

BRITISH COLUMBIA LABOUR RELATIONS BOARD

KELOWNA CABS (1981) LTD.

(the "Employer")

-and-

CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES
UNION, LOCAL 378

(the "Union")

PANEL: Stephanie Drake, Vice-Chair

APPEARANCES: Ashok Tyagi, for the Employer
Scott Wilcox and Anny Chen, for the
Union

CASE NO.: 2020-000695

DATE OF DECISION: November 12, 2020

DECISION OF THE BOARD

I. **NATURE OF APPLICATION**

1 The Union applies under Sections 11 and 47 of the *Labour Relations Code* (the "Code"), alleging the Employer has failed to meet and bargain collectively in good faith. It also alleges the Employer has improperly given layoff notice to its entire bargaining unit.

2 The Employer denies it has breached its duty to bargain in good faith. The Employer confirms it has issued layoff notice to all employees in the bargaining unit and says it does not intend to continue to bargain collectively with the Union.

II. **BACKGROUND**

3 The Union represents office and clerical employees of the Employer. The parties have negotiated six collective agreements since 1999. The last collective agreement between the parties had a term of June 1, 2017 to May 31, 2019. There are currently eight employees in the bargaining unit. The parties referred to them as the "dispatch staff".

4 The Union issued notice to bargain and the parties met on October 29, 2019 to commence collective bargaining. At that meeting, the Union says it tabled a list of proposals and the Employer provided a verbal summary of eight items it was tabling.

5 On May 12, 2020, the Union filed an application under Section 54 of the Code after the Employer laid off all employees in the bargaining unit without notice. The parties reached a mediated resolution to this complaint and the Union says a full complement of employees returned to work.

6 On August 25, 2020, the parties resumed collective bargaining remotely, using video conferencing software. The Union says, and the Employer does not dispute, that the Employer's sole representative at this meeting did not have the authority to bargain on the Employer's behalf and did not present any written proposals.

7 At the Union's request, the meeting was adjourned to the following day so the Employer could prepare its proposals. The Union also asked that the Employer bring a representative with the authority to bargain and stated that if the Employer was seeking reductions due to economic factors, the Union wanted financial disclosure from the Employer.

8 The Union says the Employer provided some information about its bargaining position by email later the same day. However, the information was unclear, did not cover all of the topics the Employer had raised previously, and did not include any proposed collective agreement language.

9 On August 26, 2020, the parties resumed collective bargaining remotely. The Union says that, while the Employer brought an authorized representative to this meeting, it did not offer any financial information. The Union says, and the Employer does not dispute, that the Employer took the position that unless the Union was prepared to agree to a collective agreement without overtime, sick leave, shift scheduling, or health benefits, the Employer was not prepared to try to conclude a collective agreement. The Employer told the Union it could file a grievance, but that the Employer would give 90 days' notice and begin to dispatch taxis using a web-based application, or app.

10 On August 27, 2020, the Employer sent an email to the Union confirming it did not intend to continue collective bargaining. In the email, the Employer stated that it had decided to move to an app-based dispatch system, effective December 1, 2020, "as per customer choice", and to close its dispatch office on that date. The Employer said this decision was made in response to the anticipated impact of the introduction of ride sharing licences in British Columbia, including six ride share licences approved in Kelowna. The Employer said the ride sharing industry has severely impacted owner/operator taxi drivers in other cities where ride sharing has been permitted. The Employer also said that the COVID-19 pandemic has negatively impacted the taxi industry in Kelowna, which it stated "depends 70%" on tourists. It said it expected to lose 35% of its business due to COVID-19.

11 On August 28, 2020, the Union filed this application.

12 On October 23, 2020, having learned from a member that the Employer had given layoff notice to all employees in the bargaining unit, the Union asked to amend its application to include the allegation that the Employer had issued this layoff notice improperly. I wrote to the Employer, set out the provisions of subsections 45(2) to 45(4) of the Code, and invited further submissions from the Employer with respect to whether the amendment to the application should be permitted, and the merits of the Union's additional allegations.

III. POSITIONS OF THE PARTIES

13 The Union says the Employer failed to meet its duty to bargain in good faith and make every reasonable effort to conclude a collective agreement. The Union says the Employer breached these obligations when it failed to provide particularized bargaining proposals, threatened to replace the bargaining unit with a web-based dispatching app, and issued layoff notice to the entire bargaining unit.

14 The Union says the Employer took the position it would replace the whole bargaining unit with a dispatching app after less than four hours of bargaining. The Union argues this clearly had the effect of undermining it in the eyes of employees, by conveying that the Employer could unilaterally implement significant changes to collective agreement terms and working conditions. The Union says the Employer's position reflects its true motivation, which is to rid itself of the Union and the collective agreement. It says the Employer's tactics unreasonably and improperly inhibited the

process of concluding a collective agreement and also were intended to force or influence employees to cease being Union members.

15 The Union argues the Employer has relied on the economic impact of ride sharing to refuse to bargain, but its spokesperson recently stated publicly to a media outlet that the Employer was not concerned about ride sharing and is positioning to offer a competitive service.

16 The Union says it shares responsibility for the delay in bargaining and does not seek any remedy in that regard.

17 The Union seeks a declaration that the Employer has failed to bargain in good faith, as well as orders that the Employer: bargain with the Union in good faith and make every reasonable effort to conclude a collective agreement; not lay off or sever any employees; not alter any term or condition of employment until such time as the parties conclude a new collective agreement; and otherwise conform to the collective agreement. The Union also seeks an order that the Board's decision in this matter be distributed to members of the bargaining unit, and an order for costs.

18 The Employer says it wants to bargain collectively in good faith. It says economic and regulatory factors led to its decision to transition to an electronic dispatching system. The Employer says it is not fair for the Union to expect it to bargain further in the circumstances. The Employer says its plan to close its dispatch office is pursuant to the notice of change article in the parties' collective agreement.

19 In final reply, the Union says the Employer has conceded that it refuses to bargain. It says the Employer's decision to layoff employees is also contrary to a job security provision in the collective agreement and notes the collective agreement contains a continuation clause.

IV. ANALYSIS AND DECISION

20 Section 11(1) of the Code states:

A trade union or employer must not fail or refuse to bargain collectively in good faith in British Columbia and to make every reasonable effort to conclude a collective agreement.

21 Section 47 of the Code states:

If notice to commence collective bargaining has been given

a) under section 45, the trade union and the employer...

must, within 10 days after the date of the notice, commence to bargain collectively in good faith, and make every reasonable effort to conclude a collective agreement or a renewal or revision of it.

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Subsection 45(2) of the Code states:

- (2) If notice to commence collective bargaining has been given and the term of a collective agreement that was in force between the parties has expired, the employer or the trade union must not, except with the consent of the other, alter any term or condition of employment, until
 - a) a strike or lockout has commenced,
 - b) a new collective agreement has been negotiated, or
 - c) the right of the trade union to represent the employees in the bargaining unit has been terminated,whichever occurs first.
- (3) Despite subsection (1), the board, after notice to the trade union, may
 - a) authorize an employer to increase or decrease the rate of pay of an employee in the unit, or alter a term or condition of employment, and
 - b) specify conditions to be observed by an employer so authorized.

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Section 11(1) has both subjective and objective elements. It requires that parties subjectively intend to reach a collective agreement and that they objectively make every reasonable effort to conclude a collective agreement: *Noranda Metal Industries Limited*, BCLRB No. 151/74, [1975] 1 Canadian LRBR 145 ("*Noranda*").

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In deciding whether a party has contravened Section 11(1), the Board considers:

On a balance of probabilities, has the [complainant] proven that the [respondent] does not intend to conclude a collective agreement, that the [respondent] has failed to make every reasonable effort toward that end, that the [respondent] has engaged in conduct which unreasonably inhibits the process of achieving agreement or, to put it another way, has engaged in conduct which has the predictable effect of destroying the decision-making framework of bargaining? (*Lafarge Canada Inc.*, IRC, No. C219/91 ("*Lafarge*") p. 23)

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Based on the undisputed evidence in this case, I find on a balance of probabilities that the Employer both lacked the subjective intention to reach a collective agreement, and objectively failed to bargain in good faith and make every effort to reach a collective agreement. Its approach went beyond hard bargaining and had the predictable effect of destroying the decision-making framework for bargaining.

26 Having received notice to bargain from the Union, the Employer met with the Union. However, without proposing any collective agreement language in writing and without disclosing any financial information, the Employer demanded significant concessions from the Union. When the Union was not prepared to discuss concessions with the Employer without financial information, the Employer refused to bargain any further. It stated that both the COVID-19 pandemic and the introduction of ride sharing licences in British Columbia would have an adverse impact on its business and that it was unfair for the Union to expect it to bargain collectively in that context. The Employer notified the Union that it would be transitioning to an app-based dispatch system.

27 While the Employer was entitled to raise its concerns about the impact of ride sharing and the COVID-19 pandemic at the bargaining table, and while it was entitled to seek concessions, it breached Sections 11 and 47 when it made no meaningful effort at all to engage with the Union in collective bargaining.

28 With respect to the layoff notice the Employer issued to all employees in the bargaining unit, I also find the Employer has contravened Section 45(2) of the Code. The Employer has not asked that the Board authorize changes to terms and conditions of employment of employees in the bargaining unit. On the undisputed facts of this case, none of the preconditions in that provision have been met for the Employer to change terms and conditions of employment of employees without the Union's consent.

V. CONCLUSION

29 I declare that the Employer has failed to bargain in good faith and make every effort to conclude a collective agreement contrary to Sections 11 and 47 of the Code.

30 I order the Employer to meet and bargain with the Union in good faith and make every reasonable effort to conclude a collective agreement beginning no later than November 26, 2020.

31 I find the Employer has breached Section 45(2) of the Code and I order the Employer to rescind its layoff notices to the employees in the bargaining unit and to provide a copy of this decision to all employees in the bargaining unit.

32 I encourage the parties to take advantage of the Board's mediation services.

LABOUR RELATIONS BOARD



STEPHANIE DRAKE
VICE-CHAIR