Seattle, Oakland, San Francisco, or Los Angeles. During the 2023 longshore strike, more than 17 container ships were eventually diverted to other ports.[16] Suffice it to say, losing this business more permanently would severely harm Canadian workers, communities, and the broader supply chain.

While the parties don't agree on the precise monetary impact of recent labour disputes, there can be no question these disputes caused a significant disruption in trade. The Greater Vancouver

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[14] Ibid.

[15] Inbound Logistics. "Canada Rail Lockout: Will Container Ships Be Diverted?" *Thomas Publishing Company*, August 2024, https://www.inboundlogistics.com/articles/canada-rail-lockout-will-container-ships-be-diverted/.

[16] Ibid.

Board of Trade calculates trade losses of $10.7 billion caused by the 2023 strike[17]. The Minister described it as "an economic disruption that no single dispute should be responsible for"[18].

The significance of the economic impact of B.C. ports on the province and the country is widely acknowledged on both sides of the labour/business divide, as is the fact that the B.C. ports are critical hubs for trade and transportation. The need for reliability in the international market has only been amplified, in the view of the Commission, by Donald Trump's recent announcements regarding his intention to introduce significant tariffs on Canadian goods exported to the U.S., and the resulting need for Canadian exporters to explore alternate trading partners.

3. The Parties and the Structure of Collective Bargaining in West Coast Ports

Ports are federally regulated and thus the terms of the *Code* apply to collective bargaining between the parties.

By way of background, the current structure of collective bargaining at the West Coast ports emerges principally from two central voluntary relationships between the BCMEA and the Canadian division of the ILWU.

The BCMEA is an organization representing the vast majority of longshoring companies and terminal operators engaged in longshoring work in B.C. The BCMEA was founded in 1966 and operates as a society pursuant to the *Societies Act*. The BCMEA negotiates collective agreements on its own behalf and on behalf of its members.

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[17] Greater Vancouver Board of Trade. "Board of Trade Statement in Response to Ratification of Deal to End Port Strike." 4 August 2023, https://www.boardoftrade.com/news/57-news/2023/2418-board-of-trade-statement-in-response-to-ratification-of-deal-to-end-port-strike. Accessed July 22, 2024.

[18] Employment and Social Development Canada. *Minister O'Regan appoints Industrial Inquiry Commission on longshoring disputes at Canada's West Coast ports*. [Gatineau, Quebec]: Employment and Social Development Canada, April 2024. https://www.canada.ca/en/employment-social-development/news/2024/04/minister-oregan-appoints-industrial-inquiry-commission-on-longshoring-disputes-at-canadas-west-coast-ports.html.

The ILWU, through various locals, represents workers on the waterfront. As will be further elaborated upon, the ILWU operates on both a national and local level in Canada.

There are two main agreements between the BCMEA and the ILWU applicable to the waterfront in the West Coast ports longshoring industry:

> [a] Longshore Agreement (also called the Industry Agreement). The BCMEA and International Longshore and Warehouse Union Canadian Area ("ILWU Canada") are signatory to a collective agreement relating to terms and conditions of employment for longshore workers (the "**Longshore Agreemen**t"), as well as specific side-agreements which have been amalgamated into the "Black Book," which is referentially incorporated into and is a part of the Collective Agreement.
>
> [b] 514 Agreement (also called the Foremen Agreement). The BCMEA and International Longshore and Warehouse Union Ship and Dock Foremen Local 514 ("Local 514") signatory to a collective agreement relating to terms and conditions of employment for forepersons (the "**514 Agreemen**t").

The ILWU Canada is the Canadian section of the international ILWU. The ILWU is composed of various locals across Canada, mostly (but not exclusively) in the longshoring industry. The ILWU Canada is composed of several "Longshore Locals" in B.C. The Longshore Agreement applies to longshore workers who are members of the following Longshore Locals:

[a] Local 500, representing workers in the Vancouver area;
[b] Local 502, representing workers in the Fraser River area in Metro Vancouver (i.e., New Westminster/Surrey/Delta);
[c] Local 505, representing workers in Prince Rupert;
[d] Local 508, representing workers on Vancouver Island; and,
[e] Local 519, representing workers in Stewart.

Local 514 represents longshore forepersons in all West Coast ports.

Under the 514 Agreement, there are two supplemental agreements dealing with ship planners and dispatchers at certain member employers. More specifically:

- the most recent Longshore Agreement has a term of April 1, 2023, to March 31, 2027.

- the most recent 514 Agreement has a term of April 1, 2018, to March 31, 2023. Negotiations for a renewal of the 514 Agreement resulted in an industry-wide lockout in the summer of 2024, and has been referred to interest arbitration.

  [a] Local 514 represents dispatchers and ship planners at DP World (Canada) Inc. pursuant to the terms and conditions set out at Appendix 2 of the 514 Agreement ("**DP World Dispatchers/Planners Appendix**");

  [b] Local 514 represents dispatchers at GCT Canada Limited Partnership pursuant to the terms and conditions set out at Appendix 2 of the 514 Agreement ("**GCT Dispatchers Appendix**").

In addition to the two main collective agreements (the Longshore Agreement and the 514 Agreement), certain locals of ILWU Canada are also certified bargaining agents of certain employees of some BCMEA members on the waterfront. More specifically:

[a] Local 502 is the certified bargaining agent for ship, rail, and yard planners at GCT Canada Limited Partnership pursuant to a separate collective agreement between GCT Canada Limited Partnership and Local 502 ("**GCT Planners Agreement**");

[b] Local 517 is the certified bargaining agent for office employees employed by Squamish Terminals Ltd. pursuant to a separate collective agreement between Squamish Terminals Ltd. and Local 517 ("**Squamish Office Agreement**");

[c] Local 517 is the certified bargaining agent for office, maintenance, facilities, and operations staff at DP World Fraser Surrey Docks pursuant to a separate collective agreement between DP World (Canada) Inc. and Local 517 ("**DP World FSD Office Agreement**");

[d] Local 500 is the certified bargaining agent IT field technicians at DP World (Canada) Inc.'s operations at Centerm Terminal pursuant to a separate collective agreement between DP World (Canada) Inc. and Local 500 (**"Centerm IT Agreement**"); and

[e] Local 505 is the is the certified bargaining agent for IT field technicians at DP World Prince Rupert Inc. operations pursuant to a separate collective agreement between DP World Prince Rupert Inc. and Local 505 (**"Prince Rupert IT Agreement**").

3. 1. International Longshore and Warehouse Union, Canada (ILWU Canada) and ILWU Local 514

On the union side, ILWU Canada is the signatory to the Longshore Agreement and the President of ILWU Canada leads bargaining on behalf of its twelve autonomous locals, and three affiliates that represent a broad range of workers on the waterfront including equipment operators, labourers, and trades people who load and unload vessels and maintain equipment and terminals[19].

These locals are:

- Local 500, Vancouver
- Local 502, Fraser River
- Local 505, Prince Rupert
- Local 508, Vancouver Island

[19] The three affiliates are the Retail Wholesale Union (B.C.), the Retail Wholesale Department Store Union (Saskatchewan), and the Grain and General Services Union (Saskatchewan).

- Local 519, Stewart

As explained earlier, certain Longshore Locals hold historic certifications at some longshoring operations in B.C. Otherwise, Longshore Locals are voluntarily recognized as the bargaining agent for the employees it represents.

The constituencies of the Longshore Locals were provided to the Commission by ILWU Canada in the following table:

ILWU Canada Longshore Locals

Local	Union Hall (Jurisdiction)	Members	Casuals	Total
500	Vancouver (Burrard Inlet, Squamish)	1,179 (38.5%)	1,885 (61.5%)	3,064 (41.9%)
502	Surrey (New West, Delta, Fraser River)	1,195 (38.7%)	1,890 (61.3%)	3,085 (42.2%)
505	Prince Rupert	323 (35.6%)	585 (64.4%)	908 (12.4%)
508	Chemainus (Vancouver Island)	90 (43.7%)	116 (56.3%)	206 (2.8%)
519	Stewart	24 (55.8%)	19 (44.2%)	43 (0.6%)
Industry Totals		2,811	4,495	7,306

The Commission notes a similar table was provided by the BCMEA with slightly different numbers.

As the voluntarily recognized bargaining agent of these Longshore Locals, ILWU Canada itself is not a trade union nor certified bargaining agent of longshore workers, nor is it a council of local unions, certified or otherwise, under the *Code*. As discussed further in this report, ILWU Canada would not meet the requirements for these definitions as currently included in the *Code*.

A sixth ILWU local, ILWU Local 514, which is not a part of ILWU Canada, represents foremen and is a party to a separate industry-wide collective agreement with the BCMEA[20]. Unlike the bargaining units represented by ILWU Canada, Local 514 is certified on an enterprise basis. In 1973, Local 514 applied for and was granted 17 individual company certifications by the Canada Industrial Relations Board (CIRB).

Presently, Local 514 is certified as the exclusive bargaining agent to represent foremen employed by 16 different employers. According to Local 514's submission, its current membership is approximately 695 members in bargaining units that range from between three members (Pinnacle Renewable Energy Inc.) to 214 members (GCT Canada Limited Partnership). Local 514 notes there are six bargaining units that contain fewer than ten members.

Despite the existence of enterprise-based certifications, Local 514 bargains with the BCMEA on an industry-wide basis and there is one collective agreement that covers all Local 514 members across B.C. Historically, Local 514 has issued a separate notice to bargain for each individual bargaining unit for which it is certified, although collective bargaining between ILWU Local 514 and the BCMEA has voluntarily taken place on an industry-wide basis for a number of decades. Despite the longstanding nature of this arrangement, Local 514 has indicated that it intends to pursue enterprise-based bargaining in the next round, as discussed more later in this report.

3. 1. a. ILWU Internal Structure for Collective Bargaining

As provided by the ILWU Canada constitution, the Longshore Locals form a "Longshore Contract Caucus" in advance of each round of Longshore bargaining.

[20] In using the term "foremen" to describe members of Local 514, we highlight that Frank Morena who was Local 514 President during the work of the Commission, was adamant that Local 514 members prefer to be referred to as foremen and not "forepeople" or "persons" and implored us on more than one occasion to use the term foremen in our report. Out of respect for ILWU Local 514 and its leadership, we have adopted its preferred terminology but in no way support continued use of gendered terminology in classifying workers.

Contract Caucuses have the power to determine their own governance rules, but in practice each Longshore Local is entitled to two Caucus delegates and the President of each Longshore Local automatically fills a delegate spot. Locals with more than 100 members are entitled to an additional delegate for each additional 50 members.

The Contract Caucus directs Longshore bargaining and determines strategy, goals, and tactics, including issues related to strike timing and activity.

The union's practice, although not detailed in ILWU Canada's constitution, has been that the Contract Caucus establishes the Longshore Bargaining Committee which is comprised of the Presidents of each of the Longshore Locals and the President of ILWU Canada, who has a voice but no vote. ILWU Canada indicated in its submission that the ILWU Canada's First Vice President is also often included on the bargaining committee because they generally carry responsibility for administering the resulting collective agreement. Moreover, in recent years the Contract Caucus has added additional members from Longshore Locals to serve on the Bargaining Committee.

In practice, the union's Bargaining Committee can reach a tentative agreement only after a majority of the five Longshore Local presidents vote in favour of the package, but it may not recommend the agreement to the union's membership without first gaining the approval of the Contract Caucus.

As explained by ILWU Canada in its submission, in practice, two-thirds support from the Contract Caucus is required before the tentative agreement can be considered by the union's membership. A simple majority vote of the combined membership of the Longshore Locals eligible to vote is required to ratify the agreement.

3. 2. The British Columbia Maritime Employers Association (BCMEA)

The BCMEA's members include both stevedoring companies that directly employ longshore workers, as well as shipping companies that do not. As already stated, the BCMEA represents all

the longshore companies and terminal operators engaged in longshoring work in B.C. except Westshore Terminals Ltd. and Trigon Pacific Terminals Ltd. (formerly Ridley Terminals Inc.).

Presently, BCMEA represents approximately 62 ship owners and other types of maritime and longshore employers with operations in B.C. Approximately 16 of the member employers directly employ longshore personnel. This subgroup of employers is often referred to as the Direct Employers.

The only companies with longshore labour that the BCMEA does not represent in B.C. are Westshore Terminals Ltd., the coal terminal at Roberts Bank, and Trigon Pacific Terminals Ltd. (formerly Ridley Terminals Inc.), the coal terminal at Prince Rupert, both of which have separate collective agreements with ILWU Locals 502, 514 and 523 respectively. Incidentally, ILWU Local 502 members at Westshore Terminals Ltd. were on strike for approximately three weeks between September to October 2022. The relationship between Local 523 and Trigon Pacific Terminals Ltd. (and its predecessor) have been stable over the years.

BCMEA describes the different categories of BCMEA membership in its submission as follows:

> [a] Carrier Members: owner, operator, charterers or agents of or for deep sea vessels carrying on business in the maritime industry in the Pacific Gateway in B.C. Essentially these members relate to foreign vessels which call at B.C. ports.
>
> [b] Direct-Employer Members: owner or operator of wharves or shore-based loading or discharging facilities or terminals in the Pacific Gateway in B.C. These include stevedores, general wharf operators, and bulk terminal operators.
>
> [c] Other: companies which are engaged in the maritime industry, but which are not carrier members or direct-employer members.

The BCMEA represents Direct Employers in negotiations with ILWU Canada and ILWU Local 514 and plays a direct role in administering labour relations function including all grievance

handling. In fulfilling this broad mandate, BCMEA operates under the direction of a Board of Directors.

The Composition of the BCMEA's Board of Directors is set out in section 7.3 of its By-Laws as follows:

> The Board will be composed of a minimum of seven (7) and a maximum of nine (9) Directors, as follows:
>
> (a) no less than four (4) and no more than five (5) Directors elected by and from among the Direct-Employer Members in accordance with these Bylaws; and
>
> (b) no less than three (3) and no more than four (4) Directors elected by and from among the Carrier Members in accordance with these Bylaws.
>
> The composition of the Board is subject to the following rules at all times:
>
> (c) there must be more Directors who were elected by the Direct-Employer Members;
>
> (d) there must be at least one (1) Director elected by the Direct-Employer Members, and at least one (1) Director elected by the Carrier Members, from each of the break-bulk, bulk and container subclasses; and
>
> (e) no more than one (1) Director from a group of Related Organizations may serve on the Board.

Under section 3.7 of the BCMEA's By-Laws, each BCMEA Member is required to conduct themselves in a manner consistent with the provisions of any collective agreement or operational agreement entered into by the BCMEA on behalf of the Member and must not take any action that is contrary to the orderly administration of such agreements, as determined by the Board of Directors in its reasonable discretion.

Each Member is bound by the decisions of the Board of Directors incidental to the administration of a collective agreement or operational agreement, or to the negotiation of such agreements including without limitation a decision to direct a lockout by some or all of the Members and shall adhere to and fully comply with all such decisions.

As made clear in section 3.7, these obligations are enforceable by way of injunction and failure to comply is grounds for discipline. Under its By-Laws, the BCMEA Board has the power to expel, suspend, reprimand, fine, penalize, deny despatch of labour or other services, or otherwise discipline a Member for a failure to comply with these obligations.

3. 2. a. BCMEA Internal Bargaining Structure

The BCMEA bargaining committee has evolved over time. Currently, the committee consists of eight members, including three terminal operators representing the bulk, break bulk, and container sectors, as well as BCMEA executives and labour relations staff. The terminal operators are selected based on their operational experience and bargaining expertise, with the executive team and labour relations group making the final selections.

According to BCMEA, it employs a comprehensive and consultative process to develop its bargaining proposals and mandate. This process typically begins well in advance of formal negotiations. For instance, for the longshore negotiations that began in November 2022, the BCMEA started its preparatory work in March 2021. The process involves several key steps:

1. Initial engagement with the "Big 5[21]" employers to stimulate discussion and gather input

2. Strategic retreat with the Board of Directors to build themes and mandates based on employer feedback

3. Extensive meetings with all Direct Employers, both individually and collectively, to refine proposals

4. Consultation with various committees, including the Direct Operator Committee and the Carrier Committee

5. Finalization of the bargaining package by the bargaining committee

6. Presentation of the package to the Direct Operators Committee for recommendation

7. Board of Directors approval of the bargaining proposals and mandate

Throughout the bargaining process, the BCMEA bargaining committee reports regularly to the Board of Directors, with the frequency of communication increasing as negotiations intensify.

The BCMEA has specific procedures for lockout and ratification votes, which have been refined over time. Key aspects of these processes include:

1. Board of Directors approval is required for both defensive and offensive lockouts

[21] Global Container Terminals, DP World Canada, SSA Marine (formerly Western Stevedoring), Neptune Bulk Terminals Canada, and Pembina.

2. A 75% majority of the Board of Directors is needed for key decisions, including approving collective agreements and lockouts. This threshold was established in 2018 to ensure a higher level of consensus for consequential decisions

3. For offensive lockouts, two separate votes are required: one by the Board of Directors and another by all Direct Employers, as mandated by the *Code*

4. Only Direct Employers participate in a vote to determine whether the BCMEA will engage in an offensive lockout

3. 3. Hiring Halls and Dispatch Under the Longshore Agreement and the Foremen Agreement

The Longshore Agreement broadly contemplates a hiring hall system, whereby workers are dispatched to member companies which employ them. This is not unique to the West Coast ports. The longshoring industry in North America generally relies on this type of model.

Dispatch under the Longshore Agreement is conducted in some places by the applicable local, and in others by the BCMEA. While there are other forms of work under the Longshore Agreement (e.g. regular workforce at particular employers), the industry-wide agreement is generally premised on this traditional structure.

There are broadly three categories of workers under the Longshore Agreement:

- members: longshorepersons who have been accepted into membership in a Longshore Local by vote of the membership of the Longshore Local, who pay union dues, have full voting privileges, and who participate in the industry medical, dental and pension plans.

- welfare casuals: longshorepersons who maintain 1200 hours of work per year, which qualifies them for participation in industry medical, dental and pension plans. Welfare casuals pay a dispatch fee to a Longshore Local, which is considerably less than union dues. They contribute to the welfare package in the same amount as union members.

- casuals: persons who are dispatched to employment from time to time, pay a fee to a Longshore Local each time they are dispatched. Those who work a minimum of 600 hours in the preceding 12 months are eligible to participate in industry medical, dental and pension plans and must make the required plan contributions.

Through a system of 'boards' in each dispatch hall, union members get first chance at work opportunities, followed by casuals, according to factors including their seniority and skill ratings (i.e., the equipment/position they are trained to perform).

Incidentally, welfare casuals and casuals are not members of any Longshore Local. Although they are covered by the Longshore Agreement, they have no right to attend union meetings, and no right to participate in strike or ratification votes.

Under the 514 Agreement, members of Local 514 are generally directly employed by members of the BCMEA forming part of their permanent workforce, although there is a pool for displaced forepersons and priority hiring between companies.

3. 4. The Legal Framework for Bargaining

3. 4. a. Geographic Certification Under the *Code*

The need for a different collective bargaining structure for longshoring has long been recognized under the *Code*.

While enterprise-based bargaining is the default basis for collective bargaining for all other federally regulated industries, section 34 (formerly section 132) of the *Code* sets out an exception for the longshoring industry in recognition of the unique attributes of this industry[22].

What is now section 34 of the *Code* was initially introduced in 1973 in response to unstable labour relations in the St. Lawrence ports in the 1960s. According to government commentary from that time, the provision was intended to prevent future conflict by fostering stable sector-wide collective bargaining in geographically limited areas with multiple employers. To date, this mechanism has only been utilized in longshoring.

Section 34 is unique in that under it, the CIRB has been given the power to join together for the purposes of collective bargaining independent and unrelated federal works, undertakings or businesses into a single certification:

> 34 (1) Where employees are employed in
> (a) the long-shoring industry, or
> (b) such other industry in such geographic area as may be designated by regulation of the Governor in Council on the recommendation of the Board, the Board may determine that the employees of two or more employers actively engaged in the industry in the geographic area constitute a unit appropriate for collective bargaining and may, subject to this Part, certify a trade union as the bargaining agent for the unit.

The only requisite criteria specifically cited in the legislation for finding such a bargaining unit appropriate is set out in section 34(2) of the *Code*:

> Recommendation of Board

[22] This exception also applies to other industries as designated, although no other industries have been designated to date.

> 34(2) No recommendation under paragraph (1)(b) shall be made by the Board unless, on inquiry, it is satisfied that the employers actively engaged in an industry in a particular geographic area obtain their employees from a group of employees the members of which are employed from time to time by some or all of those employers.

3. 4. b. The CIRB's Interpretation and Application of Section 34 of the *Code* Over the Years

It is fair to say that, prior to 1987, the CIRB interpreted section 34 in ways that alternated between liberal and restrictive approaches. This shifted, though, with *Maritime Employers' Association and Terminaux Portuaires du Québec*[23] in which the CIRB reconciled its competing interpretations and adopted a broader approach to issuing geographic certifications guided by consideration of the likelihood of improved industrial peace and more productive labour relations:

> Despite the dearth of indications noted earlier, we must not hesitate to apply this provision in circumstances where it would be likely to contribute to the introduction, maintenance or improvement of industrial peace in the longshoring industry, within a given geographic area.
>
> Finally, this panel does not share the reluctance of some to exercise the power conferred by section 132. Some have held the opinion that "compelling" reasons were required in order for the Board to exercise its discretion. We do not agree with this interpretation or the meaning that some have read into it. We believe that section 132 supports a liberal interpretation. Certainly, there must be reasons, valid reasons, to take advantage of the section, but we believe that these may be found within the situation of this industry in a particular case.

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[23] *Maritime Employers' Association and Terminaux Portuaires du Québec*, 1987 CIRB 642, page 29-30.

> The purpose of section 132 is to ensure industrial peace and avoid the conflicts to which a situation where there are many employers may lead. We would say that the exercise of this discretion should be guided by the likelihood of improved stability and more productive collective bargaining. We believe that it is better to prevent war than to limit oneself to trying to end it once it has begun. Having said this, we would point out that where specific cargoes or operations require special arrangements, it will be up to the parties to settle them in their negotiations. Both sides are well aware that realism will always be their best guide. The fact that certain customs may be disturbed, however firmly rooted they may be, should not mean that section 132 cannot be applied, if it appears that a more peaceful future can be guaranteed by its application (pages 204–205; and 78).

Following this decision, the CIRB issued geographic certifications more liberally, issuing, for example, a geographic certification in the Port of Hamilton in 1991 (see *Maritime Employers' Association et al.* (1991), 84 di 161 (CLRB no. 857)) and in the Port of St. John's in 2001, even though in the latter case labour relations tensions did not drive the decision[24].

The CIRB approaches questions of geographic certification from a practical perspective. As it explained in its *Toronto Port Authority* (2016) case:

> The Board's caselaw with respect to the exercise of its discretion under section 34 of the Code has evolved over time. Although the Board initially took a restrictive approach to determine whether it was appropriate to grant a geographic certification, that jurisprudence evolved concurrently with the labour relations context in the ports. The Board now takes a more liberal and practical approach and will assess, on a case by case basis, whether there is a labour relations purpose justifying the exercise of the Board's discretion to advance labour-management relations. However, it must do so with prudence, ensuring a balance

[24] *St. John's Shipping Association Limited*, 2001 CIRB 126.

of the interests of all parties potentially affected by a geographic certification while supporting collective bargaining rights[25].

3. 4. c. The Employer's Obligations Under a Geographic Certification Including Its Duty of Fair Representation

Under section 34(5) of the *Code*, an "employer representative" in a geographic certification is deemed to be an employer. As such, it must discharge, on behalf of all employers of employees in the bargaining unit, all duties and responsibilities of an employer under Part I, including those imposed by section 50 of the *Code*:

> 50. Where notice to bargain collectively has been given under this Part,
>
> (a) the bargaining agent and the employer, without delay, but in any case within twenty days after the notice was given unless the parties otherwise agree, shall
>
> (i) meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith, and
>
> (ii) make every reasonable effort to enter into a collective agreement;
>
> ...

While unions have long been subject to a duty of fair representation vis-à-vis its members, section 34(6) of the *Code* imports a duty of fair representation on employer representatives designated under geographic certifications requiring that they "discharge of the duties and responsibilities of an employer…an employer representative, or a person acting for such a representative, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employers on whose behalf the representative acts."

---

[25] *Toronto Port Authority,* 2016 CIRB 844.

Under section 34(7), the CIRB is vested with the jurisdiction to hear and decide complaints that an employer has violated this obligation.

In *Parrish & Heimbecker, Limited*[26], the CIRB considered the scope of this duty in the context of an unfair labour practice complaint filed by Parrish & Heimbecker, Limited (P&H) pursuant to section 97(1) of the *Code*, in which it alleged that the Maritime Employers Association (MEA) had violated section 34(6) of the *Code* when it settled a grievance filed against P&H by the International Longshoremen's Association (ILA), Local 1654, which is the certified bargaining agent for all employees of the employers in the longshoring industry in the Port of Hamilton, pursuant to a certification order issued by the CIRB.

In the course of determining that the MEA had not violated its duty of fair representation, the CIRB extensively reviewed the case law around an employer's duty under section 34(6) of the *Code* and the scope of this duty as follows:

> …The Board commented on this recently in *Quebec Ports Terminals Inc.,* 2015 CIRB 765 (*Quebec Ports Terminals Inc. 765*), stating:
>
> > [70] The duty of representation of an employer association is not an issue that the Board has addressed very often. There are few decisions relating to complaints filed against an employer representative under section 34(6) of the *Code*. However, **the fundamental principles applicable to section 37 complaints must, by analogy, be applied in this case, with the appropriate adjustments of course.** At least, that is what the Federal Court of Appeal ruled in *Quebec Ports Terminals Inc.* v. *Canada (Labour Relations Board), [1995] 1 F.C. 459*; *(1994) 175 N.R. 372*; *(1994)*

[26] *Parrish & Heimbecker,* 2015 CIRB 786.

29 Admin. L.R. (2d) 189; and *(1994) 95 CLLC 210-010* (FCA, file no. A-1584-92).

[71] In that matter, QPT, the complainant in the matter now before the Board, challenged the designation of the MEA as the "employer representative." One of the arguments presented by QPT was the lack of a community of interest among the employers concerned. The Federal Court of Appeal dismissed QPT's application and explained the powers and obligations of the employer representative as follows:

> If the employers cannot agree, the Board has a legal duty under subsection 34(4) of the *Code* to select the "employer representative." The latter "shall be deemed to be an employer." "By virtue of having been appointed under this section," it is then invested with the necessary powers to discharge all the duties and responsibilities of an employer under Part I of the *Code* on behalf of all the employers of the employees in the bargaining unit, including that of entering into a collective agreement "on behalf of those employers," that is, in place of them and on their account....If Parliament had not intended to create a special statutory system, why would it have imposed on the "employer representative" in subsection 34(6) [as am. *idem*] a duty to fairly represent all those affected by its bargaining, when the Civil Code contains its own means of redress against an agent who goes beyond his instructions? Why would it have thus codified the Civil Code in the *Canada Labour Code*? **One cannot help being**

> **struck by the parallel that exists between subsection 34(6), dealing with the employer, and section 37, dealing with the union.** In the case at bar it was entirely reasonable for the Board to conclude that the employer representative, deemed to be the employer, possessed a power similar to that of the bargaining agent, namely that of negotiating the collective agreement.
>
> (pages 473-474; emphasis added)

[72] In *Quebec Ports Terminals Inc.*, 2008 CIRB 410, another Board decision involving QPT and the MEA, the same parties as in the instant case, the Board summarized principles that apply to the duty of fair representation of an employer representative. In that matter, the Board found that the MEA had not violated section 34(6) of the *Code* when it had entered into specific agreements for one of its members. While the Board dismissed the complaint as untimely, it stated the following concerning the merits of the complaint:

> [39] That being said, just as the union must not breach its duty of fair representation toward the employees that it represents, the employer representative must not act in a manner that is arbitrary, discriminatory or in bad faith toward the employers that it represents.
>
> [40] The employer representative has the authority to negotiate on behalf of the employers that it represents and it has the right to decide which contract proposals to submit and which negotiation

> strategies to use to promote the employers' interests. Just as the union that represents employees, the employer representative is not required to consider the wishes of individual members; not considering the individual contract proposals of all the members – for example, accepting conditions that disadvantage certain employers--does not per se constitute a violation of section 34(6) of the *Code*, as long as the employer representative's decisions are made rationally, and the representative recognizes and takes into account the rival interests of all the employers that it represents (see *Bugay*, 1999 CIRB 45; and *Soulière*, 2002 CIRB 205, regarding the union's duty of fair representation[27].

The Board concluded that:

> **63** An employer representative's DFR is equally similar to that of a union in the context of the handling of grievances as well. The general DFR principles in this regard were set out by the Supreme Court of Canada (SCC) in *Canadian Merchant Service Guild* v. *Gagnon et al.,* [1984] 1 S.C.R. 509 (*Canadian Merchant Service Guild*):
>
> > The following principles, concerning a union's duty of representation in respect of a grievance, emerge from the case law and academic opinion consulted.
> >
> > 1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a

[27] Ibid.

corresponding obligation on the union to fairly represent all employees comprised in the unit.

2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.

3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.

4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.

5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.

(page 527)

3. 4. d. Geographic Certifications in Other Canadian Jurisdictions

While there is a patchwork quilt of different port labour relations structures and certifications, with different unions, different bargaining unit structures, and a mix of regional and port-specific agreements across Canada, it is fair to say that the West Coast ports are unique in <u>not</u> being certified on a geographic basis.

Most of the major ports in eastern Canada and the Great Lakes have geographic certifications. The following are geographic certifications in various Canadian ports:[28]

Halifax, Nova Scotia (as of 2004). The Council of ILA is certified for a unit of employees of the Halifax Employers Association (HEA) comprising of three geographic certifications:

> all employees including casual employees employed as longshoremen, foremen and walking bosses in the longshoring industry at the Port of Halifax, including those who perform tailgating, to the extent that this does not infringe on the jurisdiction of another union.
> …
> all employees employed as checkers in the longshoring industry at the Port of Halifax, including head checkers;
> …
> "all employees including casual employees employed as gear repair and maintenance persons in the longshoring industry in the geographical area of the Port of Halifax."
> ...

The HEA has one master collective agreement with addenda for forepersons, checkers etc. and any specific differences between Locals.

Montréal, Quebec (QC) (as of 1991). The Syndicat des débardeurs, Local 375, Canadian Union of Public Employees (CUPE), is certified as the bargaining agent for a bargaining unit comprising:

> all the employees of all the employers engaged in the loading and unloading of vessels, and in other related work, in the territory of the Port of Montréal as this territory currently described in Schedule II of the Canada Ports Corporation Act,

[28] The certification structure at other Canadian ports is also described in the *Jamieson-Greyell Commission* (1995) beginning at page 103.

> R.S.C. 1985, c. C-9, excluding the other employees already represented by a bargaining agent.

The ILA, Local 1657, is certified as the bargaining agent for a bargaining unit comprising:

> all the employees of all the employers engaged in the checking and coopering of ocean-going cargoes in the territory of the Port of Montréal as this territory is currently described in Scheduled II of the Canada Ports Corporation Act, R.S.C, 1985, c. C-9, excluding the other employees already represented by a bargaining agent

Trois-Rivières/Bécancour, QC (as of 1992). The Syndicat des débardeurs de Trois-Rivières, Local 1375, CUPE is certified as the bargaining agent for a bargaining unit comprising:

> all employees involved ln loading and unloading ships and other related duties for all employers in the longshoring industry in the geographic region comprised of the ports of Trois-Rivières and Bécancour

Rimouski, QC (as of 2022). The ILA, Local 2020, is certified as the bargaining agent for a bargaining unit comprising:

> all employees of all employer engaged in loading and unloading vessels and related operations in the district of the Port of Rimouski.

Saint John, New Brunswick (N.B.) (as of 2013). The General Longshore Workers, Checkers, and Shipliners of the Port of Saint John, N.B., Local 273 of the ILA, is certified as the bargaining agent for a bargaining unit comprising:

> all employees working as longshoremen, gear mechanical repairman, shipliners, including those doing carpentry work related to Port operation, steamship checkers, head checkers and stowage men, cargo repairmen, weighers and samplers, coopers and floormen, together with manifest clerks and office employees employed on the docks, including foremen and walking bosses

associated with these classifications, in the Port of Saint John, N.B., being that area adjacent to navigable tidal waters extending from Point Lepreau, N.B., on the south, to Cape Spencer, N.B., on the east, and extending through the City of Saint John and up the Saint John River to the boundary of the City of Saint John, N.B.

Bayside, N.B. (as of 2005). St. Croix Stevedores and Affiliates is certified as the bargaining agent for a bargaining unit comprising:

> all employees in the longshoring industry in the Port of Bayside, Charlotte County, N.B., excluding checkers, lines personnel, mechanics, warehouse personnel, and further excluding operations involving the supply of local fishing or aquaculture operations.

St. John's, Newfoundland and Labrador (as of 2001). The ILA, Local 1953, is certified as the bargaining agent for a bargaining unit comprising:

> a unit of employees of all employers involved in the business of stevedoring (being the loading and stowing of cargo on board ships and the unloading of cargo from ship to shore, or in cargo movement on the piers and cargo shed operations incidental thereto, including employees engaged in the repair of cargo containers and the operators of mechanical equipment, or in the maintenance and repair of mechanical equipment used in such operations) in the Port of St. John's (being the area encompassing the commercial docking apron of the Port and outdoor lay down or storage facilities contiguous thereto but not to intersect any public street of the City of St. John's except in the western area of the Port where it will include the existing outdoor commercial property to the west of the south side overpass that are involved in stevedoring activity, a portion of which is attached hereto as Schedule 'A'), excluding employees in the classification of night watchman, walking boss, stevedore supervisor-walking boss, superintendent, pier superintendent, assistant pier superintendent, shed supervisor, shed supervisor-management trainee, and senior pier clerk.

For accuracy, we note that the above-described geographic certification does not include bulk petroleum discharge and related activities, eventual loading or unloading of automobiles on auto carrier trucks, fabrication or repair work at NewDock's premises, the pumping of "mud" from a vehicle directly to a vessel or the discharge of bulk drilling fluids from tanker ships to on-shore storage containers, the loading or unloading of ship's supplies or buoys or other navigational aids by the coast guard employees, the mooring and unmooring of vessels other than as requested during the process of loading or unloading, and those operations or activities falling under provincial jurisdiction.

Hamilton, Ontario (ON) (as of 1993). The ILA, Local 1654 is certified as the bargaining agent for a bargaining unit comprising:

> all employees of the employers in the longshoring industry in the Port of Hamilton employed as longshoremen save and except the employees of St. Lawrence Warehousing Limited operating as Seaway Terminals who are represented by the International Union of Operating Engineers, Local 793, and who are represented by Teamsters Local Union No. 938 and Teamster's Local Union No. 879 for bulk cargo activities.

The ILA, Local 1879 is certified as the bargaining agent for a bargaining unit comprising:

> all employees of employers employed in the checking of cargo in the longshoring industry in the Port of Hamilton.

Port Weller, ON (as of 2019). The ILA, Local 1654 is certified as the bargaining agent for a unit comprising:

> all employees of Port Weller Marine Terminal Inc. including casual employees employed as longshoremen, foremen and walking bosses in the longshoring industry.

4. Legal Framework for Longshoring Collective Bargaining in Canada

4. 1. The *Canada Labour Code* (the *Code*)

In addition to knowing the major parties involved, it is also important to understand the statutory framework underlying collective bargaining in the B.C. ports, which is governed by the provisions of the *Code*.

The *Code* provides a comprehensive legal framework for labour relations in federally regulated industries, which include but are not limited to interprovincial railways, airlines, and Canada Post, and provides mechanisms for dispute resolution, regulates work stoppages, and grants powers to the Minister and other bodies to address labour relations issues.

While it is not necessary to summarize all the provisions of the *Code,* below we set out the most relevant provisions considered by this Commission in rendering our report.

4. 2. Bargaining and Conciliation under the *Code*

Division IV of the *Code* sets out the provisions applicable to the collective bargaining process for all federally regulated employers and unions.

Under section 50(a), the parties are required within twenty days after the notice to bargain is given (unless the parties agree otherwise) to:

> (i) meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith, and
> (ii) make every reasonable effort to enter into a collective agreement; and

Under section 50(b), the employer is prevented from altering the rates of pay or any other term or condition of employment or any right or privilege of the employees in the bargaining unit, or any right or privilege of the bargaining agent, until a lawful strike or lockout has commenced, unless the bargaining agent consents to the alteration.

Division V sets out the conciliation procedures available under the *Code.* Under section 71, either party may send a notice of dispute to the Minister of Labour setting out the parties' failure to reach a collective agreement.

Conciliation is a crucial step in the dispute resolution process under the *Code* and provides a structured opportunity for parties to resolve their differences with the help of a neutral third party before resorting to more drastic measures like strikes or lockouts. In the 2016-2017 fiscal year, 97% of disputes settled during conciliation and mediation were resolved without a work stoppage[29].

As was pointed out to us by some participants of the Commission process, the only prerequisite to sending a notice of dispute to conciliation is that "the parties have bargained collectively for the purpose of entering into or revising a collective agreement but have been unable to reach agreement" or that collective bargaining has not commenced within the specified timeframe.

Under section 72 of the *Code*, the Minister, once provided with a notice of dispute, has the following options:

> Options of Minister
>
> 72 (1) The Minister shall, not later than fifteen days after receiving a notice in writing under section 71,

[29] Employment and Social Development Canada. *Federal Mediation and Conciliation Service - Review of fiscal year 2017 to 2018.* [Gatineau]: Employment and Social Development Canada, 2018. https://www.canada.ca/en/employment-social-development/services/labour-relations/reports/2018-federal-mediation-conciliation.html#h2.10-h3.1

(a) appoint a conciliation officer;
(b) appoint a conciliation commissioner;
(c) establish a conciliation board in accordance with section 82; or
(d) notify the parties, in writing, of the Minister's intention not to appoint a conciliation officer or conciliation commissioner or establish a conciliation board.

The powers and obligations of conciliation officers, commissions and boards are different under the *Code.*

Conciliation officers, the mechanism most frequently triggered by the Minister, do not, most notably, have the powers set out in section 16 of the *Code* conferred on conciliation commissioners or boards. This means that officers do not have the power to summon and enforce the attendance of witnesses, compel them to give evidence or provide documents, order production, render oaths, examine certain documents, and inspect and view any work, material, machinery, appliances or articles therein and interrogate any person respecting any matter before them.

Further, while both conciliation officers and conciliation commissioners and boards are required to render a report within 14 days of being appointed or established, the contents of these reports differ, with the former being required only to report to the Minister whether the officer has "succeeded in assisting the parties in entering into or revising a collective agreement", and the latter two being tasked with producing reports that include their "findings and recommendations."

Pursuant to section 75(1), except with the consent of the parties, the Minister may not extend the time limit for the production of a report from a conciliation officer, commissioner or board beyond 60 days.

4. 3. Additional Mechanisms for the Promotion of Industrial Peace in the *Code*

4. 3. a. Section 107 and Recent Constitutional Challenges to its Use

In addition to the conciliation process, the *Code* grants powers to the Minister of Labour to promote industrial peace and make inquiries into industrial relations matters.

One section that has been getting a lot of attention of late is section 107, which reads as follows:

> The Minister, where the Minister deems it expedient, may do such things as to the Minister seem likely to maintain or secure industrial peace and to promote conditions favourable to the settlement of industrial disputes or differences and to those ends the Minister may refer any question to the Board or direct the Board to do such things as the Minister deems necessary.

Introduced to the *Code* in 1984, section 107 has only recently garnered much attention after this Commission was established.

On June 27, 2024, mechanics at WestJet represented by the Aircraft Mechanics Fraternal Association (AMFA) were in a legal strike position when the Minister of Labour announced that a strike at WestJet had been averted by his decision via section 107 of the *Code* to direct the CIRB to "assist the parties in reaching a settlement of the outstanding terms of their first collective agreement by imposing final binding arbitration to resolve outstanding terms of the collective agreement."

A question then arose at the CIRB over whether the Minister's referral impeded the union's strike notice or its ability to exercise its right strike.

WestJet took the position that it would not make practical sense that such a referral would not end the parties' ability to engage in strike or lockout activity. The union disagreed and asserted

that the referral was silent as to its effect on the strike notice and, as such, should be read, consistent with the *Canadian Charter of Rights and Freedoms* (Charter), as protecting rather than suspending the right to strike. The CIRB found the Minister's section 107 referral did not have the effect of rescinding the union's strike notice or suspending its right to strike. In reaching this conclusion, the CIRB relied on the explicit wording of the referral, the broader statutory context, and values under the Charter.

Once the decision was rendered, the strike went ahead on June 28, 2024. Despite reaching a relatively quick settlement after 29 hours, the labour dispute led to the cancellation of 1,050 flights affecting more than 100,000 travellers.

In October 2024, the Minister of Labour made another section 107 referral, this time in response to a lockout involving Canada's two largest railway companies, CN Rail and Canadian Pacific Kansas City (CPKC). In this case, the text of the Minister's referral very clearly "directed" the CIRB to order the parties to "resume operations" and "impose interest arbitration." The Board complied despite noting that using section 107 in the manner directed by the Minister of Labour in October 2024 was unprecedented. In rendering its decision, the CIRB concluded that "it does not have the authority to review the Minister's directions or to assess their validity" and that any challenge to the Minister's order would need to be heard by the federal court. The CIRB therefore ordered an end to the lockout and referred the labour dispute to arbitration. The Teamsters Canada Rail Conference, the union representing the locked-out rail workers, subsequently launched a Charter challenge in federal court against both the Minister's section 107 referral and the CIRB's decision and that challenge process is ongoing.

In November 2024, the Minister once again utilized section 107 of the *Code* to direct the labour board to impose interest arbitration in the case of the BCMEA's lockout of ILWU Local 514 members and reviews of the direction and subsequent CIRB order are also underway.

4. 3. b. Section 108

The Minister also has the power to appoint an Industrial Inquiry Commission to investigate disputes as has been done in the case of this current Commission.

4. 3. c. Collective Bargaining Under the Canadian Constitution

In addition to the framework set out in the *Code,* it is important to understand and contextualize longshoring labour disputes on the West Coast that collective bargaining and the right to strike have been held to be constitutionally protected activities.

The Supreme Court of Canada's jurisprudence regarding the right to strike and bargain collectively has significantly evolved since the Charter came into force in 1982.

Initially, the Supreme Court did not recognize the right to strike as constitutionally protected. The leading case, *Reference re Public Service Employee Relations Act (Alberta)* (1987), held that the freedom of association under section 2(d) of the Charter did not include the right to strike. The Court ruled that this right was statutory, not constitutional. The Court reached a similar conclusion in a subsequent case, *Professional Institute of the Public Service of Canada (PIPSC) v. Northwest Territories (Commissioner),* 1990, wherein it held that the restrictions placed on collective bargaining by government did not violate section 2(d) of the Charter.

However, in *Dunmore v. Ontario (Attorney General)* (2001), the Court revisited its earlier jurisprudence and began expanding the scope of freedom of association under section 2(d). In *Dunmore*, the Court held that the Charter's freedom of association provisions do indeed protect some activities that are inherently collective. This decision marked a shift toward recognizing that the Charter's guarantee of freedom of association could include the protection of collective activities essential to workers' capacity to pursue collective goals.

In *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia* (2007), the Court explicitly recognized that section 2(d) of the Charter protects the right to collective bargaining. In its decision, the Court recognized that the right to engage in collective

bargaining is an essential element of the freedom of association protected by section 2(d) of the Charter:

> We conclude that the protection of collective bargaining under s. 2(d) of the Charter is consistent with and supportive of the values underlying the Charter and the purposes of the Charter as a whole. Recognizing that workers have the right to bargain collectively as part of their freedom to associate reaffirms the values of dignity, personal autonomy, equality and democracy that are inherent in the Charter. (paragraph 86)

The *B.C. Health Services* decision effectively restricts the power of governments to unilaterally interfere with collective agreements or to impose terms on workers without negotiation.

Building on its reasoning in *B.C. Health Services,* the Court held in *Saskatchewan Federation of Labour v. Saskatchewan* (2015) that the right to strike is an essential component of the right to collective bargaining and is therefore protected under section 2(d) of the Charter:

> The right to strike is essential to realizing these values and objectives through a collective bargaining process because it permits workers to withdraw their labour in concert when collective bargaining reaches an impasse. Through a strike, workers come together to participate directly in the process of determining their wages, working conditions and the rules that will govern their working lives (*Fudge and Tucker*, at p. 334). The ability to strike thereby allows workers, through collective action, to refuse to work under imposed terms and conditions. This collective action at the moment of impasse is an affirmation of the dignity and autonomy of employees in their working lives. (paragraph 54)

The *Saskatchewan Federation of Labour* decision marked a major shift in Canadian constitutional law, affirming that the right to strike is constitutionally protected for workers as part of their freedom of association. Thus, it places significant constraints on governments'

ability to impose measures that limit the right to strike without providing adequate justification and alternatives that could withstand a test of section 1 of the Charter.

While 2(d) does not guarantee access to a particular statutory strike model, the Supreme Court has clearly articulated that workers should be provided access to a meaningful mechanism to resolve bargaining impasses.

4. 3. d. Essential Services and the Constitutional Right to Strike or Lockout

The right to strike or lockout is not absolute. Section 87.4(1) of the *Code* requires unionized employees to continue working during a labour dispute to the extent required to prevent immediate and serious danger to the public:

> Maintenance of activities
>
> 87.4 (1) During a strike or lockout not prohibited by this Part, the employer, the trade union and the employees in the bargaining unit must continue the supply of services, operation of facilities or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public.

This means that parties to a collective agreement that covers these types of services must first determine what level of services are required to be maintained during a labour dispute to prevent immediate and serious danger. In practice, this means determining what level of services must continue to prevent immediate and serious danger, with the idea that services will be reduced but not entirely suspended.

In healthcare, for example, which falls under provincial jurisdiction but nonetheless provides an illustrative example of the designation process, the setting of essential services requires the parties to determine the lowest staffing levels possible balancing the right of the parties to exercise the right to strike or lockout with the need to prevent imminent harm to residents. This might mean cancellation of elective surgeries and procedures and a reduction in the number of

staff available to assist in health care facilities. While no doubt inconvenient, the idea of a controlled strike is that it provides the requisite balance between preserving the parties' constitutional right to strike or lockout with the right of the public, who rely on these services, to remain safe from undue threat of danger.

In cases such as police and fire, where it has long been recognized that services cannot be safely reduced to a level that would allow for an effective strike or lockout, the right to strike or lockout has been replaced with the right to access binding interest arbitration to break impasse in collective bargaining. Under the British Columbia *Fire and Police Services Collective Bargaining Act*, for example, either party to a police or fire collective agreement in the province may apply to the minister for a direction that the dispute be resolved by arbitration if they have bargained collectively and have failed to conclude a collective agreement[30].

4. 3. d. i. Longshoring is not an Essential Service under the *Code*

The CIRB has consistently rejected requests to designate port work an essential service. As recently as March 2024, in a summary decision, the CIRB rejected a bid by the MEA to have longshore workers at the Port of Montreal deemed as essential in order to prevent a strike.

Citing a 2020 decision, the CIRB ruled that the MEA failed to demonstrate "imminent and serious risks to the health and safety of the public" in the event of a labour dispute[31].

The CIRB has also recognized the intent and the purpose of the regime for maintaining services under the *Code* which specifically reflects the importance of protecting the right to strike. In *NAV CANADA*, 2002 CIRB 168, the CIRB stated the following in that regard:

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[30] Fire and Police Services Collective Bargaining Act*, Revised Statutes of British Columbia* [RSBC] 1996, c 142, section 3.
[31] *Maritime Employers Association v Syndicat des débardeurs, Local 375 of the Canadian Union of Public Employees*, 2020 CIRB 927, page 277.

> [227] ... Any restrictions on the right to strike, even though imposed in the interests of health or safety, must appropriately respect the importance of the right in the context of the *Code*. Free collective bargaining is seriously compromised if the right to strike may not be exercised by employees to counteract the employer's economic power....
>
> [228] Accordingly, it is the Board's view that any abridgement of the right to strike must be to the minimum level required to cautiously protect the health or safety of the public. Accordingly, if the Board is assured that the risk or danger is not "immediate" or "serious", or if the operation of facilities, production of goods or supply of services in question can be limited or will not reasonably be necessary to protect public health or safety or to prevent an immediate and serious danger, the Board should determine such services not to be required.

While employer organizations have frequently raised hypothetical concerns about shortages related to port strikes and their possibility for inflicting immediate and serious danger to the public, the CIRB has not found the evidence for these claims compelling in relation to essential services designation – at least at the outset of a dispute.

While longshoring has not been found to constitute an essential service under the *Code*, it should be noted that section 87.7(1) of the *Code* requires that services to grain vessels must be maintained during a strike or lockout of longshoring workers as follows:

> Services to grain vessels
>
> 87.7 (1) During a strike or lockout not prohibited by this Part, an employer in the long-shoring industry, or other industry included in paragraph (a) of the definition federal work, undertaking or business in section 2, its employees and their bargaining agent shall continue to provide the services they normally provide to ensure the tie-up, let-go and loading of grain vessels at licensed terminal and transfer elevators, and the movement of the grain vessels in and out of a port.

Section 87.7(1) was added to the *Code* in 1998 as part of Bill C-19 to ensure the movement of grain during labour disputes in the longshoring industry, as grain was considered a critical commodity[32]. The introduction of section 87.7(1) was part of a larger process of consultation and compromise in Canadian labour relations that began in late 1994, culminating in the passage of Bill C-19 in 1998.

In enacting the provision, the Government's stated aim was to strike a balance between the rights of workers to engage in collective action and the need to protect certain economic interests, particularly in the grain industry and to prevent grain from being a bargaining chip. The Minister of Labour at the time stated that these provisions would prevent grain from being used as "the ace in the hole" by either side in the bargaining process[33].

5. International Structures for Longshore Collective Bargaining

In their 2024 report, Giles and Banks pointed to the need for an examination of ports outside of Canada given that contentious trends in the industry are not unique to Canada. The Commission turned its attention to this task and reviewed dispute resolution mechanisms utilized by other ports as part of its work. However, an initial scan of port structures, legal frameworks, and dispute resolution quickly revealed that, while a comprehensive comparative analysis of international ports would confirm that Canadian ports are facing similar pressures and developments, an examination of ports outside of Canada would not assist us in addressing the Commission's Terms of Reference.

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[32] Bill C-19: An Act to amend the Canada Labour Code (Part I) and the Corporations and Labour Unions Returns Act and to make consequential amendments to other Acts. 1st Reading. 36th Parl., 1st sess. [Ottawa]: Library of Parliament, 1997. *Parliament of Canada.*

[33] Standing Committee on Human Resources Development and the Status of Persons with Disabilities. *Evidence.* 36th Parl., 1st sess., meeting no. 28. 1998. *Parliament of Canada.* https://www.ourcommons.ca/Content/Committee/361/HRPD/Evidence/EV1038577/hrpdev29-e.htm

This is because international comparisons reveal that there is little uniformity or consistency in port bargaining structures across the globe.

Some jurisdictions, like Finland, have national bargaining structures, while others, like Portugal and the United States, have regional or port-based bargaining structures. Some jurisdictions, like Italy, Germany, and Spain, have a mix – with port-based agreements supplementing broader labour relations frameworks.

Other countries, like Australia, the Netherlands, and Ireland, rely on enterprise-based bargaining in the ports.

Moreover, in some cases there are important exceptions to the above, with carve outs for particular ports.

Which workers are included in a bargaining unit is similarly inconsistent across the globe, with foremen, administrative staff, and longshore workers either grouped together in a single unit or divided into separate units.

The Commission is of the view that Canada's Wagner model of labour relations, its federal division of powers as applied to the field of labour law, and its Charter provide a unique legal framework with which to craft our recommendations. Thus, rather than look outward, the Commission looked inward for a Canadian-crafted solution.

6. History of Labour Disputes in West Coast Ports

To properly understand the 2023 labour dispute that led to the appointment of this Commission, it is important to understand the context and history of negotiations between the parties over the years.

While the parties have successfully negotiated agreements in the past without government intervention, the blunt reality is that ad-hoc back-to-work legislation and binding arbitration have

often been used as instruments to resolve labour disputes in B.C. ports – a practice that has clearly influenced the conduct of both employers and unions throughout negotiations.

This reliance on government intervention has created an environment where the safety net of binding arbitration overshadows the collective bargaining process. In bargaining involving the BCMEA and ILWU Canada and Local 514 from 1972 to present, there have been 13 labour disputes, nine of which have resulted in government intervention, including the 2023 strike giving rise to the present Commission and the 2024 lockout of Local 514 members which took place after the Commission was appointed[34].

6. 1. 2010 Bargaining for the Longshoring Agreement

The ILWU Canada points to the 2010 round of bargaining as an important turning point in that, in that round, the BCMEA sought a number of operational proposals perceived by the union to be concessions. The proposed changes included shortening ordering times for gangs, averaging regular work force days of work over three months, requiring applicants for regular work force jobs to submit to employer interviews, allowing any shifts to be extended from eight to twelve hours, eliminating job restrictions, and permitting unlimited transfers of employees to rated and unrated work and between trades and production work.

In that round of bargaining, the Minister of Labour, Minister Lisa Raitt, appointed mediators Ted Hughes and John Rooney to assist the parties before the Longshore Agreement expired and without either party filing a notice of dispute. The mediators' Terms of Reference were designed to help the parties reach an agreement but included a requirement "to assist the parties in developing and agreeing to a dispute-resolution protocol under which all outstanding differences would be submitted to a person or body for final and binding determination."

The ILWU Canada alleges the BCMEA proactively lobbied the federal government to impose interest arbitration to secure a suite of changes it knew could not be achieved through traditional

[34] A chart summarizing bargaining is found at Appendix C.

collective bargaining. It points to the Federal Registry of Lobbyists which shows that the BCMEA engaged multiple lobbyists in 2009 and 2010 to "initiate discussions leading to an alternate dispute model of settling labour disputes on the west coast."

What followed was a very tense round of bargaining that included two unlawful work refusals by members of ILWU Local 500 in April and May of 2010[35].

The Hughes-Rooney Report identified four factors that were stumbling blocks to effective bargaining: mistrust between the parties; the BCMEA's demands for significant changes; the BCMEA's insistence on interest arbitration to resolve impasse; and a lack of appropriate representation from Direct Employers.

In response to the latter issue identified in the Hughes-Rooney Report, the BCMEA adopted a new bargaining committee structure in the 2010 round. Prior to that round, the bargaining committee was composed of six members (four terminal operator members and two ocean carrier representatives). The 2010 (and current) committee structure is a mix of executive operations management and labour relations professionals.

After the mediators submitted their report to the Minister of Labour, another mediator, Bill Lewis, was appointed under section 105 of the *Code* to assist the parties in reaching agreement or otherwise to assist in developing terms of reference for an arbitration process.

On November 2, 2010, ILWU Canada and Local 514 concurrently filed notices of dispute, but only in connection with one BCMEA member – TSI Terminal Systems, Inc.

After receiving the mediators' report, the Minister referred the question of whether either party had engaged in bad faith bargaining contrary to section 50(a) of the *Code* to the CIRB to determine. The CIRB rejected the idea that the parties were required to reach agreement on a process of binding arbitration, dismissing the BCMEA's argument that the union's refusal to

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[35] See *British Columbia Maritime Employers Association*, 2010 CIRB 512; *British Columbia Maritime Employers Association*, 2010 CIRB 518.

agree to a process of binding interest arbitration as a model to resolve the impasse constituted bargaining in bad faith:

> [49] Presently, there is no legislation applicable to this industry requiring parties to submit their disputes to binding arbitration if unable to achieve a negotiated resolution. The Board is of the view that it was open to the parties to elect to continue in the process of free collective bargaining to conclude a collective agreement as provided for under the *Code*, and none of the parties were obligated to engage in bargaining for a process that would eliminate the right to strike or lock out unless both parties agreed to such a negotiated result. The Board is not prepared to find that a lack of effort in reaching agreement on a process of binding arbitration amounts to a violation of the duty to bargain in good faith[36].

In February 2011, both ILWU Canada and Local 514 conducted strike votes and strikes were authorized. The parties later reached agreement on a collective agreement with an eight-year term that avoided the major changes sought by the BCMEA prior to the commencement of an active labour dispute.

6. 2. 2018 Longshoring Strike/Lockout in West Coast Ports

In the next round of bargaining in 2018, the BCMEA also sought significant changes to the collective agreement. In addition to seeking the ability to extend all employees on all shifts, and elimination of lines of demarcation, the BCMEA attempted to secure the ability to transfer regular work force employees between employers and have unrated employees on regular work force. The BCMEA also provided notice to end practices regarding scheduling, hours of work, and reporting pay and proposed elimination of the Retirement Allowance Agreement (M&M) which, according to the union, would delay the retirement plans of its members and therefore restrict job opportunities for younger employees.

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[36] *British Columbia Maritime Employers Association*, 2011 CIRB 566.

Bargaining was further strained when the BCMEA attempted to unilaterally implement a Drug and Alcohol Policy in April 2018, which resulted in the union filing an unfair labour practice complaint alleging a breach of section 50 of the *Code*. The parties resolved the issue in mediation with the assistance of the CIRB. However, the union complained that shortly after the implementation of the newly negotiated Drug and Alcohol Policy, some Direct Employers began to aggressively conduct post incident testing as a form of retribution. This led the BCMEA to bring an illegal strike application to the CIRB in early 2019, alleging that Local 502 was engaged in a slowdown at GCT Deltaport in response to the Drug and Alcohol Policy. The parties commenced a hearing, but the application was withdrawn pursuant to settlement discussions initiated by the Chair of the CIRB.

After many months of bargaining, the BCMEA and ILWU Canada jointly filed a notice of dispute in January 2019. On February 12, 2019, a conciliation officer was appointed to the dispute.

The union issued a limited strike notice in May 2019, identifying GCT Deltaport and GCT Vanterm as the locations of the strike. The strike action, which commenced on May 27, 2019, took the form of an overtime ban. In response, the BCMEA responded with a notice of an industry-wide lockout effective May 30, 2019. ILWU Canada and Locals 500, 503, 505, 508 and 519 immediately applied to the CIRB for a finding that the lockout notice failed to provide sufficient notice. The CIRB, however, dismissed the application, and the BCMEA implemented the lockout.

Less than a day later, the parties reached a deal on a renewed Longshore Agreement. The BCMEA did not achieve the changes it had intially sought. The union, however, did manage to secure the BCMEA's agreement on language for a new Technology Committee in the Black Book. The language requires a 120-day notice period for technological change and requires the committee to develop a mitigation plan to "review and minimize, to the extent possible, the impact of Technological Change including automation and semi-automation on members of the workforce in any Local Area."

6. 3. 2023 Longshoring Strike in West Coast Ports

The bargaining environment did not improve in the most recent round of negotiations.

On November 30, 2022, the BCMEA provided notice to commence collective bargaining to ILWU Canada for an agreement expiring on March 31, 2023. Negotiations began on February 16, 2023.

Less than a month later, on March 20, 2023, ILWU Canada filed a notice of dispute to commence conciliation. According to the BCMEA's submission to the Commission, as the notice was filed, the parties had met for only two hours and 15 minutes over the five sessions, and the union had not asked a single question about the BCMEA's proposals.

On March 29, 2023, the Minister of Labour, Minister Seamus O'Regan, appointed two conciliation officers with the Federal Mediation and Conciliation Service (FMCS) to support the parties in reaching a new collective agreement. On April 12 and 13, 2023, the BCMEA and ILWU Canada met with the conciliation officers separately, and the parties subsequently met for conciliation bargaining five times between May 1 and May 25, 2023.

On May 26, 2023, the conciliation period was extended to May 30, 2023, and on May 30, 2023, the parties met for bargaining conciliation.

On June 1, 2023, the Minister of Labour appointed Kathy Peters and Peter Simpson from the FMCS as mediators under section 105 of the *Code*, to support the parties in reaching a new agreement. Between June 6 and June 9, 2023, the parties met four more times and exchanged offers for settlement.

On June 5, 2023, ILWU Canada authorized a strike vote, which was held on June 9 and 10, 2023. The union reported that 99.24% of those voting supported strike authorization.

On June 13, 2023, the parties exchanged settlement proposals and met again for bargaining conciliation on June 16. On June 21, 2023, following the expiration of the mandatory 21-day

cooling off period, the parties acquired the legal right to strike or lockout. On June 24, 2023, ILWU Canada made a global settlement offer. On June 28, 2023, the union served the BCMEA with a 72-hour strike notice. Also, on June 28, Barney Dobbin was appointed as a mediator pursuant to section 105 of the *Code*.

On June 29, 30 and July 1, 2023, the parties further exchanged settlement offers. The strike began, however, on July 1, 2023, at 8 AM and the parties continued to bargain.

On July 11, 2023, the Minister of Labour wrote to Peter Simpson, Director of the FMCS, requesting that he make written recommendations for settlement pursuant to section 105(2) of the *Code*. On July 12, 2023, the Minister sent Peter Simpson's recommendations to the parties. The BCMEA's bargaining committee indicated it would recommend ratification of the proposed terms of settlement. The next day, the ILWU Canada President Rob Ashton indicated his bargaining team would recommend the union's Contract Caucus send terms of the tentative agreement to the membership for a vote.

On the basis that the respective bargaining committees had reached a tentative four-year agreement on July 13, 2023, the strike was temporarily halted. The BCMEA ratified the agreement that same day. However, on July 18, 2023, ILWU Canada's Contract Caucus rejected the tentative agreement and called for the strike to resume later that day.

On July 19, 2023, the CIRB ruled the strike unlawful because the union had not provided further 72-hour strike notice.[37] In response, ILWU Canada issued a new 72-hour strike notice but withdrew the notice later that day. Also on July 19, the Prime Minister convened the Cabinet-level Incident Response Group to discuss the strikes at the B.C. ports.

On July 21, 2023, ILWU Canada's Contract Caucus recommended a slightly revised offer from the BCMEA to the union's membership and ILWU members were provided an opportunity to

[37] *British Columbia Maritime Employers Association*, 2023 CIRB 1088.

vote on the tentative agreement on July 27 and July 28, 2023. On July 28, 2023, however, the union announced that ILWU members had rejected the tentative agreement.

In response, on July 29, 2023, the Minister of Labour advised the parties that he was invoking his powers under section 107 of the *Code*. The Minister directed the CIRB to determine if the rejection meant a negotiated agreement was impossible and, if so, to impose a new collective agreement on the parties or impose final binding arbitration to resolve outstanding terms of the collective agreement. The Minister also told the media that the federal government was "prepared for all options," leaving the door open for back-to-work legislation.

On July 30, 2023, the BCMEA and ILWU Canada participated in mediation at the CIRB and, later that day, jointly announced that they had reached a new tentative agreement with the assistance of the CIRB. The parties further indicated that they were recommending ratification to member employers and the union's membership respectively.

The BCMEA ratified the new agreement on July 31, 2023. ILWU Canada members ratified the agreement on August 4, 2023, with 74.7% voting in favour.

Most of that bargaining took place after notice of dispute was filed, and, in fact, after a labour dispute had already started.

While the BCMEA pointed to the ILWU Canada's internal processes as a factor – and certainly, the Contract Caucus slowed down a vote being put directly to ILWU Canada's membership – nonetheless, when the tentative offer was put to a vote it was rejected by the union's membership.

6. 3. a. The Major Issues in Bargaining in 2023

The real impediment in negotiations, other than the difficult relations between the parties, and the certain truth that government intervention is likely to come, is the difficulty of the issues confronted by the parties.

On the union side, one of the central themes was the demand for increased wages to keep pace with inflation and the rising cost of living. The ILWU Canada also was pushing for improvements in job security, especially in respect of increasing automation in ports. It expressed concerns over the potential loss of jobs and sought assurances that technology would not replace human workers without adequate measures or retraining opportunities.

While compensatory issues were certainly a factor in the 2023 round of bargaining, the issues related to the BCMEA's push for restructuring and labour flexibility and the union's desire to protect job security and shared control over the ports were clearly the most challenging. Specifically, the union was pursuing job security, a more collaborative approach to training, and reduced contracting out of maintenance work. In contrast, the BCMEA's bargaining proposals focused on consolidating hiring authority, eliminating union dispatch coordinators, allowing flexible call-back and job transfer policies, extending shifts at the employer's discretion, altering scheduling requirements, and tightening drug policy thresholds.

6. 4. The 2024 Industry-Wide Lockout of ILWU Local 514 (Foremen) in West Coast Ports

As mentioned earlier in this report, after the appointment of this Commission, an industry-wide lockout was initiated by the BCMEA on November 4, 2024, that lasted several days before the Government intervened. The BCMEA says it made the decision to engage in this defensive lockout after ILWU Local 514 served strike notice to commence targeted job action at DP World (Canada) Inc. (DP World).

Much litigation took place during this round of bargaining. Local 514 filed a complaint on February 16, 2024, alleging that the BCMEA and DP World had breached their duty to bargain in good faith when they failed to engage in bargaining on a manning agreement, and alleged DP World was violating the bargaining freeze provision of the *Code* by unilaterally implementing automated rail operations at its Centerm terminal.

On May 10, 2024, the BCMEA filed a bad faith bargaining complaint and an application for a declaration of unlawful strike against Local 514, alleging that the union took a strike vote among the employees of only one employer despite the parties having engaged in industry-wide bargaining for the renewal of the industry-wide collective agreement. The BCMEA alleged that a strike based on this vote was contrary to the provisions of the *Code* and unlawful, and also that the union breached its duty to bargain in good faith when it presented two new bargaining proposals, including a manning agreement for the automated operations at Centerm terminal and a new proposal relating to dispatch for the Nanaimo terminal. The BCMEA alleged that these late proposals create a receding horizon and constituted bad faith bargaining on the union's part.

Hearing days were held on July 2, 3 and 5, 2024, during which the employer presented its evidence, and continuation dates were set for August 6 to 9, 2024.

Immediately after the hearing was adjourned on July 5, 2024, the union served 72-hour strike notice on DP World. The notice indicated that strike action would consist of a ban on overtime, a refusal to work on the Centerm Expansion Project's manual development and training and a refusal to implement the Centerm electronic dispatch tracking spreadsheet.

That same evening, the BCMEA filed a request for interim relief, asking the CIRB to render its bottom-line determinations on the unlawful strike application and the complaint related to the Nanaimo dispatch proposal – which it did.

After a case management conference with the parties, the CIRB rendered its bottom-line decision on the unlawful strike application and the Nanaimo dispatch proposal (written reasons provided in *British Columbia Maritime Employers Association*, 2024 CIRB LD 5389). As set out in those reasons, the CIRB found that the Nanaimo dispatch proposal constituted a receding horizon and amounted to a failure to bargain in good faith. The CIRB accordingly directed the union to withdraw that proposal but found it was not bad faith for the union to continue to put forward proposals related to pay for continuous rail operations.

The CIRB also found that the union failed to bargain in good faith and to make every reasonable effort to reach a collective agreement in violation of section 50(a) of the *Code* by taking a strike vote only among its members at DP World. Accordingly, the CIRB declared that the union's strike notice was invalid.[38] Its stated basis for doing so was that, until the union acquired the right to strike, it was fully engaged in bargaining for an industry-wide collective agreement with the BCMEA, presenting and responding to comprehensive proposals. The CIRB held:

> 56 In these circumstances, the Board finds that the union's strike vote conducted only among the employees of DP World Canada amounted to a breach of the union's duty to bargain in good faith and to make every reasonable effort to enter into a collective agreement. The union's conduct was an attempt to single out one employer, just as the parties acquired their right to strike or lockout, and subverted the collective bargaining process that was underway. Simply put, the union cannot ride two horses at the same time and then pick the one that best suits its interests late in the race, just as it reaches the finish line.

The CIRB was clear that its decision was predicated on the fact that ILWU Local 514 had participated in industry-wide bargaining throughout the bargaining process. In restricting its reasoning to the union's conduct throughout bargaining, the CIRB acknowledged that Local 514 has enterprise-based certifications and would have the right to insist upon that bargaining structure if it so advised at the outset of the next round of bargaining:

> 57 That said, the Board is also mindful of the certification orders that recognized Local 514 as the bargaining agent for individual bargaining units for most employers that are members of the BCMEA. It is also well aware of the voluntary nature of industry-wide bargaining. As it stated in *BCMEA 566*:

[38] *British Columbia Maritime Employers Association,* 2024 CIRB 1148.

> [28] ... The Board also accepts that this was the accepted protocol for this latest round of bargaining. However, it is equally true that the BCMEA is only a voluntary association and is not a designated employer under section 33 of the *Code*. It is also a fact that there exist separate certifications or separate voluntary recognitions for each of the individual employers. Accordingly, bargaining on an industry-wide basis is a voluntary rather than a statutorily-mandated process between these parties and thus cannot be forced by one party on the other without their consent. The Board has stated in the past that where joint bargaining is only voluntary, it is, for the most part, unenforceable: ...
>
> 58 This decision does not have the effect of changing or redefining the existing certified bargaining units. Rather, the Board focused on the union's conduct during bargaining and its engagement in and commitment to industry-wide bargaining, as it had demonstrated in previous rounds of bargaining. If the union wishes to assert its bargaining rights for each individual unit, it should adopt an approach that is consistent with that intent and not wait until the end of the bargaining process to assert these rights. That is not what happened in this round of bargaining. The Board is not prepared to condone the union's conduct in these circumstances.

ILWU Local 514 sought judicial review and a decision remains pending at the time of this report.

In the meantime, the union conducted an industry-wide strike vote in September 2024, with 96% voting in favour. On October 31, 2024, the union issued industry-wide 72-hour strike notice and the BCMEA responded by issuing a lockout notice. A lockout commenced on November 4, 2024.

The parties met with the assistance of the FMCS, but given the lack of progress, on November 9, 2024, the FMCS concluded the mediation. On November 12, 2024, the Minister of Labour, Minister Steven MacKinnon, announced he would use his powers under section 107 of the *Code*

and direct the CIRB to order parties at ports across Canada's West Coast to resume operations and duties, and to impose binding arbitration on the parties in order to reach a settlement. Incidentally, the Syndicat des Débardeurs (CUPE Local 375), representing nearly 1,200 longshore workers in Montreal, had engaged in a 72-hour strike from September 30 to October 2, 2024, affecting the Port of Montreal's two Termont terminals, and had commenced unlimited strike action at those terminals as of October 31, 2024. Their dispute was also ended with a referral under section 107, as was the dispute in the port in Quebec City where dockworkers had been locked out for more than two years[39].

On November 13, 2024, the CIRB issued an order directing the BCMEA and all its members to resume operations on November 14, 2024, and to continue operations and duties until the CIRB makes a final determination on the Minister's section 107 referral. That decision has not been rendered as of the date of this report.

In its submission to the Commission, ILWU Local 514 made clear that "in the absence of a mutually acceptable protocol agreement, the Union does not intend to bargain on an industry-wide basis with the Maritime Employers – even if the BCMEA seeks recognition from the Board as the employers' organization."

7. Previous Studies of West Coast Bargaining in Longshoring

In addition to reviewing the bargaining history and litigation history of the parties over recent rounds of negotiations, the Commission reviewed previous reports written in respect of labour relations in longshoring.

There has been much study of labour relations in B.C. ports. However, it is fair to say that very little has been done to address the issues raised in various reports that have been tabled over the years. This is not, in the Commission's view, a reflection of the quality of the findings and recommendations brought forward. While a review of the recommendations from the Jamieson-Greyell Commission (1995), the Sims Task Force (1996), the Hughes-Rooney Report (2010), the

[39] Although the Port of Quebec continued operating during this time with replacement workers.

National Supply Chain Task Force (2022), and the Giles and Banks Report (2024) reveal some divergent opinions on the path forward, all these reports also share some important commonalities.

7. 1. Jamieson-Greyell Commission (1995)

The Jamieson-Greyell Commission was the most comprehensive study into longshoring on the West Coast to date and is very relevant to the present inquiry. That Commission was established under sections 106 and 108 of the *Code* on May 10, 1995, following the introduction of back-to-work legislation to end labour disputes in the ports in both 1994 and 1995.

As stated in the report, "[t]he catalyst for the Minister's concern was stated to be the frequency of coastwide work stoppages and the resulting disruption to the flow of crucial exports"[40]. In other words, the issues that gave rise to the establishment of the Jamieson-Greyell Commission are very similar to those that prompted the Minister to establish the present Commission with nearly identical Terms of Reference.

Of note, Jamieson and Greyell in their report specifically recommended, amongst other things:

- Consolidating longshoring bargaining rights through a province-wide geographic certification and the accreditation of an employers' organization and a council of unions;

- That the Canada Labour Relations Board (CLRB; the predecessor of the CIRB) consider whether foremen should be included in the bargaining unit or merged with other ILWU locals;

[40] Jamieson, H. and Greyell, B. *In the Matter of: The Canada Labour Code Part I – Industrial Relations: Report of the Industrial Inquiry Commission into Industrial Relations at West Coast Ports*. 30 November 1995, page 1.

- That BCMEA and ILWU Canada review their internal structures to ensure they can effectively represent their members at the bargaining table;

- Maintaining the right to strike and lockout with specific provisions for the Minister of Labour to intervene and appoint a mediator/arbitrator in exceptional circumstances to resolve matters in cases where the dispute poses an immediate and substantial threat to the economy or to the national interest.

Despite how well-researched and thorough the Jamieson and Greyell report was, inexplicably, few of its recommendations in respect of longshoring were subsequently implemented, including its recommendation that a province-wide geographic certification be issued for longshoring workers and that the question of whether foremen should be included in that unit be further considered.

Some recommendations were subsequently acted upon, including their recommendation to separate collective bargaining for grain handling from longshoring and to consolidate bargaining for grain handling workers. On May 5, 1977, the Grain Workers Union, Local 333 was certified as the bargaining agent for all operational employees of the five companies belonging to the Association at the Port of Vancouver, which was designated as the "employer" for the purposes of the *Code* pursuant to section 131 (now section 33). Jamieson and Greyell's recommendation that a 72-hour strike/lockout notification period was also subsequently incorporated into the *Code*, amongst other things.

7. 2. Sims Task Force (1996)

Soon after the Jamieson-Greyell Commission submitted its report, the Sims Task Force reviewed the *Code* more generally. Of note, the Task Force took issue with the Jamieson-Greyell

recommendation for mandatory accreditation of employers' organizations, advocating instead for a more voluntary and flexible approach to multi-employer bargaining[41].

The Sims Task Force also took the position that geographic certification should apply only to employers using a common labour pool and recommended that employers who hire their own workforce should be able to continue to negotiate independently. Finally, the Task Force recommended that the Minister of Labour should have the power to appoint a Public Interest Panel to advise on whether legislative intervention in a labour dispute would serve the public interest.

7. 3. Hughes-Rooney Report (2010)

As noted earlier in the report, Hughes and Rooney were appointed as mediators in 2010 to assist in negotiations between the BCMEA and ILWU Canada and Local 514 for renewals of both the Longshore Agreement and the 514 Agreement (forepersons agreement).

The Hughes-Rooney Report recommended terms of settlement of the collective bargaining disputes, as well as suggested the appointment of an Industrial Inquiry Commission (IIC) to examine the appropriateness of the BCMEA as the exclusive bargaining representative for employers and to address significant proposals for changes to the collective agreement, amongst other things[42].

7. 4. National Supply Chain Task Force (2022)

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[41] Sims, A., Blouin, R. and Knopf, P. *Seeking a Balance: Canada Labour Code Part I Review.* Ottawa: 1996.

[42] Hughes, T., and Rooney, J. *Report to the Honourable Lisa Raitt prepared pursuant to their appointment on the 5th day of March, 2010, as mediators under Section 105(l) of the Canada Labour Code, in Collective Bargaining Negotiations Between British Columbia Maritime Employers Association (BCMEA) and the International Longshore and Warehouse Union of Canada (Longshoremen)*. July 30, 2010.

The National Supply Chain Task Force's final report recommended that the Minister of Labour urgently convene a council of experts to develop a new collaborative labour relations model aimed at reducing the likelihood of strikes or lockouts that risk the operation of the national transportation supply chain, but did not recommend any specific mechanism[43].

7. 5. Giles and Banks Report (2024)

As indicated at the outset of this report, Giles and Banks undertook a review of bargaining structures in the wake of the 2023 dispute between the ILWU Canada and BCMEA. In their report, they recommended a comparative study of longshoring labour relations in Canadian and international ports, focusing on collective bargaining structures and processes, especially in relation to technological changes and labour deployment systems[44].

Giles and Banks also recommended examining whether early intervention by a mediator or conciliator appointed by the Minister of Labour could better enable the parties to reach negotiated agreements. The report also recommended consideration of fact-finding at the Minister's request regarding the parties' efforts to reach an agreement to serve the public interest.

All of these reports, either directly or indirectly, address issues of bargaining structure, mediation and dispute resolution. It is clear that the questions about the appropriateness of bargaining unit structures, lingering concerns about the legitimacy of the BCMEA as a bargaining agent, and complaints about existing dispute resolution processes are longstanding issues that have been studied for decades without timely and effective solutions being implemented. These are the very same issues facing the present Commission, thus these previous reports—most notably the Jamieson and Greyell report, which arose under very similar Terms of Reference to the present Commission—provide a rich base for grounding our recommendations.

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[43] National Supply Chain Task Force. *Action. Collaboration. Transformation: Final Report of the National Supply Chain Task Force 2022*. [Ottawa]: Transport Canada, 2022.

[44] Banks, K. and Giles, A. *Report to the Federal Minister of Labour on Issues Requiring Further Study in Collective Bargaining in Longshoring in the West Coast and Other Ports in Canada.* 18 January 2024.

8. Summary of Parties' Positions

Having summarized the major expert reports on longshoring collective bargaining in B.C. ports, we now turn to summarizing the submissions received by the Commission in respect of this IIC.

As previously indicated, the Commission received numerous submissions from stakeholders and interested parties setting out their views on the issues set out in the Terms of Reference. For ease of reference, those terms are to study: the unique application of geographic certification on the West Coast; their coverage of employers and employees; whether a tiered bargaining structure distributing issues between central and other tables would be appropriate; whether reforms to the internal governance and decision-making structures of the parties could assist in reducing the likelihood of work stoppages; and whether there may be voluntary collective bargaining dispute resolution processes, ad hoc or standing, such as mediation-arbitration that might assist the parties in resolving recurring issues arising between them.

Suffice it to say, employer organizations generally focused on the importance of enhancing labour stability at the B.C. ports and ensuring that supply chains are reliable and resilient. Their recommendations to the Commission included amending or enhancing mediation and arbitration mechanisms to facilitate timely resolution of disputes and incentivize good faith bargaining, issuing some form of geographic certification for B.C. ports, amending the *Code* to exempt cruise operations from strikes to ensure uninterrupted services, establishing permanent labour-management committees on specific issues to foster ongoing dialogue and address concerns proactively, and amending the *Code* to replace the right to strike/lockout with binding arbitration and essential services designation or other alternate dispute resolution tools to minimize labour disruption.

On the other hand, submissions the Commission received from unions largely favoured maintaining the status quo and generally focused on the need to preserve labour rights and improve labour relations in B.C. ports. Unions voiced opposition to any amendments to the *Code* that would restrict the right to strike and an emphasis on protecting the right to bargain collectively and strike as fundamental Charter-protected rights, emphasizing that the best deals

are made at the bargaining table without third-party interference. There was unanimity amongst the unions in the view that longshore work should not be designated as an essential service.

Some union submissions made thoughtful comments and recommendations about longshore working conditions or other matters that are not captured by the Commission's Terms of Reference and, thus, mostly not included in the report.

While for brevity, we have not summarized all the submissions received by the Commission in an individualized manner, we have summarized the positions of each of the parties to longshoring bargaining on each of the Commission's Terms of Reference.

8. 1. ILWU Canada

The ILWU Canada's positions can be summarized as follows:

8. 1. a. Geographic Certification

ILWU Canada is opposed to a geographic certification, arguing the issuance of such would not enhance the bargaining process for longshore workers. It contends that the current system, which it asserts allows for the negotiation of contracts with individual employers, offers more flexibility and better caters to the workers' interests.

ILWU Canada believes it is essential for employers to recognize and accept the significant control that ILWU Canada has established on the waterfront through long-standing practices and the use of hiring halls. Furthermore, ILWU Canada opposes the inclusion of all employees under a single geographic certification, maintaining that separate agreements for various groups – such as foremen – are more effective. This structure, in its view, respects the unique needs of different bargaining units, enhancing their autonomy in negotiations.

According to ILWU Canada, a single certification increases the risk of industry wide disputes and would not have prevented the 2023 strike. It notes this configuration was rejected in the

Sims Report (1996), and stresses that multi-employer bargaining on the West Coast is voluntary, as supported by the *Code* and case law.

8. 1. b. Tiered Bargaining

According to ILWU Canada, tiered tables lead to better bargaining. ILWU Canada argues that the absence of Direct Employer involvement at the bargaining table is a key barrier to effective bargaining and contributes to instability.

A potential solution to this put forward by ILWU Canada is the use of multiple bargaining tables with single employers. In its view, such an approach could maintain stability while fostering more focused and efficient negotiations. ILWU Canada suggests that at the election of either party, a local bargaining table could be established between a specific local and a Direct Employer and eliminate the need for ILWU Canada or the BCMEA to be involved. According to ILWU Canada, this direct bargaining model would enable more effective resolution of localized issues and reduce the likelihood of broader disruptions.

8. 1. c. Internal Governance and Decision-Making Structures

In defending its internal governance, ILWU Canada highlights its democratic processes, which involve substantial participation from the membership, and says its Contract Caucus ensures that proposals from local members are prioritized and heard and makes the bargaining process more efficient.

ILWU Canada criticizes the BCMEA's governance structure, asserting it lacks adequate representation from employers directly involved in longshoring which it says restricts meaningful bargaining outcomes.

8. 1. d. Dispute Resolution Processes

ILWU Canada staunchly opposes any dispute resolution model that eliminates the right to strike, a fundamental and Charter-protected right for workers. It believes mandatory arbitration

undermines the integrity of collective bargaining by limiting its bargaining power. Instead, ILWU Canada proposes amendments to the *Code*, including to enhance the authority of conciliation officers, to prohibit the use of conciliation evidence in arbitrations, and to establish a statutory expedited arbitration process. These changes are viewed as key to improving negotiation effectiveness while safeguarding workers' Charter rights.

ILWU Canada makes other suggestions, including that the Commission recommend that strike/lockout notice be required at each work site or employer, that a strike/lockout vote be required to escalate work stoppage industry-wide, that the obligation to provide strike notice only once during a labour dispute be clarified, and that unions be authorized to request final offer votes.

ILWU Canada's recommendations encapsulate its broader goals of maintaining the collective rights of longshore workers, advocating against the imposition of interest arbitration, and ensuring that the voices of their members are preserved during bargaining processes. Moreover, the union emphasizes the need for accurate metrics to assess the impact of work stoppages and urges the establishment of effective bargaining committees that involve senior managers from Direct Employers with genuine interests in resolving ongoing disputes.

Overall, ILWU Canada stands firm against changes that would compromise the collective bargaining rights and established practices that the union believes have served its members effectively over the years.

8. 2. ILWU Local 514

ILWU Local 514's positions can be summarized as follows:

8. 2. a. Geographic Certification

ILWU Local 514 opposes geographic certification and urges the Commission to find that it has the right to bargain collectively with each of the Direct Employers separately for which it is certified and is not required to bargain on an industry-wide basis.

According to Local 514, its members have a different and distinct community of interest than other longshore workers represented by ILWU Canada and should remain separate and distinct.

8. 2. b. Tiered Bargaining

ILWU Local 514 rejects tiered bargaining and argues it ought to be able to bargain directly with employers.

8. 2. c. Internal Governance and Decision-Making Structures

In respect of internal governance and decision-making structures, ILWU Local 514 recommends that the Commission critically examine the deleterious and disruptive role of the BCMEA as a voluntary employers' association due to the lack of direct participation at the collective bargaining table of the most senior management of the Direct Employers with knowledge of the day-to-day operation of the ports.

8. 2. d. Dispute Resolution Processes

According to ILWU Local 514, the Commission should strongly discourage government intervention and/or the imposition of compulsory binding interest arbitration to curtail an otherwise lawful and constitutional right to strike in the longshore industry. It asks that the Commission emphasize the deleterious "chilling affect" and "narcotic effect" on free collective bargaining, as well as labour relations between the parties, because of both government intervention and the imposition of compulsory interest arbitration.

The ILWU Local 514 suggests that the Commission should recommend against the longshore industry being declared an essential service. It notes that none of the previous IICs have

recommended that the longshore industry be declared an essential service and contends that such a recommendation would be draconian in nature.

Rather, Local 514 indicates that the Commission should recommend increasing the authority and powers of conciliation officers to include the following powers:

- to compel individuals to attend conciliation meetings;
- to require a party to provide information to the other party;
- to require a party to respond meaningfully to the other party's proposal; and
- to produce a report at the conclusion of conciliation containing recommendations similar to a commissioner or the Board.

8. 2. e. Additional Recommendations

In addition to recommendations that fit within the Commission's Terms of Reference, ILWU Local 514 also put forward additional recommendations, as follows:

- The Commission should recommend that the *Code* be amended to reflect that, once strike notice is given by the union, it remains in effect for the duration of the labour dispute.
- The Commission should recommend that the *Code* be amended to require each maritime employer to participate in a lockout vote prior to an industry-wide lockout.

- The Commission should recommend that the *Code* be amended to provide unions with the right to require employers to conduct a final offer vote of a union's final offer. Similarly, the *Code* should be amended to require employers to conduct ratification votes.

- The Commission should recommend that the *Code* be amended to include an expedited grievance arbitration process to provide a timely dispute resolution process concerning the administration, interpretation, or alleged violation of the collective agreement.

8. 3. BCMEA

The BCMEA's positions can be summarized as follows:

8. 3. a. Geographic Certification

The BCMEA strongly advocates for the implementation of a single geographic certification that encompasses all longshore workers, foremen, and employees currently subject to collective agreements between the ILWU and BCMEA member companies.

According to the BCMEA, the case for a broad geographic certification for the West Coast ports is clear. The BCMEA highlights that many major Canadian ports have already adopted geographic certification, which, in the view of the BCMEA, has proven effective in maintaining labour peace through a reliable pool of qualified labour. The BCMEA specifically seeks this certification for all longshore operations while excluding historically excluded employers, such as Westshore Terminals and Trigon Pacific Terminals, by emphasizing that this framework would minimize the potential for labour disputes through reduced fragmentation of bargaining units.

The BCMEA urges the Commission to recommend that the Minister of Labour make a referral to the CIRB to determine the appropriateness of establishing a geographic certification for the West Coast ports pursuant to section 34 of the *Code.*

8. 3. b. Coverage of Employers and Employees

To further enhance stability, the BCMEA proposes that the geographic certification include all existing relationships with ILWU Canada while creating a unified structure for collective bargaining.

The BCMEA argues that the exclusion of Westshore Terminals and Trigon Pacific Terminals reflects the bargaining history those terminals had with the ILWU Canada separate from the BCMEA. While the BCMEA acknowledges that they obtain their workers from the local's hiring

hall, it notes they generally have a permanent workforce. Further, it points out that the dispatch of these employees from the hiring hall has never involved the BCMEA. According to the BCMEA, any labour disruption at these terminals would not affect BCMEA members' companies or their employees in the West Coast ports and vice versa and, thus, it is not necessary from a labour relations perspective to include these employers. The BCMEA says that new entrants into port operations would be included in the geographic certification to preclude future instability.

8. 3. c. Tiered Bargaining

The BCMEA argues that the parties should negotiate a single collective agreement with tailored addendums for different employee categories, ensuring that specific issues relevant to distinct groups of workers can be addressed while preserving a cohesive bargaining approach.

The BCMEA suggests a tiered bargaining structure similar to that used in the Port of Halifax. This structure would consist of a main table for overarching agreements along with side tables to negotiate special addendums for various employee categories – like foremen – allowing for detailed negotiations tailored to specific roles, without losing the overall cohesion of a main agreement.

8. 3. d. Internal Governance and Decision-Making Structures

In addressing internal governance, the BCMEA maintains that its current decision-making structures are legitimate and effective and should be recognized as such. The BCMEA proposes that the ILWU's constitution be revised to facilitate the ILWU Canada acting as the union's exclusive bargaining agent, thereby promoting efficient collective bargaining and dispute resolution.

8. 3. e. Dispute Resolution Processes

Finally, the BCMEA calls for the enactment of legislation that empowers the Minister of Labour with authority to refer disputes to an independent mediation-arbitration process where they determine it is in the national interest to do so. This measure, in the view of the BCMEA, would better protect public interest during labour disputes and prevent disruptions that could negatively impact the economy. The BCMEA argues that this legislation should ensure mediation and binding arbitration can take place when traditional bargaining avenues reach an impasse.

Borrowing from the Jamieson-Greyell Commission's recommendations, the BCMEA submits that the following legislative provisions should be enacted either in separate legislation or as a special section of the *Code*:

- Grant the Minister of Labour the discretion to refer the dispute to mediation and binding arbitration where they determine it is in the national interest to do so;

- Upon such referral, strikes or lockouts would be precluded;

- Provide for the selection of a single mediator-arbitrator by the parties or, failing agreement, the appointment of an arbitrator by the Chair of the CIRB;

- Provide timelines for the selection/appointment of an arbitrator and for the issuance of a decision;

- Require the arbitrator to engage in mediation and, failing agreement, issue a binding decision resolving all remaining matters in dispute;

- Extend the protections extended to arbitrators and to conciliation commissioners under the *Code*;

- Provide that each party pay its own fees, expenses and costs, and an equal portion of the fees and expenses of the mediator-arbitrator.

9. General Analysis of Issues and Recommendations

From our study of longshoring bargaining on the West Coast, the Commission is of the view that the system is broken but not beyond repair. We believe there are entrenched challenges and evolving dynamics in B.C. ports that necessitate thoughtful attention and action to ensure the rights of union members to negotiate terms and conditions of employment are appropriately balanced with employer rights and the national interest in port stability.

At the core, the parties involved lack trust, which complicates negotiations and allows for an environment where suspicion overshadows collaboration. Although there exists a mature bargaining relationship among the parties, it is far from healthy, and is marred by ongoing conflicts, misaligned priorities, and a fiercely protectionist stance by the union and its members against what it views as attempts to erode its hard-bargained rights.

Fueling tensions, however, is the fact that the industry itself has undergone significant transformation over the course of the last few decades. The issues facing the parties are complex. These are not just traditional disputes over wages and benefits. They include contentious matters such as job security and automation.

These issues are not unique to B.C. ports. Similar tensions are ever present in other Canadian ports and in longshoring all over the world. The reality is that ports are crucial nodes in the maritime logistics chain and successful supply chains depend on the smooth flow of goods from ships to ground transportation and vice versa. Competition is no longer confined to individual ports. It spans the entire logistics chain, involving various actors, including shipping lines, terminal operators, and ground transportation services. This multi-dimensional competition impacts how ports structure their operations and creates demands on the efficiency of cargo handling operations.

Increased vessel sizes and consolidation in shipping have placed pressure on port operations, leading to employer demands for enhanced performance and flexibility in longshoring to meet market demands. Automation and technological innovations are similarly transforming

longshoring. While no doubt these changes can bring enhanced efficiency, they also could lead to future job contractions and changing skill requirements. Further, longshore unions have emphasized that port workers should not be viewed merely as a production variable, but rather, recognized as active partners that play a key role in port operations. In their view, the workforce must be seen as an integral part of the supply chain that not only contributes to productivity but also influences decision-making regarding operations, reflecting the need for inclusive labour practices that account for workers' rights and well-being.

The drive for profitability and more efficient work practices in ports has led longshoring employers to pursue what are viewed by unions as unpopular bargaining demands that cause parties to lock horns over challenging and polarizing issues. In part due to the distrust between the parties and competition over the role and scope of the ILWU's representation rights, the ILWU Canada and Local 514 both strongly resist modernization and is suspicious of change. As noted by Jamieson and Greyell in their report, "[t]his hostile attitude naturally deepens the adversarial rift between the parties and leaves very little foundation for any sense of reason on the employees' part when it comes to settling disputes over the terms and conditions of employment"[45].

Against the backdrop of a diminished market share for many of Canada's export categories[46] and the difficulty of the issues the parties must tackle in negotiations, the Commission is of the view that steps must be taken to decrease the likelihood that a labour dispute shuts down port activities given the serious impact of such a disruption on the interconnected supply chain and the public.

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[45] Jamieson, H. and Greyell, B., page 143.

[46] According to "Trading Places: Canada's Place in a Changing Global Economy" (*RBC Economics*, 2021), many of Canada's leading export-oriented industries—including lumber, pulp and paper, minerals and metals, automobiles and parts, chemicals and petrochemicals, aerospace products and equipment, and processed food products—have been losing global market share in the last two decades. To some extent, this reflects the rise of new economic giants, notably China, which since 2000 has become the world's largest exporter and the number one producer of manufactured goods. But it also speaks to the fact that Canada has been struggling to retain market share in many traded-goods sectors, as other supplier jurisdictions in addition to China, including the United States, Mexico, and the EU, have made inroads at Canada's expense

The simple threat of a disruption causes shippers to divert cargo elsewhere, which in the case of the West Coast ports, historically has meant diverting to U.S. ports. The BCMEA reports that during the labour instability of the summer of 2023, there were 20 port swaps, twelve diversions, and 48 blank sailings impacting just container vessels alone. In the lead up and during strike action, U.S. marine terminals entered into long-term contracts with container shippers to reroute cargo away from Canada's West Coast ports[47]. The very fact that labour disruption is possible imposes immediate reputational and economic damage. Cargoes, once diverted, may not quickly return, if at all, once a port is back in normal operation.

Almost 30 years ago the Jamieson-Greyell Commission made the following observation in their report:

> The point repeatedly made to the Commission in submissions by primary producers and the port authorities was that Canada's reputation as a reliable trading partner has been significantly affected by work stoppages or the threat of work stoppages in the transportation link between producer and customer. ln a world economy that is highly competitive and cost conscious, it is essential to have reliable, cost efficient and on time delivery. The Commission was provided with numerous incidents of an anecdotal nature where Canadian producers on trade missions abroad have been accosted by trade interests in foreign countries, complaining about the reliability of our delivery systems. These concerns were understood - indeed to a large degree echoed, by the labour and management representatives with whom the Commission spoke[48].

[47] Port swaps are when a vessel changes their schedule to call at another port first, before it's scheduled call in B.C. (e.g. a vessel changes its regular schedule to call in Seattle-Tacoma first, then called at Vancouver). Diversions are when a vessel is scheduled at a B.C. port and diverts to another port. A blank sailing is when a vessel is scheduled to call at a B.C. port, and the scheduled loop is cancelled all together. Container vessels operate on a schedule like a transit bus, so a blank sailing is similar to when a bus is taken off the road.

[48] Jamieson, H. and Greyell, B., page 19-20.

These comments resonate even more today. Several studies have shown that Canada's economic infrastructure lags behind key international competitors in terms of quality and reliability[49]. A World Bank study in 2018 ranked Canada 21st globally in the quality of trade and transportation infrastructure, well behind Germany (1st) and the U.S. (7th)[50]. After examining the results of various international surveys of national competitiveness, Deloitte Canada noted "[t]he perceived quality of Canada's general infrastructure…is just below that of its peers on average and has decreased in recent years[51]." From a review of the literature, the Commission accepts that perceptions of the quality of Canada's transportation infrastructure are particularly unfavourable, and that Canada is likely to see a further decline in its infrastructure rankings. A report by the World Bank and S&P Global Market Intelligence ranked the Port of Vancouver next to last in terms of its performance and operational efficiency in 2021—368th out of 370 ports around the world and 27th out of 29 North American ports[52].

There is no magic solution for finding the appropriate fulcrum point between the interests of labour and the need for stability and efficiency in the ports. Structural changes in the collective bargaining process alone are not a panacea to fully address the shifting industry landscape and pressures nor to mend the trust deficit present in West Coast longshoring negotiations. The reality is that there is an urgent need to adapt to the changing global marketplace that poses a very real threat to the livelihood of longshore workers and foremen if the West Coast ports are not competitive. This reality must be recognized by the union and its members, and the parties must cooperate and be flexible to enhance efficiency in the ports. Navigating those thorny issues is no easy task. However, there are changes this Commission believes will promote better and more stable labour relations in B.C. ports while recognizing that the right to strike is a fundamental Charter right that cannot and should not be taken away for non-essential workers.

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[49] Summarized in "Canada's competitiveness scorecard: Measuring our success on the global stage." *Deloitte Canada,* 2019, https://www2.deloitte.com/ca/en/pages/finance/articles/canada-competitiveness-scorecard.html. Accessed 27 July 20240.

[50] Ibid.

[51] Ibid.

[52] Humphreys, R. M. et al. "The Container Port Performance Index 2021: A Comparable Assessment of Container Port Performance (English)." *World Bank Group*, 8 June 2022, http://documents.worldbank.org/curated/en/099125006072255739/P1758330dccd270a70b31e0619fee32eb41. Accessed 27 July 2024.

9. 1. Recommendation 1: The right to strike/lockout be preserved in the longshoring industry in Canada.

As a starting point, and consistent with our Terms of Reference, the Commission is of the strong belief that free collective bargaining is the fairest and best process for reaching collective agreements. On this, we note our mandate included making recommendations to "reduce the likelihood" of work stoppages. In the absence of some clear direction from Parliament if its intent is to eliminate the right to strike or lockout for the longshoring industry, the Commission is committed to the principles of free collective bargaining set out in the Preamble of the *Code.* To borrow the words used by Jameson and Greyell in their report, "[t]he Commission seeks solutions to alleviate the problems of the serious economic impact of work stoppages at West Coast Ports by way of structural and systemic alternatives to the status quo but without draconian interference with long establish freedoms and traditions[53]."

A number of submissions presented to the Commission addressed the significance and impact of labour disputes in the longshore industry and urged the Commission to find a way to avoid disruptions to supply chains by removing the right of the parties to strike or lockout and by building in binding interest arbitration or final offer selection to the longshoring bargaining structure. A number of other submissions urged the Commission to preserve the strike/lockout model, insisting that the alternatives cannot effectively substitute for the process of free collective bargaining.

The Commission observes that all of those dispute resolution mechanisms have been considered by previous studies and were rejected in favour of allowing free collective bargaining to take its course. This necessarily includes the option of strike or lockout to create the economic pressure necessary to reach a collective agreement.

[53] Jamieson, H. and Greyell, B., page 135.

The Commission is of the strong view that the essential services model cannot work in the longshore industry without severely undermining collective bargaining rights. Longshoring cannot be parsed or reduced in the same way that work is designated in other sectors that provide essential services to allow for a structured reduction in services and a meaningful right to strike. Simply stated, a ship cannot be only partially unloaded, nor can particular goods be selected for removal only, nor can a ship reasonably be unloaded with a reduced crew. Either longshoring in its entirety is an essential service on par with police and fire, where the right to strike or lockout is entirely removed, or it is not essential because the work of loading and unloading shifts is not essential because it inflicts only monetary harm. While no doubt, significant financial impact is caused by a disruption of port services, it simply cannot be said that a disruption of these services causes an immediate risk to the health or safety of the public.

There is no question that the level of acrimony between the parties has heightened tensions and polarized opinions on how to restore a sense of stability and predictability to labour relations in B.C. ports. However, in the Commission's view, limiting or removing the right to strike is unlikely to achieve labour relations stability in B.C. ports and denying the parties a legal right to strike or lockout would do more harm than good, potentially fuelling illegal and unpredictable work stoppages.

Moreover, as many union submissions underscored, the rights to strike and collectively bargain are protected by the Charter's guarantee of freedom of association and are not to be interfered with lightly. While there is plenty of evidence that port strikes and lockouts can cause economic harm, they do not threaten life and limb. This is an important distinction, especially in relation to section 1 of the Charter. While it is in everyone's best interests to avoid labour disputes, the route to doing so is not through a complete ban, but by adding in additional mechanisms to facilitate free collective bargaining as we recommend below.

The Commission recognizes that past and recent work stoppages at the West Coast ports have damaged Canada's reputation as a reliable trading partner and have caused significant economic harm to innocent third parties as well as to Canada's economy as a whole. However, the fact that some labour disputes can unquestionably cause more economic harm than others should not

dictate whether the legal right to strike should be withheld from certain groups of workers. Furthermore, while employer organizations focused exclusively on the negative economic impact of strikes in their submissions, unions and academics pointed to the salutary effects of strikes, underscoring the important role they play in rectifying power imbalances in the labour relations relationship.

Free collective bargaining only works if the parties want it to work. The Commission recognizes that the collective bargaining process is dynamic in its nature and that the results of it rests in the hands of the parties to the negotiations. While collective bargaining is an adversarial process by nature, we believe it carries with it onerous obligations and responsibilities for each party to conduct themselves in a responsible manner to reach a mutually acceptable agreement. Successful collective bargaining requires constant hard work and rational decision-making. In short, the Commission believes better effort needs to be demonstrated by both parties in reaching an acceptable collective agreement and to working through the complex and unavoidable issues confronting them as set out earlier in this report.

That being said, it is beyond question that employers and unions are less likely to bargain earnestly with the objective of securing a deal if they know the Government will intervene to limit the right to strike. This dynamic creates more, not less, tension between the parties, as evidenced by longstanding labour unrest and the frequency of government intervention to end labour disputes in B.C. ports.

If the parties are not meeting their collective bargaining obligations, it is the view of the Commission that meaningful intervention is necessary—particularly in the longshoring industry where so much of the Canadian economy and national interest relies on collective bargaining outcomes. It is not good enough let a dispute fester without meaningful bargaining until one side or the other decide to serve lockout or strike notice and then trigger what has usually been government intervention followed by binding third party assistance. Rather, we believe that if intervention is unavoidable, then early intervention is better than last minute intervention and, more importantly, that informed intervention is better than uninformed intervention based on information filtered through informal channels.

Reliance on ad hoc government intervention to end labour disputes has a corrosive impact on collective bargaining. The Commission is persuaded that the expectation of government intervention affects how the BCMEA and ILWU Canada and Local 514 approach negotiations, holding back on tabling their best offers secure in the knowledge that the dispute will be settled at arbitration. Also, no one "owns" the deal, creating further problems in subsequent rounds. It creates a system wherein the parties are not properly incentivized to reach agreement on their own and exacerbates existing tensions. With the principal that the parties should be facilitated in reaching their own agreements to the greatest extent possible, the Commission recommends that new provisions be enacted to introduce a new special mediation process.

9. 2. Recommendation 2: Legislation be enacted to create a new Special Mediator process to enhance the process of free collective bargaining.

While the Commission takes no position on the ongoing litigation related to the Government's recent use of section 107, we do observe that part of what renders the existing system untenable is that government is compelled to intervene with imperfect information. There is no transparent, fully informed or standardized approach to labour dispute interventions, and this leads unions to challenge these actions on the basis that less invasive measures ought to have been tried first before their Charter right to strike was curtailed.

The Commission is of the belief that the addition of special mediator provisions at the federal level (modelled on section 76 of the B.C. *Labour Relations Code* (B.C. *Code*)) would help address this problem by giving the government a window into what is happening at the bargaining table via a neutral third party. That third party is tasked with producing a detailed report about what has happened and what ought to happen to resolve potential disputes. This means the government would be able to rely on the special mediator's expert opinion about negotiations and the likelihood that the parties can reach a deal. The added benefit of this approach is that, even if the report is not accepted by the parties, a special mediator's recommendations can still advance negotiations by providing a basis for continued bargaining (i.e., a party may say they can live with certain aspects of the recommendations, but not others,

narrowing the issues in dispute and allowing for further negotiations and mediation on the remaining outstanding issues arising out of the special mediator's report).

We considered a longshoring-specific system to fit within our Terms of Reference. However, the Commission is of the view that special mediator provisions will be a helpful tool in other disputes that affect the national interest, of which Canada has seen many of late, as an alternate to ad hoc intervention. While we acknowledge our Terms of Reference are specific to the West Coast ports, the Commission is of the view that our recommended addition to the dispute resolution process under the *Code* should be accessible to assist free collective bargaining across all federally regulated industries. Doing so, in our view, would provide an additional tool to ensure that if and when the government decides it must intervene in a dispute to prevent significant harm to the national interest, it does so fully-informed and guided by a labour relations expert chosen by the parties (unless they fail to agree, in which case one may be appointed) who has been directly involved in the negotiations.

In the Commission's experience under these types of provisions, the mere knowledge that the special mediator is vested with powers to issue a report on the parties' conduct at the bargaining table improves their bargaining conduct and the likelihood that an agreement can be reached without further intervention.

9. 2. a. Special Mediator Provisions

ILWU locals suggested in our meetings with them that the powers of conciliators need to be increased, including by vesting them with the authority to compel participation and production of documents. The Commissions notes these powers are currently extended to conciliation boards and commissions; however, neither are used very often in practice. Part of the reason for this is that under the current provisions of the *Code,* there is a limitation clause which allows for only one of these mechanisms to be triggered in any given dispute. Anecdotally, we heard that conciliation boards and commissions slowed down the bargaining process and required the expenditure of greater resources because they were three person panels. In most disputes that

proceed to conciliation, a conciliation officer is appointed, and this position lacks those powers vested on conciliation boards and commissions.

While the Commission is not suggesting any changes be made to the conciliation process under the *Code,* we do agree that a third-party neutral involved in helping the parties settle the dispute ought to have greater powers than conciliation officers under the *Code.* Specifically, the Commission is recommending that additional bargaining assistance be provided following the conciliation process by embedding a mediator into the parties' negotiations to ensure that meaningful bargaining is taking place and to further facilitate a resolution to negotiations.

This recommendation draws from provisions that exist in other Canadian jurisdictions. For reference, only about six percent of workers in Canada are federally regulated (including those working for banks, airports, broadcasters, fisheries, and interprovincial/international transportation). Outside of those industries, most employees in Canada work for provincially regulated businesses and are governed by legislation administered by the province they work in. It makes sense, then, as previously stated, to look to the mechanisms that exist within other Canadian jurisdictions for guidance on effective, constitutionally sound initiatives that can assist parties in reaching agreements.

B.C., for example, has had special mediator provisions since 1992, when they were brought in as an additional mechanism available after regular mediation proves unsuccessful at resolving the parties' collective bargaining dispute. Section 76 of the B.C. *Code*, for reference, reads as follows:

> Special mediator
>
> 76 (1) The minister may appoint a special mediator, and specify terms of reference for the special mediator, to assist the parties in settling the terms and conditions of a collective agreement or a renewal or revision of a collective agreement.

(2) The minister may terminate the appointment of a special mediator.

(3) The special mediator must keep the minister informed as to the progress of the mediation.

(4) The special mediator, in carrying out the special mediator's duties under this Code, has the powers and protection set out in sections 145.1 to 145.4.

The powers provided to special mediators under the B.C. *Code* are as follows:

Power to compel persons to answer questions and order disclosure

145.1 (1) For the purposes of carrying out duties under this Code, a special mediator appointed under section 76, an industrial inquiry commission appointed under section 79 or a special officer may make an order requiring a person to do either or both of the following:

(a) attend, in person or by electronic means, before the special mediator, industrial inquiry commission or special officer, as applicable, to answer questions on oath or affirmation, or in any other manner;

(b) produce for the special mediator, industrial inquiry commission or special officer, as applicable, a record or thing in the person's possession or control.

(2) The special mediator, industrial inquiry commission or special officer may apply to the Supreme Court for an order

(a) directing a person to comply with an order made under subsection (1), or

(b) directing any directors and officers of a person to cause the person to comply with an order made under subsection (1).

Maintenance of order at hearings

145.2 (1) At an oral hearing, a special mediator appointed under section 76, an industrial inquiry commission appointed under section 79 or a special officer may make orders or give directions as necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any order or direction, the special mediator, industrial inquiry commission or special officer who made the order or gave the direction may call on the assistance of any peace officer to enforce the order or direction.

(2) A peace officer called on under subsection (1) may take any action that is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.

(3) Without limiting subsection (1), the special mediator, industrial inquiry commission or special officer, by order, may

(a) impose restrictions on a person's continued participation in or attendance at a hearing, and

(b) exclude a person from further participation in or attendance at a hearing until the special mediator, industrial inquiry commission or special officer, as applicable, orders otherwise.

Contempt proceeding for uncooperative person

145.3 (1) The failure or refusal of a person subject to an order under section 145.1 to do any of the following makes the person, on application to the Supreme Court by the special mediator, industrial inquiry commission or special officer referred to in that section, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court:

(a) attend before the special mediator, industrial inquiry commission or special officer;

(b) take an oath or make an affirmation;

(c) answer questions;

(d) produce records or things in the person's possession or control.

(2) The failure or refusal of a person subject to an order or direction under section 145.2 to comply with the order or direction makes the person, on application to the Supreme Court by the special mediator, industrial inquiry commission or special officer referred to in that section, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

(3) Subsections (1) and (2) do not limit the conduct for which a finding of contempt may be made by the Supreme Court.

Immunity protection

145.4 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against the special mediator, the industrial inquiry commission, a member of the industrial inquiry commission or the special officer referred to in section 145.1, or a person acting on behalf of or under the direction of any of these, because of anything done or omitted

(a) in the performance or intended performance of any duty under this Code, or

(b) in the exercise or intended exercise of any power under this Code.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Saskatchewan also has similar provisions in section 6-33 of the *Saskatchewan Employment Act*, which allow for the Minister of Labour to appoint a labour relations officer or special mediator or to establish a conciliation board:

Notice of impasse and mediation or conciliation required before strike or lockout

6-33(1) If, in the opinion of an employer or a union, collective bargaining to conclude a collective agreement has reached a point where agreement cannot be achieved, the employer or union shall serve a written notice on the minister and the other party that an impasse has been reached.

…

(4) As soon as possible after receipt of a written notice pursuant to subsection (1), the minister shall appoint a labour relations officer or a special mediator, or establish a conciliation board, to mediate or conciliate the dispute.

(5) Subject to subsection (6), the labour relations officer, special mediator or conciliation board shall give a report, recommendation or decision to the minister and the parties within 60 days after the date of his, her or its appointment.

(6) The parties may agree to extend the time set pursuant to subsection (5) for giving a report, recommendation or decision.

(7) No strike is to be commenced and no lockout is to be declared:

(a) unless a labour relations officer or special mediator is appointed or a conciliation board is established pursuant to subsection (4);

(b) unless:

(i) the labour relations officer, special mediator or conciliation board has informed the minister and the parties that the labour relations officer, special mediator or conciliation board does not intend to recommend terms of settlement; or

(ii) the labour relations officer, special mediator or conciliation board has informed the minister that the parties have not accepted the recommended terms of settlement by the date set by the labour relations officer, special mediator or conciliation board;

(c) unless the labour relations officer, special mediator or conciliation board has informed the minister and the parties in a report that the dispute has not been settled; and

(d) until:

(i) in the case where no essential services are identified by the parties or there is an essential services agreement in effect between the parties, the expiry of 14 days after the date on which the labour relations officer, special mediator or

conciliation board has informed the minister pursuant to clause (c); or

(ii) in the case where essential services are identified by either party and there is no essential services agreement in effect between the parties, the expiry of seven days after the date on which the labour relations officer, special mediator or conciliation board has informed the minister pursuant to clause (c).

(8) If it appears to the labour relations officer, special mediator or conciliation board that settlement of the dispute is unlikely before a strike or lockout, the labour relations officer, special mediator or conciliation board shall discuss with the union and the employer whether it is necessary to establish a shutdown protocol that preserves the plant, equipment and any perishable items.

We acknowledge that special mediators have been used federally on an ad hoc basis in the past. However, we believe that enshrining this practice in the *Code*, by setting out the powers of the special mediator in legislation, will enhance the transparency and predictability of the mediation process.

In so recommending, we note that the Sims Task Force (1996) suggested that the Minister of Labour should have the option to appoint a Public Interest Panel on an ad hoc basis to address disputes with serious public consequences. The rationale for this recommendation was as follows:

> The appointment of Public Interest Panels for some disputes will give the Minister the benefit of considered advice and satisfy the legitimate and important objective of being seen to balance the public interest with the *Code*'s stated

> purpose of fostering collective bargaining. This should also reduce the appearance of unjustified interference in free collective bargaining[54].

While we agree with that rationale, we believe a special mediator selected by the parties and embedded in their negotiations is in a much better position to provide thoughtful intervention in labour disputes and is a more efficient and cost-effective method of intervening in disputes that involve the national interest. By adding special mediator provisions, the parties will have the assistance of the third party vested with power to help them reach an agreement and the Minister will gain access to expert advice and insight into negotiations so that they can act accordingly and reduce perceptions of unnecessary governmental interference in labour relations. Even when a special mediator's recommendations are rejected, their issuance often narrows the issues in dispute and can be used to push the parties to finding the path to a renewed collective agreement.

The Commission notes that this is not dissimilar to changes recommended in the Jamieson-Greyell Commission to enhance the conciliation process, including by giving the right to the Associate Chair to appoint a conciliation officer at any time in the negotiations and a provision requiring the conciliation officer to provide a report setting out the matters on which the parties have and have not agreed and such other information as the conciliation officer considers relevant to the collective bargaining dispute between the parties including their recommendation as to the process that should be followed to achieve a collective agreement. They also recommended a provision stipulating that a conciliation officer need not be an employee of the CIRB, but did not go so far as to suggest the officer ought to be selected by the parties. We note in addition to enhanced conciliation, Jamieson and Greyell recommended a further provision authorizing the Associate Chair to appoint a fact finder to make non-binding recommendations[55].

While the Commission believes that adoption of those recommendations would be better than the current *Code* provisions, we think a special mediation process that takes place after conciliation

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[54] Sims, A., Blouin, R. and Knopf, P., page 158.

[55] Jamieson, H. and Greyell, B., page 208-209.

is preferable for the reasons previously articulated. It moves the dispute through a dispute resolution continuum and allows for the necessary passing of time and narrowing of issues.

Further, we note that special mediators can be appointed under broad terms of reference which specify they are to apply the principles of interest arbitration in fashioning their recommendations. For reference, those principles include replication of what the parties themselves would have arrived at had they reached an agreement on their own, the requirement to be "fair and reasonable" in the sense that the award must fall within a "reasonable range of comparators" even if one party could have imposed more extreme terms, the notion that changes must be incremental and not ground-breaking, and that historical patterns of negotiated settlements between the parties carry significant weight.

Tying the special mediator's recommendations to well-established interest arbitration principles makes sense in that it provides a rational and acceptable basis for the special mediator and for the parties to analyze the dispute, while still allowing the parties to continue bargaining toward an agreement.

In sum, the Commission is of the view that the best deals are reached by the parties themselves doing the difficult work of bargaining, and we believe this additional measure will enhance the opportunities for this to happen and reduce the need for further intervention when implemented in tandem with our other recommendations.

We recommend the following mechanics of such a provision:

9. 2. b. Triggering the Special Mediator

If after conciliation under section 72 of the *Code* the parties remain unable to resolve their dispute, either party may apply to the Minister for the appointment of a special mediator, or the Minister may appoint a special mediator on their own if the dispute has the potential to adversely impact the national interest of Canada.

In so recommending, the Commission considered whether it would be advisable for the special mediator to be inserted earlier into the bargaining process, perhaps foregoing conciliation altogether. However, we decided it was better for conciliation to proceed as it exists now, and for special mediation to be the next step on the continuum towards more intrusive intervention into negotiations.

Even when not successful, conciliation plays a useful role in wearing down the parties and bringing at least some focus into the dispute. In other words, even if conciliation does not result in settlement of a collective agreement, its still a worthwhile endeavor. In the Commission's view, inserting a special mediator into the process too early doesn't make it any more likely the parties will get a deal. Collective bargaining is about timing, and mediators can't control that, no matter how early they are involved in negotiations.

9. 2. c. Selecting the Special Mediator

The parties should be able to mutually select the special mediator to be appointed. Failing agreement, the Minister of Labour may appoint independently. In that case, the Minister will seek the agreement of the parties on a special mediator and, if agreement cannot be secured within a reasonable period, will independently appoint a special mediator.

9. 2. d. Duties and Powers of the Special Mediator

The special mediator will have the powers granted to conciliation commissioners and boards under section 84 of the *Code* including, but not limited, to the power to set their own process.

Upon determining that the parties cannot reach an agreement on a collective agreement, the special mediator will provide:

- A comprehensive report outlining the issues in dispute, the respective positions of the parties, and:

    (i) setting out their view on just and reasonable settlement terms on each issue;

(ii) recommend mechanisms to conclude the terms of the collective agreement;

9. 2. e. Financial Arrangements

The costs of the special mediator will be shared equally between the involved parties to promote a collaborative and mutually invested process.

9. 2. f. No Strikes or Lockouts

During the period in which the special mediator is active, and for ten days following issuance of their report, both parties will be prohibited from issuing strike or lockout notice.

9. 2. g. Immunity Protection

A provision should be included with the special mediator provisions that stipulates that no legal proceeding for damages lies or may be commenced or maintained against the special mediator, or a person acting on behalf of or under the direction of the special mediator, because of anything done or omitted:

(a) in the performance or intended performance of any duty under this *Code*, or

(b) in the exercise or intended exercise of any power under this *Code*.

Unless the action relates to anything done or omitted by the special mediator in bad faith.

9. 3. Recommendation 3: A B.C.-wide geographic certification (excluding Westshore Terminals and Trigon Pacific Terminals) is the most appropriate bargaining unit for longshore workers.

In practice, bargaining in B.C. ports has long been structured on an industry-wide basis.

The ILWU's longstanding voluntary participation in industry-wide bargaining suggests that the bargaining structure is not the problem. Rather, the ILWU Canada and Local 514 object to the composition of the BCMEA's bargaining team and believes a reversion to enterprise-based bargaining will solve the problem. The Commission does not share this view.

The Commission understands that both ILWU Canada and Local 514 to want to be able to choose between industry-wide and enterprise-based bargaining on an *ad hoc* basis, but the uncertainty created by the parties' largely voluntary bargaining structure is not consistent with the need for reliability in Canada's national supply chain nor with the structure of other ports in Canada nor around the world.

As previously noted, but worth repeating, in B.C., although the ILWU Canada has been bargaining with the BCMEA on an industry-wide basis for longshoring workers, it has been doing so on an informal basis.

In recommending a single bargaining unit for longshoring work on the West Coast, as opposed to smaller geographic certifications, the Commission agrees with and adopts the findings of the Jamieson-Greyell Commission that:

> …regionalization of the Ports on the West Coast would likely increase rather than decrease fragmentation of bargaining units. The present broader based bargaining structure which results in one master coast wide collective agreement in longshore is much preferable to four regional agreements. There is presently one set of negotiations covering the coast rather than the proposed four sets of collective bargaining. A fragmented structure which produces four sets of collective bargaining could only lead to increased industrial instability and would act, of course, to the detriment of the suppliers or customers who, for geographic reasons, are bound to the use of a particular port.

The Commission accepts that the various ports on the West Coast cannot effectively act as alternatives to one another in case of labour disputes. For instance, the Port of Prince Rupert is geographically isolated, with limited infrastructure, and can't serve as an alternative for major shipments such as coal or grain. Ports on Vancouver Island are similarly constrained, and the Port of Vancouver, while potentially serving as a substitute for others, does not have any port that can serve as its alternative.

The fact that the parties have been bargaining on an industry or geographic basis for decades is relevant to this recommendation. On this, the Commission observes that in *W.S. Anderson Co. Ltd. et al.* (1984), the CIRB made several conclusions relevant to the present matter, including that various ports on the Miramichi River were appropriately included in a single geographic certification in part due to the historical bargaining structure voluntarily utilized by the parties. In concluding the geographic certification was appropriate in that case, the CIRB found that the existing locals "exist primarily as geographical subdivisions of the union," that "[the locals] are not separate bargaining units," and that the existence of a common hiring hall system is not a prerequisite for certification under what is now section 34 of the *Code*[56].

Similar comments can be made about the ILWU Canada on the West Coast. On a voluntarily structured basis, ILWU Canada already acts, in practice, as a council of unions, leading negotiations with the BCMEA on behalf of its member locals. While it is true each ILWU Local maintains its own independent leadership and union members, the issuance of a geographic certification will not interfere with those arrangements. Rather, in the Commission's view, certifying a council of unions to represent ILWU Locals in negotiations with the BCMEA will bring stability and certainty to future rounds of bargaining and is fully consistent with the legislative intent in enacting section 34 of the *Code* and with the CIRB's modern jurisprudence on geographic certifications in longshoring.

While ILWU Canada and Local 514 made clear in their respective submissions that they oppose geographic certifications, we note this view is not a universal one among unions. For example,

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[56] *W.S. Anderson Co. Ltd. et al.* 1984 CLRB 454, 55 di 105.

CUPE Local 2614, representing Port of Québec Longshoremen, argued in favour of geographic certifications generally in its submission to the Commission:

> This type of certification should not be fragmented and, eventually, broader certifications should even be set up, so that, for example, from Quebec City to Sept-Îles, longshoremen can unite to bargain collectively because of their small size and since essentially a single employer gives all the work there, but also to prevent the work of one from becoming the work of the other in the event of a labour dispute. (page 4)

Moreover, in the *Toronto Port Authority* (2016) cases, it was the union, not the employer pushing for geographic certification[57]. So too is this true in Halifax and elsewhere. In fact, as ILWU Local 514 points out, it actually applied for a geographic certification previously in or around 1974, but that application was opposed by the BCMEA. ILWU Local 514 later withdrew that application and obtained certification on a company-by-company basis, meaning that the issue of whether a geographic certification was an appropriate unit was not explored at that time[58].

Similarly, as noted in the Jamieson-Greyell Commission*:*

> … the ILWU (Canadian Area) and the BCMEA did file a joint application for geographic certification back in 1983 seeking a bargaining unit of province-wide scope. A number of nonunionized companies that could have been swept into the bargaining unit challenged the application as did a number of provincially regulated lumber and pulp operators who load their own product aboard ships. After two weeks of hearing before the CLRB, the application was withdrawn (CLRB File No. 530-967)[59].

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[57] *Toronto Port Authority,* 2016 CIRB 844.

[58] *Canadian Stevedoring Co.,* 1974. CLRB 2354-U, file 2284-C, *supra* note at paragraph 18.

[59] Jamieson, H. and Greyell, B., page 35.

The Commission is of the view that a geographic certification that includes all B.C. ports (except Trigon Pacific Terminals and Westshore Terminals) is the appropriate unit for bargaining. As further explained, the Commission believes this certification ought to cover all longshore workers including those represented by ILWU Local 514, as such a configuration would greatly reduce the likelihood for labour disruption in B.C.'s ports, and because such a framework makes sense for collective bargaining in this unique and important industry.

The exclusion of Trigon Pacific Terminals and Westshore Terminals reflects the bargaining history those terminals have had with the ILWU separate from the BCMEA. The Commission accepts that there is no labour relations purpose for including them in the geographic certification given that a labour dispute at one of these terminals would not affect BCMEA members companies or vice versa.

Not only does such a certification bring immediate stability, but it brings stability into the future, since the effect of a geographic certification in B.C. is that employees of new entrants to the longshore industry are covered by the geographic certification and collective agreement. The CIRB explained the rationale for these "exceptional provisions" as follows:

> 34 The Code provides for consolidated employer bargaining in the longshoring industry of a given port with a view to minimizing the potential for instability in that industry. **The monopoly created by the existence of a single bargaining structure has the effect of capturing any new employer engaging in longshoring activities within that port into the existing employer certification and making it a party to the existing collective agreement, whether or not it is named in the certificate**. These exceptional provisions were added to the Code in response to the troubled history of the longshoring industry in the ports along the St. Lawrence Seaway and the findings and recommendations of several commissions of inquiry. This history

> is reviewed notably in Maritime Employers' Association (1981), *45 di 314* (CLRB no. 346) [emphasis added][60].

The reasoning for this was also explained in ***International Longshoremen's Association, Local 1739****:*

> To allow a new employer performing longshoring activities to set up operations in the port and recruit manpower from outside without any obligation to first recruit its manpower among these professionals who were laid off owing to a lack of work, and thus not to contribute to the collective effort of the other employers who have to provide job security - to permit the creation of a new bargaining unit which could be included in the first one - would from any point of view be returning to the Middle Ages of the history of labour relations in the ports along the St. Lawrence. This would constitute disdaining the legislature's will, and the observations and recommendations of the commissions to which we referred earlier..."[61]

The Minister of Labour's purpose in establishing the Commission was to find ways to improve the structure and processes for collective bargaining in the West Coast ports, thereby enhancing labour stability.

In the Commission's view, a broad geographic certification that appropriately preserves the historic exclusion of Westshore Terminals and Trigon Pacific Terminals while ensuring the future stability of the B.C. ports by bringing new entrants into the bargaining structure would best achieve those objectives.

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[60] *Bayside Port Employers Association Inc*., 2004 CIRB 293. See also *Maritime Employers Association*, 2014 CIRB 728; and *Rideau Bulk Terminals Inc*., 2011 CIRB 608.

[61] *Cargill Grain Co., Gagnon and Boucher Division v. International Longshoremen's Assn., Local 1739,* 1983, F.C.J. No. 948; cited with approval in *Mobil Oil Canada Ltd.*, 1983, 53 di 114*,* page 11.

9. 3. a. Sub-Recommendation: The geographic certification for longshoring should include foremen and other longshore workers represented who work for BCMEA members.

In the most recent round of bargaining, ILWU Local 514 indicated that it wishes to pull out of the industry-wide bargaining structure and bargain with certified employers on an individual basis. This would represent a significant departure from the bargaining structure the parties have utilized for decades, but a permissible one without intervention, given that ILWU Local 514 holds enterprise-based certifications, and has a right to bargain according to those certifications unless they are rescinded or altered.

This fact was recognized by the CIRB in the context of the recent industry-wide lockout of ILWU Local 514 members, during which the CIRB found the union's strike vote amongst its members working at one employer site was illegal on the basis that the parties had voluntarily engaged in industry-wide bargaining since the commencement of that round of negotiations. On this point the CIRB held:

> **54** The union changed the course of bargaining at a crucial time in negotiations when the parties were making ultimate efforts to reach agreement by exchanging comprehensive proposals. The union conducted a strike vote isolating one employer as the parties acquired the right to strike and lockout. In the Board's view, this had the effect of substantially modifying the framework for bargaining in the manner described in *Interior Forest Labour Relations Association*. The BCMEA is rightly concerned about its ability to make proposals that respond to the constituency that will ultimately be asked to ratify an agreement when that constituency is substantially modified at this late stage of bargaining. The union's attempt to revert to the existing certified bargaining units and its timing in doing so removed the prospect for productive bargaining at a critical time.
>
> **55** It is trite to say that in collective bargaining, both parties develop strategies that will best achieve their objectives and make the most gains for their respective constituents. The *Code* provides a framework and establishes rules for how bargaining

should unfold. Once the parties are well engaged in this process, the playing field must remain stable and conducive to reaching agreement. There is no dispute in this case that bargaining has occurred on an industry-wide basis and that, historically, strike votes and ratification votes were conducted among all union members across all member employers of the BCMEA. The union engaged in the same industry-wide bargaining during this round of collective bargaining. It did not file individual notices to bargain. It did not file individual notices of dispute. It participated at the industry-wide bargaining table with the BCMEA and agreed to items that involved the industry and the terms of the expired collective agreement. Until it acquired the right to strike, the union was fully engaged in bargaining for an industry-wide collective agreement with the BCMEA, presenting and responding to comprehensive proposals.

56 In these circumstances, the Board finds that the union's strike vote conducted only among the employees of DP World Canada amounted to a breach of the union's duty to bargain in good faith and to make every reasonable effort to enter into a collective agreement. The union's conduct was an attempt to single out one employer, just as the parties acquired their right to strike or lockout, and subverted the collective bargaining process that was underway. Simply put, the union cannot ride two horses at the same time and then pick the one that best suits its interests late in the race, just as it reaches the finish line.

57 That said, the Board is also mindful of the certification orders that recognized Local 514 as the bargaining agent for individual bargaining units for most employers that are members of the BCMEA. It is also well aware of the voluntary nature of industry-wide bargaining. As it stated in *BCMEA 566*:

> [28] ... The Board also accepts that this was the accepted protocol for this latest round of bargaining. However, it is equally true that the BCMEA is only a voluntary association and is not a designated employer under section 33 of the *Code*. It is also a fact that there exist separate certifications or separate voluntary recognitions for each of the individual employers. Accordingly,

> bargaining on an industry-wide basis is a voluntary rather than a statutorily-mandated process between these parties and thus cannot be forced by one party on the other without their consent. The Board has stated in the past that where joint bargaining is only voluntary, it is, for the most part, unenforceable: ...
>
> **58** This decision does not have the effect of changing or redefining the existing certified bargaining units. Rather, the Board focused on the union's conduct during bargaining and its engagement in and commitment to industry-wide bargaining, as it had demonstrated in previous rounds of bargaining. If the union wishes to assert its bargaining rights for each individual unit, it should adopt an approach that is consistent with that intent and not wait until the end of the bargaining process to assert these rights. That is not what happened in this round of bargaining. The Board is not prepared to condone the union's conduct in these circumstances[62].

We believe there is a compelling reason for the CIRB to issue a B.C.-wide geographic certification that encompasses ILWU Local 514 and other workers presently represented by the ILWU Canada at BCMEA-represented terminals including ship planners, dispatchers, maintenance, facilities, operations staff, office staff, and IT field technicians. In the view of the Commission, such a configuration is consistent with the *Code* and the CIRB's modern jurisprudence in respect of section 34 of the *Code*. Stated simply, the current model of collective bargaining with different bargaining units is contributing to the frequency of labour disruptions. In the Commission's view, a more inclusive framework with a tiered bargaining structure, as discussed later in this report, will bring much needed stability to B.C.'s ports and ensure that waterfront workers can continue to be represented by the local of their choice.

The Commission acknowledges ILWU Local 514's contention that industry-wide strikes and lockouts pose a more serious threat to the continuous flow of goods through B.C.'s ports and, thus, have a significant negative effect on the Canadian economy as well as Canada's national

[62] *British Columbia Maritime Employers Association,* 2024 CIRB 1148.

and international reputation in trade. However, in the event of a labour dispute at a major port like Vancouver, there are no other West Coast Canadian ports that could handle the required capacity. In effect, this means that separate certifications in smaller geographic regions in B.C. would not minimize the impact of a disruption in any one area but would maximize the likelihood that more frequent disruptions occur. Such an approach would be entirely inconsistent with the Commission's mandate to enhance the labour stability of B.C.'s ports.

The Commission is guided by the findings in *Terminaux Portuaires du Quebec (TPQ) (Re),* in which it held:

> The purpose of section 132 is to ensure industrial peace and avoid the conflicts to which a situation where there are many employers may lead. We would say that the exercise of this discretion should be guided by the likelihood of improved stability and more productive collective bargaining. We believe that it is better to prevent war than to limit oneself to trying to end it once it has begun. Having said this, we would point out that where specific cargoes or operations require special arrangements, it will be up to the parties to settle them in their negotiations. Both sides are well aware that realism will always be their best guide. The fact that certain customs may be disturbed, however firmly rooted they may be, should not mean that section 132 cannot be applied, if it appears that a more peaceful future can be guaranteed by its application.[63]

Under the more modern framework outlined in the CIRB's decision in *Toronto Port Authority* (2016), the ultimate question in determining whether a geographic certification ought to be granted is whether there is a labour relations purpose for geographic certification[64]. While the Commission acknowledges that a common pool of labour (or common labour force) is a consideration under the *Code*, it points out that the CIRB has made clear this factor must be considered in the context of the bigger question of industrial stability. In the present case, we

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[63] *Maritime Employers' Association and Terminaux Portuaires du Québec*, 1987 CIRB 642, page 30.

[64] *Toronto Port Authority,* 2016 CIRB 844, paragraphs 19 to 35.

have a common pool or pools of labour working under the same terms and conditions of employment under a single collective agreement, the Longshore Agreement.

The same can be said of the 514 Agreement. Under the 514 Agreement, members of ILWU Local 514 are generally directly employed by members of the BCMEA forming part of their permanent workforce, although there is a pool for displaced forepersons and priority hiring between companies. Employers are therefore hiring from a common pool. The fact that forepersons are "regular workforce employees" (i.e., do not work through a hiring hall) is not, in the view of the Commission, an impediment to geographic certification.

In reaching this conclusion, the Commission observes that both the Longshore Agreement and the 514 Agreement are industry-wide and provide a mechanism whereby hiring is from a group of employees. For example, Article 9.2 of the Longshore Agreement provides, in part:

> 2. The Parties will jointly:
>
> (a) determine from time to time that in each area there is an adequate and competent work force and an appropriate number of employees to be registered and despatched within and between areas;

Article 22 of the Longshore Agreement, Transportation and Traveling Time, expressly contemplates workers under the agreement travelling from "home" port to working at other ports. We also note that various Black Book documents contemplate the interconnectedness of labour under the Longshore Agreement, for instance:

a) BB#36, BB#37, BB#39, BB#40 – contemplates workers travelling to various locations to fulfill a workforce.

b) BB#41, #78 – contemplates transportation from Vancouver to the Squamish Woodfibre Area, and contemplates opportunities for Squamish

Casuals to work in Vancouver where there is no work opportunity in the area.

c) BB#86 – contemplates inter-local travel between Chemainus, Port Alberni, Cowichan Bay, and Victoria as Locals 503, 504, and 508 were amalgamated into a single Local.

d) BB#87 – contemplates Local-based committees travelling to other locations to gather information for the purposes of their mandate.

The interconnectedness of labour between ports is also contemplated in the manner the Longshore Agreement is carried out:

a) Each Local has a Visitors board for union members from other Locals to join and be dispatched from. Visitor members are dispatched before casuals.

b) The Constitutions of the Locals make provision for "travelling cards" between Locals. This practice, called "wolfing" is a considerable worker mobility benefit under the Longshore Agreement.

Under the 514 Agreement, foremen also may move between locations with a single employer (for example, GCT is a single employer which is serviced by different locals at different operations). Foremen may also be dispatched as service group foremen (Article 22) as well as pool foremen.

In our view, the foregoing makes clear that both longshore workers and forepersons across the West Coast ports effectively constitute a single pool of labour as a consequence of their mobility rights which are contained under the collective agreements and operationalized through the complex dispatch process that has evolved under those collective agreements. Further, the

Commission has heard anecdotes of *actual* mobility of longshore workers working outside of their home port under the Longshore Agreement and the 514 Agreement, and learned that this is not a rare exception to the norm. It occurs regularly, particularly in areas or times of reduced work.

In any event, the most pressing reason for an all-encompassing geographic certification is that it will promote industrial stability much more effectively than separate bargaining units. In the Commission's view, such an approach is consistent with the traditional criteria for determining appropriate bargaining units, as summarized by the CIRB in *National Bank of Canada*:

> 1. community of interest, by salary or compensation, hours of work, fringe benefits, supervision, qualifications and duties; community of interest by frequency of contact with other employees doing the same work, integration into the duties of other employees, interchange of employees, geographical proximity;
>
> 2. extent of union organizing;
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> 3. employee desires;
>
> 4. bargaining history,
>
> 5. employer's structure;
>
> 6. viability of the unit.

While not universal, as earlier noted, geographic certifications are the norm in other Canadian ports. In Halifax, for example, this arrangement has seemingly served the parties well. There have been no work stoppages since the 1970s. ILWU Canada at page 3 of its supplemental submission to the Commission noted that "the Halifax model of geographic certification offers a more helpful example of how a collaborative and effective bargaining process can be achieved."

During our visit with the parties in Halifax, we learned that it was the union that was the impetus for consolidating smaller bargaining units into a council of trade unions and that this structure has worked well for the smaller locals who previously, in practice, merely "me-tooed" the results

of bargaining achieved by the largest ILA local. We heard about the process of merging the collective agreements, whereby the parties identified common terms and maintained as separate articles any differences in language. While no doubt some of the success in this model must be credited to the relationship between the parties, the Commission heard that within the ILA Council, the constituent members listen and care about each local's issues, and that there is no agreement on the master until all of these local issues are resolved.

While the Commission has concluded that the issuance of a geographic certification for all longshoring workers makes sense, this is not to suggest that geographic certifications are a panacea. As the ILWU Canada correctly noted in its supplemental submission, such certifications have not "eliminated" labour disputes in Montreal. However, with the right to strike/lockout preserved, the goal of the Commission is not to "eliminate" the possibility of labour disputes. We recognize that they continue to serve an important function and that the rights of workers to meaningful collective bargaining ought not be infringed upon lightly. Rather, the Commission is tasked with developing recommendations that will reduce the likelihood of work stoppages. To that end, we have strong reason to be believe that a geographic certification would indeed reduce that likelihood.

On this point, we turn to the analysis of the Jamieson-Greyell Commission, which observed:

> Notwithstanding the common ground between the WFEA and Local 514 for the continuation of the status quo, **there is an obvious possibility here of including the foremen's bargaining units in the same bargaining unit as the longshoremen or, at the very least, consolidating their bargaining with that of the longshoremen**[65]. [emphasis added]

Acknowledging ILWU Local 514's strong opposition to merging their bargaining unit with other longshoring locals and its argument that doing so would give rise to conflict to interest, nonetheless held:

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[65] Jamieson, H. and Greyell, B., page 148.

> All of this notwithstanding and, with the full knowledge and sympathy for the long and arduous battle that these foremen have endured over the years to **get access to collective bargaining and to maintain their separate identity, the Commission is of the firm view that supervisory employees are routinely included in the same bargaining unit as those they supervise and they somehow manage to have their concerns aired at the bargaining table.**
>
> The simple proposition here is whether a small bargaining unit of 450 people who the CLRB has identified as employees within the meaning of the Code, ought to have a separate right to strike? The answer to that question falls within the purview of the CLRB and the Commission can only recommend steps be taken to bring this matter before that body[66]. [emphasis added]

Jamieson and Greyell went on to recommend that the Minister of Labour, amongst other things, direct what was then the CLRB to initiate a review of certifications issued to the ILWU with a view to determining whether a single bargaining unit is an appropriate bargaining unit for coast-wide collective bargaining and whether a council of trade unions composed of all ILWU Locals was an appropriate bargaining agent for coast-wide bargaining. Jamieson and Greyell further recommended, amongst other things, that, pursuant to section 107 of the *Code,* the Minister direct the CLRB to initiate a review of certifications issued to ILWU Local 514 for the purposes of examining whether:

(a) It is appropriate to consolidate the bargaining units issued;

(b) A council of trade unions which would include ILWU Local 514 with other ILWU bargaining units.

There was no information presented to the Commission that undermines Jamieson and Greyell's findings, analysis, or recommendations related to geographic certifications. If anything, the

[66] Ibid., page 192.

arguments in favour of a geographic certification have only been strengthened given more recent disputes. While ILWU Canada and Local 514 indicated their preference for retaining flexibility to engage in either enterprise-based or industry-wide collective bargaining, the uncertainty that results from such perceived flexibility is contributing to the instability and unpredictability of subsequent rounds of bargaining. The assertion by ILWU Canada and Local 514 in their respective submissions that they plan to break with tradition and engage in enterprise-based bargaining moving forward in certain circumstances (while preserving the option to revert to industry-wide bargaining), in the view of the Commission, increases the risk of sequential work stoppages. The Commission is of the view that consolidating bargaining units would reduce the opportunities for labour disputes and contribute to greater labour stability.

While we acknowledge that the working conditions of longshore workers and foremen are different, we do not see that as necessitating their continued separation in bargaining. Parliament included section 34 in the *Code* for longshoring in recognition that the unique circumstances of this industry render bargaining on an enterprise basis impractical, and it is consistent with the purpose of this provision to include all the longshoring workers in the geographic area working for the same employers into a single unit.

In the Commission's view, there is no labour relations rationale that today supports separate certification for longshore forepersons or for other longshoring positions in B.C. presently covered by other collective agreements—particularly given the recent rounds of bargaining. Indeed, we believe that it is highly unlikely that foremen would be certified separately from the longshore bargaining unit today if an application for certification or consolidation were before the CIRB.

The role of foremen today is the same as described in *Canadian Stevedoring Co.* (1974). That case, the CIRB summarized the evidence about the role and responsibilities of foremen as follows:

> **Many of the attributes of authority which are found at least in part and to a certain degree in foremen and supervisors in other industries, are here**

practically non-existent since they are twice removed from them, having been delegated to this strong employers' association.

In the key and most important attributes of management, that is the dismissing or promoting and demoting of employees, functions which may have the greatest impact on the economic lives of employees, **we find that the foremen or supervisors have no great say: in fact the dismissal, the promotion or demotion of employees is largely handled by the B.C.M.E.A.** And even there, some aspects of the exercise of these functions are preset and predetermined in various sections of the collective agreement entered into by the union representing the longshoremen and the B.C.M.E.A.

Definitely, the authority to make the original decision or the final one does not rest at the level of management which is under study.

As to the hiring, again we find that the foremen or supervisors have no important role in this function. The study of the evidence demonstrates that it is discharged by the B.C.M.E.A. and again here is in part pre-determined by the collective agreement.

As to the exercise of independent judgment as the Board defined it above, it is minimal in the case of the foremen or supervisors. In the application of their skill, which is the efficient and expeditious loading or unloading of commodities, and the carrying out of other ancillary duties they have obviously been left with great initiative. En passant, the fact that these men are using this initiative in their skill to the degree that they do is a measure of the success of that industry on the West Coast. **But it has nothing to do with the independence of judgment with which the Board is concerned, that is: independence of judgment in the dismissing, promoting, demoting, assigning of work, budgeting for money, hiring of new employees, and participating in the decision-making process.**

Concerning the determination and decision-making process as to job priorities, the assignment of work to persons (not the division or allocation of pre-determined work) again we find that it is vestigial in most cases**. The evidence is generally replete with examples of how the priorities for jobs to be done are handed down in a predetermined fashion by higher levels of management to these foremen or supervisors.** Also we find in one section of the collective agreement quoted above that the allocation of jobs to longshoremen is greatly preset at the negotiating table between the union of longshoremen and the B.C.M.E.A.

If we turn to the function of buying, or spending money, or the ordering of new equipment, the authority left to these men is relatively minimal. We are dealing with enterprises which have relatively high capital investments in tools and equipment as well as material facilities. It is quite easy to discern that the only area where independent judgment is left to the foremen or supervisors is in cases of emergencies where requisitioning of existing materials or spending of money for urgent repairs are required in order to maintain the efficient and constant flow of operations. In terms of dollars even that relative authority is not significant as compared to the overall value of the assets in the operations.

As to policy-making or participation therein, it is practically non-existent in the circumstances. Sporadically, but not in most cases nor in recent years have these men been invited to attend management meetings. But even in cases when such meetings were held, the nature of these sessions was far more informative than being the act of sharing in the overall responsibility of studying, identifying, selecting and applying new policies or modifying existing ones. **At most in this area, these foremen or supervisors act as conduits for higher management vis-à-vis the longshoremen.** Another activity which this Board took time to examine very closely was the role of foremen and supervisors in the disciplining of employees.

There was uncontradicted evidence that they are authorized freely to "fire" employees. The Board has defined above what is meant by this process. It means

the suspension of an employee for the balance of a shift. However, a close analysis of the process as well as of the various sections of the collective agreement dealing with this demonstrates that here again they only have a relatively insignificant level of authority. In order to maximize the effective use of their expertise, that is the efficiency in the swift loading or unloading of commodities from ships, the Respondents have felt it necessary to leave with these men the weapon of fast removal from the job for the balance of a shift.

From there on, the evidence and the collective agreement prove that:

1. **the foremen do not represent the employer at any level of the grievance procedure;**

2. **once they have taken this action of "firing" they do not participate any more in the aftermath of that disciplinary action**. It becomes a matter between not even the Respondent and the union but a matter to be dealt with between the B.C.M.E.A. and the union;

3. **as a matter of fact, as regards penalties and discipline the collective agreement pre-determines a large area of the rules applicable. For instance, there are automatic penalties in the collective agreement in Section 4.10. The B.C.M.E.A. has authority in other cases**. Also the evidence revealed that although foremen or supervisors may make recommendations for additional discipline, they are not involved in the eventual study and final determination of these recommendations. Their recommendations are sometimes acted upon, ignored completely, modified or increased by higher level in management or by the B.C.M.E.A. after consultation with the union;

4. **as to the various steps in the grievance procedure or in the arbitration machinery one finds that the direct participation of these men is nil except the odd occasion when one of them would be called upon to testify in arbitration procedures**. There

was no evidence that they are members of the team directly defending the interests of the employer before the arbitration tribunal.

As to the criterion of participation in or influence over negotiations of collective agreements, these men have no input.

Are these men delegated the responsibility of representing management in various joint committees with the union or other organizations in matters of labour relations or safety? The collective agreement in Article 3 establishes the Port Labour Relations Committee, the Joint Industry Labour Relations Committee, a joint Safety Committee, the Vancouver Island Committee and others when necessary.

Yet the evidence was positive that none of these men is appointed to represent management on any of them.

The reading of the whole collective agreement signed on behalf of this Respondent by the B.C.M.E.A. and the union of longshoremen establishes in the mind of the reader the conviction that here is a relationship between employer and employee which is rigidly governed, controlled and determined by negotiations between two collectivities: the union of employees and the association of employers. There is not much discretion or authority left to the foremen or supervisors. **On balance, the Board came to the conclusion that the jobs performed by these foremen or supervisors, do not involve to any significant degree or extent the performance of management functions although the degree or extent varies from company to company**[67]. [emphasis added]

Nothing has changed in the 50 years since that case was decided. The work of forepersons is largely "work direction" and does not, in the Commission's view, raise a level of conflict of interest that would support separate certification.

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[67] *Canadian Stevedoring Co.,* 1974. CLRB 2354-U, file 2284-C, supra note 36 at pages 47-49.

Recent decisions of the CIRB regarding the appropriateness of creating a separate bargaining unit for supervisors similarly do not support separate certification of forepersons. In *Sperry Rail Canada Ltd.* (2022), for example, the CIRB held:

> The Board finds that the shop supervisors and project supervisors have an important role to play in the interview process and that their recommendations carry significant weight in the employer's hiring decisions. However, the evidence also reveals that the effective decision to hire a candidate is not theirs to make. In fact, the evidence demonstrates that they do not exercise independent decision-making authority in hiring employees since their recommendations are coupled with input from Human Resources and require the approval of the manager, production, the vice-president and/or Human Resources**. As mentioned above, the power to recommend is not equivalent to the power to decide. In the present case, the evidence reveals that these supervisors do not have the power to decide on the hiring of employees. While their recommendations may effectively exclude candidates from moving forward in the hiring process, there are approvals required above the supervisors' level in order for a candidate to actually be hired. As such, the Board cannot find that the role played by these supervisors in the hiring process demonstrates that they are exercising management functions and must therefore be excluded from the bargaining unit**[68]. [emphasis added]

In *Sperry Rail Canada* (2022), the CIRB held that Chief Operators (COs) were employees under the *Code*, as is the case of forepersons here, but that their level of "management" or supervision did not support their inclusion in a separate bargaining unit. In reaching that conclusion, the CIRB referred to criteria that may influence their decision as to whether or not supervisory functions should be excluded, or included, in a bargaining unit with employees they supervise, relying on *Pelmorex Communications Inc., division of MéteoMédia* (2003)[69], and determined that it was appropriate to include the COs within the existing employee bargaining unit.

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[68] *Sperry Rail Canada Limited*, 2022 CIRB 1013.

[69] *Pelmorex Communications Inc, division of MéteoMédia*, 2003 CIRB 238.

[86] The conclusion to be drawn from the … analysis is that there is no simple method for the determination of appropriate bargaining units and the positions that should be included or excluded. In some cases, supervisors are excluded from the unit of employees under their supervision because of conflicts of interest, while in others they are included. The decision must be based entirely on the particular facts of each matter before the Board. Nevertheless, certain facts may lead the Board in one direction or another, depending on circumstances.

[87] A number of criteria that may influence the Board can be drawn from the above decisions:

- The size of the bargaining unit. The viability of a bargaining unit (its chances of survival) increases with its number of employees. The Board is thus more likely to find a separate unit of supervisors appropriate if it includes a large number of supervisors. A unit with 100 employees will have better chances of survival through its numeric strength than a unit with only ten employees.

- The number of subordinate employees. A supervisor with many subordinates will be seen more as a real supervisor, while one who supervises few employees will be seen as a team leader and therefore included in the same unit as his/her subordinates.

- The type of supervisory functions. A person with supervisory functions that make up most or the core of his/her responsibilities will be seen differently than someone whose supervisory duties towards subordinates are basically limited to their orientation and training, straightforward coordination of their work, or advice, guidance or help. This difference could be defined as staff supervision as opposed to work supervision, or as administrative supervision as opposed to professional or technical supervision.

- Decision-making authority. The difference between a team leader and a “real” supervisor can be compared to that between a supervisor and a manager. A person who acts as a conduit between his/her subordinate employees and his/her line supervisor, who must work closely with the latter and has little latitude for his

own decisions on certain situations such as granting leave, approving overtime, evaluating performance independently, authorizing expenditures based on a predetermined budget or salary increases within a pre-determined pay scale, etc., can only be considered a team leader.

- The nature of the work. A person whose duties partly include the same work as his/her subordinate employees and who works with them in a team is more likely to be seen as a team leader. If the subordinates are unionized, the Board will tend to include the team leader who is doing the work of the bargaining unit within this same unit rather than in a separate unit of supervisors, even if this work accounts for only part of his/her duties.

[88] It should be noted that none of the above criteria is singly determinative. **If, in a given case, the circumstances are such that most of these criteria apply, such that the reasonable finding is that a group of persons is mostly made up of team leaders and not "real" supervisors, the Board is more likely to include them in the all-employee unit with the employees working under their supervision rather than create a separate unit**[70]. [emphasis added]

When the CIRB applied the above criteria to the facts, it determined that COs should be included in the employee bargaining unit. While COs operated such that they were responsible for approving their crew member's hours of work and overtime and reporting on their performance, there was **"**no indication that they effectively make decisions to disciple or terminate employees."[71] The CIRB further emphasized that despite COs working independently and while the CIRB acknowledged the COs responsibilities for daily work, "the Board is unable to conclude that the COs responsibilities place them in direct conflict with the members of the bargaining until such that they have to be excluded from it."

Returning to the present review, the Commission concludes that longshoring foremen do not perform a role that makes their inclusion in a certification with other longshore workers a

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[70] *Sperry Rail Canada Limited,* 2022 CIRB 1013 (citing *Pelmorex*).

[71] Ibid.

conflict of interest. The Commission observes that there are number of geographic certifications in the longshore industry in Canada that include forepersons or walking bosses in the same bargaining unit as other longshore employees.[72]

We therefore recommend a geographic certification that:

- maintains the historic exclusion of terminals that have never participated in the existing regime (i.e. Westshore Terminals and Trigon Pacific Terminals);

- is limited to the work and positions that are currently covered by the current collective agreements, and should not be used as a tool to subsume groups of workers who are not subject to certification or voluntary recognition; and

- will expand if new groups of longshoring employees are unionized following geographic certification or if there were new entrants to the longshore industry in the West Coast ports.

In the view of the Commission, a certification with these characteristics would have the effect of strengthening the unstable structures and also provide certainty for future entrants into the industry.

9. 4. Recommendation 4: An appropriate framework for collective bargaining needs to be established.

In its supplemental submission, ILWU Canada raised legitimate concerns about the impact of geographic certification on its ability to meaningfully negotiate over workplace-specific concerns. The Commission is of the view that a tiered bargaining structure can adequately address this concern and continue to provide the union with a meaningful process of collective bargaining that brings with it new sources of formal geographic leverage.

[72] Jamieson, H. and Greyell, B., page 108.

There is no doubt there will be a transition period following certification of a single bargaining unit in longshoring in B.C. However, the Commission believes that with time and with the proper structure for bargaining, foremen and longshoremen can effectively co-exist in the same bargaining unit and continue to have access to a meaningful process of collective bargaining. Simply stated, we do not accept that the interests of ILWU Local 514 members are so distinct that they cannot effectively be advanced as part of a geographic certification that also includes longshore workers. Communities of interest need not be construed so narrowly. The Commission notes that trade unions have long grappled with the issue of ensuring that minority interests in bargaining units are balanced with those of the majority and that this is not a new, nor insurmountable issue in our view.

In the Commission's view, the challenges arising from the consolidation of existing longshore and foremen bargaining units are not impossible to overcome and can be adequately addressed with the formalization of a tiered bargaining structure for negotiations. Under this model, negotiations would first take place between the BCMEA and each ILWU Local to resolve "local" issues (the Local Bargaining Table). In the case of ILWU Local 514, the Local Bargaining Table would be with the BCMEA in respect of its membership group specifically. The types of issues that could be discussed at the Local Bargaining Tables would be workplace specific (or in the case of foremen, classification specific) procedures or policies of the kind presently covered by the Black Book and other informal agreements.

A main table to discuss industry-wide issues should be convened following the Local Bargaining Tables as follows (the Industry Table). It is at this main table that major and common issues will be negotiated. We recommend that any outstanding issues not resolved at the Local Table within 45 days after notice to bargain is served (or such period agreed between the parties) either be withdrawn by the party advancing it or be referred to the Industry Table for resolution.

In terms of the process for identifying which issues are appropriate at which table, the Commission recommends that within 15-20 days following notice to bargain by either side, the parties will meet to determine which of their proposals are of a local nature and which

proposals are to be dealt with at the Industry Table. In the event the parties are unable to agree on which table a bargaining proposal belongs at, that matter may be referred to the CIRB or, by the agreement of the parties, to an industry arbitrator named in the collective agreement, for an expedited decision.

The Commission is of the view that secondary tables will provide additional avenues for resolving disputes before they escalate, fostering a more cooperative labour relations environment. During its visit to the Halifax ports, the Commission heard about the success of the bargaining process there, where the parties utilize a tiered bargaining consisting of a main table alongside side tables to negotiate unique language for various employee categories. We heard directly from the parties that this structure allows for detailed negotiations about classification-specific issues, without losing overall cohesion of a main agreement. Indeed, in the time since the ILA locals applied to be designated as a council of unions under the *Code*, the formerly separate collective agreements have been merged into one that contains both common terms and some distinct language carved out for each employee group. The parties told us that issues not affecting the whole group are discussed at the smaller tables but elevated to the main table if important enough and if no settlement is reached in earlier discussions.

Similar stories were shared during our visit with the ILWU International in San Francisco, where we heard that there is no agreement on the big issues unless the local issues are resolved first. We heard about the U.S. West Coast parties' commitment to bargaining, learning that the parties engage in consecutive days and weeks of bargaining over an extended period to keep the momentum going at the table.

In recommending an all-encompassing geographic certification in B.C.'s ports, the Commission recognizes it is comprised of various work locations with unique issues that must be addressed. But the parties are already working within this structure, albeit with ILWU Canada members and ILWU Local 514 bargaining separately on an industry-wide basis. We see no impediment to ensuring that all groups of workers are fairly represented in this structure and note that, outside of the longshoring industry there are many successful examples of these kinds of bargaining structures such as in education, construction, the film industry, and for government workers.

9. 5. Recommendation 5: The parties to the geographic certification should be a council of trade unions comprised of the ILWU Canada longshoring locals with members working for BCMEA members and Local 514.

In the view of the Commission, a geographic certification should name the BCMEA as the employer and a council of trade unions comprised of ILWU Locals 500, 502, 505, 508 and 519 as well as Local 514 as the union.

The Commission considered whether ILWU Canada ought to be certified as the bargaining agent for the ILWU council of unions, as it currently acts as the chief negotiator for the Longshoring Locals and is the signatory to the Longshoring Agreement. Certifying ILWU Canada is certainly one option available, provided the legislative amendments recommended are implemented.

The other option is to certify an ILWU council of unions, as we have suggested, that is comprised of ILWU Locals 500, 502, 505, 508 and 519 as well as Local 514 as the union. With the legislative amendments discussed in the next section, the council could then choose ILWU Canada to act as its representative in negotiations and could even apply to vary the certification to reflect that ILWU Canada **is** the council of unions if they so chose.

The Commission supports this second option in recognition of the fact the ILWU Local 514 is not a member of ILWU Canada and that ILWU Canada has no representational rights in respect of Local 514, voluntary or otherwise.

On the employer side, a geographic certification would name the BCMEA as the representative for the Direct Employers of all longshore workers in B.C., except Westshore Terminals and Trigon Pacific Terminals, which, as noted, have historically bargained separate from, and are not presently nor have they ever been represented by, the BCMEA. The effect of the BCMEA being named on a geographic certification is that it becomes a designated employer representative with all the responsibilities and obligations imparted on employers under the *Code*.

This includes, of course, the duty of fair representation under section 34(6), which prohibits the BCMEA from exercising its representational duties and responsibilities for any of the employers it represents in a manner that is "arbitrary, discriminatory or in bad faith." Certifying the BCMEA as the employer representative for Direct Employers, in other words, brings the BCMEA's representational activities within the purview of the CIRB.

Designating the BCMEA the employer representative of Direct Employers will provide greater legitimacy vis-à-vis the ILWU and bring with it a mechanism for review if members have issues with the internal operating of BCMEA, and the CIRB will be vested with the jurisdictional authority to ensure BCMEA operates in accordance with its good faith obligation.

9. 6. Recommendation 6: The government enact legislative changes or new legislation required for a geographic certification.

The issuance of such a broad geographic certification recommended by this Commission requires either legislative amendments to the *Code* or the creation of a new separate statute for longshoring collective bargaining on the West Coast as discussed more below.

Presently, section 34 of the *Code* allows the CIRB to certify a "trade union" as the bargaining agent for a geographic unit. The term "trade union" is defined broadly in section 3 of the *Code* as follows:

> **trade union** means any organization of employees, or any branch or local thereof, the purposes of which include the regulation of relations between employers and employees

Section 32(1) allows the CIRB to certify a council of trade unions where "two or more trade unions have formed a council of trade unions." In those circumstances, "the council so formed may apply to the Board for certification as the bargaining agent for a unit in the same manner as a trade union."

There are no provisions in the *Code* that permit the involuntary certification of a council of trade unions. Given that ILWU Canada and Local 514 oppose the creation of such a bargaining unit, it is fair to say it is unlikely that they will be filing an application together to be certified. For the CIRB to issue a geographic certification in the form recommended by this Commission, then, it will have to do so in the absence of an application from the unions, and, in fact, over their staunch objection.

As explained in the Jamieson-Greyell Commission:

> …Under section 32 of the *Code,* councils of trade unions are strictly voluntary. The Commission also notes that a council of trade unions is not defined in the *Code*, nor are they included in the "definition of trade union." The only route by which a council of trade unions can obtain trade union status and thus become a bargaining agent under the *Code* at the present time in through the voluntary scheme under section 32. Therefore, the effectively bring all of the West Coast Port operations under a single bargaining regime, in the form of a council of trade unions, the *Code* would have to be amended accordingly. Authority would also have to be given to the CLRB to impose a council of trade unions where it deems it appropriate. Of course, this is not a novel concept, such powers do exist elsewhere, for example, the B.C. *Labour Relations Code*, section 41(1)[73].

On the other side of the certification, the current definition of an employer under the *Code* is:

> (a) any person who employs one or more employees, and
>
> (b) in respect of a dependent contractor, such person as, in the opinion of the Board, has a relationship with the dependent contractor to such extent that the arrangement that governs the performance of services by the dependent contractor for that person can be the subject of collective bargaining.

[73] Jamieson, H. and Greyell, B., page 197.

Under section 33(1), the CIRB may designate an employers' organization as follows:

> Designation of employers' organization
>
> > 33 (1) Where a trade union applies for certification as the bargaining agent for a unit comprised of employees of two or more employers who have formed an employers' organization, the Board may designate the employers' organization to be the employer if it is satisfied that each of the employers forming the employers' organization has granted appropriate authority to the employers' organization to enable it to discharge the duties and responsibilities of an employer under this Part.

As can be seen from above, both the designation of a council of trade unions and an employers' organization are predicated on an application for certification being made by a trade union or unions.

While the Commission is of the view that the Minister has the authority to refer the question of the appropriate bargaining unit for longshoring in B.C. to the CIRB, and that the CIRB has the jurisdiction to answer that question, we do not believe the CIRB at present has the jurisdiction to certify the all-inclusive bargaining unit recommended by this Commission without legislative changes.

This is because the existing language does not allow for certification of a council of trade unions, nor the designation of an employers' organization, without an application for certification. It is clear on the face of the statutory language, and from the CIRB's jurisprudence, that rights under section 34 of the *Code* cannot result from voluntary recognition. On the latter point, we note the CIRB has determined that the existence of a common collective agreement is not sufficient to crystallize the existence of a single bargaining unit for longshoring workers in the form of a CIRB certification[74].

[74] *BCR Marine Ltd.,* 2002 CIRB 172.

The CIRB's lack of jurisdiction to issue a geographic certification without an application for such a bargaining unit was reinforced in *International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514 v. Prince Rupert Grain Ltd.* (1996)[75]. In that case, the CIRB rejected ILWU Local 514's application for certification as bargaining agent for a unit of foremen employed by Prince Rupert Grain Ltd. It did so on the basis that the appropriate unit consisted of all the foremen employed by all the members of the B.C. Terminal Elevator Operators' Association—the umbrella organization for grain employers much like the BCMEA for longshoring companies. The CIRB accordingly declined to award the enterprise-based certification–leaving the union only with the option of reapplying for a certification encompassing all foremen working for BCMEA-represented employers, or not applying for certification at all[76]. In the absence of jurisdiction to issue a certification for the voluntarily recognized foremen unit, the merely articulated its view that a provincial-wide foremen certification would be the appropriate unit.

9. 6. a. Amendments to the *Code*

In our view, amendments to the *Code* are the preferred option for ensuring the legislative path to a geographic certification exists. Necessarily, these changes would include:

- amending the definition of "trade union" in section 3 to include a council of trade unions;

- amending the definition of "bargaining agent" in section 3 to include a council of trade unions or a representative chosen by a trade union or a

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[75] *International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514 v. Prince Rupert Grain Ltd*. 2 SCR 432. 1996. Supreme Court of Canada.

[76] The Federal Court of Appeal set aside the CIRB's decision, concluding that it had acted outside its jurisdiction. The Supreme Court of Canda reinstated the CIRB's decision, determining that the CIRB had jurisdiction to determine the appropriate bargaining unit and to make a suggestion as to the composition of that unit, and that its decision must be upheld.

council of unions;

- amending the definition of "employer" in section 3 to include an employers' organization and an "employer representative" designated under section 34(3) or 34(4);

- amending section 33 to allow for the accreditation of employers' organizations and for the addition of members to such accredited employers' organization on the consent of the employers involved without the necessity of either a trade union application for certification or consent by the trade union;

- adding a provision to the *Code* to authorize the Minister on an application by one or more employers or on the Minister's own direction or the CIRB's motion, to consider whether, in the interest of securing and maintaining industrial peace and promoting conditions favourable to the settlement of disputes, an accredited employer's organization and/or a council of trade unions would be appropriate for collective bargaining and empowering the CIRB to issue such a certification in the absence of an application; and

- amending the *Code* to include explicit jurisdiction for the CIRB to assist the parties to craft a bargaining structure for a geographic certification in the event the parties are unable to agree on one.

These provisions could be contained in the *Code* as separate provisions applicable only to longshoring or other industries as designated, as is the case with section 34.

The benefit of such an approach is that it eliminates the need to create a stand-alone piece of legislation dealing specifically with longshoring issues or national supply chain issues more generally—which can lead inconsistent provisions amongst labour statutes if sections, such as

the duty of fair representation, the duty to bargain in good faith, etc. are replicated from the *Code* and imported into the new legislation. Amending the *Code* allows for seamless coverage between provisions and ensures that all of the dispute resolution mechanisms available under the *Code* remain available for longshore workers as well as other workers in industries vital to the nation's economy.

While amending the *Code* does not create the opportunity to legislatively enshrine the tiered bargaining structure nor to address other longshoring specific issues or to create different mechanisms for dispute resolution in longshoring, we believe with the above-recommended amendments, that the provisions in the *Code* are sufficient. The CIRB can assist the new ILWU council of trade unions and the BCMEA with setting up their new bargaining framework and can resolve any disputes arising from this exercise.

9. 6. b. Longshoring Specific Legislation

The other option, as mentioned, is for a new piece of legislation to be created to address longshoring collective bargaining in Canada, and the bargaining unit structure in B.C. specifically. This could be a stand-alone piece of legislation, or part of a wide statutory scheme aimed at providing more stability to the supply chain generally, in recognition that labour disputes in certain federally regulated industries impact the national interest more than others.

Legislation could be loosely based off the *School Board Collective Bargaining Act* in Ontario, which was introduced to address issues that arose from changes in education funding and governance. Prior to the introduction of that legislation, school board negotiations were done on a board-by-board basis. However, the consolidation of school boards and centralization of funding prompted the provincial government to devise a legislative instrument to combine education locals and set out a two-tier bargaining system for central and local issues.

We also note that this kind of legislated bargaining units and structure has been utilized in other sectors including health care and construction.

Central features of this new legislation could include:

- Designation of the BCMEA as an employer representative and a council of trade unions as the parties to a single geographic certification for longshoring workers in B.C. with the exception of those working for Trigon Pacific Terminals or Westshore Terminals.

- The bargaining framework for negotiations including the tiered bargaining recommended in this report.

In the view of the Commission, if new legislation is created, we recommend that rather than recreate duties such as the duty of fair representation and the duty of good faith, etc., as was done in the case of the *School Board Collective Bargaining Act*, that the legislation simply make clear that all the provisions of the *Code* apply unless a provision is specifically exempted under the statute.

9. 7. Recommendation 7: No changes to the internal governance or decision-making processes of the parties

In its submission to the Commission, the BCMEA expressed clear frustrations with the perceived structural and decision-making processes within ILWU Canada. Similarly, ILWU Canada provided strong criticisms of the BCMEA's structure and internal decision-making processes. However, the Commission is loath to recommend that government interfere with the inner workings of trade unions or employer organizations. Unions are autonomous democratic organizations that should be provided wide latitude to set up their own systems of democratic checks and balances, subject to the *Code*. The cut and thrust of debate within trade unions may sometimes aggravate employers and governments, but that does not provide reasonable justification for interfering in democratic internal processes and structures – however imperfectly they may be viewed. The reverse is also true.

For that reason, we are similarly reluctant to recommend changes to the BCMEA structure based on the numerous complaints advanced by the ILWU Canada as to its alleged inability to deal with longshore issues. We believe the BCMEA is properly structured to carry out its

responsibilities under the *Code*, and as earlier indicated, that designating it as an employer representative under the *Code* will provide even greater assurance that it continues to represent its members fairly and democratically.

As earlier noted, with the creation of a geographic certification in the form recommended, the *Code* provisions require that each side exercise its representational duties fairly. If one of them is representing its members in a way that is arbitrary, discriminatory, or the result of bad faith, their members can bring an application forward to the CIRB challenging the BCMEA's representation.

The Commission is of the view that any greater interference would only aggravate tensions between the parties and inevitably lead to the replication of such structures in a slightly altered form. Instead, the Commission's view is that the bargaining relationships between the parties could be remodeled to bring them in line with the *Code* and improve the efficiency and effectiveness of the collective bargaining process. We have therefore structured our recommendations accordingly to deal with the bargaining relationship between the parties rather than the inner workings of the individual parties.

9. 7. a. Collective Agreement Grievance Dispute Resolution

Although not part of our Terms of Reference, both ILWU Canada and Local 514 pointed to the number of grievances outstanding and explained it is causing considerable frustration amongst members.

The parties have processes in their collective agreement for fully and finally resolving grievances. On this, the Commission notes the existence of the expedited "job arbitrator" procedure in the collective agreement, whereby differences can be resolved on the spot within twelve or twenty-four hours. The parties also have a number of competent industry arbitrators named in their collective agreements to determine appeals from the job arbitrator and more complex, less urgent grievances.

What appears to be the root of backlog, in the Commission's view, is that the parties are not working together to resolve mid-contract issues short of pushing matters to arbitration. In the

view of the Commission, the parties need to do better to resolve issues during the term of the collective agreement and to build some rapport making trade offs and compromises. In our view, festering disagreements under the contract can poison collective bargaining, and undermine the process if the parties are not regularly engaging in the spirit of compromise necessary for harmonious relations. That said, the Commission notes the parties successfully worked together mid-contract to tackle issues including the Drug and Alcohol Policy and criminal background checks policy and encourage the parties to continue with that kind of cooperation in future to resolve issues as they arise.

While we are not prepared to formally recommend that expedited arbitration provisions be added to the *Code*, as such a recommendation is outside our Terms of Reference, we urge the government to consider this option. Amending the *Code* to provide a statutory right for parties to access these less costly and more efficient options for arbitrating grievances would help employers and unions across Canada to clear grievance backlogs and to process grievances more efficiently. The appointment of arbitrators could be managed by a collective agreement arbitration bureau and would continue to be paid for by the parties.

Given the absence of statutory expedited arbitration, the parties may wish to consider adding an expedited arbitration process into their collective agreement to reduce the number of days spent in arbitration hearings and to fully and finally resolve grievances in a more timely, inexpensive, and informal way.

Grievances do not age well. As an immediate step, the parties may wish to consider pre-setting arbitration dates with the present list of arbitrators as a way of relieving the backlog of cases and ensuring that disputes which arise during the contract are resolved in a timely way. Many parties do this, knowing that issues will continually arise. After securing dates for the entire calendar year, they simply assign a matter or matters to the date being held. In the Commission's experience, this process is effective.

9. 7. b. Training Fund for Longshoring Workers Displaced by Automation

Another recommendation that falls outside our Terms of Reference, but that we feel is important to put forward in our report given the significance of this issue on collective bargaining, is that the Government consider creating a training fund for longshoring workers displaced by automation.

As acknowledged in this report, the world of longshoring work is changing quickly due to dramatic advancements in technology. Pressure for enhanced efficiency, safety and competitiveness is high, and longshoring workers unfortunately are baring the consequences of this pressure. Their jobs are fundamentally changing from the way they have been for essentially the last 100 years or more with the introduction of more automation in ports. The push between preserving the status quo and advancing the industry to keep pace internationally is a major irritant in bargaining, and the parties' disagreement over the pace and who should bare the impact of these changes is, at its essence, one of the major hurdles to reaching agreement in bargaining.

Through the work of the Commission, we met numerous longshore workers who come from a long line of stevedores—the family connections and pride in this work apparent. It is in the economic and social best interests of Canada that these skilled workers be retained and utilized to their greatest extent in segments of the national economy where they are needed. If this is no longer in the longshoring industry, then these workers ought to be retrained into other important and necessary careers that support their families, their communities and the Canadian public.

The importance of supporting workers displaced by changes to the industrial landscape is well established in Canada. In B.C., for example, the provincial government has established the Employer Training Grant to support workers directly or indirectly impacted by a downturn in the forest sector (e.g., due to old growth deferral impacts) by providing money to employers (including self-employed workers and contractors) who are looking to adapt to a new line of business to reskill themselves and/or their employees. A pilot program for training workers in the silviculture sector to better prepare and prevent wildfires was also introduced to help better match skilled workers with jobs.

Federally, the Canada Retraining and Opportunities Initiative already supports workforce planning and skills training in communities significantly impacted by a mass layoff, providing funding for community-based projects that help workers develop the skills they need to transition to new jobs. In our view, this program could be extended to longshoring workers who are interested in learning new skills. We note the trades are experiencing a significant shortage of skilled workers, primarily due to an aging workforce and a decline in young people entering the trades, and that this shortage is impacting various industries, including construction. In our view, government assistance in matching worker skills with employment needs makes sense, especially in the context of mitigating the impact of changes being experienced in the longshoring industry.

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9. 8. Other Recommendations Put Forward by the Parties

One final area we felt warranted mentioning is the ILWU Canada's recommendation that the *Code* be amended to provide unions with the right to require employers to conduct a final offer vote of a union's final offer.

At present, section 108.1 the *Code* allows for the Minister to order that a last offer vote be held so that employees in the affected bargaining unit are given the opportunity to accept or reject an employer's last offer if the Minister is of the opinion that it is in the public interest to do so.

While in our experience, last offer votes are rarely if at all successful, we do on the principle of fairness support the creation of a parallel right for a trade union or a council of unions to request a last offer vote amongst employers' organizations. Although we are doubtful that the addition of such a provision would actually change the outcome of any set of negotiations, we see no harm in creating a parallel right for unions in circumstances where an employer group is made up of individual employer members.

All other recommendations put forward by the parties that were not commented upon in the analysis section of this report were considered by the Commission but ultimately, we decided not to include these in our list of recommendations put forward to government. Most of these either fell outside the Terms of Reference of this Commission or were declined in favour of different recommendations on the same issues as have been set out above.

10. Conclusion and Summary of Recommendations

The world has changed dramatically in the twenty years since the Jamieson-Greyell Commission, with increased globalization and the rise of e-commerce and geopolitical tensions. Given the deep connectivity of the global supply chain, delays and uncertainties caused by labour disputes can have far-reaching consequences, impacting not only employers and workers but also consumers, communities, and the overall Canadian economy.

The findings and recommendations presented in this report offer a roadmap for achieving lasting stability and prosperity at West Coast ports. They emphasize the importance of modernizing collective bargaining practices to foster greater collaboration between labour and management.

The success of these recommendations hinges on the willingness of all stakeholders to embrace change and work together toward a common goal. This requires open dialogue, mutual respect, and a commitment to finding solutions that benefit everyone involved and the national interest. In the view of the Commission, the stakes are too high and the consequences too severe for complacency. We urge all parties – labour, management, government, and the broader community – to seize this opportunity to build a stronger, more competitive, and more sustainable future for West Coast ports and for Canada as a whole.

In summary, the Commission recommends the following to enhance the labour stability of B.C.'s waterfront:

1. That the right to strike/lockout be preserved for the longshoring industry in Canada.

2. That the *Code* be amended to include special mediator provisions as detailed in this report.

3. A B.C.-wide geographic certification (excluding Westshore Terminals and Trigon Pacific Terminals) is the most appropriate bargaining unit for longshore workers.

4. An appropriate framework for collective bargaining needs to be established.

5. The parties to the geographic certification should be a council of trade unions comprised of the ILWU Canada longshoring locals and Local 514.

6. The government enact legislative changes or new legislation required for a geographic certification.

7. No changes to the internal governance or decision-making processes of the parties.

In our view, the above-noted recommendations constitute the appropriate balance between ensuring stability in B.C.'s ports with the rights of workers to collectively bargain.

We trust this report is satisfactory and discharges the Terms of Reference for this Commission.

All of which is respectfully submitted this 8th day of May, 2025.

Amanda Rogers, BA, JD, LLM

Vincent L. Ready

Appendix A – Recommendations

Recommendation 1: That the right to strike/lockout be preserved for the longshoring industry in Canada.

Recommendation 2: That the *Canada Labour Code* be amended to include special mediator provisions as detailed in this report.

Recommendation 3: A British Columbia-wide geographic certification (excluding Westshore Terminals and Trigon Pacific Terminals) is the most appropriate bargaining unit for longshore workers.

Recommendation 4: An appropriate framework for collective bargaining needs to be established.

Recommendation 5: The parties to the geographic certification should be a council of trade unions comprised of the ILWU Canada longshoring locals and Local 514.

Recommendation 6: The government enact legislative changes or new legislation required for a geographic certification.

Recommendation 7: No changes to the internal governance or decision-making processes of the parties.

Appendix B – Stakeholders Consulted

Neutrals
Barry Eidlin, Associate Professor, Department of Sociology, McGill University
B.C. Ministry of Labour
B.C. Ministry of Transportation
Peter Simpson, Director General, Federal Mediation and Conciliation Service
Transport Canada

Employers and employer organizations
Association of Canadian Port Authorities
British Columbia Chamber of Commerce
British Columbia Maritime Employers Association (BCMEA)
Canadian Association of Importers and Exporters Canada
Canadian Chamber of Commerce
Canadian Federation of Independent Business
Canadian Manufacturers and Exporters
Canadian Meat Council
Canadian International Freight Forwarders Association (CIFFA)
Canadian Pacific Kansas City (CPKC)
Federally Regulated Employers – Transportation and Communications (FETCO)
Fertilizer Canada
Freight Management Association
Global Automakers of Canada
Greater Vancouver Board of Trade
Halifax Employers Association (HEA)
Mining Association of British Columbia
Shipping Federation of Canada
Western Canadian Shippers Coalition

Unions and labour organizations
British Columbia Trucking Association
Canadian Union of Public Employees (CUPE)
Canadian Union of Public Employees – Port of Québec Longshoremen's Union, Local 2614 (CUPE 2614)
International Longshoremen's Association
International Longshoremen's Association Locals 273, 1341, 1657 and 1953
International Longshore and Warehouse Union Canada (ILWU Canada)
International Longshore and Warehouse Union Locals 500, 502, 505, 508 and 519 (ILWU Locals)
International Longshore and Warehouse Union Canada – Local 514 (ILWU Local 514)
Le Syndicat des Débardeurs (CUPE Local 375)
UNIFOR

Appendix C – Summary of Collective Bargaining

Table C. 1. Between the BCMEA and ILWU Canada (1972 to Present)

Expiry of prior Collective Agreement (CA)	Duration of Bargaining	Process and Stage of Settlement	Work Stoppage	Legislation	Grain Affected	Term of New CA
March 31, 2023	Notice to bargain served November 30, 2022; Agreement reached July 30, 2023	Settled post-conciliation following a 13-day strike, a 1-day illegal strike, and a referral to the CIRB under section 107.	13-day legal work stoppage, 1-day illegal work stoppage.	Industrial Inquiry Commission (IIC) commenced under section 108.	No	April 1, 2023 - March 31, 2027
March 31, 2018	Notice to bargain served November 30, 2017; Agreement reached May 30, 2019	Settled post-conciliation following a brief strike and lockout.	Strike at GCT commenced May 27, 2019; Lockout commenced May 30, 2019 (less than one day).	No	No	April 1, 2018 - March 31, 2023
March 31, 2010	January 2010 - May 2011	Settled at the conciliation officer stage.	No	No	No	April 2010 to March 2018

Expiry of prior Collective Agreement (CA)	Duration of Bargaining	Process and Stage of Settlement	Work Stoppage	Legislation	Grain Affected	Term of New CA
March 31, 2007	January 2007 - February 2008	Settled at the conciliation officer stage.	No	No	No	April 2007 to March 2010
December 31, 2002	August 2002 - March 2003	Settled in direct negotiations.	No	No	No	January 1, 2002, to March 31, 2007
December 31, 1998	October 1998 to November 1999	Settled post-conciliation following an 8-day work stoppage	8-day work stoppage	No	Not specified	January 1, 1999, to December 31, 2002
December 31, 1995	Notice to bargain served August 1994	Conciliation officer appointed November 3, 1995. Settled at the conciliation officer stage.	No	No	No	January 1, 1996 – December 31, 1998
December 31, 1992	Notice to bargain served Sept 18, 1992,	Settled by legislation at the post-conciliation officer mediation	Selective strike action began January 27, 1994, became a full	*West Coast Port Operations Act, 1994*, received Royal Assent	Yes, as per media reports	January 1, 1993- December 31, 1995

Expiry of prior Collective Agreement (CA)	Duration of Bargaining	Process and Stage of Settlement	Work Stoppage	Legislation	Grain Affected	Term of New CA
	settled March 31, 1994	stage following strike.	strike January 29, 1994, ended on February 8, 1994.	February 8, 1994. Arbitration with Final Officer selection used to resolve remaining issues. Arbitrator H. Allan Hope appointed February 24, 1994. Report released March 31, 1994.		
December 31, 1991	Notice to bargain served Settled October 18, 1991	Settled in direct negotiations.	No	No	No	January 1, 1992-December 31, 1992
December 31, 1988	Notice to bargain served September 26, 1988, settled March 29, 1990	Settled at the conciliation officer stage.	No	No	No	January 1, 1989-December 31, 1991

Expiry of prior Collective Agreement (CA)	Duration of Bargaining	Process and Stage of Settlement	Work Stoppage	Legislation	Grain Affected	Term of New CA
December 31, 1985	Notice to bargain served September 30, 1985, settled December 18, 1987	Settled by legislation at the post-conciliation commissioner mediation stage following lockout.	Lockout October 6-8, 1986, resumed November 15, 1986, lockout ended November 18, 1986.	*Maintenance of Ports Operations Act, 1986*, received Royal Assent November 18, 1986. Professor Joseph Weller appointed as an IIC on December 5, 1986, to deal with Container provision, Dalton Larson appointed as a Referee on January 13, 1987, to deal with non-container issues. Referee's report filed January 28, 1987, with final IIC report sent to	Yes, as per media reports	January 1, 1986-December 31, 1988

Expiry of prior Collective Agreement (CA)	Duration of Bargaining	Process and Stage of Settlement	Work Stoppage	Legislation	Grain Affected	Term of New CA
				parties December 18, 1987.		
1984 Wage Reopener	Not specified	Settled in Direct negotiations. Parties agreed to extend agreement another year to December 31, 1985.	No	No	No	January 1, 1985, to December 31, 1985
December 31, 1981	Notice to bargain served September 28, 1981, Settled November 26, 1982	Settled by legislation at the post-conciliation commissioner stage following a lockout.	Union held a series of one-day port closures and work slowdown. Lockout began October 19, 1982, ended November 3, 1982.	*West Coast Ports Operations Act, 1982*, received Royal Assent November 3, 1982. Parties reached a negotiated settlement November 8, 1982. Settlement provided for a wage reopener	Yes	January 1, 1982-December 31, 1984

Expiry of prior Collective Agreement (CA)	Duration of Bargaining	Process and Stage of Settlement	Work Stoppage	Legislation	Grain Affected	Term of New CA
				for the 1984 calendar year.		
December 31, 1978	Notice to bargain served September 25, 78. Settled June 14, 1979	Settled at the post-conciliation commissioner mediation stage following a strike action.	Strike began June 4, 1979, ended June 14, 1979.	No	Yes	January 1, 1979 - December 31, 1981
December 31, 1977	Not specified	Settled in direct negotiations under Anti-Inflation Board (AIB) era.	No	No	No	January 1, 1978 - December 31, 1978
December 31, 1976	Not specified	Settled in direct negotiations under AIB era.	No	No	No	January 1, 1977- December 31, 1977
December 31, 1974	Notice to bargain served September 24,	Settled by legislation following a direct no-action,	Strike began March 2, 1975, ended March 24, 1975.	*West Coast Ports Operations Act, 1975* received Royal Assent	Yes	January 1, 1975- December 31, 1976

Expiry of prior Collective Agreement (CA)	Duration of Bargaining	Process and Stage of Settlement	Work Stoppage	Legislation	Grain Affected	Term of New CA
	1974, settled May 30, 1975	mediation and strike action.		March 24, 1975. Arbitrator Justice Seaton appointed April 3, 1975, and award released May 30, 1975.		
July 31, 1972	Notice to bargain served May 1, 1972, settled January 24, 1973	Settled by legislation the post-conciliation board mediation stage following strike action.	Work slowdown closed Port of Vancouver as of August 10, 1972, following which full strike began August 23, 1972, ended September 1, 1972.	*West Coast Ports Operations Act, 1972* received Royal Assent September 1, 1972. Mediator Justice Nemetz appointed December 4, 1972, and a settlement subsequently reached on January 24, 1973,	Yes	August 1, 1972-December 31, 1974

Expiry of prior Collective Agreement (CA)	Duration of Bargaining	Process and Stage of Settlement	Work Stoppage	Legislation	Grain Affected	Term of New CA
				based on his report.		

Table C. 2. Between the BCMEA and ILWU Local 514 (1974 to Present)

Expiry of prior CA	Duration of Bargaining	Process and Stage of Settlement	Work Stoppage	Legislation	Grain Affected	Term of New CA
March 31, 2023	Ongoing, notice to bargain served November 30, 2022	Referred to interest arbitration by CIRB	BCMEA industry-wide lockout led to a shutdown of port facilities across the province between Nov. 4 and Nov. 14, 2024.	Section 107 direction to CIRB to end the dispute and CIRB order referring bargaining to interest arbitration	No	TBD
March 31, 2018	Maintenance of activities (MOA) signed December 2,	Settled at conciliation.	No	No	No	April 1, 2018 - March 31, 2023

	2019 (approximately 24 months)					
March 31, 2010	24 months	Settled at conciliation.	No	No	No	April 1, 2010 - March 31, 2018
March 3, 2007	24 months	Settled at conciliation.	No	No	No	April 1, 2007 - March 31, 2010
December 31, 2002	12 months	Settled at conciliation.	No	No	No	January 1, 2003 - March 31, 2007
December 31, 1998	23 months	Settled at conciliation.	No	No	No	January 1, 1999 - December 31, 2002
December 31, 1996	1 month	Settled without assistance.	No	No	No	January 1, 1997 - December 31, 1998
December 31, 1992	Notice to bargain served September 28, 1992. Settled	Settled by legislation at the post-commissioner	Union commenced strike action on March 13, 1995,	*West Coast Ports Operations Acts, 1994* - Royal Assent on March	Union strike action avoided grain and	January 1, 1993 - December 31, 1996

	July 13, 1995. (Total of 34.5 months)	stage following strike/lockout.	followed by an employer lockout from March 15, 1995 - March 16, 1995.	16, 1995. Mediation-Arbitration process of settlement. Mediator-Arbitrator Donald Munroe appointed March 24, 1995. Report released July 13, 1995.	perishable goods but those members working such cargo were locked out on March 15, 1995.	
December 31, 1991	Notice to bargain served September 28, 1991. Settled September 24, 1992. (Total of 12 months)	Settled at the post-conciliation officer stage with informal mediation assistance following strike.	September 22, 1992 - September 24, 1992	No	Reported that grain shipments and cruise ships were not affected.	January 1, 1992 - December 31, 1992
December 31, 1988	Notice to bargain served Sept 19, 1988. Settled June 15, 1990. (Total of 33 months)	Settled at conciliation.	No	No	No	January 1, 1989 - December 31, 1991

December 31, 1985	Notice to bargain served September 23, 1985. Settled April 14, 1987. (Total of 19 months)	Settled at conciliation.	No	No	No	January 1, 1986 – December 31, 1988
December 31, 1983 (Wage Reopener)	Notice to bargain served Sept 19, 1983. Settled May 18, 1984 (Total of 8 months)	Settled at conciliation. Also extended agreement by one year.	No	No	No	January 1, 1985 - December 31, 1985
December 31, 1981	Notice to bargain served October 1, 1981. Settled December 22, 1982. (Total of 14 months)	Settled at post-conciliation commissioner stage.	No	No	Not specified	January 1, 1982 - December 31, 1984
December 31, 1978	Notice to bargain served October 1, 1978.	Settled in direct negotiations.	No	No	No	January 1, 1979 - December 31, 1981

December 31, 1977	Not specified	Settled in direct negotiations under Anti-Inflation Board (AIB) era.	No	No	No	January 1, 1978 - December 31, 1978
December 31, 1976	Not specified	Settled in direct negotiations under AIB era.	No	No	No	January 1, 1977 - December 31, 1977
Union certified June 1974	Notice to bargain served July 19, 1974. Settled May 30, 1975.	Settled by legislation at the post-conciliation officer mediation stage following strike action.	Strike began March 23, 1975, and ended March 24, 1975.	*West Coast Ports Operations Act, 1975* received Royal assent March 24, 1975. Arbitrator Justice Seaton appointed April 3, 1975, and award released May 30, 1975.	Yes	December 31, 1976