

BRITISH COLUMBIA
LABOUR RELATIONS BOARD

August 27, 2019

To Interested Parties:

Re: Kootenay Lake Ferry Division (Western Pacific Marine Ltd.) –
(the "Employer" or "Kootenay Lake Ferry") -and- B.C.
Government and Service Employees' Union (the "Union" or
"BCGEU")
Designation re Essential Services at Kootenay Lake Ferries
Division (Western Pacific Marine Ltd.)
(Section 72 - Case No.73225/19)

The Labour Relations Board, (the "Board") is concerned in this proceeding with a directive by the Minister of Labour, pursuant to Section 72 of the *British Columbia Labour Relations Code*, R.S.B.C. 1996, c.244 (the "Code"), to designate essential services at Kootenay Lake Ferry Division. The directive relates to a dispute between Kootenay Lake Ferry Division (Western Pacific Marine Ltd.) (the "Employer") and the B.C. Government and Service Employees' Union (the "Union").

Members of the BCGEU served lawful strike notice on the Employer. Pursuant to Section 72, the Board is required to designate those facilities, productions and services that the Board considers necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the patients at Kootenay Lake Ferry Division (Western Pacific Marine Ltd.).

All interested parties were notified of a hearing into this matter which the Board convened on August 21, 22 and 23, 2019 at 1066 West Hastings Street, Vancouver, B.C. At the hearing, the Employer was represented by Melanie J. Vipond and the Unions were represented by Mike Fenton and Jitesh Mistry.

The Unions and the Employer were given a full opportunity to present evidence and to make submissions on which facilities, productions and services are necessary or essential, and how those facilities, productions and services shall be maintained during the course of the dispute.

The Board is satisfied, after considering the evidence and the submissions placed before it, that the following designations and orders should be made and the following conditions imposed, pursuant to Sections 72, 73, 133(2), 134 and 139 of the Code.

1. The Labour Relations Board hereby designates the following facilities, productions and services as necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the communities of Kootenay Lake.
 - (i) Facilities
the continued operation of ferry services provided by Kootenay Lake Ferries Division for the communities of Kootenay Lake, Harrop, Procter and Glade
 - (ii) Services
the maintenance of ferry services necessary or essential for the continued operation of the Kootenay Lake Ferries Division as set out in the Schedules attached to this Order.
2. To ensure that the facilities and services designated as necessary or essential are supplied, provided or maintained by the parties in full measure, the Labour Relations Board makes the following Orders:
 - (i)
 - (a) The Employer shall utilize the services of its management and excluded personnel who are qualified to the best extent possible. The Employer shall, if requested by the Union, record the daily number of hours and locations worked by each manager and excluded employee and forward a written record of the hours and locations worked to the Unions every three days.
 - (b) The Employer shall, not hire replacement employees, engage additional volunteers, or assign additional duties to volunteers. The Employer shall provide the Unions with a list of names of all volunteers who are expected to perform volunteer duties during the dispute, and where they usually perform their volunteer duties. The Employer shall, if requested by the Unions, or the affected Union, record the daily number of hours and locations worked by each volunteer and forward a written record of the hours and locations worked to the Unions every three days.
 - (ii)
 - (a) The Union shall schedule its members to work in accordance with the Essential Service Designations in Schedules A and B. The Union shall provide the necessary information to the Employer for the preparation of payroll and, if possible, shall provide the schedule in advance. Where a shift is designated in the Schedule, that shift shall not

be split between employees unless otherwise agreed to by the parties. Members of the Union scheduled to work as directed by this Order shall be the only members of the Unions who work.

(b) The Employer shall direct those scheduled employees employed at Kootenay Lake Ferries Division to perform the duties of their employment that it determines to be necessary or essential to comply with this Order.

(c) The Union shall instruct its members employed by the Employer to perform the work as directed by the Employer in (b) above.

(d) Every employee shall perform the duties of his employment as directed by the Employer in (b) above.

(e) Schedules, directions and instructions, in (a), (b) and (c) above shall be governed by the terms and conditions of the applicable collective agreement last in force between the Employer and the Unions except as altered by this Order.

3. The Labour Relations Board retains jurisdiction to monitor the operation of the facilities and services of the Employer during the dispute, and to make such change to the Order, as may be necessary for the continued supply, provision or maintenance of the facilities, productions and services which are necessary or essential to prevent immediate or serious danger to health, safety or welfare of the communities of Kootenay Lake.
4. The Employer and Union will make mutually agreed upon facilities available as headquarters for the Union.
5. Employees will be available in the event of any emergency or disaster situation. In the event of a dispute between the Employer and the Union as to whether an emergency or disaster situation exists, the employees will perform the work in questions. If such a dispute arises the Employer shall provide the Unions documentation and/or information in a reasonable period of time.

This Order reflects the current determination of the Board. The above designations may be increased by agreement of the parties or revised by successful application to the Board by the Employer or the Unions.

LABOUR RELATIONS BOARD

JENNIFER GLOUGIE
ASSOCIATE CHAIR

"Schedule A"

The "Osprey" Ferry will run three round trip crossings (with overflow, as necessary), at times to be determined by the Employer during the business week (Monday to Friday) which will be limited to:

1. Persons crossing for medical treatments/appointments or in-person pharmacy requirement for filling prescription;
2. Personnel necessary for the continued operation of medical services at the East Shore Community Health Centre;
3. Students (up to and including Grade 12 students) crossing to attend classes at public or private school;
4. Parents or guardians of students crossing for the purpose of dropping off or picking up students attending classes (excluding non-classroom or extracurricular school activities) at public or private school; and
5. Personnel (including principal/vice-principal) who are necessary for the operation of classes (excluding non-classroom or extracurricular student activities) at public or private schools.

The ferry crews will be paid for time worked only.

The Union and Employer will each provide one attendant (monitor) at the entrance to the Kootenay Lake terminal to advise oncoming traffic the limitations on boarding the "Osprey".

The "Osprey" Ferry may also cross for legitimate emergencies, as determined by the Employer.

Between sailings, the "Osprey" will be docked on the Balfour side.

The Union will ensure that sufficiently qualified ferry operators are available throughout regular business hours for emergencies (Monday through Sunday).

The Employer may hire flaggers for ferry traffic control on highway in accordance with normal practice.

The "Harrop" and "Glade" Ferries will continue to operate as per normal (i.e., at 100%).