Canada Industrial Relations Board | Conseil canadien des relations industrielles

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BY WEB PORTAL

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In the matter of the *Canada Labour Code (Part I–Industrial Relations)* and a referral by the Minister of Labour to the Canada Industrial Relations Board pursuant to section 80(1) thereof involving a dispute between LTS Solutions Ltd., employer; Local Union No. 213 of the International Brotherhood of Electrical Workers, certified bargaining agent. (033606-C)

Further to the hearing held in the above-noted matter, the parties will find enclosed the Reasons for Decision issued by a panel of the Canada Industrial Relations Board (the Board), composed of Paul Love, Vice-Chairperson, and Barbara Mittleman and Paul Moist, Members.

To comply with section 20 of the *Official Languages Act*, the Reasons will be translated and published on the Board's website at www.cirb-ccri.gc.ca. A copy may be obtained upon written request to the undersigned.

Sincerely,

Tanya Venable

Tanya Venable
Team Leader, Registry

Encl.

c.c.: Lindsay Foley

Canada

Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Local Union No. 213 of the International Brotherhood of Electrical Workers,

applicant,

LTS Solutions Ltd.,

employer.

Board File: 033606-C
Neutral Citation: 2023 CIRB **1075**
June 22, 2023

The panel of the Canada Industrial Relations Board (the Board) was composed of Mr. Paul Love, Vice-Chairperson, and Ms. Barbara Mittleman and Mr. Paul Moist, Members. The Board held a hearing on March 31, 2023.

Appearances

Mr. Brandon Quinn, for the Local Union No. 213 of the International Brotherhood of Electrical Workers;
Mr. Peter A. Gall and Ms. Justina Sebastiampillai, for LTS Solutions Ltd.

These reasons for decision were written by Mr. Paul Love, Vice-Chairperson.

I. Nature of the Application

[1] On November 10, 2022, the Board issued a decision in *LTS Solutions Ltd.*, 2022 CIRB 1047 (the Phase 1 decision), pursuant to section 80 of the *Canada Labour Code* (the *Code*), deciding that it was advisable to settle the terms of the first collective agreement (CA) between the Local Union No. 213 of the International Brotherhood of Electrical Workers (the union or the IBEW) and LTS Solutions Ltd. (the employer or LTS). In that decision, the Board directed that Ms. Lindsay

Foley (the IRO) provide an update to a report that she had issued on June 9, 2020, about which terms of the CA had been agreed to by the parties during bargaining and which were in dispute. She issued an amended report dated January 30, 2023. As the union remained on strike when the Board issued the Phase 1 decision, the Board also directed the IRO to assist the parties with respect to developing a return-to-work protocol, to which they ultimately agreed. On December 12, 2022, the Board issued a consent order annexing the return-to-work protocol (Board order no. 1398-NB).

[2] In the Phase 1 decision, the Board also encouraged the parties to make one last effort to bargain the terms of the CA. The IRO met with the parties to assist them in settling the dispute. The articles that the parties agreed to are set out in Schedule "A" to this decision.

[3] As a result, the remaining CA terms for the Board to settle are as follows:

- Article 2: Duration
- Article 6: Union Security
- Article 18: Wage Schedule (specifically, Article 18.02)
- Article 21: Health and Welfare
- Article 22: Pension and Retirement/Retirement Benefits
- Letter of Understanding #2: Exclusive Jurisdiction

[4] The parties were given an opportunity to comment on the IRO's report. The union took no issue with the report. The employer did not provide written comments; instead, it provided a written amendment of its wage offer set out in the IRO's report.

[5] In the Phase 1 decision, the Board also indicated that it would schedule a case management teleconference (CMT) with the parties to discuss the next steps. On February 6, 2023, the Board held a CMT with the parties. At the CMT, the employer's counsel advised the Board that the employer took no issue with Ms. Foley's report but explained that it withdrew its wage offer and replaced it with a new offer as a result of recent developments with its main customer, TELUS.

[6] At the CMT, after hearing from the parties, the Board advised them that it would apply an approach set out in *National Bank of Canada, division Télécommercialisation MasterCard*, 2001

CIRB LD 404. This approach involved each of the parties providing a submission and evidence concerning their respective positions on the outstanding matters and the Board then choosing either the union's offer or the employer's offer on an issue-by-issue basis. The salient part of the Board's letter requesting these submissions from the parties reads as follows:

> The parties' submissions should include submissions and evidence or information about these articles of the CA:
>
> ...
>
> After having heard the parties' submissions, the Board will weigh each of the clauses and supporting positions, and will adopt in its entirety either the employer's or the union's clause.

[7] The Board directed that the parties provide their written submissions by March 6, 2023, with an opportunity to provide a reply submission in writing by March 29, 2023. The Board also scheduled a hearing for March 31, 2023. At the hearing, the employer called Mr. Daniel Geheran, the Operations Manager for LTS, to provide brief oral evidence on updates to events between the employer and its major customer TELUS. This evidence related to an email dated March 10, 2023, to Ms. Alicia Milton at Ledcor from the General Manager, National Partner Operations, TELUS Home Solutions, which the Board will refer to in greater detail below.

[8] This decision settles the terms of the parties' first CA for a two-year term commencing on June 22, 2023. The CA shall consist of the articles agreed to by the parties in Schedule "A" and the terms settled by the Board in Schedule "B." For the reasons set out below, with the exception of the duration clause, the Board has decided to select each of the union's proposals in preference to the employer's proposals.

II. Background and Facts

[9] The Board does not propose to set out the background and facts in detail. There has been a lengthy history of litigation between the parties following the issuance of the Board's certification order on August 31, 2017. This history has been set out in a number of previous Board orders and decisions, including:

- Board certification order no. 11171-U, issued on August 31, 2017;

- *LTS Solutions Ltd*., 2018 CIRB LD 3953 (*LTS 3953*) (application for reconsideration of certification order);
- *LTS Solutions Ltd*., 2019 CIRB 896 (the scope decision);
- *LTS Solutions Ltd*., 2021 CIRB 982 (the ULP decision);
- *Howell*, 2022 CIRB LD 4639 (*Howell 4639*) (the bottom-line revocation decision);
- The Phase 1 decision; and
- *Howell*, 2022 CIRB 1055 (*Howell 1055*) (the reasons for the revocation decision).

[10] In the ULP decision, the Board described the clash of ideologies between the IBEW and LTS, which bears repeating. In British Columbia (BC) and other parts of Canada, telecommunications are delivered using telephone lines and cable systems. Telephone and cable companies often provide substantially similar products in the same market area. In BC, the market is divided largely between TELUS and Shaw Cablesystems (Shaw), with some other smaller competitors.

A. The Shaw World or Ecosystem

[11] In BC, the IBEW has had a lengthy presence in the telecommunications industry, and is a party to many CAs with Shaw. The parties have referred to this as the Shaw world or the Shaw ecosystem, as opposed to the TELUS world or TELUS ecosystem.

[12] Examples of this are the Cable Contractors Standard and Project Labour Agreements (August 10, 2015, to August 9, 2020), and the current CA (August 10, 2020, to August 9, 2025), signed by the IBEW with several cable contractors (cable contractors' agreement). This agreement provides for union recognition, for a bar on the use of non-union workers (Article 2.03), for a bar on contracting out unless it is to a contractor with an IBEW certification, that the union may discipline its members (Article 2.05), for a prohibition on contracting out bargaining unit work (Article 2.09(b)) and for labour to be supplied through a union hiring hall (Article 4.0).

[13] The cable contractors' agreement is a closed-shop agreement, which means that the employees must remain members of the union in good standing to remain employees of an employer. The union can call on the employer to terminate the employment of an employee who is not in good standing. Employees are generally paid based on an hourly rate with those terms

set out in the CA. Many of these CAs in the lower mainland of BC have existed since the 1960s with limited use of unionized subcontractors.

B. The TELUS World or Ecosystem

[14] Prior to the certification of this bargaining unit, LTS had minimal exposure to trade unions that advanced closed-shop provisions during collective bargaining. This is standard in many CAs. The closed shop is not mandated by the *Code*; it can be negotiated and agreed to by the parties. The very few Ledcor CAs based on an open-shop arrangement are with either the Construction and Allied Workers Union, CLAC Local 68 (CLAC), the Carpenters' Union or the Labourers' International Union of North America.

[15] In 2005, there was a lengthy strike at TELUS, which the parties refer to as "The Event" (the event). The TELUS CA resulting from this work stoppage eliminated all the restrictions on TELUS's ability to contract out work, or its obligation to use solely union contractors when contracting out work. As a result, TELUS has contracted out work to a small number of other contractors (6 to 12), primarily non-unionized contractors, under highly competitive terms. TELUS sets the terms and conditions for its contractors. LTS has been a TELUS contractor for many years. It commenced its relationship of providing installation and repair (I&R) services to TELUS following the event. LTS employs technicians who work on telecommunications systems owned by others. At the outset of the union's certification application, LTS was also involved in constructing a fibre-optic system for TELUS known as Project Falcon.

C. The Nature of LTS's Work

[16] LTS is part of the Ledcor group of companies. It is a construction company that engages in the designing and building of fibre-optic networks. It does not own or operate the infrastructure. It also provides technicians to service networks owned by different telecommunications companies, such as TELUS, Rogers Communications (Rogers) and Bell Canada (Bell), which includes providing services to individual customers and businesses who are the downstream users of those networks.

[17] LTS is a labour supply company that is primarily connected to TELUS, although it clearly has other customers as well.

[18] Non-bargaining-unit construction-side employees are involved in building the network. That can include the work of linemen, fusion splicers (splicers) and other employees on the core infrastructure side of LTS or subcontractors. The linemen and splicers who were formerly employees of LTS were transferred by the employer to LTS OSP Services Limited, a related company in the Ledcor group, which is represented by the CLAC.

[19] LTS has employed different types of technicians. The drops technician connects a cable from a network access point (NAP) outside the home, for example on a pole or underground access point, to a home or business. In larger, multi-unit buildings such as apartments, condos or offices, the fibre-optic technician—inside wiring (referred to as an MXU technician) installs a fibre distribution hub inside in the communications room of the building, installs an intermediate distribution hub on each floor, runs the cable through duct work and uses Invisilight—a clear, gel-like substance—along the junction between the ceiling and walls to complete the fibre path to each suite. It is a complicated task, and a crew of four would typically spend a whole week completing this task in a building.

[20] The work of a drops technician differs from that of an MXU technician in that a drops technician only connects one strand of fibre from the NAP to the home and this connection takes about 45 minutes, unless the work is complicated by factors such as garden suites or multiple suites within the building or disruption of the underground service by collapsed or blocked conduits. The MXU work is more complex.

[21] The I&R technicians and business field services (BFS) technicians run the cable from an NAP on the outside edge of the home by putting a plug or socket on a single strand of fibre on the edge of the home and run a cable inside the home to the router or gateway. The I&R and BFS technicians commission the service, test the service and demonstrate that the installed products, such as internet, television, telephone or alarm systems, work. This work is performed on a live network and can involve minor repairs or replacement of components.

[22] BFS technicians also provide services such as fixing breaks in the fibre-optic trunk line by fusion welding (break fix), locating underground services prior to someone else disturbing the surface (locates) and performing installations and repairs inside above- or below-ground shelters.

Some of this work for certain companies such as Bell or Rogers is provided in remote locations in BC, Alberta and other provinces.

[23] Sometimes the I&R or BFS technician will perform the drop if this is needed, and sometimes the drops technician will perform it.

D. The Relationship Between the IBEW and LTS

[24] In the spring of 2017, the IBEW began its organizing drive at LTS.

[25] The employer resisted the certification application, arguing that the bargaining unit should be national in scope and not limited to employees residing in BC and that the group should include field technicians performing sales work. The employer argued for a bargaining unit that paralleled its business structure. The union felt that it would be unlikely to gain a certification for such a large unit as proposed by the employer.

[26] On August 31, 2017, the Board issued Board order no. 11171-U, certifying the union as the bargaining agent for a unit of employees described as "all technical field employees employed by LTS Solutions Ltd., in British Columbia, **excluding** office, sales, warehouse and casual employees, and supervisors."

[27] The employer sought a reconsideration of the certification order, and the Board dismissed this application in *LTS 3953*. On April 30, 2018, the employer filed an application for judicial review of *LTS 3953* in the Federal Court of Appeal. On March 13, 2019, the employer withdrew the application.

[28] Although the employer challenged the certification, there is no evidence before the Board that it delayed its bargaining with the union because of the reconsideration application or proceedings in Federal Court.

[29] On September 6, 2017, the union's lawyer sent the employer's lawyer a notice to bargain. In correspondence with the union, Mr. Iain Morris, Chief Operating Officer, confirmed that the union should contact Mr. Jack Hoosen, Vice-President Industrial Relations, and Mr. Dale Hildebrandt, Manager of Industrial Relations.

[30] By the time the Board issued its Phase 1 decision, it had been more than five years since it issued the certification order and since the organizing drive commenced, and the parties had not yet reached a first CA. At the time of the certification order, the bargaining unit consisted of 238 employees: 188 I&R technicians, 8 BFS technicians, 25 drops technicians and 17 MXU technicians. The bargaining unit now consists of 65 employees: 26 MXU technicians, 4 BFS technicians, 25 small medium business (SMB) technicians and 10 fibre in a day (FIAD) technicians.

[31] The union has filed a number of unfair labour practice (ULP) complaints against the employer, but none of these complaints alleged surface bargaining. The Board did not adjudicate the first ULP complaint, which was filed prior to the issuance of its certification order, as the union withdrew it following certification. The union filed ULP complaints over a period of time after it gave its notice to bargain to the employer.

[32] As a result of issues arising during the course of the ULP complaints, the Board heard and determined an issue about the scope of the bargaining unit. In that decision, the Board found that the MXU and drops technicians were within the bargaining unit and that the splicers and linemen were not (see the scope decision).

[33] In an August 19, 2019, email written by Mr. Robin Nedila, Assistant Business Manager, the union raised allegations with the employer of surface bargaining. The primary thrust of the union's referral under section 80 of the *Code* is a complaint of surface bargaining by LTS.

[34] On July 27, 2020, Mr. Jordan Howell filed an application with the Board to revoke the union's certification. At the time of his application, Mr. Howell was an MXU employee. On January 31, 2021, the Board dismissed that application by way of a bottom-line decision, with reasons to follow (see *Howell 4639*). On December 29, 2022, the Board issued its decision with reasons (see *Howell 1055*).

III. Positions of the Parties

[35] The Board has set out the arguments and findings in connection with each of the six issues below. However, it first wishes to articulate the overarching positions of the parties.

A. The Union's Position

[36] The union submits that its positions should be preferred based on the approach set out in *Yarrow Lodge Ltd.*, BCLRB No. B444/93 (*Yarrow Lodge*), which will be described more fully below. The union submits that the employer has provided no financial information and that the Board therefore cannot accept arguments based on the employer's economic circumstances. The union submits that many of the employer's submissions are not supported by any facts or contradict findings already made by the Board in earlier proceedings.

[37] Based on the principles set out in *Yarrow Lodge*, the union argues that none of the proposed clauses are in the nature of breakthrough clauses and that they are in line with other industry CAs, particularly those in BC. The union's proposals are attractive enough to limit rejection by bargaining unit employees.

B. The Employer's Position

[38] The employer argues that the Board must impose a CA that replicates what the parties would have agreed to. The most important point is that the Board must impose a CA that permits the employer to continue to exist and compete in the highly competitive "TELUS world" where the terms can be dictated and changed by TELUS.

[39] Applying the replication principle, the employer states that it would not have agreed to any of the union's proposals.

[40] The employer argues that unless its proposals are imposed by the Board, it will not be able to continue to carry on business. The Board notes that the employer makes this argument without providing data demonstrating that its position has an evidentiary foundation. The employer does point to a previous loss of jobs prior to the strike and the loss of the I&R work as a result of what it claims was the union's conduct when TELUS sought to reduce amounts paid to LTS on account of I&R services. It also points to the recent email from TELUS seeking a reduction in the cost of MXU services.

IV. Analysis and Decision

[41] As outlined, section 80 of the *Code* requires the Board to assess whether it is advisable to settle the terms of the first CA between the parties, and, if it decides to intervene the Board settles the terms of the first CA. In the Phase 1 decision, the Board determined that it was advisable to settle the terms of the first CA between the parties.

[42] The Board notes that this is the first section 80 application in which it has fixed the terms of a first CA since 1986. The Board is only aware of a small number of applications under section 171.1 of Part V of the *Code*, the precursor to section 80 of Part I of the *Code*, and only a few of these resulted in the Board—or specifically, its predecessor, the Canada Labour Relations Board (CLRB)—imposing terms. For example, the CLRB imposed terms in the following cases:

- *CJMS Radio Montréal Limitée* (1978), 27 di 796; and [1979] 1 Can LRBR 332 (CLRB no. 160) (*CJMS Radio*);
- *Huron Broadcasting Limited* (1982), 49 di 68, [1982] 2 Can LRBR 227; and 82 CLLC 16,167 (CLRB no. 378) (*Huron Broadcasting*);
- *Canadian Imperial Bank of Commerce* (1986), 65 di 1; and 86 CLLC 16,023 (CLRB no. 564; and
- *Graham Cable TV/FM* (1986), 67 di 1; and 86 CLLC 16,039 (CLRB no. 585) (*Graham Cable*).

[43] In past cases, the Board or the CLRB did not clearly articulate the approach taken in fixing the terms of the CA. It is clearly a case-by-case approach where the Board tailors the approach to the nuances of the dispute. The Board accepts that in *CJMS Radio*, the CLRB adopted the approach of the British Columbia Labour Relations Board (BCLRB) in *Re London Drugs Ltd.*, [1974] B.C.L.R.B.D. No. 30 (QL) (*London Drugs*). At that time, the provisions of the BC *Labour Relations Code* and the *Code* were similar with respect to fixing the terms of the first CA where the parties were unable to agree.

[44] In *CJMS Radio*, the CLRB adopted certain comments made about BC's legislation, indicating that the terms imposed should be attractive enough to avoid a future revocation application by the

employer's employees. The Board notes that the same concern arises in this case, as it had to deal with a revocation application brought during the strike.

[45] As there were no decided cases following *Graham Cable* where the CLRB or the Board settled the terms of a CA under section 171.1 or section 80, there was no case law development. There have been ongoing developments in the case law within BC. The leading case in BC, building on the approach in *London Drugs*, is *Yarrow Lodge*.

[46] In *I.M.P. Group Limited – Aerospace Division*, 2008 CIRB 408, in the context of considering an application to refer all outstanding collective bargaining disputes to arbitration pursuant to section 87.4 of the *Code*, the Board referred to a relatively broad range of options. These options included referring the disputes to a single arbitrator or a panel, mediation-arbitration (med-arb) or final offer selection. The Board identified two types of final offer selection processes—either based on selection of a parties' entire package of proposals or based on selection on an issue-by-issue basis—as less frequently used in the federal jurisdiction.

[47] The procedural approach taken in Phase 2 of the instant case was as follows. The Board had the IRO meet with the parties to update a previous report issued on June 9, 2020, to determine which CA terms were agreed to and which were in dispute. The Board directed that the IRO work with the parties to develop a return-to-work protocol. On December 12, 2022, the Board issued a consent order as a result containing the return-to-work protocol (Board order no. 1398-NB). The Board made the IRO available to assist the parties in making a last-ditch effort to resolve the outstanding terms of the CA. The Board granted a number of extensions to permit mediation with the IRO and the finalization of the report. On January 30, 2023, the IRO provided an amended report. The parties had an opportunity to comment on that report.

[48] On February 6, 2023, the Board then held a CMT with the parties to determine the next steps.

[49] There are different ways in which the Board could have chosen to proceed to settle the terms of the CA. In *Seeking a Balance: Canada Labour Code, Part I, Review* (Ottawa: Human Resources Development Canada, 1995) (the Sims Report), at pages 159–161, the report discussed interest arbitration variants, including final offer selection.

[50] In the circumstances of this case, the Board chose a process of final offer selection, on an issue-by-issue basis, to resolve the outstanding CA issues (as noted in paragraph 6). This is a form of interest arbitration where the parties make their last and best proposal on the matters at issue. On an issue-by-issue basis, the Board then selects either the union's proposal or the employer's proposal without modification.

[51] The Board chose this method for a number of reasons. The parties have been involved in a protracted collective bargaining dispute in which there has been almost continuous litigation since the Board granted the certification on August 31, 2017. There was a strike that lasted for more than three years (from October 1, 2019, to the Board's order containing the return-to-work protocol on December 12, 2022). There has been extensive involvement of conciliators from the Federal Mediation and Conciliation Service (FMCS) in collective bargaining and the Board's IRO in attempting to mediate outstanding CA issues in the section 80 process. The parties' relationship is such that it is probable that this dispute will continue unless the Board makes an order.

[52] The Board has devoted significant resources to the resolution of the dispute. In addition to providing the assistance of its IRO, the Board has held some 31 days of hearing.

[53] The Board is dealing with sophisticated parties, but they clearly bring different ideologies to collective bargaining, which the Board referred to as a clash of ideologies in the ULP decision. Both parties are represented by very experienced counsel.

[54] The Board notes that there was a winnowing down of the unresolved issues. The parties' positions on the remaining issues are clearly defined, and the issues that the Board had to determine were narrow, lending themselves to a final offer selection process.

[55] The Board felt that final offer selection, on an issue-by-issue basis, would encourage the parties to realistically evaluate their position and the position of the other party and put forward a realistic proposal—one that they could live with as a resolution of the issue. The Board has been concerned that ideology, lack of trust and lack of financial information have been significant barriers in resolving the collective bargaining issues. The hope was that final offer selection would strip away these barriers and lead to an efficient and final resolution of the disputed CA terms.

[56] The Board chose this approach over a more conventional interest arbitration approach. As noted in the Sims Report, one of the flaws of conventional interest arbitration is that it may encourage the parties to "take positions and hold them because there is no advantage to compromise" (page 160). This can lead to protracted hearings and lengthy delays. There has been significant taking and holding of positions, as evidenced by the Board's finding in the Phase 1 decision that the employer did not make every reasonable effort to conclude a CA.

[57] One of the downsides of final offer selection, as pointed out in the Sims Report (see page 161), is that the panel has no ability to construct a compromise or refashion proposals. In the Board's view, however, these parties had an ample opportunity to resolve this dispute, with extensive assistance from the FMCS and the IRO.

[58] While the Board determined that final offer selection on an issue-by-issue basis was appropriate in this case, it may not be appropriate in all cases before the Board. The Board notes that section 80 applications occur rarely as they are infrequently sought and, when sought, often result in a settlement.

[59] The interest arbitration process, including final offer selection, appears on its face to be adjudicative in nature. However, the issues being considered have more to do with the allocation of economic resources than law (see *Governor and Co. of Adventurers of England trading into Hudson Bay (c.o.b. the Bay)* v. *British Columbia (Labour Relations Board)*, [1996] B.C.J. No. 2698 (QL)).

[60] As the employer pointed out, intervention by the Board under section 80 of the *Code* does not necessarily mean that the union gets what it wants. Phase 2 of the section 80 process provides a platform for the parties to make submissions and introduce evidence as to what the Board should impose.

[61] In assessing and selecting offers on each of the issues, the Board decided to follow the principles set out in *Yarrow Lodge*. This is the seminal case in BC, and there is a substantial body of interest arbitration experience based on the *Yarrow Lodge* approach. *Yarrow Lodge* builds upon the earlier approach in *London Drugs*, which was the leading case before the CLRB when it last

imposed first CAs. In *Yarrow Lodge*, the BCLRB set out five factors that arbitrators should consider in determining the terms of a first CA:

> 1. A first collective agreement should not contain breakthrough or innovative clauses; nor as a general rule shall such agreements be either *status quo* or an industry standard agreement. [The BCLRB made the observation that new and innovative clauses should be left to subsequent CAs.] [*Yarrow Lodge* Principle 1]
>
> 2. Arbitrators should employ objective criteria, such as the comparable terms and conditions paid to similar employees performing similar work. [*Yarrow Lodge* Principle 2]
>
> 3. There must be internal consistency and equity amongst employees. [*Yarrow Lodge* Principle 3]
>
> 4. The financial state of the employer, if sufficient evidence is placed before the arbitrator, is a critical factor; [*Yarrow Lodge* Principle 4]
>
> 5. The economic and market conditions of the sector or industry in which the employer competes must be considered. [*Yarrow Lodge* Principle 5]
>
> (page 57)

[62] The Board's decision on the six collective bargaining issues is set out below. In the Board's view, none of the clauses that it imposes are innovative or breakthrough clauses. The Board is not imposing the standard CA used by the IBEW with cable contractors in BC, nor is it imposing the status quo that has been LTS's objective in collective bargaining.

[63] For example, on the issue of pensions and health and welfare benefits, both parties agree that the CA should address these issues; the question is simply whether the status quo offered by the employer should prevail over the union's proposal.

[64] *Yarrow Lodge* refers to two framework principles, replication and fairness and reasonableness in the circumstances, as the basis for arriving at the terms of a first contract.

[65] The interaction between the principle of replication and the principle of fairness and reasonableness is described in *Yarrow Lodge* as follows:

> Aside from this qualifier, arbitrators will determine on a case-by-case basis what should be contained in specific first collective agreements. In attempting to arrive at the actual terms and conditions of a first contract, arbitrators usually employ two framework principles: the "replication" principle, and what is "fair and reasonable in the circumstances".

> In applying the replication principle, an arbitrator's objective is to replicate or construct a collective agreement which reflects as nearly as possible the agreement that conventional bargaining between the parties would have produced had they themselves, been successful in concluding a collective agreement. This approach seeks to put both parties in the same position they would have been had there been no breakdown in negotiations.
>
> However, arbitrators try to overcome one serious flaw in this approach; that is, they do not simply want to mirror any great imbalances of power between parties in drafting the terms and conditions of employment. They will attempt to look at other objective criteria – for example, the terms and conditions of employment of other employees performing similar work. They therefore, in addition to employing the replication principle, impose what they consider to be fair and reasonable terms and conditions. We endorse both these approaches in the determination of first collective agreements.
>
> (page 55)

[66] In *Penticton (City)* v. *Penticton Fire Fighters' Assn., International Assn of Fire Fighters, Local 1399 (Interest Arbitration)*, [2015] B.C.C.A.A.A. No. 75 (QL), at paragraph 64, Arbitrator McPhillips commented on replication as a somewhat fictional exercise.

[67] There are examples in the interest arbitration jurisprudence where arbitrators have rejected proposals as "minimal and unrealistic in approximating a replication of the likely outcome of vigorous collective bargaining" (*Teamsters Local Union No. 213* v. *Sysco Fine Meats Vancouver, a Division of Sysco Canada Inc. (c.o.b. Trimpac Meat Co.) (First Collective Agreement Mediation Grievance)*, [2020] B.C.C.A.A.A. No. 144 (QL), paragraph 20).

[68] The Board has attempted to replicate the result that reasonable parties would have reached had they been able to successfully bargain the remaining matters in issue.

[69] The Board will now proceed to address the terms in issue by setting out the parties' positions and arguments, analyzing the positions and arguments and selecting either the union's proposal or the employer's proposal.

A. Article 2: Duration

[70] The parties take different views on the duration of the CA, and each has advanced cogent arguments in support of its position. The union proposes a four-year term, and the employer proposes a three-year term. The Board need not set out the arguments of each of the parties on the duration issue. Suffice it to say that they do not agree on the duration of the CA.

[71] The Board notes that in *Yarrow Lodge*, the BCLRB determined that the duration of a first-imposed CA would be two years unless the parties agreed to a longer term. The Board also notes that some jurisdictions in Canada have a one-year requirement for a first CA where the CA is imposed under first contract processes.

[72] The predecessor provision to section 80(4) of the *Code* was section 171.1(4), which read as follows:

> **171.1 (4)** Where the terms and conditions of a first collective agreement are settled by the Board under this section, the agreement shall be effective for a period of one year from the date on which the Board settles the terms and conditions of the collective agreement.

[73] In *CJMS Radio*, the CLRB found that the wording of section 171.1 of the *Code* was almost identical to that of section 70 of the BC *Labour Relations Code* which was in effect as of January 24, 1974. The BC process has since been amended, and the current provision—section 55—contains no legislative standard for the duration of a CA. However, section 50(1) of the BC *Labour Relations Code* provides that CAs of a term of less than one year are deemed to be for a term of one year. Section 67 of the *Code* contains a similar provision:

> **67 (1)** Where a collective agreement contains no provision as to its term or is for a term of less than one year, the collective agreement shall be deemed to be for a term of one year from the date on which it comes into force and shall not, except as provided by subsection 36(2) or with the consent of the Board, be terminated by the parties thereto within that term of one year.

[74] Section 80(4) of the *Code* clearly provides for a mandatory two-year term when the Board determines the term of the CA:

> **80 (4)** Where the terms and conditions of a first collective agreement are settled by the Board under this section, the agreement is effective for a period of two years after the date on which the Board settles the terms and conditions of the collective agreement.

[75] The Board therefore orders that the term of this CA be for a period of two years starting from the date the Board issues this decision.

[76] Had the parties reached an agreement for a duration exceeding two years, the Board would have had to consider whether it had any discretion to impose a term consented to by the parties in excess of the two-year period set out in section 80(4) of the *Code*.

[77] The Board notes that the duration of the term affects its decision about the wage schedule it imposes under Article 18.02 below.

B. Article 6: Union Security

1. The Union's Proposal and Argument

[78] The union's position on union security as set out in its proposal is as follows:

> **6.01 (a) Union Membership**
>
> The Employer agrees to employ none but members in good standing of the Union to perform the various classes of work mentioned in the Certification. All employees shall remain members in good standing as a condition of employment.
>
> …
>
> **6.02 Union Clearance**
>
> It is agreed that such members secure a written clearance from the Union prior to reporting for work or within fifteen (15) days of reporting for work. The Shop Steward is to be given a copy of the clearance as soon as possible. Such clearance shall continue unrevoked so long as the member remains in good standing.

[79] The union explains that the clearance article is simply a notification requirement so that it is made aware of new employees hired by the employer. It is not intended to allow the union to provide input into the selection or hiring of employees, which, under this CA, is a vested management right.

[80] The union seeks that all employees be members of the bargaining unit. It argues that the best chance for a lasting collective bargaining relationship is for all employees to be union members so that they have some skin in the game.

[81] The union notes that under the *Yarrow Lodge* approach, the theory is that the best chance for a lasting relationship is if the Board were to impose a closed shop. The union submits that the requirement to join a union is common in telecommunications CAs, particularly those in BC.

[82] The union argues that imposing this clause will also go some way towards repairing the damage the Board found was caused by the employer in committing ULPs based on its failure to recognize the union.

2. The Employer's Proposal and Argument

[83] The employer's position on union security as set out in its proposal is as follows:

> **6.01 Union Membership**
>
> i. No employee who continued to work during the strike, that commenced in September 2019, will be required to join the union as a condition of continued employment.
>
> ii. All employees who join the company after the effective date of this agreement will be required to join the union within 10 working days of completing their probationary period.
>
> iii. No Employee shall be discriminated against or jeopardized in standing or suffer loss of employment on account of a lack of membership.
>
> iv. The Employer will inform all new employees of the collective agreement and the Union's bargaining rights during the recruitment process for positions in the bargaining unit.
>
> v. The Employer will provide the Union with the names and contact details of new employees before or within 10 working days of their start date.
>
> vi. All new employees will be provided with the names and contact details of the Union shop stewards ("Stewards") as provided by the Union, in order to give the Steward an opportunity to describe the Union's purpose, representation and inform the new employee(s) of the benefits of Union membership.

[84] The employer argues that persons who have crossed the picket line should have the choice to join the union. It argues that the union's conduct during the strike was egregious and included threats to fine those employees. It states that employees who crossed the picket line should not be required to join a union that has mistreated them.

[85] The employer argues that disaffected employees have had very little choice in the past, as illustrated by a strike being called without a vote on the employer's last offer, a lack of communication with non-union employees, the crossing of the picket line by employees and the filing of an application for revocation.

[86] The employer argues that compelled membership is not a good basis for a relationship. The union must reach out to the disaffected employees and build trust with them.

[87] In its submission, the employer also refers briefly to the right of non-association under the *Canadian Charter of Rights and Freedoms* (the *Charter*):

> 23. If the Board now compels union membership for the employees who crossed the picket line, the breach of their *Charter* rights is no longer speculative, it is real, as the employees will not have another opportunity to have the certification revoked until the last three months of the imposed agreement, which is at least three years away. This is clearly not consistent with their fundamental right of freedom of association under the *Charter*.

3. The Union's Reply Argument

[88] The union argues that most of the points raised by the employer have already been considered and dismissed by the Board in earlier proceedings.

4. Analysis

[89] The main difference in the positions on the union security clause relates to employees who were employed at LTS prior to the strike. Both parties otherwise accept the concept of a closed shop for at least new employees.

[90] With respect to the decided cases in which its predecessor imposed the terms of a CA, the Board has not had to grapple with whether to impose a union security clause. The closed shop is permissive under the *Code*. It is not a requirement of the *Code*. The Board was provided with no authorities dealing with imposing a union security clause and where the employer opposed such a clause.

[91] On a review of the BC interest arbitration cases, it appears that this issue has rarely arisen. The only case that the Board was able to find where an interest arbitrator imposed a union security clause was *K Mart Canada Ltd.* v. *United Food & Commercial Workers' Union, Local 1518*, [1993] B.C.C.A.A.A. No. 241 (QL). In that decision, the arbitrator examined CAs in the retail industry and determined that, with few exceptions, agreements in the industry contained union security provisions similar to those proposed by the union. The arbitrator found, applying the replication principle, that the parties likely would have arrived at a union security clause similar to the one proposed by the union.

[92] Under the approach in *Yarrow Lodge*, with respect to provincially regulated labour relations in BC, a closed-shop union security clause is not viewed as a novel or innovative type of clause

but as an ordinary and usual clause to facilitate the chance of developing a stable collective bargaining relationship when a first CA is imposed (*Yarrow Lodge* Principle 1).

[93] The Board notes that the employer's position in these proceedings has softened from its open-shop bargaining proposal of September 19, 2019, that the Rand formula should apply to the union recognition clause, to its current proposal of compelled membership for new employees with optional membership for those employees who crossed the picket line during the strike.

[94] The Board selects the union's proposal over the employer's proposal.

[95] The evidence before the Board showed that at least 50 percent of the CAs in the telecommunications industry across Canada have a closed-shop union recognition clause.

[96] There are two agreements affecting BC telecommunications employees that are not closed-shop agreements—the CA between TELUS and the United Steelworkers (USW) and the CA between LTS Build Services Ltd. and the Construction and Allied Workers' Union, CLAC Local 68 (February 27, 2022, to June 30, 2025). The Board is not aware of any other unionized contractors that provide services to TELUS in BC or Alberta.

[97] In the effort to attempt to ensure a lasting collective bargaining relationship, the Board finds that in the circumstances of the instant case, it would be best to follow the approach in *Yarrow Lodge* and order a closed shop agreement as proposed by the union.

[98] The Board intervened in this dispute in part because of ULPs by the employer which related to drops and MXU employees. Part of the Board's remedial order in the ULP decision was an order that the employer publish the Board's findings to its employees. In the Board's view, the employer provided very little information as well as incorrect information when it published the results of the Board's decision to the employees. It was characterized as a minor issue, when in fact it was significant (see the Phase 1 decision, at paragraphs 313–315).

[99] The employer's proposed clause perpetuates the distinction between those employees who crossed the picket line and those who did not. This clause reflects statements made by Mr. Hildebrandt on October 18, 2019, during the strike, when he stated in effect that LTS would not agree to a union security term that required mandatory membership (see the Phase 1 decision,

at paragraph 84). The Board notes that the employer's proposal violates *Yarrow Lodge* Principle 3 related to treating employees equitably. Further, the proposal is a novel one distinguishing between the membership obligations of different groups within the bargaining unit. The Board was referred to no comparable clause in a telecommunications industry CA (*Yarrow Lodge* Principle 2).

[100] The Board notes that in the ULP decision (see paragraphs 153 to 159), it made findings about why the union had called the strike without calling a vote on the employer's last offer. The union was concerned with the employer's offer as it contained insufficient particulars for any employees to determine the basis of pay and hours to be worked in a week, other than work hours and pay at the employer's discretion. In the Phase 1 decision, the Board characterized the wage proposal as one that was cast in jello.

[101] Mr. Nedila had some thought of referring the offer to the membership for its consideration and a vote. The union intended to recommend that the members decline the employer's offer. On September 19, 2019, the union sent out a notice for a membership meeting. On September 25, 2019, the employer notified the union that it had terminated 31 residential I & R technicians. As a result, Mr. Nedila felt there was no choice but to declare a strike.

[102] The Board notes that no findings were made by the Supreme Court of British Columbia in the injunction application filed by the employer, which alleged misconduct by the union in its treatment of employees who chose to cross the picket line. The union also disputed the employer's allegations and provided sworn affidavits. The parties agreed to a consent injunction. In its injunction proceedings, the employer did not raise any further alleged misconduct after the consent order. Further, it agreed to withdraw and did withdraw its injunction application as part of the return-to-work protocol.

[103] The Board notes that the employer filed no application with it regarding the union's conduct during the strike. However, it has raised this issue as a reason why the Board should not intervene under section 80 of the *Code* (the Board rejected this argument) and again has raised this issue as part of its argument for granting its union recognition clause.

[104] The Board made no findings of union misconduct in the ULP proceedings before it as it was not seized with any ULP complaint against the union (see the ULP decision, at paragraph 178).

[105] The Board reiterates its findings about the strike. A strike is not a tea party. An injunction was in place to prevent tortious conduct.

[106] The Board notes that under the replication principle, the concept of replication includes correcting power imbalances. Further, the Board can look at the terms proposed to determine whether they are reasonable.

[107] Here, without supporting facts, the employer maintains positions concerning the importance of employee choice in membership which it links to unproven and disputed allegations of union retaliatory misconduct during picketing related to the crossing of the picket line by some employees. These allegations reportedly arose shortly after the strike commenced in 2019.

[108] Generally, the approach in interest arbitration is an objective approach using evidence and relevant comparators. In terms of the objective facts, there is no proof of the union engaging in retaliatory conduct against any employees.

[109] The Board notes that the employer did not draw its attention to any Court application to enforce the injunction or to hold the union in contempt for breaching the injunction's terms. The injunction proceedings were discontinued as a term of the return-to-work protocol. The parties and the Board have addressed the issue of retaliation in the return-to-work protocol. This protocol has been in effect for more than five months [based on the probable date of the decision release in May], and the Board has not been made aware of any retaliatory conduct by either the union or the employer.

[110] If the alleged "picket line misconduct" is removed from the equation, it is probable that these parties would have agreed to the union's proposal of a closed shop. The parties are almost there in the employer's proposed clause—the issue is whether the protection against retaliation sought by the employer is based on objective evidence and is reasonable.

[111] In the Board's view, the parties' concern about retaliation is fully addressed in the return-to-work protocol. The Board expects the parties to comply with its orders, and no issue about non-

compliance has been raised. Retaliation does not need to be addressed in the union security clause.

a. Protection From Retaliation

[112] The primary reason the employer seeks its clause is to protect its existing employees from union retaliation in respect of actions in crossing the picket line during the strike. The employer refers to misconduct by the union during the strike. The Board notes firstly that this issue was canvassed during the Phase 1 hearing. The conduct that the employer alleges was not sanctioned by the union. The union consented to an injunction which prevented harassing or tortious conduct, if in fact it did occur. There was never proof on a balance of probabilities of union misconduct during the strike.

[113] On October 17, 2019, Mr. Nedila provided a strike update by email. In this update, he provided short Questions and Answers for employees who were crossing the picket line, whom he referred to as scabs. Mr. Nedila stated that the union would fine members who crossed the picket line and that these employees would have to pay for their own legal representation. As the Board noted in *Howell 1055* (see paragraphs 95–98), there is no evidence that the union has laid charges under its constitution in respect of crossing the picket line.

[114] Furthermore, the Board notes that the parties entered into a return-to-work protocol ending the strike, which was incorporated into the Board order of December 12, 2022.

[115] The salient part of that protocol reads as follows:

> 6. Return to work Terms and conditions
>
> > 1. The IBEW agrees that no employee who crossed the picket line of the strike that commenced on 30th September 2019 will be discriminated against or suffer any form of punishment, discipline or retribution including monetary fines by the IBEW, its employees, and members and supporters.
> >
> > 2. The IBEW agrees to stop all picketing and demonstration activities at LTS offices and worksites and to take down all signage and placards related to the strike and dispute no later than end of day December 12, 2022
> >
> > 3. The Company agrees that employees, who return to work and who participated in the strike that commenced on 30th September 2019, will not be subject to any form of punishment, discipline, or retribution.

> 4. LTS and the Union agree that time on strike counts towards their length of service with the Employer.
>
> 5. The Employer will withdraw to the Supreme Court of British Columbia regarding the Notice of Civil Claim (S-201074) against the IBEW that was filed on January 3, 2020 by December 31,2022.

[116] The employer argues that it is naïve for the Board to expect that employees will not face retaliation by the union. However, the Board expects the parties to honour the commitments they made to each other in the return-to-work protocol where they both agreed that:

- the IBEW would not subject employees who crossed the picket line to discrimination or any form of punishment, discipline or retribution including monetary fines by the IBEW, its employees, members and supporters and
- LTS would not subject employees who participated in the strike to any form of punishment, discipline, or retribution.
- This is part of the Board's order, and the Board expects that the parties will comply with its orders.

[117] The Board notes that unions have certain legal obligations towards the employees they represent. Under section 37 of the *Code*, unions must not act in an arbitrary, discriminatory or in bad faith manner in representing employees with respect to rights under the collective agreement. In addition, section 95 of the *Code* contains a number of prohibitions against certain union conduct. For example, a union cannot apply standards of discipline or membership rules to an employee in a discriminatory manner. Also, a union cannot ask an employer to dismiss an employee if the employee has been expelled or suspended from membership in the union, except if the employee failed to pay dues, assessments and initiation fees required as a condition of membership.

[118] In other words, a bargaining unit member has remedies under the *Code* if the union retaliates against them. Further, the union does not have an unfettered right to enforce a union security clause requiring the employer to terminate an employee's employment for loss of union membership, resulting from a failure to pay a fine (see *Khan*, 2006 CIRB 357). The union has no ability to request that the employer dismiss employees who crossed the picket line and who the union requests the employer to dismiss (see *Solly* (1981), 43 di 29; [1981] 2 Can LRBR 245; and

81 CLLC 16,089 (CLRB no. 296)). Employees have remedies available to them under sections 37 and 95(e) of the *Code*.

[119] The Board notes that individual employees in the bargaining unit may well resent employees who chose not to honour the strike. This might lead to direct retaliation by a union supporter against a person who crossed the picket line, despite the return-to-work protocol. The Board notes that this possibility can be adequately addressed by the employer. The employer has the right to manage its workforce. The parties agreed to a broad management rights clause (Article 7.00–Management Rights), and the employer has the right and obligation to deal with employee misconduct, including allegations of bullying and harassment. Given commitments made during the strike, it is improbable that the employer would tolerate any harassment at work on these issues.

[120] Further, there are provisions under Part II (Occupational Health and Safety) of the *Code* that deal with workplace safety.

[121] The Board is satisfied that it is unnecessary to have CA language that specifically protects employees who crossed the picket line from retaliation by the union. Such language perpetuates differences that arose during the strike, which the parties agreed to resolve with the return-to-work protocol.

b. *Charter* Right of Non-Association

[122] In its submission, the employer raises a breach of the freedom of association under section 2(d) of the *Charter*. The employer asserts the following:

> 23. If the Board now compels union membership for the employees who crossed the picket line, the breach of their *Charter* rights is no longer speculative, it is real, as the employees will not have another opportunity to have the certification revoked until the last three months of the imposed agreement, which is at least three years away. This is clearly not consistent with their fundamental right of freedom of association under the *Charter*.

[123] The union refers to the Board's decision in *Howell 1055* and the reference in that decision to *R.* v. *Advance Cutting & Coring Ltd.*, 2001 SCC 70; [2001] 3 S.C.R. 209 (*Advance Cutting*). The union notes that the requirement to join a union is not a breach of the right to freedom of association under section 2(d) of the *Charter*. It argues that there is no constitutional challenge in

this case and that following *Yarrow Lodge*, the imposition of a closed shop, as opposed to an open shop and the Rand formula, will give a better chance to a lasting collective bargaining relationship. In *Advance Cutting*, LeBel J., writing for three members, found that there was no forced association and compelled ideological conformity or breaches of another liberty interest to trigger the negative guarantee.

[124] The Board recently addressed the issue of whether the revocation provisions of the *Code* were contrary to a *Charter* right of non-association and provided reasons in *Howell 1055*. In *Howell 1055*, the Board found that a temporal restriction on the right to bring a revocation application was not a breach of the freedom of association (see paragraphs 217–225). It referred to other Board decisions where it had found that the mere requirement to join a union was not sufficiently burdensome to breach the negative freedom of association embedded in section 2(d) of the *Charter*. The Board relied on cases in the certification context where individual employees may be obligated to belong to a bargaining unit and pay union dues, against their wishes, and this does not necessarily engage their rights under section 2(d) of the *Charter* (see *TD Canada Trust in the City of Greater Sudbury, Ontario*, 2006 CIRB 363, upheld in *TD Canada Trust* v. *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union*, 2007 FCA 285). The Board notes that in *TD Canada Trust*, the Federal Court of Appeal relied on *Lavigne* v. *Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211; *Advance Cutting*; and *Télé-Mobile Co.* v. *Telecommunications Workers Union*, 2004 FCA 438.

[125] Given the Board's recent determination in *Howell 1055*, it is unnecessary to revisit the *Charter* issues.

[126] Moreover, given the term of this CA (two years) and the open period for filing a revocation application (in this case, the last three months of the second year of the CA's term; see sections 24(2)(c) and 38(2) of the *Code*), employees who do not wish to join the union will be subject to compelled association for a very limited period of 21 months and up to 24 months. If the affected employees are dissatisfied with the union as their certified bargaining agent, it is open to them to bring an application for revocation of the certification during the open period.

c. The Optics in Light of the Board's Decision in *Howell 1055*

[127] The employer alleges that the employees have been misled as a result of the Board's ruling in *Howell 1055* that it was speculative whether the Board would impose a closed shop. The employer argues that this raises concerns about what non-union employees would think about the Board now imposing this term. The employer argues that this is no longer speculative.

[128] This is an emotive rather than a legal argument. The hidden premise in the argument is that the Board always intended to impose a closed-shop recognition provision. The true facts, however, are that the Board could only settle the issue of union security if it decided that it was advisable to settle the terms of the CA, and only after it considered the proposals, arguments and evidence presented by the parties.

[129] In *Howell 1055*, the Board characterized the applicant's concern as hypothetical because the Board's refusal to allow a revocation application would not automatically result in it imposing a closed-shop union security clause in the section 80 process. The Board stated that this was a matter best left to collective bargaining and the section 80 application (see *Howell 1055*, at paragraph 241).

[130] The Board notes that when it issued *Howell 1055*, the last offers known to it on union security were the employer's proposal for an open shop and the Rand formula and the union's proposal for a closed shop.

[131] In its March 6, 2023, submissions in Phase 2 of this section 80 application, the employer's proposal on union security was much different than its offer of September 19, 2019, or as reported in the IRO's June 9, 2020, report that catalogued the matters agreed to and in dispute.

[132] The Board recognized the possibility that the open or closed shop issue could arise during the section 80 process, but in no way had it predetermined the outcome of this issue. The Board notes that the parties' positions on the union recognition clause are not as stark in contrast as they were at the start of the strike. The issue now was whether the Board should distinguish between groups of employees in imposing a union security clause.

[133] For all these reasons, the Board selects the union's proposal on the union security clause.

C. Article 18: Wage Schedule (Specifically, Article 18.02)

[134] It is helpful to set out some factual context before exploring the wage schedules proposed by each party.

1. A Factual Context for Reviewing the Wage Proposals

[135] On September 16, 2017, the union's lawyer gave a notice to bargain to the employer by letter to the employer's lawyer (see the ULP decision, at paragraph 122). Under section 50 of the *Code*, the notice to bargain collectively triggers a statutory freeze, for example, on rates of pay. Section 50(b) of the *Code* reads as follows:

> **50** Where notice to bargain collectively has been given under this Part,
>
> …
>
> **(b)** the employer shall not alter 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 the requirements of paragraphs 89(1)(a) to (d) have been met, unless the bargaining agent consents to the alteration of such a term or condition, or such a right or privilege.

[136] Because of the statutory freeze, the employer was unable to increase wages without the union's consent during the course of collective bargaining, until the union issued a strike notice.

[137] The Board has reviewed 30 CAs in the telecommunications industry across Canada provided by the union. It has also reviewed a further CA that was submitted as part of the documents during Phase 1 (the cable contractors' agreement). Each of the CAs provides for an annual increase in wages during the CA's term. Ordinarily, parties covered by a CA from November 2017 to June 2023 (69 months) would have had six annual wage increases under the CA during that period, while the LTS bargaining unit employees have only had one increase during that period, in January 2022.

[138] The Board finds it probable that the employer implemented a five-percent increase in wages in January 2022, based on the facts set out below. However, during the 69-month period from the date of the notice to bargain to the date of this decision, it is apparent that telecommunications employees would generally have received annual wage increases.

[139] On December 20, 2021, Mr. Hildebrandt emailed Mr. Nedila, on the subject of rates of pay in BC, as follows:

> The business has announced the implementation of increases to the deemed rates of pay for our Alberta based techs, that will come into effect on the 2nd of January 2022.
>
> In the normal course of events any increase applied to Alberta techs would also be applied to our BC based techs. While we have already communicated the increase to our Alberta employees, we are seeking your agreement for us to implement a 5% increase as of 2nd of January 2022 for the BC employees within the IBEW bargaining unit.
>
> This 5% increase will be applied to our piece rate paid tech's deemed rates and our MxU and BFS (Non-Piece rate)tech's hourly rates of pay.
>
> Please let me know if you agree to this increase being applied as of the 2nd of January 2022. If you have objections to this proposed increase, please let me know and we can leave it until we discuss monetary items during bargaining.
>
> [*sic*]

[140] The Board notes that the Alberta-based technicians are not part of the bargaining unit.

[141] On December 31, 2021, Mr. Nedila responded as follows:

> In regards to the proposed pay increase for BC Bargaining unit employees the Union is not against this and wouldn't stand in the way of it happening. Can you provide more details as to why this is happening? Is Telus paying more for the work or has the Company made more profit? Can you give us an idea how profitable 2021 was for LTS?

[142] While the employer appears to have implemented a five-percent increase in January 2022, it cannot be characterized as an increase arising from collective bargaining. The Board considers that this is a fact that can be considered in assessing the parties' proposals.

[143] The employer did not provide financial information in collective bargaining, nor has it provided financial information in the section 80 process before the Board.

[144] In the Phase 1 decision, the Board found that the employer had failed in its duty to make every reasonable effort to enter into a CA, in part by "creating an impasse by insisting on unusual CA terms that were not industry standards for technicians, particularly the wage rates, which gave the employer the unilateral right to reduce or change the wage rates" (Phase 1 decision, paragraph 320).

2. The Union's Proposal and Argument

[145] The union's proposal reads as follows:

> **18.02 Base Increases Hourly Rate & Deemed Rates:**
>
> Ratification: 5%
>
> 2024: 3%
>
> 2025: 3%
>
> 2026: 3%

[146] The union bases its five-percent proposal on the fact that the employer offered a five-percent increase in 2021 and that is therefore some indication of an ability to pay.

[147] The union agreed that if the Board imposed a CA with a duration of two years because of section 80(4) of the *Code*, its offer would be truncated by eliminating the proposals for 2025 and 2026.

[148] The union says that it has no desire to renegotiate wages each year, as proposed by the employer for the second and subsequent years of the CA. It argues that the employer's proposal raises the same concerns as set out in the Phase 1 decision at paragraphs 246–271. It is a wage proposal cast in jello.

[149] Given the employer's approach to bargaining since 2017, the union anticipates annual bargaining being a difficult process and states that there is no mechanism for resolution if the parties are unable to agree.

[150] The union proposes a five-percent increase in 2023, with three percent after that. In selecting the proposals, the union argues that the Board need not concern itself with the employer's financial information, as none has been provided. The union seeks five percent in the first year as this was the amount provided in early 2022. The union notes the high rate of inflation.

3. The Employer's Proposal and Argument

[151] The employer's original proposal at the time of the IRO's report read as follows:

> **18.02 Annual Base wage review**
>
> a) Effective upon employee ratification of this agreement the base wage hourly rates and deemed rates will be increased by 3.0%.
>
> b) Starting April 2024, the parties agree to an annual base wage review process each April to discuss rates of pay to be effective from first pay period after the 1st of May for the following 12-month period. A similar review will occur every April for the duration of this agreement.

[152] On January 4, 2023, the employer provided a modified proposal, which reads as follows:

> 18.02 Annual Base wage review
>
> a) Effective upon employee ratification of this agreement the BFS base wage hourly rates and SMB deemed rates will be increased by 3.0%.
>
> b) Effective upon employee ratification of this agreement the MxU base wage hourly rate will be increased by 0.5%.
>
> c) Starting April 2024, the parties agree to an annual base wage review process each April to discuss rates of pay to be effective from first pay period after the 1st of May for the following 12-month period. A similar review will occur every April for the duration of this agreement.

[153] At the hearing, the employer proposed a mechanism for interest arbitration for the 2024 wages if the parties did not agree after meeting about wages. The employer, however, did not provide any language for such a clause.

[154] The employer submits that it is in danger of losing the MXU contract because its costs are higher than those of its competitors. There could be 10 jobs lost.

[155] The employer submits that the fundamental purpose of the *Code* is to facilitate and protect collective bargaining that meets the needs and circumstances of the business in the environment in which it operates. Imposing higher wage rates limits LTS's ability to compete.

4. Analysis

[156] The employer has never provided the union with financial information or the contract between it and TELUS, despite repeated requests from the union during the bargaining process. The union did not ask the Board for a production order.

[157] In its CMT letter of February 9, 2023, the Board invited the parties to make full submissions. The Board notes from the past litigation history that LTS is quite capable of adducing voluminous and detailed data when it chooses to do so. An example of this is the voluminous data it supplied when it advanced its business as before defence before the Board in the ULP hearings (see the ULP decision, at paragraphs 206–207, 212–214, 288, 296, 306 310, 324–331 and 339–340).

[158] The Board notes that interest arbitration cases are often data-intensive because of the consideration of the replication principle and comparatives. The Board concludes that LTS has chosen not to provide it with the relevant data.

[159] The Board understands the rationale for the union's proposal of five percent in 2023 and three percent in 2024.

[160] The employer has not explained to the Board the basis for its original submission of a three-percent increase in the first year of the CA, for all of the technicians. For example, there is no reference to any objective comparable data in the telecommunications industry. LTS simply states the following:

> 39. The Union's proposed wage rates would render LTS uncompetitive for work from its primary client, TELUS, and hence doom its business in the province.

[161] LTS also refers to an example of TELUS seeking a six-percent reduction in the price charged by LTS for residential I&R services in BC. LTS says that it would never agree to labour costs that make it impossible to work for TELUS.

[162] Despite not providing any data, LTS nevertheless takes the position that its wage proposal should be preferred.

[163] In applying the principles in *Yarrow Lodge*, it is incumbent on an employer who raises a financial issue to ensure that sufficient evidence is placed before the arbitrator.

[164] The Board characterizes LTS's proposal as a willingness to pay issue as opposed to an ability to pay issue. LTS does not plead poverty before the Board. Its primary concerns are that it must make a reasonable rate of return and that it operates in a highly competitive environment. However, from the lack of data provided by LTS, the Board has no way to measure whether the union's proposal affects that reasonable rate of return or affects in a meaningful way the competitive environment. The Board has no idea what LTS considers a reasonable rate of return.

[165] To the extent that LTS has argued that any changes to the status quo affect its ability to compete in the TELUS world, the Board notes that it was receptive to considering that argument. In the context of *Yarrow Lodge* Principle 4, however the employer has to supply evidence to the Board. The parties have to be conscious that this type of argument, in the absence of cogent evidence, may simply be an argument, which violates *Yarrow Lodge* Principle 1 that an arbitrator should generally not impose either the standard terms of a CA or the status quo.

[166] The Board accepts that LTS operates in a very competitive environment, and it appears to be the only unionized company providing technician services to TELUS (*Yarrow Lodge* Principle 5).

[167] The Board described the environment in which LTS operates in previous decisions. It also accepts that TELUS apparently has the power to dictate terms. However, without a review of the contractual terms between LTS and TELUS, the degree of control by TELUS is somewhat unclear. LTS is also a company that is highly responsive to the needs of its customer—whether these are actual needs or anticipatory needs the Board cannot be certain.

[168] The employer has not demonstrated that an additional two-percent increase in the rates of pay for employees (the difference between the union's proposal and the employer's proposal for the first year for all employees other than MXU employees) would have an impact on its financial viability or the rate of return necessary for it to remain in business.

[169] The Board selects the union's wage proposal.

[170] The Board is concerned that the employer's proposal has no wage schedule for 2024, the second year of the CA. Given the Board's review of the CAs provided to it, it finds that LTS's proposal is out of step with what generally occurs in the telecommunications industry. All the CAs

reviewed (except the CA between Bragg Communications “Eastlink” and Unifor Local 919-M (Nova Scotia)) provided a set wage schedule for the life of the CA, and none of the CAs provided for discussion of rates for the final year of the CA. The employer provided no examples of any CAs where parties agreed to interest arbitration as a mechanism to resolve the final year of the wage schedule during the CA’s term.

[171] In the Board’s view, the employer’s proposal for this second year raises similar concerns to its previous and last wage offer in September 2019. The employer apparently seeks flexibility, presumably to be able to respond to changes introduced by TELUS. However, it is a wage proposal that is cast in jello. Employees should be able to look at the CA and ascertain their wages or the basis of their wages. The union would be left with no recourse under the employer’s proposal if the parties were unable to reach a consensus about wage rates in 2024.

[172] As presented in its written submissions, the employer’s proposal does not contain any mechanism to resolve a dispute arising from the discussion. The employer’s counsel stated that the CA would have to have an interest arbitration mechanism to resolve differences, but the employer had the opportunity to respond in writing to the union’s submission on this issue, and the Board has not received any details of the interest arbitration proposed by the employer on this issue.

[173] Given the bargaining history, the Board is concerned with the viability of interest arbitration as a mechanism to determine wages in 2024. The Board rejects this approach. In the Phase 1 decision, the Board commented on LTS’s substantial delay in providing an offer on wages during bargaining, which was not provided until September 2019. LTS did not provide any financial information supporting its proposals during bargaining despite repeated union requests.

[174] In this phase of the section 80 process, the Board finds that LTS did not participate in a meaningful way in providing evidence to the Board concerning its wage proposal. Given the employer’s conduct during bargaining and during these proceedings in not providing financial information, the Board expects that LTS would take a similar approach in wage discussions for 2024.

[175] Given its submissions, it appears that the employer continues to resent the imposition of CA terms. In December 2019, the employer rejected the union's proposal for interest arbitration to resolve the terms of the CA; the employer did not want to relinquish control to a third party (see the ULP decision, at paragraph 27).

[176] The union might have some measure of recourse under an interest arbitration approach for the 2024 wage rate, but given the employer's lack of financial disclosure in collective bargaining and in the Phase 2 Board proceedings, the Board finds that an interest arbitration approach is not likely to advance a collective bargaining relationship between these parties. Such an approach would allow the employer to do what it wants—as if there were no CA in place. Further, by the time of any negotiations about the 2024 wage rate, there would be little or no opportunity for the union to demonstrate to employees that there was a value to union membership. The Board notes that this has been a concern for the Board—the employer attempts to carry on without respect for the union's position as the bargaining agent for employees.

[177] The Board views an interest arbitration process to set wages for the second year of the CA as likely to be problematic, expensive, time consuming and out of step with how CAs in this sector usually express wages in a schedule for each year of the CA's term. Further, leaving this issue unsettled would promote conflict as opposed to providing labour relations stability, which is the underlying intent of entering into a CA.

[178] Separate and apart from rejecting the employer's proposal based on its failure to identify wages for all years of the CA, the Board finds that the union's proposal of five percent in 2023 and three percent in 2024 is reasonable given the facts in this case and data provided to the Board in the form of CAs that show the range of wage increases over time.

[179] In effect, the union's proposal represents a 13-percent wage increase, which is not retroactive and which covers the period from the imposition of the statutory freeze in 2017 to the date of this decision less the payments arising from the employer's proposal to increase wages by five percent in 2022.

[180] The Board notes that in 1982 in *Huron Broadcasting*, the CLRB imposed a 10-percent increase in the hourly rate where employees had been without a wage increase for one year. The

CLRB referred to considering actual and projected wage rates in a number of CAs affecting the same industry in the approximate geographical location. In 1986 in *Graham Cable*, the CLRB granted a six-percent increase to employees who had been on strike to place them on an even footing with employees who had remained at work, with a further four-percent increase. The Board notes that the imposition of wage increases as sought by the union amounting to eight percent is substantially less than the CLRB's order in *Huron Broadcasting*.

[181] Based on a review of the CAs before it, the Board finds that it is probable that telecommunications sector employees would have received an annual increase for each of the years from 2018 to 2024.

[182] The Board has tabulated the effect of the parties' proposals as follows, taking into account the impact of the statutory freeze, the strike, the 2022 increase and the parties' proposals for 2023 and 2024:

Proposal	**2018 % Increase**	**2019 % Increase**	**2020 % Increase**	**2021 % Increase**	**2022 % Increase**	**2023 % Increase**	**2024 % Increase**
The Union's Offer	Statutory freeze No increase	Statutory freeze and strike No increase	Strike No increase	Strike No increase – other LTS Alberta employ-ees receive 5% increase	5.0	5.0	3.0
LTS's Offer	Statutory freeze No increase	Statutory freeze and strike No increase	Strike No increase	Strike No increase – other LTS Alberta employ-ees receive 5% increase	5.0	3.0 for all employ-ees except MXU, 0.5 for MXU	To be deter-mined

a. National Comparators

[183] The Board has reviewed the data from 30 CAs across Canada, including BC, but noted that only 27 of those CAs included data for technicians within the period after the notice to bargain was issued in 2017. There was no data set for a single bargaining relationship that covered the entire period following the statutory freeze to 2024. The CAs supplied were for discrete terms. Some of the years had few entries. For certain of the CAs, the Board derived the percentage increase in a year by reviewing the increase in the hourly wage as set out in the CA. Based on the data supplied to the Board, there is a range in the percentage increase in wages for each of the years as follows:

By Year	**2018 % Increase**	**2019 % Increase**	**2020 % Increase**	**2021 % Increase**	**2022 % Increase**	**2023 % Increase**	**2024 % Increase**
Range of Increase	1.5 to 2.9	1.5 to 2.8	1.5 to 4.2	1.25 to 4.1	1.25 to 4.0	1.25 to 3.7	1.5 to 2.5

b. BC Comparators

[184] The Board has summarized the range in the percentage increase in wages for each year as demonstrated by CAs for parties in the telecommunications industry within BC:

By Year	**2018 % Increase**	**2019 % Increase**	**2020 % Increase**	**2021 % Increase**	**2022 % Increase**	**2023 % Increase**	**2024 % Increase**
Range of Increase	1.5	1.5 to 1.75	1.5 to 4.1	1.25 to 3.14	1.25 to 2.0	1.5 to 2.0	1.5 to 2.0

[185] The employer has argued that the CAs involving the union and Shaw should not be considered properly comparable. These are, however, CAs in BC, the market area covered by the certification. The Board notes that technician rates under the cable contractors' agreement rose 1.25 to 1.75 percent per year for the period of 2021 to 2024 or 5.5 percent over that period. The Board notes that the prior CA tendered during the Phase 1 hearing shows that the wage increases in the cable contractors' agreement raised 1.75 percent in 2018 and 1.75 percent in 2019.

[186] The Board reviewed the CA between TELUS and USW Local 1944, Telecommunications Workers Union, for the period of November 27, 2016, to December 31, 2021 (TELUS CA). The TELUS CA provided for a two-percent annual increase in wages per year for the years 2019 to 2021, or six percent over this period.

[187] For the CA between LTS Build Services Ltd. and the Construction and Allied Workers' Union, CLAC Local 68, again a CA in BC, wages rose two percent in 2023 and 1.5 percent in 2024. The Board was able to derive these rates from the CA provided.

[188] For the City West and IBEW unit in Northwestern BC, the increases were as follows: 1.75 percent (2019), 1.75 percent (2020), 1.75 percent (2021), two percent (2022) and two percent (2023).

[189] Using TELUS as a comparison, the wage increases sought by the union in 2023 and 2024 are reasonable.

[190] LTS increased its employees' wages by five percent in 2022, as of January 2, 2022. The Board finds that this proposal is less than what TELUS bargaining unit members would have received over the same period.

[191] With a five-percent increase in 2023 and a three-percent increase in 2024, the LTS employees would have received wage increases on par with TELUS employees.

[192] The Board has also reviewed the cable contractors' agreement rates of pay for journeymen and installers. This CA provides for annual rate increases of 1.75 percent in 2018, 1.75 percent in 2019 and 1.24 to 1.75 percent in each year from 2021 to 2024. The increase in 2023 is 1.24 percent and 1.75 percent in 2024.

[193] The Board also reviewed the CA between Unifor and Expertech Network Installation effective January 25, 2021, which sets out wages from 2020 to 2023. The percentage increase in wages was 1.75 percent in 2021, two percent in 2022 and two percent in 2023.

[194] Without evidence from the employer showing that the union's proposal is unreasonable, the Board finds that the union's proposal is reasonable in light of the data and the fact that telecommunications industry workers receive annual increases and would have received annual increases during the year of the notice to bargain in 2017 to 2024. LTS employees received only one pay increase, in 2022.

c. Distinguishing the MXU Group From Other Portions of the Bargaining Unit

[195] Further, the Board is concerned that the employer's proposal distinguishes between the MXU employees and other employees. It singles out MXU employees for a 0.5-percent increase rather than a three-percent increase in pay for the first year of the CA. The Board notes that the MXU technicians are the largest group of technicians within the bargaining unit. Evidence in past hearings has shown that a greater percentage of MXU technicians crossed the picket line than other technicians, and the MXU technicians were the subject of scope issues raised by the employer which the Board found to be ULPs in the ULP decision.

[196] The Board expressed concern that the ULPs drove a wedge between members of the bargaining unit. The Board notes that the employer's proposal on wages as well as union recognition perpetuates this wedge.

[197] Further, the Board notes that the revocation application was brought by Mr. Howell, who, at the time of bringing the application, was an MXU employee.

[198] The employer's proposal raises an issue of internal consistency and equity in the differential treatment of MXU and other employees (*Yarrow Lodge* Principle 3).

[199] The employer argues that the union has to demonstrate to all employees that there is value in the union.

[200] The Board notes that it is difficult for the union to show that it has any value to MXU employees unless it shows gains that roughly equate to gains for other technicians in the bargaining unit. Unions often show value by demonstrating gains in collective bargaining and in administering a CA.

[201] The employer's rationale for proposing different compensation increases for the employees within the bargaining unit is that TELUS intends to reduce compensation payable to LTS in respect of the MXU services LTS provides to TELUS by 2.5 percent.

[202] The Board, however, has no facts that set out the remuneration that TELUS currently pays LTS for MXU services or LTS's profit in supplying MXU services to TELUS. The Board has no

factual evidence that demonstrates that this is an ability to pay issue rather than a willingness to pay issue.

[203] The TELUS March 10, 2023, email states that LTS is a high-cost MXU service provider. It raises concerns about the rates that LTS charges and seeks to reduce payments in respect of the MXU services by 2.5 percent. This tells the Board nothing about how MXU wage rates paid by LTS to its MXU employees contribute to TELUS's conclusion.

[204] The Board notes that given the statutory freeze and later five-percent increase in wages LTS paid in 2022, LTS has enjoyed a six-year period (from the date of the notice to bargain to the date of this hearing) where its hourly labour costs did not rise at the same rate as the increase in rates set out in the TELUS CA.

[205] The Board is not satisfied based on the evidence tendered that the amount of wages LTS pays to MXU employees accounts for any issue between it and TELUS. The problem appears to be that TELUS wishes to, again, reduce payments to LTS, but now for MXU services rather than I&R services provided to TELUS under contract.

[206] The Board is not satisfied that the MXU employees should bear the brunt of TELUS's possible rate reductions in the absence of objective evidence being provided to the Board, such as financial documents.

[207] The employer argues that this will result in job loss; however, there is no data supporting the argument. Under *Yarrow Lodge* Principle 4, the Board should give no weight to this argument as it is unsupported by evidence.

[208] The Board has no data as to what LTS considers is an acceptable rate of return for it in order to retain this part of the services it provides to TELUS. The Board has no data to evaluate the actual impact of TELUS's actions. Clearly, as expressed by Mr. Geheran, there is a risk of job loss; however, the Board is unable to identify the probability of the actual loss occurring because LTS has not supplied data on this issue. Mr. Geheran testified that some 11 to 12 MXU positions are at risk.

[209] Further, the risk appears to be that there will be no work for MXU technicians if LTS does not lower its MXU rates to TELUS. Again, the Board has no information about the MXU rates charged to TELUS and how much labour costs contribute to the rate. LTS has not shown the Board, for example, how a 0.5-percent increase in MXU wages in 2023 will stave off any problem with TELUS or render the possibility of job loss less likely.

[210] If the loss materializes, it likely is not a wage rate issue for MXU employees but a lack of work issue, perhaps due to contractual changes between LTS and TELUS.

[211] Further, it is premature to address this issue as part of the wages determined by the Board in settling the outstanding terms of this CA. The loss has not yet materialized. If it materializes, the parties have available mechanisms in the CA to meet and discuss altering the rates of pay. In particular, Article 18.01 as agreed to by the parties reads as follows:

> 18.01 Wages
>
> > Employees will be paid hourly and/or a piece rate depending on the work they perform.
> >
> > **It is understood and agreed that the wage rates set out in this agreement may be amended by mutual agreement if there are significant changes in the Employers [*sic*] business environment or for specific projects. Either party may request that negotiations commence by giving notice in writing.** The parties agree to have representatives meet for discussions within (30) days of receiving the written request from the other party. Any amendments resulting from the discussion under these terms will be put in writing and signed by a representative of the Employer and the Union.
>
> (emphasis added)

[212] In summary, the Board prefers the union's proposal because the employees can easily calculate their pay rate in the first and second year of the CA. The union's proposal does not go against *Yarrow Lodge* Principle 3 related to internal consistency and equity. Further, in applying objective data, the union's proposal is within what is normal for hourly wage increases within the telecommunications industry, particularly considering the period.

[213] The Board notes that, on its face, the union's approach is reasonable. The union lacks data from the employer about its ability to pay. The Board also notes that, on their face, the increases sought are reasonable and well under the current rates of inflation.

[214] Based on this review, the Board finds that a five-percent increase in 2023 and a three-percent increase in 2024 is reasonable.

[215] LTS has had the advantage of not having to pay annual wage increases for the period from 2017 to the end of 2021 as a result of the combined impact of the statutory freeze and the strike. The Board acknowledges that the employer commenced a five-percent wage increase in January 2022, but there is no indication that this was a retroactive increase. During this period, other employees in the industry would have had annual increases. There is no retroactive effect of the Board's order as the Board cannot award "back pay"—the order is effective from the date it is made. A five-percent increase in 2022 does not make up for a loss of opportunity for annual increases from 2018 to 2022 enjoyed by most telecommunications workers.

[216] For the above reasons, the Board selects the union's wage proposal over the employer's wage proposal. Employees will receive a five-percent wage increase in 2023, effective on the date of this award, and a three-percent increase in 2024, effective on the anniversary date of this award.

D. Article 21: Health and Welfare

[217] As indicated above, both parties have health and welfare proposals. These are not novel terms in a CA. The question is whether the Board should impose the union's proposal or maintain the status quo with the employer's proposal.

1. The Union's Proposal and Argument

[218] The union's proposal is stated as follows:

> **ARTICLE 21.00–HEALTH AND WELFARE** (Union Counter Dec 22/22)
>
> 21.01 At the end of each calendar month, the Employer will pay to the Administrator of Local 213 Electrical Workers' Welfare Plan, $358.80 for each employee in their employ during such month who is covered by the Collective Agreement. These contributions shall be for the benefit of such employees.
>
> (i) If employment commences from the first (1st) to the fifteenth (15th) of the month, the Employer will contribute for the full months' payment and coverage will commence on the first (1st) day of the month following three (3) months of employment.
>
> (ii)When an employee terminates or is laid off the Employer will make full payment for the entire month regardless of the number of days worked.

21.02 Payments to the Welfare Trust Funds based on hours earned shall be made by cheque payable at par at the City of Vancouver, Province of British Columbia for Local 213 Welfare Plan addressed to Administrator of Local 213 Electrical Workers Welfare and Pension Plan and shall be due and payable not later than ten (10) days after the termination of the calendar month in which the hours were worked. Cheques may be post-dated the fifteenth (15th) of the month. The Employer shall also forward the remittance forms provided by the Administrator setting out the names and classifications of the employees in respect of whom such payments are made and the amounts paid in respect of each employee and the hours worked by each employee during such calendar month, together with such other information as may be required by the Trustees.

21.03 **Time Off for a Visit to Doctor**

(a) **Paid Time Off**

An employee who has been injured at work and has returned will be granted reasonable paid time off work for necessary return visits to his doctor for treatment in relation to the on-the-job injury. The payment for such time off will be conditional upon the Company receiving a doctor's certificate and confirmation that the Workers' Compensation Board recognizes the injury as a compensable on-the-job injury. It is the responsibility of the employee to provide the Company with notice of the necessity for leave as soon as the employee knows of the doctor's appointment.

An employee who is injured at work and is unable to continue working will receive a full day's pay for the day of the accident.

(b) **Reasonable Time Off**

"Reasonable Time Off" shall be understood to be limited to only that time off which is required to attend at the doctor's office for an appointment made in advance and the related time required to travel to and from the doctor's office. The affected employee is obligated to cooperate in keeping this paid time absence to the minimum time actually required.

21.04 **"Time Worked" and Prepayments**

(a) **Amount of Contributions**

For the purpose of determining the contributions, time off for Annual Vacation, Statutory Holidays and Workers' Compensation are to be considered as time worked.

(b) **Pre-Paid Coverage**

Employees going on approved Extended Leave of Absence must make arrangements with the Plan office prior to the leave of absence if they wish to continue a selective benefit package. Coverage may be maintained for up to a maximum of six (6) consecutive months. Premiums must be pre-paid to the administration office of the Plan prior to the leave of absence, otherwise all benefits will terminate effective the date the Extended Leave of Absence becomes effective.

21.05 **Sick Time**

The Company will continue to maintain the existing 17 week sick leave program.

21.06 In cases when a member is declined benefits from Workers' Compensation Board he may apply for weekly indemnity benefits. He must notify the Plan Administration Office to obtain a weekly indemnity claim form. It must be completed and submitted back to the Plan Administration Office along with any written correspondence from the Workers' Compensation Board declining his claim.

21.07 A doctor's certificate must be delivered to the plan for all weekly income or long term disability claims. The doctor must be aware of the employee's first day of sickness. Notification of sickness or accident must be reported by telephone to the Plan Office no later than the first (1st) working day following the sickness or accident. All claims should be submitted within the eighth (8th) day of sickness or accident to the Plan Office. Claims will not be valid until the date of notification. Claims which are received late, or after the fact, will be held and reviewed by the Trustees at their next meeting.

[219] The union proposes its plan based on benefit costs at $2.07 per hour, which is the same as the benefit costs the employer pays under the CA between LTS Build Services Ltd. and the CLAC.

[220] Further, in considering the plan benefits, the union submits that its plan provides superior benefits to LTS employees. Certain of the benefits that the employer claims are superior are already provided in other parts of the CA.

2. The Employer's Proposal and Argument

[221] The employer proposes as follows:

ARTICLE 21.00 – HEALTH & WELFARE

Health and welfare benefits will continue to be provided by the Employer.

[222] The employer submits that the two plans are comparable in terms of the level of benefits, but its plan is $86.80 less expensive per month per employee than the union's plan. The employer argues that there is no justification for the Board to impose an additional 30 percent increase in health and welfare costs on it.

3. Analysis

[223] The Board is unclear as to some of the costing of the union's proposal. For example, the article provides for time off to visit a doctor, but it is unclear what this would cost.

[224] Both parties provided a chart that compares the union's proposal (IBEW Plan A) and the employer's proposal (Red Plan). The union pointed out some differences in the employer's chart. The Board prefers the union's chart as a more accurate analysis of the similarities and differences. The union's chart reads as follows:

RED PLAN vs IBEW 'Plan A' Benefits Comparison		
	Red Plan [Employer]	**IBEW Plan A**
Provider	Canada Life	Pacific Blue Cross (PBC) / Self Insured
Life Insurance	Basic life insurance for employee – 1 times base salary (*this is mandatory but employee paid*) Optional life insurance for employee, spouse (employee paid) Terminates at age 70	Basic life insurance for employee: $100,000 ($35,000 if employee 65 or older) Basic life insurance for spouse: $10,000 (if there are covered dependent children) $5,000 (if no children)
Death Benefit	None	$10,000 death benefit towards funeral services
AD&D	1 times base salary	$100,000 if under age 65 / $35,000 if over age 65
Drug plan & Healthcare	Drug Plan: Tier 1: 80% coverage (national formulary); Tier 2: 50% coverage (open formulary) plus dispensing fee	Drug plan plus healthcare: $100 deductible (per family, per calendar year) 80% coverage all eligible expenses $1000 out of pocket max per individual per calendar year; 100% thereafter
Paramedical	$750/provider/person/year: Chiropractor; Physiotherapist; Podiatrist; Speech Therapist; Osteopath, Massage Therapist; Acupuncturist; Naturopath/Homeopath; $400/person/year Psychologist/Social Worker/Register Clinical Counselor/Canadian Clinical Counsellor	80% up to $750/provider/person/year and subject to the $50 deductible under Healthcare: max. $100 per year per family for Massage Therapist and/or Physiotherapist; Chiropractor and/or Naturopath; max. $750 per year per family for Acupuncture; Podiatrist; Speech Language Pathologist 80% up to $1,000/person/year: Clinical Psychologist

Nursing	Home nursing care: $7,500/12 months/condition	Special Nursing – 80% coverage (100% after $1,000 out of pocket max for healthcare)
Hospital	Private hospital room: $200/day	Private or Semi-Private Hospital Rooms – 80% coverage (100% after $1,000 out of pocket max for healthcare)
Ambulance	100%	80% coverage (100% after $1,000 out of pocket max for healthcare)
Equipment & additional healthcare	Narcotics, smoking cessation, migraine medicine, fertility drugs, diabetic supplies, blood glucose monitoring machine, custom orthotic, compression hose, wheelchair ramp, CPAP	Same, except no coverage for fertility drugs and wheelchair ramps, and a $250 per year limit on vaccines. Durable medical supplies covered at 80% until $1,000 paid, then 100% afterwards.
Health Spending Account / Supplemental Health Account	Not eligible for HCSA	Supplemental Health Account: $750 per family per calendar year, following 4 months of coverage Eligible expenses: expenses that exceed the annual maximums for Health Professionals, Optical, Hearing Aids and Dental
Out of province health coverage	Out of country emergency care – $1,000,000 lifetime; Global Medical Assistance	Our of province emergency care – Unlimited; Global Medical Assistance
Dental	Basic Services – 80% coverage Major Services – 50% coverage $2000 combined max	$2500 per family per calendar year. Max is combined with hearing aids. Note that first 4 months of coverage, this maximum is prorated. Processed by Local 213 Electrical Workers' Welfare Plan (not PBC)
Dental – orthodontics	50% coverage; $1000 lifetime max; members age 6 and over	75% of up to $7,000; lifetime max $5,250; limited to dependent less than 18 years, members can use dental maximum for adult orthodontics.
Vision	Eye exams – 1 every 24 months Glasses, contact lenses, laser eye surgery –	Glasses, contact lenses, laser eye surgery, bi-annual eye exam – $500 per family per calendar year. Excludes frames only

	$200 per member every 24 months	Processed by Local 213 Electrical Workers' Welfare Plan (not PBC)
Sick leave/Wage Indemnity	17 weeks sick leave 100%	For first 17 weeks, employer sick leave at 100%. From 17 weeks to 52 weeks: $637.00 per week for a maximum period of 52 weeks, including any E.I. Sick benefit entitlement reimburse up to twenty-five dollars ($25) for the cost of Doctors completing the wage indemnity claim forms
LTD	66.7% of first $2,500 of monthly earnings plus 52.5% of next $2,500 plus 40% of remainder up to age 65 *Employee paid*	$1,250.00 per month up to age 65 for members with more than 10 years of membership in Local 213 IBEW. Members with less than 10 years of membership will be prorated according to their number of years. Must be proven disabled for more than 52 consecutive weeks and covered by the Welfare Plan for 48 of the past 60 months
EFAP	Homewood Health	Homewood Health ALaVida substance use management

[*sic*]

[225] The main difference is on the short-term disability (STD) benefits. The employer offers 17 weeks of wages at 100 percent. The union's plan provides for 17 weeks as per the employer's plan, with additional STD benefits of $637.00 per week for weeks 18 to 52.

[226] Overall, it appears that the union's plan is a better plan than that offered by the employer. For example, the union's plan is superior in the areas of sick leave wage indemnity and dental, orthodontics and vision care, which may be more relevant to the majority of bargaining unit employees.

[227] The Board notes that as a comparator, the union's plan is in place with other employers in BC, including those covered by the CA between the Construction Labour Relations Association of

BC and Locals 213, 230, 993 and 1003 of the International Brotherhood of Electrical Workers (effective May 1, 2019, to April 30, 2023).

[228] The union's plan is no more costly for this employer than what LTS Build Services Ltd, also part of the Ledcor group of companies, pays for its employees under its CA with the CLAC.

[229] The employer argues that its plan is $86.80 less expensive per month per employee than the union's plan. The employer, however, provided no documents or calculations supporting this position. The employer has provided some partial data for the monthly amounts it pays for health, dental, out-of-country emergency and accidental death and dismemberment (AD&D) benefits, but it did not explain these numbers.

[230] Based on the data provided by the employer, the Board summarized the monthly costs for amounts paid by the employer for health, dental, out-of-country emergency and AD&D benefits and the employee-paid amounts for long-term disability (LTD) and life insurance:

Employer-Paid				Employee-Paid	
Health	Dental	Out-of-Country Emergency	AD&D	LTD	Life
$6,108.52	$3,801.76	$26.95	$81.12	$2,105.76	$299.71

Monthly Total Employer-Paid for 49 Employees	$10,198.35
Annual Total Employer-Paid for 49 Employees	$122,380.20

[231] However, the information provided by the employer was for 49 out of 60 employees, so the amount must be increased to $12,487.78 per month or $149,853.36 per year to provide an estimated cost for all employees in the bargaining unit.

[232] The Board wished to compare this to the union's proposal, which is based on the hourly amount. Assuming an average of eight hours of work per day for 22 days per month for 60 employees ($10,560.00), the hourly rate of the employer's plan for an expenditure of $12,487.78 amounts to $1.18 per hour worked by an employee.

[233] In contrast, the union's plan costs $2.07 per hour worked. There is a difference of $0.89 per hour worked.

[234] The employer argues that the IBEW's plan is not substantially better than its plan, which is already provided.

[235] The union's plan, which is a superior plan, is offered to the employer at the same rate that Ledcor pays for benefits under the CA between LTS Build Services Ltd. and CLAC Local 68 (effective February 27, 2022, to June 30, 2025).

[236] Under the approach in BC and endorsed in *CJMS Radio*, the Board should consider imposing terms that would be a sufficient incentive to employees not to seek a revocation of the union's bargaining agency. Some of the technician groups (the linemen and splicers) in the CA between LTS Build Services Ltd. and CLAC Local 68 were employees of LTS until the employer decided to transfer these non-bargaining unit employees on its Core Infrastructure side to LTS OSP Services Limited, a separate provincially regulated employer (see the scope decision). It is unclear whether these technicians remain with LTS OSP Services Limited or whether they are now employed by LTS Build Services Ltd.

[237] If the Board imposes the employer's status quo, employees shopping for a replacement union might consider the CLAC benefit plan with LTS Build Services Ltd. to be preferable to the employer's current benefits. Given that LTS Build Services Ltd. has agreed to terms with the CLAC, Ledcor appears to be able to pay for benefits at the CLAC rate. By paying the additional benefit costs in the union's proposal, which are no more than what LTS Build Services Ltd. pays in respect of the CLAC plan, the LTS employees will have a more beneficial plan than that proposed by the employer.

[238] The Board finds that the employees should have the benefits of the union's plan, which is at the rate Ledcor pays for the plan under the CA between LTS Build Services Ltd. and CLAC Local 68 (February 27, 2022, to June 30, 2025).

[239] The Board is unable to determine the significance of an increase in the health and welfare benefit costs as it does not have LTS's financial data or information about LTS's ability to pay or what it considers is a reasonable rate of return.

[240] The Board is satisfied that LTS's position is that it would not have agreed to a more expensive union plan. There is evidence before the Board of part of the Ledcor group agreeing to

a more expensive plan in respect of its CLAC-certified unit that also contains technicians. The Board has no evidence before it as to why one Ledcor entity could afford the costs of the plan for the CLAC unit but another Ledcor entity could not afford the costs of the plan for the IBEW unit. The Board therefore awards the union's proposal.

E. Article 22: Pension and Retirement/Retirement Benefits

1. The Union's Proposal and Argument

[241] The union's proposal is for a defined benefit pension plan in the following terms:

> **ARTICLE 22.00 – PENSION AND RETIREMENT** (Union Counter Dec 22/22)
>
> 22.01 The Employer agrees to contribute the equivalent of five (5%) of the employee's earnings for each employee who has successfully completed their probationary period, to the Local 213 Electrical Workers Pension Plan ("the Pension Plan").

[242] The union argues that a defined benefit pension plan is better for employees than Registered Retirement Savings Plan (RRSP) contributions. The pension plan is administered to be able to fund pensions now and into the future. RRSPs are administered by the individual and do not have the same safeguards as pensions. The union argues that LTS has supplied no evidence that the cost of its proposal would end up at four percent, the figure argued by the employer in its submission.

[243] The union has supplied information about the pension plan which shows that the plan is sustainable, professionally managed and currently would pay an employee a monthly amount based on $80.00 per month per full year of service from January 1, 2023, onwards. The rates increased from $37.00 per month per full year of service prior to January 1, 1996, to $70.00 per month per full year of service in 2017 (the first year of certification of the union).

[244] The employer's liability is limited to the same amount it would have paid for the CLAC-certified employees covered by the LTS Build Services Ltd. and CLAC CA.

2. The Employer's Proposal and Argument

[245] The employer proposes retirement benefits as follows:

> **ARTICLE 22.00 –RETIREMENT BENEFITS**
>
> Retirement benefits will continue to be provided by the Employer as per below
>
> 21.01 Registered Retirement Saving Plan
>
> > (a) For each employee who elects to Opt-In to the Company Group RRSP plan, the Employer will to [*sic*] contribute the equivalent of two percent (2%) of the employee's regular earnings excluding overtime, for each employee who has successfully completed their probationary period, to the Employee's Group Registered Retirement Saving Plan Account.
> >
> > (a) For each employee who elects to Opt-In to the Company Group RRSP plan and contribute a minimum of one (1) percent of their regular earnings, excluding overtime to the Company Group RRSP Plan, the Employer will contribute a matching amount of one half (½) of a percent of the regular earnings, via payroll deduction to the Employees Company Group RRSP Plan Account.
> >
> > (b) The Employer matching portion will not exceed three percent (3%).
> >
> > (c) In order to be eligible for the Employer matching, employees must have successfully completed their probationary period, and continue to make the additional voluntary contributions above and beyond the core 2% as per point (a) above.

[246] The employer argues that its plan provides for greater employee choice—they can choose to contribute or not. The group RRSP is owned by the employees and is not dependent on future contributions by future workers, and this is in the best interests of employees. The employer submits that in practice, not all employees contribute, and the cost to the employer is four percent. The employer submits that in addition to being better for the employees, this plan does not pose any additional costs to the employer. In the alternative, the employer submits that contributions should be limited to four percent.

3. Analysis

[247] In reviewing the CAs provided on the issue of how parties provide for retirement compensation in CAs, the Board firstly notes that unlike the issue of wages where each CA generally clearly identifies wages paid, not every CA addresses the issue of retirement compensation. The Board noted a number of examples in the CAs provided where the CA did not

reference retirement compensation—for example, where Bell or one of its subsidiaries was the employer. There is some suggestion that the Bell retirement provisions are contained on a website independent of replication in the CAs. In certain cases, it may be that lack of mention of retirement compensation arrangements in the CA means that there are no such arrangements in place. The Board notes that retirement compensation is not a mandatory part of a CA required by the *Code*, but in the CAs provided to the Board, many parties addressed retirement compensation as part of their CA.

[248] The Board notes that where the parties addressed retirement in the CAs, there were examples where this was addressed by way of defined benefit pension plans, defined contribution pension plans or RRSPs. Some of the RRSPs provide for the employer to match contributions made by an employee.

[249] In looking at the TELUS CA, for example, the Board notes that there is a mix of retirement arrangements which include a defined contribution pension plan. BC employees continue to be eligible to participate in the Telecommunications Workers Pension Plan. There is no indication of whether this is a defined benefit or defined contribution pension plan. The employees in Alberta appear to be eligible to participate in the TELUS Defined Contribution Plan. Employees who formerly (prior to June 9, 2011) were eligible to participate in the Structure Group Registered Retirement Plan (RRP) can, subject to eligibility requirements, participate in the TELUS Defined Contribution Plan.

[250] Within the BC comparators, the Board notes that the majority of the CAs contain RRSP provisions, rather than pension plans:

- Cable contractors' agreement
- Shaw Communications (Port Coquitlam) and the IBEW (March 24, 2019, to March 23, 2024)
- Shaw Communications (North Shore) and the IBEW (March 24, 2019, to March 23, 2024)
- Shaw Communications (White Rock) and the IBEW (March 24, 2019, to March 23, 2024)
- Shaw Cablesystems G.P. (Abbotsford) and Telecommunications Workers Union, USW Local 1944 (April 1, 2020, to March 31, 2025)

- Shaw Cablesystems G.P. (Surrey) and Telecommunications Workers Union, USW Local 1944 (March 24, 2018, to March 23, 2023)
- Shaw Cable Systems G.P. (Vancouver) and Telecommunications Workers Union, USW Local 1955 (March 24, 2018, to March 23, 2023)
- Persona Communications Inc. operating as Delta Cable Communications and the IBEW (April 2020 to April 27, 2023)

[251] Some BC comparators have pension plans:

- LTS Build Services Ltd. and the CLAC (February 27, 2022, to June 20, 2025)
- City West and the IBEW (July 1, 2019, to June 30, 2014)
- TELUS CA

a. Employer v. Employee Contribution Rates

[252] The Board noted that all of the CAs in BC, except for the CA between LTS Build Services Ltd. and the CLAC, provide for a much higher rate of employer contribution, whether it is to an RRSP or a pension plan, than is proposed by either of the parties, as can be illustrated in the table below:

Collective Agreement	**Employer Contribution**	**Employee Contribution**
LTS Build Services Ltd. and the Construction and Allied Workers' Union, CLAC Local 68 (February 27, 2022, to June 20, 2025)	3% in 2022 and 2023 and 4% in 2024 per hour of regular wages, plus 2% matching	2%
TELUS CA	10% of gross earnings	Tiered contribution of 3% to 5% based on the age of the employee

Cable Contractors Agreement	10% of annual earnings	3% of annual earnings
Shaw Communications (Port Coquitlam) and the IBEW (March 24, 2019, to March 23, 2024)	7.51% of gross earnings	3% of gross earnings
Shaw Communications (North Shore) and the IBEW (March 24, 2019, to March 23, 2024)	9.75% of annual earnings	3% of annual earnings
Shaw Communications (White Rock) and the IBEW (March 24, 2019, to March 23, 2024)	9.75% of annual earnings	3% of annual earnings
Shaw Cablesystems G.P. (Abbotsford) and Telecommunications Workers Union, USW Local 1944 (April 1, 2020, to March 31, 2025)	7.51% of annual earnings	4% of annual earnings
Shaw Cablesystems G.P. (Surrey) and Telecommunications Workers Union, USW Local 1944 (March 24, 2018, to March 23, 2023)	7.51% of annual earnings	1% of annual earnings
Persona Communications Inc. operating as Delta Cable Communications and the IBEW (April 2020 to April 27, 2023)	9.79% of gross annual earnings	3% gross annual earnings

City West and the IBEW (July 1, 2019, to June 30, 2014)	7% of annual earnings (Legacy Cable North agreement)	3% of annual earnings

[253] The employer bases its calculations on “regular earnings excluding overtime.” The union bases its proposal on five percent of the “employee’s earnings.” In the Board’s view, regular earnings excluding overtime may be a lesser amount where an employee actually works overtime. If earnings include overtime payments, the union’s proposal is calculated on a larger base income. The employer’s costs may be higher in the union’s proposal as the calculation is based on employee earnings rather than regular earnings excluding overtime.

[254] The union’s proposal, however, is similar to other BC comparators where the contribution is based on gross annual earnings (*Yarrow Lodge* Principle 2).

[255] Under both proposals, the maximum employer contribution rate is capped at five percent.

[256] There is a potential for the cost of the employer’s proposal to be less than the union’s proposal if an employee chooses not to contribute to an RRSP and since the contribution is based on the employee’s regular earnings excluding overtime. The employer argues that the real cost to it is four percent, not five percent.

[257] Applying *Yarrow Lodge* Principle 4, the Board cannot accept the employer’s argument in light of the fact that it has not introduced any evidence showing the costing of its plan.

[258] It appears to the Board, from a review of the comparators (*Yarrow Lodge* Principle 2), that most employer contributions to either RRSPs or pension plans are not based on whether the employee contributes. The employer’s proposal—while it may be normal for how it operates—is out of step with other BC comparators.

[259] Further, the Board notes, again in terms of the comparators, that the employer-funded portion of four or five percent is generally less than what other telecommunications employers in BC contribute to pensions or RRSPs.

[260] The union's plan does not permit for voluntary employee contributions; it is set up to be funded by payment from the employer on behalf of employees. The mandatory contributions in the union's proposal are more likely to ensure a post-retirement income than employer contributions based on voluntary employee contributions. The effective removal of the employee choice to contribute may in fact result in more retirement income for an employee.

[261] The Board notes that the RRSP is individually managed, whereas the union pension plan is professionally managed with more assets under management. The Board notes that there is likely less risk and perhaps a more favourable return for the pension than an individually managed RRSP as it is professionally managed.

[262] There is no evidence before the Board of the retention or turnover rate—those employees who remain with or leave the employer. For an employer with a higher turnover rate, RRSPs may provide a more portable investment vehicle for an employee who wishes to seek alternative employment. The employer has submitted that the employees stay with it because it is a good employer. If this is the case, then a pension based on years of service, managed by a professional, may provide for a more stable and less risky source of retirement income than an RRSP.

[263] For these reasons, the Board selects the union's plan, which appears to provide a better retirement outcome for the employees. The Board accepts that the union's plan is likely more expensive than the employer's proposal in part because the contribution base is different and in part because the contribution is mandatory rather than voluntary. It is, however, much less of a contribution than the other BC employers contribute under the terms of their respective CAs.

F. Letter of Understanding #2: Exclusive Jurisdiction

1. The Union's Proposal and Argument

[264] The union wants to include a letter of understanding that would give it exclusive jurisdiction over work in the event that LTS performs work with Shaw Communications, Delta Cable or City West. The proposed letter of understanding also provides that in such a situation, the employer will apply the terms and conditions set out in its "Cable Contractor Standard Agreement" including terms which would prohibit the employer from contracting out. The union's proposal reads as follows:

Letter of Understanding #2 – Exclusive Union Jurisdiction (LOU Proposal May 22/20)

Whereas a collective agreement is in full force and effect between the Company and Union;

And Whereas the members employed by the Company would now pay dues to the Union to become members in good standing;

And Whereas the Union and United Steelworkers "USW" have exclusive jurisdictional rights to work according to the collective agreements in place with Shaw Communications that restrict contracting out to only members of the Union in good standing;

And Whereas the Union have [*sic*] exclusive jurisdictional rights to work according to collective agreements in place with Delta Cable and City West that restrict contracting out to only members of the Union in good standing;

And Whereas the Company would not have access to bid on this work unless it was signatory to the Union;

Now Therefore the parties are agreed to the following terms and conditions around this work:

It is agreed that, should the Employer enter into a contract to perform work for Shaw Communications (or any of its subsidiaries or related companies), Delta Cable or City West that the Employer will only use bargaining unit employees to perform that work, and the Employer will apply the terms and conditions set out in the Union's "Cable Contractor's Standard Agreement" to any bargaining unit employee who performs that work.

2. The Employer's Proposal and Argument

[265] The employer proposes in response:

Letter of Understanding #2 – Exclusive Union Jurisdiction

It is agreed that, should the Employer enter into a contract to perform work for Shaw Communications, Delta Cable or City West in BC, to which the IBEW Local 213 has exclusive jurisdiction, that the Employer will engage in discussions with the IBEW Local 213 regarding terms and conditions for the work.

[266] The employer objects to any reference to the IBEW's standard agreement in the agreement with LTS. The employer says that the CA must be based on the circumstances of its current business and not the union's closed-shop world. It, however, concedes that this is an issue that would require it to consult with the union should it ever contemplate doing work for Shaw.

3. Analysis

[267] The Board notes that this is an existential issue for the union. If the Board does not impose the union terms of this LOU, it is unlikely that the IBEW will be able to continue to represent the LTS employees, knowing that LTS would then be able to undermine its collective bargaining relationships and agreements in the cable industry by bidding on that work, using subcontractors and paying rates lesser than those set out in the Shaw agreements. Without the LOU, LTS would have a competitive advantage over other contractors that supply services in the cable environment, which are bound to pay the rates in the Shaw CAs.

[268] In contrast, the Board notes that the imposition of the union's version of LOU #2 has no present impact on the employer, as the employer currently does not perform work for Shaw, Delta Cable or City West. It cannot perform such work without a CA with the union. Further, the employer has expressed no current plans to do work in the Shaw environment.

[269] In the Board's view, it is appropriate in this case to follow the approach of the BCLRB in *Spelchan Holdings Ltd.*, BCLRB No. B399/95 (*Spelchan*). *Spelchan* involved an application to the BCLRB to reconsider an interest arbitration decision issued by a mediator. The issues under review were unrelated to the issues before the Board. The decision, however, reports the mediator's decision to impose a wage rate that did not give the employer an advantage over other employers with which the union had a CA, who competed in the same market for the same products. The mediator's view was that the employer should not receive the benefit of lower rates due to its intransigence which resulted in the imposition of the CA.

[270] The Board adopts the reasoning in *Spelchan*. Here, there are negotiated terms and conditions in the Shaw world, which appear to be better than those in the TELUS world. In particular, in the Shaw world, contractors cannot provide services to Shaw unless there is a CA with either the IBEW or the USW. Both TELUS and Shaw compete for the same customers and offer substantially similar products in the same geographic regions. This CA is being imposed in part to remedy against ULP findings made against the employer and as a result of the breach of LTS's duty to make every reasonable effort to conclude a CA. The Board notes that without the union's version of LOU #2, the employer would receive a competitive advantage in the Shaw work over other companies bound by the cable contractors' agreement.

[271] In the ULP decision, the Board noted LTS's historical use of subcontractors as opposed to LTS employees in dealing with work (see paragraphs 203–222). This historical right is preserved in the terms to which the parties have agreed. In the absence of LOU #2, LTS could work with Shaw using non-union subcontractors as it has historically done.

[272] However, LTS would only have the right to seek Shaw work as a result of a CA, in this case a CA which is being imposed by the Board in part because of LTS's failure to make every reasonable effort to conclude a CA with the union and its ULPs. If it is entitled to work with Shaw as a result of the Board's intervention in collective bargaining, it should not receive a reward for its misconduct in respect of its dealings with the IBEW by being able to undercut other parties who are bound by wage rates and working conditions set out in those CAs.

[273] While LTS will not agree to LOU #2, it is an agreement that a reasonable employer would agree to. The Board notes that the employer's primary concern in its bargaining with the union has been to achieve a CA based on its status quo prior to certification, with the values of flexibility and cost-neutrality shaped to the highly competitive work as a contractor with TELUS. The union's proposed LOU does not have an impact on the employer's stated goals with respect to its need to be competitive amongst other TELUS contractors.

[274] Further, the terms of the union's proposed LOU #2 are reasonable. The employer should not be able to undercut others bound by a Shaw CA.

[275] In the Board's view, this should not be left up to negotiation once LTS has obtained a contract in the Shaw environment. The harm for the union has the potential to materialize when the employer agrees to contract terms that are different than the standard terms in the Shaw agreements. The Board notes that the employer's proposed LOU #2 provides the right only to engage in discussions once it has entered into a contract. Further, as found in the section 80 Phase 1 decision, LTS has shown that it has the ability to protract a dispute by refusing to communicate and refusing to negotiate when it believes it is in its interest to do so.

[276] There is no further remedy for the union if the parties do not reach an agreement and the union is precluded from taking strike or other action for the term of the CA.

[277] In summary, LTS cannot currently provide services in the Shaw world without a CA which is being imposed by the Board. The employer has no history of providing services in the Shaw world. It therefore would cost nothing for the employer to agree to the LOU, and the reasons LTS gave are ideologically driven, without any other implications for LTS or its bargaining relationship with the IBEW. In the Board's view, LTS has not taken a reasonable approach on this issue.

[278] There is a significant issue of distrust between the parties.

[279] As a matter of basic fairness and labour relations stability in the telecommunications industry in BC, it makes sense to impose the union's version of LOU #2.

[280] Imposing the union's proposal on LOU #2 allows the parties to maintain the focus on their own collective bargaining relationship without the fear that LTS will undermine the IBEW's long-standing collective bargaining relationships in the Shaw world. Reference to Shaw work in LOU #2 does not undermine LTS's wish to remain competitive in its dealings with TELUS.

V. Conclusion

[281] The Board confirms that the parties have agreed on the terms of the CA, set out in the IRO's report of January 30, 2023, attached hereto as Schedule "A" to this decision.

[282] The Board confirms that it has ordered that the terms in Schedule "B" form part of the CA, as a result of its review of each of the issues outstanding between the parties.

[283] The Board orders that the terms in both Schedule "A" and Schedule "B" form part of the CA for its term, which shall be a period of two years starting from the date of this decision.

[284] The parties are jointly responsible for preparing an integration of the terms of Schedule "A" and Schedule "B" which will be available to the employees.

[285] The Board reserves jurisdiction in the event that issues arise from the implementation of this decision.

[286] This is a unanimous decision of the Board.

Paul Love
Vice-Chairperson

Barbara Mittleman
Member

Paul Moist
Member

Schedule "A"

IBEW and LTS Agreed to Articles First Collective Agreement		
Union January 25, 2023	Employer LTS January 25, 2023	Date
Article 1.00: Purpose	Article 1:00 Purpose	January 25 2018
Article 3.00: Settlement Without Stoppage of Work	Article 3.00 Settlement Without Stoppage of Work	January 25 2018
Article 4.00: Human Rights	Article 4.00: Human Rights	November 8, 2017
Article 5.00: Scope and Recognition	Article 5.00 Scope and Recognition	December 22, 2022
Article 7.00: Management Rights	Article 7.00 Management Rights	January 24, 2018
Article 8.00: Duties and Definitions of Employees	Article 8.00 Duties and Definitions of Employees	December 22, 2022
Article 9.00: Union Stewards	Article 9.00 Union Stewards	January 25, 2018
Article 10.00 Company Seniority/Length of Service	Article 10.00 Company Seniority/Length of Service	January 25, 2023
Article 11.00: Grievance Procedure	Article 11.00: Grievance Procedure	January 24, 2018
Article 12.00: Arbitration	Article 12.00: Arbitration	January 24, 2018
Article 13.00: Impact of Legislation	Article 13.00: Impact of Legislation	January 23, 2018
Article 14.00: Labour Management Relations	Article 14.00: Labour Management Relations	January 24, 2018
Article 15.00: Health & Safety	Article 15.00: Health & Safety	June 10, 2019
Article 16.00: Hours of Work	Article 16.00: Hours of Work	January 23, 2023
Article 17.00: Tools, Equipment, and Clothing	Article 17.00: Tools, Equipment, and Clothing	May 6, 2021
Article 18.01 Wages	Article 18.01 Wages	

Article 19.00: General Holidays	Article 19.00: General Holidays	December 22, 2022
Article 20.00 Vacation	Article 20.00 Vacation	January 11, 2023
Article 23.00: Leaves of Absence	Article 23.00: Leaves of Absence	May 6, 2021
Article 24.00 Netcom Training Fund	Article 24.00: Netcom Training Fund	June 12, 2019
Article 25.00: No Other Agreement	Article 25.00: No Other Agreement	January 24, 2018
Appendix A: Wage Schedule	Appendix A: Wage Schedule	January 25, 2023
Appendix B: Piece Rate Paid Technician Deemed Rate	Appendix B: Piece Rate Paid Technician Deemed Rate	December 22, 2022
Appendix C: BFS FDP	Appendix C: BFS FDP	December 22, 2023

Schedule "B"

ARTICLE 2.00 – DURATION

2.01 **DURATION**

Except where otherwise provided herein, the terms and conditions of this Agreement shall become effective on the 22nd day of June, 2023 and shall continue in full force and effect until Midnight on the 22nd day of June, 2025 and thereafter they shall continue in full force and effect from year to year, unless written notice of intent to terminate or amend the Agreement at the expiration of any yearly period is given by either party to the other party pursuant to this Article.

2.02 **NEW AGREEMENT**

(a) Either party to this Agreement may, not more than four months prior to the 22nd day of June, 2025, or any subsequent anniversary of that date, present to the other party, in writing, notice of intent to commence collective bargaining for the purpose of renewing or revising the Agreement or entering into a new Agreement.

(b) During the period when collective bargaining negotiations are being conducted between the parties to amend this Agreement, the present Agreement shall continue in full force and effect until:

(i) the Union commences a lawful strike; or

(ii) the Employer commences a lawful lockout; or

(iii) the Parties enter into a new or amended agreement.

Article 6.00 – Union Security

6.01 (a) Union Membership

The Employer agrees to employ none but members in good standing of the Union to perform the various classes of work mentioned in the Certification. All employees shall remain members in good standing as a condition of employment.

(b) Probationary Period

(i) New employees shall serve a probationary period of ninety (90) calendar days. Their employment may be terminated within this period if in the Employers view, the employee is not suitable for continued employment.

6.02 Union Clearance

It is agreed that such members secure a written clearance from the Union prior to reporting for work or within fifteen (15) days of reporting for work. The Shop Steward is to be given a copy of the clearance as soon as possible. Such clearance shall continue unrevoked so long as the member remains in good standing.

18.02 Base Increases Hourly Rate & Deemed Rates:

June 22, 2023: 5%

June 22, 2024: 3%

Article 21.00 – Health and Welfare

21.01 At the end of each calendar month, the Employer will pay to the Administrator of Local 213 Electrical Workers' Welfare Plan, **$358.80** for each employee in their employ during such month who is covered by the Collective Agreement. These contributions shall be for the benefit of such employees.

(i) If employment commences from the first (1st) to the fifteenth (15th) of the month, the Employer will contribute for the full months' payment and coverage will commence on the first (1st) day of the month following three (3) months of employment.

(ii) When an employee terminates or is laid off the Employer will make full payment for the entire month regardless of the number of days worked.

21.02 Payments to the Welfare Trust Funds based on hours earned shall be made by cheque payable at par at the City of Vancouver, Province of British Columbia for Local 213 Welfare Plan addressed to Administrator of Local 213 Electrical Workers Welfare and Pension Plan and shall be due and payable not later than ten (10) days after the termination of the calendar month in which the hours were worked. Cheques may be postdated the fifteenth (15th) of the month. The Employer shall also forward the remittance forms provided by the Administrator setting out the names and classifications of the employees in respect of whom such payments are made and the amounts paid in respect of each employee and the hours worked by each employee during such calendar month, together with such other information as may be required by the Trustees.

21.03 Time Off for a Visit to Doctor

(a) **Paid Time Off**

An employee who has been injured at work and has returned will be granted reasonable paid time off work for necessary return visits to his doctor for treatment in relation to the on-the-job injury. The payment for such time off will be conditional upon the Company receiving a doctor's certificate and confirmation that the Workers' Compensation Board recognizes the injury as a compensable on-the-job injury. It is the responsibility of the employee to provide the Company with notice of the necessity for leave as soon as the employee knows of the doctor's appointment. An employee who is injured at work and is unable to continue working will receive a full day's pay for the day of the accident.

(b) **Reasonable Time Off**

"Reasonable Time Off" shall be understood to be limited to only that time off which is required to attend at the doctor's office for an appointment made in advance and the related time required to travel to and from the doctor's office. The affected employee is obligated to cooperate in keeping this paid time absence to the minimum time actually required.

21.04 "Time Worked" and Prepayments

(a) **Amount of Contributions**

For the purpose of determining the contributions, time off for Annual Vacation, Statutory Holidays and Workers' Compensation are to be considered as time worked.

(b) **Pre-Paid Coverage**

Employees going on approved Extended Leave of Absence must make arrangements with the Plan office prior to the leave of absence if they wish to continue a selective benefit package. Coverage may be maintained for up to a maximum of six (6) consecutive months. Premiums must be pre-paid to the administration office of the Plan prior to the leave of absence, otherwise all benefits will terminate effective the date the Extended Leave of Absence becomes effective.

21.05 Sick Time

The Company will continue to maintain the existing 17 week sick leave program.

21.06 In cases when a member is declined benefits from Workers' Compensation Board he may apply for weekly indemnity benefits. He must notify the Plan Administration Office to obtain a weekly indemnity claim form. It must be completed and submitted back to the Plan Administration Office along with any written correspondence from the Workers' Compensation Board declining his claim.

21.07 A doctor's certificate must be delivered to the plan for all weekly income or long-term disability claims. The doctor must be aware of the employee's first day of sickness. Notification of

sickness or accident must be reported by telephone to the Plan Office no later than the first (1st) working day following the sickness or accident. All claims should be submitted within the eighth (8th) day of sickness or accident to the Plan Office. Claims will not be valid until the date of notification. Claims which are received late, or after the fact, will be held and reviewed by the Trustees at their next meeting.

Article 22.00 – Pension and Retirement

22.01 The Employer agrees to contribute the equivalent of five (5%) of the employee's earnings for each employee who has successfully completed their probationary period, to the Local 213 Electrical Workers Pension Plan ("the Pension Plan").

Letter of Understanding #2 – Exclusive Union Jurisdiction

Whereas a collective agreement is in full force and effect between the Company and Union;

And Whereas the members employed by the Company would now pay dues to the Union to become members in good standing;

And Whereas the Union and United Steelworkers "USW" have exclusive jurisdictional rights to work according to the collective agreements in place with Shaw Communications that restrict contracting out to only members of the Union in good standing;

And Whereas the Union have exclusive jurisdictional rights to work according to collective agreements in place with Delta Cable and City West that restrict contracting out to only members of the Union in good standing;

And Whereas the Company would not have access to bid on this work unless it was signatory to the Union;

Now Therefore the parties are agreed to the following terms and conditions around this work:

It is agreed that, should the Employer enter into a contract to perform work for Shaw Communications (or any of its subsidiaries or related companies), Delta Cable or City West that

the Employer will only use bargaining unit employees to perform that work, and the Employer will apply the terms and conditions set out in the Union's "Cable Contractor's Standard Agreement" to any bargaining unit employee who performs that work.