IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

CORPORATION OF THE DISTRICT OF WEST VANCOUVER

(the "Employer")

AND:

AMALGAMATED TRANSIT UNION, LOCAL 134

(the "Union")

(Collective Agreement Interest Arbitration)

ARBITRATOR:	Vincent L. Ready
COUNSEL:	Gabrielle Scorer for the Employer
	William Clements for the Union
HEARING:	December 14, 2022 Vancouver, BC
DECISION:	January 26, 2022

33751

I was appointed by the parties as an Interest Arbitrator to settle the terms of their Collective Agreement (the "Collective Agreement"). The previous Collective Agreement expired on March 31, 2022.

THE PARTIES

The Employer delivers public transit service in the West Vancouver region, which includes service to Lions Bay and Horseshoe Bay. From west to east West Vancouver Transit services Lions Bay to Deep Cove on the North Shore; and in the City of Vancouver, Georgia Street west of Homer Street.

TransLink contracts with the Employer for the delivery of public transportation services in the West Vancouver region pursuant to the terms of an Operating Agreement for Public Transportation Services (the "Operating Agreement"). The Operating Agreement sets out the terms and conditions between TransLink and the Employer pursuant to which the Employer provides public transportation in the West Vancouver region operating the West Vancouver Transit system.

The Amalgamated Transit Union, Local 134 (the "Union") is the certified bargaining representative of Conventional and Community Shuttle Bus Operators, Mechanics, Electronics Technicians, Tire/Utility Workers, and Transit Service Technicians employed by the Employer.

COLLECTIVE BARGAINING TO DATE

Prior to referring their collective bargaining dispute to interest arbitration, the parties met in direct negotiations with the assistance of a Labour Relations Board mediator on March 29, 2022; May 25-26, 2022; and June 14-15, 2022.

During bargaining, the parties were able to resolve the following matters:

[a] Article G2 – Term of Collective agreement

Term: April 1, 2022-March 31, 2024

[b] New Statutory Holiday – National Truth & Reconciliation Day

Agreement to add one additional day of statutory holiday for National Truth & Reconciliation Day

[c] Article 19 (New) – Commercial Driver's Medical Fitness Examination to be paid by the Employer

Commercial Driver's Medical Fitness Examination Requirement: the Employer and the Union agree to add a new section A.19 effective the date of the arbitration decision: "The Employer will pay the cost of mandatory medical examinations and associated medical form fees for employees who are required to hold a valid Class 1, 2, 3 or 4 driver's license or a Transport Canada Certificate of Competency, necessary to perform their job."

[d] Article B.3(b) – Overtime at double time (2x) after 10 hours work (instead of 11)

B.3(b): amend to state "In the event that a duty is over eight (8) hours, time and one-half (1 ½) rates shall be paid for all such time over eight hours. Double time shall be paid for all work over ~~eleven (11)~~ ten (10) hours."

[e] Article 29 – separate holiday and layoff columns for the Electronics Technician

A.29(e)(iv): amend to "For the purposes of this Section A.29, a Maintenance Division 'hierarchy' shall be established for classification groups with high to low ranking as follows:

1. Mechanics, Electronics Technicians;
2. Support services, i.e. Utility Worker, Service Technician, and General Helper"

[f] Article C.1(f): Replenishable Statutory holiday banks for mechanics

Statutory holiday banks for mechanics shall be replenishable to a maximum of fifty hours per calendar year.

The above changes are to be incorporated into this Award by reference and shall form part of the renewed Collective Agreement.

On July 22, 2022, the Union took a strike vote. Employees voted 99% in favour of job action, and the Union proceeded to issue a strike notice.

The parties subsequently agreed to resolve their collective bargaining dispute through binding interest arbitration and agreed to my appointment as an interest arbitrator to determine all unresolved collective bargaining issues.

ISSUES FOR DETERMINATION

The outstanding items submitted to interest arbitration are all proposals put forward by the Union in bargaining, and are as follows:

[a] Article A.10, Statutory Holiday Pay on Sundays (New); and Sunday Pay Increases

[b] Article A.20, Long Term Disability Plan

[c] Schedule A – Wage Rates and Salaries, Item 2, Community Bus Operations; and Proposal G19 – Article A.28(b) – Shorter Work Year, History and Formula

[d] and (g) Article B.4, Minimum Call Out on Days Off and Shift Extensions

[e] Article B.5(a)(b) Split Shifts; O6 – Definition of Straight Runs (New); and O7 – Article B.6(a)(vi)(vii)(viii) – Standby Operators

[f] Recovery Time (New)

[g] Extended Work (New) – included in (d) above

[h] and (i) Article C.9 Maintenance Department – Safety Glasses, Tool and Boot Allowances

[j] Tire/Utility Worker Sign Up Column (New)

[k] Maintenance Department – Minimum of Two Mechanics

[l] Maintenance Department – Clarification Regarding Parts Department Duties (New)

[m] Overtime in Service Department (New)

[n] Section D, Community Bus Operators

PRINCIPLES OF INTEREST ARBITRATION

Prior to delving into the disputed issues, I pause here to set out the role and principles applicable to interest arbitration.

The role of an interest arbitrator has been described as being to:

> …act conservatively, to maintain the status quo, and to have significant regard to historical bargaining relationships and relationships between employee groups particularly where those relationships have been established or have been continued through freely negotiated agreements.
>
> *City of Vancouver*, [2001] B.C.C.A.A.A. No. 49 (Korbin)

The “guiding principles for interest arbitration” were well-explained by Arbitrator McPhillips in *Nelson (City) v. Nelson Professional Fire Fighters’ Assn. (Wages Grievance),* [2010] B.C.C.A.A.A. No. 174:

> 6 …**First, replication is the desired outcome and that refers to the notion that an interest arbitration board should attempt to duplicate what the parties themselves would have arrived at if they had reached an agreement on their own**. In *City of Vancouver and Vancouver Fire Fighters, Local 18*, [2001] B.C.C.A.A.A. No. 49, Arbitrator Korbin determined that “the guiding arbitral principle in interest arbitration is the replication theory -- an award should replicate what the parties would have concluded themselves, had they successfully settled their collective bargaining dispute. This is a principle which arbitrators have long accepted.” Similarly, in *Board of School Trustees, School District No. 1 (Fernie) and Fernie District Teachers Association*, 8 L.A.C. (3d) 157, Arbitrator Dorsey stated, at p. 159 that “…the task of an interest arbitrator is to simulate or attempt to replicate what might have been agreed to by the parties in a free collective bargaining environment where there may be the threat and the resort to a work stoppage in an effort to

obtain demands...an arbitrator's notions of social justice or fairness are not to be substituted for market and economic realities". That principle has been adopted in numerous other awards: *Vancouver Police Board and Vancouver Police Union* [1997] B.C.C.A.A.A. No. 621 (Lanyon); *City of Burnaby and Burnaby Fire Fighters Union, Local 23*, [2008] B.C.C.A.A.A. No. 220 (Gordon); *Beacon Hill Lodges of Canada,* 19 L.A.C. (3d) 288 (Hope); *Corporation of City of Calgary and IAFF, Local 255,* December 22, 1999 (Tettensor); *City of Regina and Fire Fighters Association, Local 181*, September 21, 2005 (Paus-Jenssen); *City of Richmond and Richmond Fire Fighters Association*, [2009] B.C.C.A.A.A. No. 106 (McPhillips); *City of Vancouver and Vancouver Fire Fighters Union, Local 18*, [2008] B.C.C.A.A.A. No. 182 (Korbin).

7 A second principle **the requirement to be "fair and reasonable" in the sense that the award must fall within a "reasonable range of comparators" even if one party could have imposed more extreme terms**. *City of Vancouver and Vancouver Fire Fighters (2001), supra; Yarrow Lodge Ltd.,* (1993) 21 C.L.R.B.R. (2d) 1 (B.C.L.R.B.); *Vancouver Police Board (1997), supra; City of Richmond and Richmond Fire Fighters Association, supra; City of Campbell River and Campbell River Fire Fighters Association (I.A.F.F., Local 1668)*, October 19, 2005 (Gordon); *City of Burnaby and Burnaby Fire Fighters (2008), supra; City of Regina and Regina Professional Fire Fighters' Association, Local 181 (IAFF),* (2005), *supra; City of Moose Jaw and Moose Jaw Fire Fighters' Association, IAFF Local 553,* August 30, 2007 (Paus-Jenssen); *McMaster University and McMaster University Faculty Association,* 13 LAC (4th) 199 (Shime); *Temiskaming Lodge and Canadian Union of Public Employees,* September 11, 2007 (Shime); *Governing Council of the University of Toronto and the University of Toronto Faculty Association,* March 27, 2006 (Mr. Justice Winkler); *City of Vancouver and Vancouver Fire Fighters' Union, Local 18, (2008) supra; City of Vancouver and Vancouver Fire Fighters' Union Local 18, (2001) supra.*

8 Third, the exercise **of interest arbitration has been described as a "conservative process"** and that it **"ought to supplement and assist the parties' collective bargaining relationship and not unravel or depart from it"**: *City of Campbell River and Campbell River Fire Fighters Association, supra,* at pa. 18, see also: *Vancouver Police Board and Vancouver Police Union,* (1997), *supra; City of Vernon and Vernon Fire Fighters Association, Local 1517,* [1995] B.C.C.A.A.A. No. 432, December 28, 1995 (Hope); *Okanagan Mainline Municipal Labour Relations Association and International Association of Fire Fighters, Locals 953, 1339 and* 1746, 6 L.A.C. (4th) 323 (Hope); *City of Vancouver and Vancouver Fire Fighters Union, Local 18* (*2001*), *supra; City of Burnaby and Burnaby Fire Fighters Union, Local 323 (2008), supra; City of Vernon and Vernon Fire Fighters Association, IAFF Local 1517,* [1999] B.C.C.A.A.A. No. 182 (Hope). In his 1995 decision in *City of Vernon and Vernon Fire Fighters, Local 1517, supra*, Arbitrator Hope stated, at paragraph 76, that "**interest**

> **arbitration is not an appropriate medium for the imposition of fundamental changes in collective agreement relationships**..." Similarly, in *Okanagan Mainline Municipal Labour Relations Association and IAFF Locals 953, 1399 and 1746*, (1997) *supra*, Arbitrator Hope stated, at page 43, that "it is trite for me to observe that **interest arbitration holds little potential for innovation. Interest arbitrators are enjoined to replicate the collective bargaining process. Thus, it is predictable, and perhaps inevitable, that they will follow bargaining trends, not set them"**.
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> 9 Fourth, as a result of this reluctance to innovate, **historical patterns of negotiated settlements between the parties will carry significant weight**: *City of Richmond and Richmond Fire Fighters Association (2008), supra; District of Chilliwack and Chilliwack Fire Fighters Association (1999), supra; City of Vancouver and Vancouver Fire Fighters Union Local 18 (2001), supra; City of Burnaby and Burnaby Fire Fighters Union, Local 323, (2008), supra; City of Vernon and Vernon Fire Fighters Association, Local 1517,* [1995] B.C.C.A.A.A. No. 432 (Hope). It is well established that interest arbitrators will attempt to respect historical relationships and the party seeking to disrupt that "voluntarily negotiated historical pattern" will have to identify persuasive reasons for doing so: *Kootenay Boundary (Regional District) and Trail Firefighters Association, Local 9411* [2009] B.C.C.A.A.A. No. 173, No. A32/09 (Gordon).
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> [emphasis added]

In the seminal case *Beacon Hill Lodges of Canada v. H.E.U.* (1985), 19 L.A.C. (3d) 288, Arbitrator Hope described the replication principle as follows:

> 62 The replication approach, or, as Professor J. M. Weiler describes it, the attempt to simulate the agreement the parties would have reached in bargaining under sanction of a lock-out or strike, relies on a market test which consists of assessing collective agreements in relationships in which similar work is performed in similar market conditions. The terms and conditions of employment thus derived are, as stated, referred to as the prevailing standard or prevailing rate.

Arbitrator Dorsey similarly described the task of the interest arbitrator in *Board of School Trustees, School District No. 1 (Fernie) and Fernie District Teacher's Association* (1982), 8 L.A.C. (3rd) 157 (Dorsey) as follows:

> There seems to be a consensus in British Columbia that the task of an interest arbitrator is to simulate or attempt to replicate what might have

> been agreed to by the parties in a free collective bargaining environment where there may be the threat and resort to a work stoppage in an effort to attain demands. This consensus accepts that an arbitrator's notions of social justice or fairness are not to be substituted for market and economic realities.

In *Penticton (City) v. Penticton Fire Fighters' Assn., Local 1399 (Interest Arbitration Grievance)*, [2015] B.C.C.A.A.A. No. 75, Arbitrator McPhillips elaborated that an interest arbitration board applying the replication principle must have regard to a number of factors including demonstrated need and comparability:

> 63…an interest arbitration board should attempt to replicate what the parties themselves would have agreed to if bargaining had resulted in an agreement. (citations omitted). In a recent decision from the Ontario Divisional Court in *Corporation of the Town of Ajax v. Ajax Professional Fire Fighter Association (#49)*, the Court stated:
>
> > 50 The parties agree that the starting point in any interest arbitration is the replication principle – the interest arbitration board must attempt to discern what the parties to the collective agreement would likely have achieved in a free strike/lockout bargaining environment given all of the prevailing circumstances. In this exercise, an interest arbitration board can have regard to a number of factors including demonstrated need and comparability.
> >
> > 51 In respect of demonstrated need, the Town relies on the following observations in *Brandt Centre Long-Term Care Residence v. Ontario Federation of Health Care Workers, L.I.U.N.A., Local 110,* 2011 CanLII 81923 (ON LA) at para.9:
> >
> > > It is generally accepted in interest arbitration that a party seeking to change provisions of a collective agreement should come forward to demonstrate a need for the change, as there is a presumption that such need will be a significant force in driving the bargaining agenda where the strike/lockout weapon is otherwise available. Without such "demonstrated need", however, there is little urgency moving the parties to maintain a position leading to or continuing a strike/lockout situation.

Finally, as noted by Arbitrator Dorsey, in *Simon Fraser Administrative and Professional Staff Association v. Simon Fraser University*, 2021 CanLII 138035 (BCLA):

> Inherent in the four guiding principles…is a choice by arbitrators to exercise restraint in the use of their adjudicative authority in order to support and encourage party self-governance. The intent is to avoid giving either party an incentive to choose interest arbitration for impasse resolution in place of making the difficult decisions, choices and compromises necessary to achieve a negotiated settlement. (at para 26)

IS COAST MOUNTAIN BUS COMPANY AN APPROPRIATE COMPARATOR?

As noted above, replication of an agreement parties would have reached in collective bargaining necessarily requires consideration of comparator collective agreements that were voluntarily reached. As Arbitrator Hope explained in *Beacon Hill, supra*:

> 62 Interest arbitration awards should reflect the standard received by employees performing similar work in the relevant labour market. When arbitrators speak of replicating the result of collective bargaining, that is the context in which they speak. That reasoning was summarized by Professor J. M. Weiler in *Grandview Private Hospital* on p. 168 as follows:
>
>> Interest-dispute arbitration under section 73 of the Labour Code [the predecessor legislation to the Essential Services Disputes Act] is intended to provide a procedural substitute for strike within a process of free collective bargaining. An arbitrator must look at labour market realities, i.e. the relative economic and bargaining positions of the parties, in attempting to simulate the agreement which could have been reached by the parties under the sanction of a strike or lockout. The best evidence of this hypothetical agreement is the pattern of development in other comparable hospitals in the community, especially those collective agreements voluntarily concluded.
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> 63 The replication approach, or, as Professor J.M. Weiler describes it, the attempt to simulate the agreement the parties would have reached in bargaining under sanction of a lock-out or strike, relies on a market test which consists of assessing collective agreements in relationships in which similar work is performed in similar market conditions. The terms

and conditions of employment thus derived are, as stated, referred to as the prevailing standard or prevailing rate.

The Union's proposals in this case are largely modeled on the Coast Mountain Bus Company (CMBC) collective agreement with Unifor Locals 111 and 2200. According to the Union, its members expect to bring their own working conditions and wages in line with CMBC in this round of collective bargaining and would not agree to a renewal Collective Agreement without such parity.

The Employer objects to the Union's reliance on CMBC as a comparator in this interest arbitration, noting CMBC is the largest operating company in the integrated TransLink enterprise and serves customers in Metro Vancouver, which is the largest single transit service area in Canada. The Employer observes that CMBC, in fact, operates more than 96 per cent of the Metro Vancouver region's bus service and has almost 6,000 employees. As of November 2021, it notes, CMBC's fleet included approximately 1,500 buses of different kinds and 163 community shuttle buses.

According to the Employer, CMBC can be contrasted with the Employer's operations, which currently employs the following bargaining unit complement:

- 73 Permanent Full time and 5 Temporary Full time Conventional Bus Operators;
- 15 Full time Community Shuttle Bus Operators; 15 part time Community Shuttle Bus Operators and 18 casual Community Shuttle Bus Operators;
- 16 Mechanics;
- 7 maintenance and service persons.

In the Employer's submission, the small number of buses and staff relative to CMBC restricts the ability of West Vancouver Transit to schedule staff and buses in the same manner as provided for by the CMBC collective agreement. Because West Vancouver Transit service is not comparable to the service and operations of CMBC, the Employer says the collective agreement terms agreed to by CMBC and Unifor Local

111 (transit operators) and Local 2200 (Mechanics and Maintenance) cannot be considered comparable to the terms which would have been agreed to by the Union and the Employer during free collective bargaining.

The Employer observes that several of the proposals based on the CMBC agreement have been previously proposed by the Union in several past rounds of bargaining and not achieved.

The Employer asserts that the fact the parties have not agreed to adopt the CMBC collective agreement terms in past rounds of bargaining demonstrates their recognition of the significant differences between the two enterprises.

DECISION ON COAST MOUNTAIN BUS COMPANY AS A COMPARATOR

While the CMBC collective agreement is a useful comparator in these proceedings, it would be inconsistent with the principles of interest arbitration – namely replication, conservatism and gradualism – to simply grant the Union's proposals on the basis that similar or identical language is found in the CMBC collective agreement.

The fact is, differences between these two collective agreements have developed over time. These disparities no doubt reflect differences in the parties' relative bargaining strength and composition amongst other things. While I have considered the changes to the Collective Agreement proposed by the Union with an eye to the CMBC collective agreement, I have applied all of the principles outlined above, and considered each proposal within the entire context of the parties' historical collective bargaining and within the normal and complete framework of interest arbitration generally.

COLLECTIVE BARGAINING CHANGES NOT ACHIEVED IN THE PREVIOUS ROUND OF COLLECTIVE BARGAINING

The other theme that emerges in support of the Union's proposals is the idea that the Union chose to roll over the previous Collective Agreement during the COVID-19 pandemic, and thus the changes in this round must take into account changes not pursued or achieved in the previous round of bargaining.

In the Union's submission, the fact that the parties essentially rolled over the Collective Agreement, while the CMBC agreement was renegotiated shortly before the pandemic, only served to widen the disparity between the two agreements. The Union stresses that it had intended to address certain key discrepancies between the CMBC collective agreement and its own Collective Agreement during collective bargaining for the 2019–2022 renewal agreement. However, the Union states it was prevented from doing so by the onset of the COVID-19 pandemic, and thus it agreed to a renewal Collective Agreement without substantive changes except for incorporating the percentage wage increases that the CMBC agreement had established for the 2019-2022 Collective Agreement term.

I find this argument unpersuasive in that the COVID-19 pandemic clearly impacted collective bargaining for all union members and employers across the country and indeed around the world. Nothing was stopping the Union from pursuing changes it is now seeking other than the economic and operational realities of the time. The fact is, the parties mutually agreed to the terms and conditions contained in the previous Collective Agreement through the collective bargaining process. It is not open to the Union to argue these changes ought to be granted now because it made a strategic decision not to pursue these changes in the previous round.

SUMMARY OF ARGUMENTS AND DECISIONS ON PROPOSALS

(a) Article A.10, Statutory Holiday Pay on Sundays (New); and Sunday Pay Increases

The Union proposes to amend the Statutory Holiday and Sunday Pay language contained in Article 10(a)(i) and (ii) of the Collective Agreement as follows:

(a)(i) All work done on Statutory Holidays to be paid at the rate of time and one-half (150%) up to ~~eleven (11)~~ hrs ten (10) hours worked, or completion of a signed up run, and double time (200%) after ~~eleven (11)~~ after ten (10) hours worked.

(NEW) Payment for a Statutory Holiday which falls on a Sunday will be paid 200% for all hours worked.

(ii) ~~All work done on Sundays to be paid for at the straight time equivalent of time and one-half (1 ½) up to eight (8) hrs work, or competition of a signed up run, time and one-half overtime rates (1 ½) over eight (8) hrs to eleven (11) hours worked, and double time after eleven (11) hours worked.~~

All Sunday shifts will pay a minimum of six (6) hours at time and one-half (150%). Double time (200%) will be paid for all time worked in excess of eight (8) hours.

Union's Position

The Union submits that this, too, is a modest adjustment that would likely have been pursued by the Union in the last round of collective bargaining if circumstances had allowed for more meaningful and substantive bargaining to have taken place at that time. The Union seeks this adjustment to maintain consistency with the CMBC agreement.

Employer's Position

The Employer's position is that there should be no further changes to Article 10 which would increase operational costs, specifically costs tied to working on Sundays.

The Employer does not agree to the additional cost of the Union's proposal to require a 200% rate be paid on all hours worked on a Statutory Holiday which falls on a Sunday. In support of its position, the Employer notes that Article B.3(k) already entitles employees to be paid at two times (2x) their regular rate of pay for all hours worked on Christmas Day. If Christmas Day falls on a Sunday, the employee shall be paid at two hundred percent (200%).

In addition, the Employer notes, there are five additional statutory holidays that could fall on a Sunday and be impacted by the Union's proposal requiring payment at 200% for all hours worked on statutory holidays which fall on a Sunday: New Year's Day, Canada Day, Truth & Reconciliation Day, Remembrance Day and Boxing Day.

The Employer observes that Article 10(a)(ii) provides that Sundays are paid at 150% of an employee's regular wages up to 8 hours, then 150% for 8-11 hours worked, and then double time after 11 hours worked, submitting the Union has not provided "significant and compelling evidence of a demonstrated need" for this proposal to be included in the Collective Agreement.

Decision Re Article A.10, Statutory Holiday Pay on Sundays (New); and Sunday Pay Increases

I am not persuaded that it is appropriate nor consistent with the principles applicable to interest arbitration to award this proposal at this time.

In so stating, I observe that the parties have already agreed to modest changes to Article 10 in the course of collective bargaining. Given that, in my view, I find it unlikely the Union would have successfully achieved further enhancement of these provisions in this round of negotiations. I thus decline to award this proposal.

(b) Article A.20, Long Term Disability Plan

Union Proposal G15 seeks to eliminate the requirement that the Union's members must participate in the Long Term Disability ("LTD") Plan, or, alternatively,

change the payment of the premium cost for the LTD Plan from being paid 100% by employees to being jointly paid 25% by employees and 75% by the Employer.

The Union also proposes adding a new term to the Collective Agreement disentitling new employees from being included in the LTD Plan if their disability resulted from a medical condition received in the 120-day period prior to their date of hire unless they have completed 18 consecutive months of services after the date of hire during which they have not been absent from work due to the pre-existing condition.

Union's Position

The Union submits it has found itself in an "untenable position" with respect to the long-term disability benefits coverage that is provided in the Collective Agreement. This is because employees are required to participate in the municipality's group Long Term Disability Plan, under which they are required to pay 100% of the premiums, with no ability to opt out. The Employer chooses the provider and policy and the Union has little or no ability to control premium costs.

The Union laments that premium costs have been increasing continuously and have been a rising source of concern for its members, with current monthly premiums being $125 per month for full-time bus drivers and $170-$200 a month for mechanics. The Union asserts that due to these "unaffordable" premium costs, its members voted overwhelmingly in favour of eliminating the LTD plan in advance of bargaining. The Union's mandate entering collective bargaining was to eliminate the LTD coverage from the Collective Agreement or achieve a reasonable cost sharing arrangement with the Employer.

In terms of what it calls the more "equitable" solution of cost-sharing, the Union points to the West Vancouver Municipal Employees' Association ("WVMEA") agreement, in which the Employer agreed to pay 75% of the cost of LTD premiums for the very same plan. This cost-sharing makes the LTD benefit affordable for other

employees of the District. The Union seeks this same 75%-25% cost-sharing arrangement for its members, by amending Article A.20(a)(b) of the Collective Agreement to provide that the Employer will pay 75% of the premium cost.

While the Union prefers the premium cost-sharing arrangement, the Union submits it would not have agreed to a renewal Collective Agreement without the Employer agreeing to either cost-sharing or elimination of its members' mandatory participation in the LTD Plan, the latter of which it points out should not involve any material cost change for the Employer.

Employer's Position

The Employer submits there should be no change to Article A.20, due to a trade-off the parties negotiated in 2000 and have maintained ever since. That trade-off was that employees would pay 100% of the LTD premium costs in exchange for a reduction in the premiums they would pay for Extended Health Benefits and Dental Plan benefits under Article A.17. The Employer maintains that the financial obligation of employees for these benefits has not increased in the past 22 years since the parties agreed to the trade-off, and that proposals by the Union to change the 100% employee-paid LTD premiums in prior rounds of bargaining were unsuccessful.

The Employer further argues that the Union's proposed change to a 75%-25% cost-sharing arrangement for LTD premiums would have significant cost implications for it, both in terms of the premium costs themselves and the possibility of a cost change for the Employer in its other employee group plans due to a rate review and increase by the provider.

The Employer warns that this change to a partially employer-paid LTD Plan would also have significant financial repercussions for Union members who receive LTD benefits. Those benefits are currently non-taxable because the premiums are fully employee-paid; however, if the Employer begins paying 75% of the premiums, the LTD benefits would start being subject to tax deductions. The Employer points out

that CMBC employees pay 100% of LTD Plan premiums resulting in their LTD benefits being non-taxable.

The Employer further rejects the Union's proposal to disentitle new employees from the LTD plan for pre-existing conditions, arguing this contradicts its goal of ensuring employees who become totally disabled have a source of income. Moreover, the Employer alleges this change would only result in negligible cost savings, which would be nonexistent if the Employer began paying 75% of the premiums as proposed by the Union.

The Employer points to high LTD Plan usage among the Union's members as compared to its other employee groups, in support of its position that the Union's proposed changes to the LTD Plan should be rejected. The Employer submits that absent "exceptional circumstances", which the Union has not shown, the parties' agreement from over 20 years ago should be maintained as it is reasonable to conclude the parties would have done as they have always done in the past, which is not make any changes to the LTD Plan. The Employer maintains the Union has not identified persuasive reasons for the significant changes it proposes to the parties' historic agreement and that these changes are not appropriate for an interest arbitration.

Decision Re Article A.20, Long Term Disability Plan

I start by observing that the parties' LTD Plan contribution and benefit levels are steeped in a historical trade off dating back over two decades. I also observe that these parties have consistently renewed successive freely-negotiated collective agreements without changing the plan structure or the contribution structure – a similar and comparative structure exists between CMBC and Unifor.

As set out in *Burnaby Firefighters' Union, International Assn. of Fire Fighters, Local 323 (Collective Agreement Grievance),* [2016] B.C.C.A.A.A. No. 81, Arbitrator McPhillips stated the Union is required to provide "significant and compelling

evidence…of a demonstrated need" for the changes that they seek. In my view, the Union has failed to meet this standard and has not shown that there is a demonstrated need or compelling reason to make the changes it seeks, nor that such a change is in line with the inherently conservative and gradual approach taken in interest arbitration.

Also, with respect to the arbitral principle of comparability, I note that the contribution levels in this Collective Agreement are comparable with the CMBC agreement and that the benefits under the current plan arguably compare favourably when compared against those provided in the WVMEA LTD plan. I say that because the "actual benefits" paid under the WVMEA plan, which is partially-Employer paid, provide 50% of gross monthly salary up to $5,000 monthly subject to taxation, while the LTD benefits under this Collective Agreement provide a non-taxable benefit of $4,000 monthly.

Further, in applying the principle of replication, I observe that CMBC did not alter its LTD contribution rate in its last round of negotiations – a plan which also requires 100% employee-funded contributions.

All things considered, I am not prepared to award changes to the current LTD plan at this time. However, given the importance of this benefit to the Union's members and the Union's continued advocacy on this issue, I believe it prudent for the parties to review all aspects of the current LTD plan – both the contribution and benefit levels – during the term of this Collective Agreement. To that end, I direct the parties to jointly review all aspects of the present LTD plan including the plan's comparability with the WVMEA plan as a whole and present the results of that review to the bargaining principals so that they can address this matter in an informed basis during their next round of negotiations which will commence within the next 12 months from the date of this Award.

(c) Schedule A – Wage Rates and Salaries, Item 2, Community Bus Operations; and Proposal G19 – Article A.28(b) – Shorter Work Year, History and Formula

Currently, the wage rate for the Employer's Shuttle Operators is $3.30 per hour less than Shuttle Operators at Coast Mountain Bus Company. The maximum rate for the Employer's Shuttle Operators is $26.91 as compared to $30.21 at Coast Mountain Bus Company. Community shuttle buses are smaller than conventional buses and have a maximum capacity of 21 seated and 2 assisted seated (mobility devices) passengers.

The Union has two proposals regarding the wages of Community Bus Operators:

- Union Proposal G1, proposes that Schedule A, item 2 be changed to provide wage parity between the Employer's Shuttle Operators and CMBC's Shuttle Bus operators.
- The Union also proposes to add Shuttle Operators to the "Historic Formula" for a shorter work year/wage calculations which concern the Employer's and CMBC's full time Conventional Transit Bus Operators and Skilled Tradespersons and has been in place since 1975.

Briefly, the Historic Formula is set out in Schedule "B" to the 2000-2002 Collective Agreement between the parties and ties the wages paid to Conventional Operators and Skilled Tradespersons at Coast Mountain Bus Company (who were employed by BC Hydro at the time the Historic Formula was negotiated in the 1970s) to the Employer's Conventional Operators and Skilled Tradespersons.

Union's Position

The Union emphasizes that one of its key objectives in this round of collective bargaining was to ensure wage parity for community shuttle bus drivers with their counterparts working under the CMBC collective agreement.

According to the Union, there is no rational basis for the substantially lower wages paid to the community shuttle bus drivers working for the District of West Vancouver as compared to those working under the CMBC agreement. It states the community buses have become a vital and significant component of the West Vancouver Blue Bus Service and provide the same service as CMBC community shuttle bus drivers working in other regions of Metro Vancouver. The Union also notes that other bus drivers and maintenance employees under the Collective Agreement have maintained a form of wage parity with the wages in the CMBC agreement. The Union submits that based on 2021 wage rates, community shuttle bus drivers have been paid $3.30 less per hour, or more than 10% less, than their CMBC counterparts.

While the Union understands the District is resistant to providing the "Shorter Work Year" arrangement to the shuttle driver category, it submits it is prepared to accept the alternative of an agreement that provides for the community shuttle bus drivers to receive the same wage rate, with the same work schedule, as community shuttle bus drivers working under the CMBC collective agreement.

Employer's position

The Employer has proposed to work toward the parity sought by the Union by continuing the structure agreed to in 2020 – reducing the gap between West Vancouver Transit Conventional Operators and Community Shuttle Operators as follows:

[a] Year 1 – $5.95 below conventional operator wage rate

[b] Year 2 – $5.25 below conventional operator wage rate

The Employer submits the Union's demand for parity with the wages of CMBC Shuttle Bus operators is unreasonable. The Employer points out that the Union's proposal G1 would require a very substantial and immediate wage increase. In its submission, the Employer states it has made a reasonable proposal to make gradual and staged increases to Shuttle Operators' wages. It notes that it would cost Employer

$210,906.35 ($108,799.59 in year one and $102,106.75 in year two) to achieve full parity over the two-year agreement as the Union has proposed.

The Employer is willing to agree to an incremental and gradual increase over time, working towards parity. It notes that that process is already underway and in 2020, the parties' agreement provided a greater wage increase to Shuttle Operators than the general wage increase agreed to by the parties in that round of bargaining.

In respect of the Union's other proposal to add Shuttle Operators to the "Historic Formula", the Employer takes the position it does not fit within the scheme of the formula without significant changes being made to Shuttle Operators' traditional hours of work. It notes the "Historic Formula" has, since its inception in 1975, only applied to Conventional Transit Operators and skilled trades employees who work 40 hours a week. Full-time Shuttle Operators, in contrast, currently work only 37.5 hour weeks.

In addition, the Employer observes, the majority of Shuttle Operators work casual or part-time hours and thus the hours of work performed by full-time, part-time and casual Community Shuttle Operators do not lend themselves to inclusion in the "Historic Formula". Adoption of this proposal would, in the Employer's submission, require a wholesale change to Shuttle Operators' hours of work. The Employer says that the Union's proposal would require the interest arbitrator to be an "innovator", when the role of an interest arbitrator is to act conservatively, to maintain the status quo and to have significant regard to the historical bargaining relationship of the parties.

Decision re Schedule A – Wage Rates and Salaries, Item 2, Community Bus Operations; and Proposal G19 – Article A.28(b) – Shorter Work Year, History and Formula

In my view, granting full parity with the CMBC wage rate for Community Bus Drivers at this time as the Union has proposed would be inconsistent with the

principle of gradualism and would not accord with the principle of conservatism both required in interest arbitration.

Consistent with the parties' historical approach to this matter, I award an incremental improvement to the Community Bus Operator wage rate as follows:

> Effective April 1, 2022, the Community Bus Driver hourly wage rate shall be $4.00 below the Conventional Bus Driver Rate.
>
> Effective April 1, 2023, the Community Bus Driver hourly rate shall be $3.00 per hour below the Conventional Bus Driver Rate.

With respect to the Union's proposal to include Shuttle Operators in the "Historic Formula", I am not persuaded there is a demonstrated need for this change. In my view, the granting of this proposal would represent a departure from the parties' practice in this regard, and would have been unlikely to have been achieved in free collective bargaining given the unique scheduling requirements of those positions.

(d) and (g) Article B.4, Minimum Call Out on Days Off and Shift Extensions

Article B.4 of the Collective Agreement currently provides for a minimum of three (3) hours' pay at the overtime rate for employees called out on their days off.

The Union proposes to change the minimum number of hours paid for a call out under Article B.4 from 3 hours to 4 hours.

The Union also proposes the addition of new language to the Collective Agreement that would entitle Operators to a minimum of two hours' pay where the Employer requests them to extend their work beyond their scheduled hours of work:

[a] By working an additional piece of work; or,

[b] By continuing in service as a result of a missed relief; or

[c] By more than fifteen (15) minutes for the purpose of a bus change on the road.

Union's Position

The Union submits that its two proposals concerning call out and shift extensions were also to address issues that had been addressed in the CMBC agreement for other transit operators that it did not have the opportunity to bargain in the last round of bargaining with the Employer.

The Union's position is that its proposals would simply add protections for transit operators, and disincentives for the Employer, already provided to transit operators working under the CMBC agreement. According to the Union, these are modest protections that recognize the disruption and inconvenience for operators that is caused when this occurs and provides a guaranteed minimum pay of two hours for shift extensions and four hours for callout.

Employer's Position

The Employer points out that the Union has made both these proposals in the past, arguing for parity with the CMBC collective agreement, and the Employer has never agreed to them, showing the Employer likely wouldn't have agreed to them this time. The Employer submits that being paid for three hours on a callout is fair and reasonable and changing it to a guaranteed four hours, even when those hours aren't worked, is unreasonable.

The Employer further argues that an automatic requirement to pay two hours when shifts are extended is unreasonable and that employees who work beyond their scheduled hours are paid regular or overtime rates as applicable. The Employer submits that the Union has not demonstrated "significant and compelling evidence of a demonstrated need" to add this provision to the Collective Agreement.

Decision re Article B.4, Minimum Call Out on Days Off and Shift Extensions

Having regard to all relevant circumstances, I agree with the Union that increasing the minimum number of hours paid to employees for callouts under Article B.4 from three hours to four hours is a modest change the Union would likely have been able to achieve in free collective bargaining had the parties not reached impasse. Thus, I order that Article B.4 be amended to reflect this increased minimum callout period.

I do not, however, find the same can be said about the Union's proposal to add new language to the Collective Agreement so that the Employer is obligated to pay a minimum amount of overtime when an employee's shift is extended. In respect of that aspect of the Union's proposal, I respectfully do not accept it would be appropriate nor consistent with the applicable arbitral principles to grant such a proposal – certainly, not on the basis that the Union forwent its opportunity to pursue such a change in the last round of bargaining. As I have already stated, I do not find that argument persuasive generally, nor in the specific circumstances of this proposal. All things considered, I find it unlikely the Union would have been successful in securing this change and I therefore decline to grant it.

(e) Article B.5(a)(b) Split Shifts; O6 – Definition of Straight Runs (New); and O7 – Article B.6(a)(vi)(vii)(viii) – Standby Operators

Currently, Article B.5 reads as follows:

B.5 Split Shifts

(a) Any regular Full-time duties with a layover of two (2) hours or more shall constitute a split shift. A split shift shall be made of two (2) sections only with a minimum of two (2) hours in any one section, and the total elapsed time shall not exceed twelve (12) hours.

(b) The Municipality agrees to hold the number of split shifts posted to a minimum, subject to the following conditions:

(i) No Sunday or statutory holiday split shifts except by mutual agreement or on Easter Monday where it is impossible to do otherwise without an increase in staff.
(ii) No split shifts on duties finishing after 2015.
(iii) Subject to sub-section B.5 (b) (i) and notwithstanding A.10 (a) (i), Easter Monday shifts shall be paid at time and one half (1½) up to and including ten (10) hours of spread or actual work carried out and double time thereafter.

(c) The Municipality and the Union shall endeavour to reduce the number of split shifts further.

The Union proposes to amend that language as follows:

(a) Any regular Full-time duties with a layover of ~~two (2)~~ one hour and half (1 ½) or more shall constitute a split shift. A split shift shall be made of two (2) sections only with a minimum of two (2) hours in any one section, and the total elapsed time shall not exceed ~~twelve (12)~~ eleven and half (11 ½) hours.

(b) The Municipality ~~agrees to hold the number of split shifts posted to a minimum,~~ will guarantee as a minimum of that 75% of signed up runs will be cut within nine hours and half (to include straight runs) and that 70% of signed up runs will remain as straight runs, subject to a leeway of 3% below these limits, subject to the following conditions:

(i) No Sunday or Statutory Holiday split shifts except by mutual agreement or on Easter Monday where it is impossible to do otherwise without an increase in staff.
(ii) No split shifts on duties finishing after 20.15.
(iii) Subject to sub-section B.5 (b) (i), easter Monday shifts shall be paid at time and one half (1 ½) up to and included ten (10) hours of spread or actual work carried out and double time

The Union also proposes that B.5(b) be amended to including the following definition of “straight runs”:

“straight” run is one that:

- is assigned to one (1) Operator;
- is approximately eight (8) hours of scheduled work time (but can be more or less); and

- is made up of one (1) or more pieces of work that are separated by 30 minutes or less of unpaid time, in total.

Union's Position

According to the Union, its proposal would revise outdated language and incorporate clearer, fairer language than is already in place for other transit operators working under the CMBC agreement. The Union laments that it was unable to address this in the last round of collective bargaining due to the circumstances, and states its proposal addresses another important working condition of primary importance to the transit bus operators, and that it would not have entered a renewal Collective Agreement without achieving parity with the CMBC agreement on this issue.

The Union asserts that the quality of working life for drivers in West Vancouver has been detrimentally impacted by the Employer's use of "split shifts" and what may be considered a "straight" shift for West Vancouver Blue Bus drivers. Shifts are work assignments that have been scheduled to include long unpaid layovers in the working day, such that the driver's shift is "split" and may extend over many more hours in the day than the paid working time requires – making for a much longer day for employees from start to finish without commensurate remuneration. According to the Union, split shifts profoundly compromise the time employees have away from their place of work to spend with their families and in their communities.

Employer's Position

The Employer submits that the Union's proposals are both unnecessary and a significant departure from the status quo which is not responsive to the flexibility the Employer requires to respond to service demands.

The Employer explains that there are two rush-hour peaks in service demands each weekday, with a 12-hour period in between the start of the first peak period and the end of the second peak period. This requires the use of split shifts, because the

Employer's Conventional Operators are all full-time with an entitlement to an 8-hour daily shift. If it did not use split shifts, the Employer argues there would be inefficiencies, such as buses running with few passengers during non-peak times. The Employer maintains that as a much smaller employer than CMBC, it requires more flexibility in its scheduling.

In addition to hindering its flexibility, the Employer argues the Union's proposals would result in the need for additional staffing and equipment which would increase costs. The Employer asserts that the status quo, in which the Employer must make best efforts to minimize split shifts, and the requirement for a paid "sheet committee" to scrutinize running sheets and suggest run changes, is sufficient to address the Union's concerns.

Decision re Article B.5(a)(b) Split Shifts; O6 – Definition of Straight Runs (New); and O7 – Article B.6(a)(vi)(vii)(viii) – Standby Operators

After careful consideration of these proposals, I am not prepared to award these changes to the Collective Agreement at this time.

While I recognize the negative impact the use of split shifts can have on employees, I note there is already a requirement that the Employer minimize its use of these undesirable shift patterns. However, the fact is, these shifts are operationally required in some cases and can be justified under the existing Collective Agreement language. To the extent the Union believes the existing language is not being adhered to, it has recourse under the grievance and arbitration provisions of the Collective Agreement. Applying the applicable interest arbitration principles, however, I am not convinced that the changes being sought are warranted at this time.

Article B2 of Collective Agreement provides for recognition of a Union Committee to scrutinize new running sheets. In my view, that Committee is an appropriate existing resource to consider the use of split shifts and whether there are other ways of allocating shifts without added cost to better balance the Employer's operational needs with employees' desire to minimize the use of split shifts.

I order that the Committee be paid a maximum of eighteen hours to review the running sheets and provide its suggestions to Transit Management.

(f) Recovery Time

This is the first of several proposals the Union says attempt to address Driver Working Conditions. The Union proposes to add a new provision of the Collective Agreement in respect of "recovery time" effective the December 2022 sheet.

Briefly explained, "recovery time" is time built into the driving schedule for the driver to recover and have a washroom break, if needed, without falling behind the passenger schedule that the public is relying upon.

The Union's proposal mirrors language in the CMBC collective agreement, which is:

> Effective the December sheet, 2022, at the end of each trip, and subject to space/vehicle limitations and other site-specific considerations, a minimum of ***five (5) minutes*** of recovery will be allocated.
>
> The parties agree that recovery that includes a rest for Operators is an important part of the schedule.
>
> Each run will have scheduled recovery time in the run. Notwithstanding the scheduled recovery, except on Sundays, Operators will be entitled to a minimum amount of actual recovery of ***fifty (50) minutes*** per run.
>
> Every effort will be made to ensure that the recovery time in a run is distributed evenly, considering rush hour peaks.
>
> An Operator who is not able to take the minutes of actual recovery set out above over the course of the work may file an overtime claim and be paid at 200% for lost minutes up to the associated guarantee. To determine the correct amount on any given day for calculating the claim, the Employer shall use GPS (or other data) and shall provide this to the Union representative upon request. If it can be show that the actual time did not provide for the minimum guarantee (or portion thereof) the overtime claim shall be automatically paid unless there was an incident that occurred

> outside the Employer's ability to plan when building the schedule, in which case this guarantee does not apply.
>
> Traffic and congestion are considered to be within the Employer's ability to plan.

Union's Position

According to the Union, the lack of adequate recovery time in the bus schedules has become a central problem for drivers and became a key bargaining concern and objective for the Union.

The Union states that inadequate recovery time only exacerbates stress for drivers who face traffic congestion or delays on the road that may cause the bus to fall behind schedule and increases pressure on drivers to continue driving without even a washroom break. It notes that in many cases there is no washroom facility on the run, so drivers must search for a washroom available to the public that is open and available for them to use when a break is taken. Thus, according to the Union, the lack of adequate recovery time is a problem that truly touches the dignity and quality of the working life of bus drivers, and potentially even the safety of bus operations in some cases.

The Union describes this proposal as a key demand of the Union and states it would not have concluded a Collective Agreement without addressing this issue. Recovery time is an important working condition, and the proposal involves simply catching up to the CMBC collective agreement for drivers.

Employer's Position

The Employer opposes the Union's proposal for recovery time and submits it is both unnecessary and represents a "breakthrough" provision that requires the interest arbitrator to be an innovator rather than act conservatively to maintain the status quo. The Employer notes the Collective Agreement currently contains no provisions respecting recovery time.

Further, the Employer argues there is uncertainty in the Union's proposal as it is not clear when the five minutes recovery time for each trip would be required. The Employer complains that the Union's proposal would also create a new "claims" process that imposes a cumbersome administrative burden on the Employer.

The Employer understands that most runs already have adequate scheduled and actual recovery time, and that the Union's proposal is aimed at specific runs that have too little recovery time. The Employer argues that the specific problem runs can be addressed between the parties and the imposition of a new administrative burden on management is unnecessary.

Decision re Recovery Time

I accept the Union's position regarding the importance of recovery time to operators during the performance of their work. Reasonable recovery time should be available to operators during the course of their work.

However, I note the parties disagree about whether the scheduled recovery time has been available for operators, and that whether or not and to what extent operators have been unable to take scheduled recovery time is not certain.

Consistent with my decision in respect of the Union's split shift proposal, I find that the Union Committee referred to in Article B.2 recognized for reviewing sheets is an appropriate existing resource to consider the matters put forward in this proposal.

Therefore, I order that the Committee will be tasked with reviewing the TMAC data to determine whether there are runs on the September to November 2022 sheet where it has not been possible for operators to take scheduled recovery time. The Committee will identify circumstances where operators were not able to take the recovery scheduled for their work 50% or more of the time and will inform Transit

Management of its findings and provide the supporting records. The Employer will then make schedule changes to address the findings on the next sign-up sheet.

I order that the Committee shall be paid a maximum of nine (9) hours to review the data and provide its findings to Transit Management.

On a go forward basis, if the Union identifies scheduled work where the operator is not able to take the scheduled recovery 50% or more of the time, it will notify Transit Management, and Transit Management will obtain the TMAC data pertaining to that work to consider whether the schedule needs to be changed for the next sign up to ensure reasonable recovery time can be taken by the operator.

(g) Extended Work (New) – included in (d) above

(h) and (i) Maintenance Department – Safety Glasses, Tool and Boot Allowances

The Union proposes the following changes and additions for safety shoes and prescription safety glasses:

> **REVISE C.9 (c):**
> When safety shoes are required on the job and with prior approval by the ~~Maintenance Superintendent~~, the Municipality will pay up to three hundred dollars ($300) per ~~twenty-four (24)~~ twelve (12) month period.
>
> **Add**: Protective prescription safety glasses.

The Union proposes the following change for the tool allowance:

> <u>Tool Allowance</u>
> ***CHANGE***:…eighty cents ($0.80) per hour ~~for hours worked~~ for hours paid. *The Tool Allowance will be paid on the employee's payroll cheques ~~on the first payday in January and the first payday in July of each year.~~* BI-WEEKLY.

Union's Position

The Union submits that entitlement to paid protective prescription safety glasses, a reasonable allowance for safety shoes, and a minor adjustment to how the tool allowance for maintenance employees is paid, should be an area where the parties can reasonably agree, particularly for a group of employees whose attraction and retention is both vital and challenging for the Employer.

The Union points out that compensation for prescription safety glasses is something the Employer provides already, as confirmed in a letter, and there is no reason this should not be added to the Collective Agreement. The Union observes the Collective Agreement currently requires that mechanics provide and maintain their own set of tools.

The Union argues this was not a round of collective bargaining in which the Union would have accepted leaving modest requests on behalf of employees in the Maintenance Department unaddressed. Replicating the agreement that the parties would have reached through free collective bargaining and the Union exercising its right to strike requires that these modest changes on behalf of mechanics be included.

Employer's Position

With respect to the safety glasses, the Employer asserts that while the Employer has committed to pay for them, the parties have agreed this commitment would remain outside the Collective Agreement and there is no reason to change that.

With respect to the boot allowance, the Employer submits the Union has not demonstrated a need to increase the allowance to $300 per year, which would add significant costs to the Employer.

With respect to the tool allowance, the Employer expresses confusion as to why the Union is requesting it be paid bi-weekly, when the Union previously rejected bi-

weekly payment when the Employer did it mistakenly. The Employer further argues that changing the tool allowance to be paid on all hours paid instead of the status quo of paying it on all hours worked would add an additional cost to the Employer and does not reflect the practical purpose of the allowance, which is to account for wear and tear on tools resulting from work.

The Employer points out that the Union's proposal on tool allowance is a significant change from the Collective Agreement and from the Employer's agreement with WVMEA, and according to the Employer, the Union has not demonstrated a need for the change.

Decision re Maintenance Department – Safety Glasses, Tool and Boot Allowances

I accept that safety glasses are already funded by the Employer and that inclusion of this benefit in the language of Article C.9 is both appropriate and consistent with interest arbitration principles. In my view, it is likely the Union would have successfully secured this change in bargaining given that the benefit is already provided to employees. I therefore award the Union's proposal in this regard.

However, I am not prepared to increase the boot allowance to $300 every 12 months as proposed by the Union because I do not believe it has sufficiently demonstrated the need for such a change. I do accept that a modest increase to this benefit is warranted, though, and thus order that the language be amended so that the $300 boot allowance is payable every 18 months. I maintain the requirement that requisite approval be obtained from the superintendent.

Nor am I prepared to order that the tool allowance be paid on all hours paid rather than the existing practice of paying this benefit on all hours worked. On this point, I accept that the purpose of the benefit is to compensate for wear and tear and that it would be inconsistent with this purpose to award the change sought by the Union.

(j) Tire/Utility Worker Sign Up Column (New)

The Union proposes an article providing as follows:

Tireman removed from all service department signup shifts and Holidays.

Union's Position

The Union observes that the parties already agreed on the separation of the Electronics Technician from mechanics for holiday sign up in the maintenance department. The Union explains this made sense, because the Electronics Technicians are independent of the mechanics in their daily work and their vacation should not affect the right of a mechanic to take their vacation.

The Union extends this logic to argue that the "Tireman" or "Tire/Utility Worker" is also a role that can be treated independently of mechanics with respect to sign up for extra shifts and holiday sign up. They can and should be treated separately for sign up, so that each does not affect the opportunities of the other.

The Union submits this change is operationally practical and recognized as such by those familiar with the operations of the department. There is no practical reason why it would not have been included by the parties in a renewal Collective Agreement and the Union's bargaining committee was insisting upon it.

Employer's Position

The Employer explains that separating the Tire/Utility Workers for the purposes of shift and holiday sign-up would mean that up to six employees could be off at one time, instead of the current maximum of five. The Employer's position is that this would have a significant operational impact given the small number of employees in the Service Department. According to the Employer, it would also add to already existing staffing challenges around leaves in the department.

The Employer submits it has already agreed to separate the Electronics Technicians and that further separating the Tire/Utility Workers would impose an unreasonable restriction on the Employer's ability to schedule work in the department. The Employer maintains the Union has not shown this change is necessary.

Decision re Tire/Utility Worker Sign Up Column (New)

I award the Union's proposal to treat Tiremen separately for sign up shifts and holidays. In so awarding, I note this is a modest change with little operational impact but of benefit to the Union's members. I find it likely to have been achieved in free collective bargaining.

(k) Maintenance Department – Minimum of Two Mechanics

The Union proposes to add a new article to the Collective Agreement as follows:

Minimum of two mechanics will be scheduled to work every regular shift.

Union's Position

While many of the Union's maintenance department proposals concern recruitment and retention, the Union submits this first issue arises from a safety concern. The Union observes that, perhaps due to the Employer's challenges in attracting and retaining mechanics, mechanics are sometimes scheduled to work by themselves; for example, on Sunday shifts.

The Union submits that mechanics working alone is of significant concern and must not occur. Not only is it more efficient and practical to work in pairs, but the Union also points out that mechanics can find themselves in dangerous situations

where they may be pinned or incapacitated without a counterpart to assist them if scheduled to work alone.

Employer's Position

The Employer submits that the Union's proposal would impose a significant cost burden on the Employer as well as a significant limitation on management's right to schedule based on operational needs. The Employer observes that future vehicle technology could mean less work is required, making the obligation to schedule two mechanics more onerous.

The Employer observes that it often does schedule two mechanics at a time, but it should not be required to do so, and that such a requirement would be a fundamental change to its collective bargaining relationship with the Union.

Decision re Maintenance Department – Minimum of Two Mechanics

To the extent that the Union has pointed to a perceived safety concern as the basis for this proposal, I note these concerns can be addressed under the applicable occupational health and safety processes between the parties.

I am not persuaded that the Union has demonstrated a need for this proposal and thus decline to award it.

(l) Maintenance Department – Clarification Regarding Parts Department Duties

The Union proposes adding a provision as follows:

Mechanics no longer required to engage in parts department duties.

Union's Position

The Union explains that employees in the Maintenance Department obtain necessary parts from a Parts Department that is responsible for purchasing and receiving what is required, maintaining inventory, organizing the shelves, and locating and providing the items when they are needed. The employees who perform this function are not in the Union's bargaining unit and are employees of the Employer working under the WVMEA collective agreement.

The Union laments that, due to the way the Maintenance Department has been managed, situations arise when the mechanics feel that they have been expected to perform the bargaining unit work of the Parts Department employees, including when a Parts Department employee is not present. The Union submits it has no interest in any dispute with the WVMEA, nor should Maintenance Department employees be placed in a situation where they are expected to work outside of their role, or where the scope of their duties is not clear.

The Union submits this ought to be a non-controversial proposal that will avoid confusion and the potential for disputes for all concerned.

Employer's Position

The Employer submits that the proposed language is unnecessary, as the Employer denies requiring mechanics to do Parts Department duties. The Employer explains that while mechanics interact with the WVMEA stores employees to obtain parts to do their work, and the Parts Department employees support the mechanics work, each group of employees has different roles and functions.

Decision re Maintenance Department – Clarification Regarding Parts Department Duties

Like the previously considered proposal, I find this matter is best left to the parties to resolve through the grievance and arbitration processes under the Collective Agreement. I decline to award this proposal.

(m) Overtime in Service Department (New)

Overtime work in the Service Department may include cleaning and fuelling buses and other tasks which do not require a Red Seal mechanic designation.

The Union proposes a new provision be added to the Collective Agreement requiring certain overtime in the Service Department be offered to Transit Service Technicians by seniority prior to offering the work to other employee categories.

According to the Union, its proposal to restrict overtime in the service department (cleaning and fuelling buses, etc.) to service technicians was intended to more logically separate employee categories in the Maintenance Department with respect to their work opportunities. In response to the Employer, the Union clarifies the proposal is not intended to prevent the Employer from offering overtime by seniority to other employees, including Red Seal mechanics, if the work has first been offered, by seniority, to the service technicians. With this clarification, the Union asserts, there is no operational disadvantage to the Employer with the proposal. It would reasonably have been adopted.

Employer's position

The Employer objects to the proposal, arguing it would unduly restrict management's right to offer service department overtime work to mechanics and constitute a fundamental change to its collective bargaining relationship with the Union.

The Employer notes it is not always able to find a Service Technician available or willing to perform the work required, and asserts it must be entitled to offer the work to other employees who are available and willing to do the work in order to ensure it maximizes the number of buses which are cleaned, fuelled and ready for service. If the work is not performed, the Employer alleges, it may have to hold a bus out of service.

Decision re Overtime in Service Department (New)

With the Union's clarification that its proposal is not intended to, nor would it, restrict the ability of the Employer to fill overtime shifts; but, rather, pertains to the order by which such work will be offered, I find it appropriate to award this change.

In my view, the Union has provided a sufficient basis and demonstrated need for its proposal. Weighing the minimal impact on the Employer's operations with the stated benefit for impacted Union members, I find it likely the Union would have been successful in achieving this change in free collective bargaining and that the principles of interest arbitration thus support its being awarded.

(n) Section D, Community Bus Operators

Section D of the Collective Agreement pertains to Community Bus Operations.

The Union's proposals C1, C2, C3, C4, C5, C8 and C9 seek to amend Articles D.1(a) and (b); D.2(a), D.3(a)(b)(c), D.4(a)(b), D.5(a)(b), D.8(a) and D.9(a) of the Collective agreement.

Employer's position

The Employer argues that the Union's proposals seek to make significant changes to the hours of work, classifications and wages of Shuttle Operators. It notes that these proposals are in addition to the proposals made by the Union regarding wages for Shuttle Operators – G1 – parity with CMBC Community Shuttle Operators; and G19 – Add full time Shuttle Operators to the Historic Formula.

The Employer says that operationally the Community Bus operation functions well and that the system should be left as is. If changes are to be made, they should be made through free collective bargaining, not interest arbitration. In the Employer's submission, the Union's proposals affecting Community Bus Operations and Shuttle Operators demonstrate its desire to make significant and fundamental changes to this part of the Collective Agreement, which conflict with the conservative nature of interest arbitration.

According to the Employer, the Union's proposals concerning Community Bus Operations seek to "unravel" and "depart from" the parties' historic agreement regarding Section D of the Collective Agreement. Further, the Union's proposals do not explain how the parties would address all of the issues which flow from the changes contemplated in them. In so stating, the Employer observes that there are currently three Letters of Understanding (LOUs) negotiated by the parties which concern full-time Shuttle Operators, and that the Union's proposals do not explain or address what happens to the LOUs if the Union's proposals are accepted.

Union's position

The Union did not address these proposals in its initial submission. However, in reply, the Union clarifies it is not pursuing the elimination of the casual classification for Community Bus operators; rather, it is seeking with these proposals to incorporate the existing agreements pertaining to the category of Permanent Full-Time Community Bus Operator into the Collective Agreement, not making substantive changes.

Decision re Section D, Community Bus Operators

I do not accept the Union's assertions that these proposals are entirely in the nature of housekeeping and can be incorporated into the Collective Agreement without issue. For example, Working Days, Shifts and Hours for Permanent Full-Time Community Bus Operators were addressed by the parties in the Letter of Understanding dated September 13, 2017. The parties agreed the operators would have a 37.5 hour work week. The Union's proposal C4 – change Article D.4 Working Days, Hours and Shifts to add Full-Time Community Shuttle Operators and proposal C8, remove Article D.8(a) and revise it according to B.3(j) both appear to be contingent on the application of a 40-hour work week.

I believe these matters are best left to the parties for further discussion. If not resolved in the course of those discussions, these matters ought to be referred to the next round of bargaining, which I note will take place in approximately 15 months.

CONCLUSION

I trust the foregoing provides a fair and reasonable conclusion to the parties' collective bargaining dispute.

It only remains for me to thank both bargaining committees for their candour and cooperation during this process. The submissions of the parties were well-laid out, and clearly explained the issues.

Finally, as previously stated, I order that all items previously agreed to during collective bargaining be incorporated into the Collective Agreement.

It is so awarded.

Dated at the City of Vancouver in the Province of British Columbia this 26th day of January, 2023.

Vincent L. Ready