IN THE MATTER OF AN ARBITRATION

BETWEEN:

HEALTH EMPLOYERS ASSOCIATION OF BC
(BC EMERGENCY HEALTH SERVICES)

("HEABC" or "BCEHS" or the "Employer")

AND:

AMBULANCE PARAMEDICS OF BC, CUPE LOCAL 873

(the "Union" or "CUPE 873")

(Memorandum of Understanding)

ARBITRATOR:	Vincent L. Ready
COUNSEL:	Delayne Sartison, Q.C. for the Employer
	Amanda Rogers for CUPE 873
HEARING:	April 7, 2016 Vancouver, BC
WRITTEN SUBMISSIONS:	August 24, 2016 and September 7 and 15, 2016
DECISION:	October 31, 2016

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The issue in this case arises out of the Memorandum of Understanding Re: Resolution of Specific Issues in the BCEHS/CUPE 873 Addendum [the "MOU"] reached between the Facilities Bargaining Association [the "FBA"] and the Health Employers' Association of British Columbia ["HEABC"]. The Ambulance Paramedics of British Columbia are represented by CUPE 873 and are a constituent member of the FBA. The British Columbia Emergency Health Services [the "BCEHS"] is a member of HEABC.

Specifically, CUPE 873 argues that the MOU has been extinguished and I am without jurisdiction to grant an extension of timelines to the HEABC and its member, or I should decline to do so. CUPE 873 asserts that since the Employer failed to provide its information and bargaining proposals by September 1, 2015, the MOU is extinguished and there is no longer any obligation on CUPE 873 to continue to engage in collective bargaining under the process outlined in the MOU.

The initial portion of the MOU, integral to these proceedings, reads as follows:

> HEABC and the FBA have bargained over renewal of the BCEHS/CUPE 873 Addendum to the FBA Collective Agreement and have been unable to resolve their differences in regards to the following issues:
>
> - Scheduling under A.101 of the addendum and related provisions
> - Introduction of a regular part-time employee category other than for Community Paramedicine
> - Requirements for Unit Chiefs under Article 13 and Schedule F5.01.
>
> The parties agree to resolve outstanding differences over these matters as follows:

> Commencing not later than September 1, 2015, the parties will exchange information as required and discuss resolution of the identified issues.
>
> Any issue which the parties are unable to resolve through negotiations will be submitted to Vincent Ready as adjudicator no later than November 15, 2015.
>
> Vince Ready will establish his own procedure for any adjudication that is required.
>
> Vince Ready will issue a final and binding decision on the issues based on the provisions set out below no later than December 15, 2015.
>
> The parties may request that Vincent Ready mediate their continued negotiations over the outstanding issues at any time after June 1, 2015.

BACKGROUND

The HEABC is the exclusive bargaining agent for the BCEHS.

The Facilities Bargaining Association [the "FBA"] is the bargaining agent for employees in the Health Services and Support Facilities Subsector bargaining unit of the health sector in British Columbia and represents health care workers including the Ambulance Paramedics – members of CUPE, Local 873.

On May 12, 2014, HEABC and the FBA concluded a tentative Collective Agreement [the "Tentative Collective Agreement"] which, among other things, includes Appendix C entitled: "CUPE 873 Appendices" as well as Appendix D which covered certain items and conditions to be included in the renewed Collective Agreement. In addition to Appendices C and D, the parties agreed to the MOU on May 12, 2014 (including the terms outlined above).

Subsequent Events

The reason for the creation of the MOU is the fact that BCEHS was, at the time of bargaining, going through numerous changes and hence at the conclusion of main table bargaining, the parties needed additional time to conclude outstanding issues. This situation resulted in agreement by the principals, the FBA and HEABC, to the MOU which allowed them to continue negotiations on the outstanding issues involving BCEHS and CUPE 873.

Further to those ongoing changes, during the relevant period, ORH Ltd. was contracted by BCEHS to undertake a review of demand and deployment of ground ambulance services in the Lower Mainland and create a report [the "ORH Report"]. The ORH Report was to provide data that would inform the BCEHS on its proposals. There was also an understanding that the Union would be given access to some of the data from the ORH Report. The BCEHS received a preliminary ORH Report in mid-August and the final ORH Report was due in November 2015.

In order to deal with the alleged extinguishment of the MOU I believe it prudent to contextualize the dispute. As such, I will set out the dates of the interactions and correspondence between the parties subsequent to ratification of the Tentative Collective Agreement (including the MOU).

On March 19, 2015, Ms. Bronwyn Barter, Provincial President of CUPE 873 wrote to Ms. Jodi Jensen, Chief Operating Officer of BCEHS, asking for bargaining dates and seeking advanced disclosure of any plans, proposals or information.

The Union and the Employer met on April 9, 2015 under the MOU and met again on June 24, 2015 for discussions on a number of issues, including supervisory changes to the Superintendent's role and the impact to the Unit Chiefs and Supervisors.

On June 29, 2015, Ms. Barter wrote to Ms. Jensen indicating that the parties were scheduled to continue negotiations and wrote: "We have been advised that pending the 'ORH Review', the Employer will make its intentions clear". The Union reviewed the MOU issues and asked to receive proposals on Shift Scheduling (Article A1.01) in advance of September 1, 2015 so it could respond "before the deadline". The Union observed that the issue of Unit Chiefs requirements was directly connected to the proposed supervisory changes. The Union proposed two dates for discussions: July 16 and August 12, 2015, stating "[a]s previously noted availability is extremely limited through the summer months…".

On June 30, 2015, Mr. Cameron Ely, Provincial Recording Secretary of CUPE 873, wrote to Ms. Jensen to voice the Union's disagreement that any prior arrangement related to Supervisors was extinguished and seek clarification.

On August 11, 2015, Ms. Jensen wrote to Mr. Tom Manz, Provincial Secretary Treasurer of CUPE 873, repeating the following quotation from the Employer's March 17, 2014 letter to the Union including the following quotation:

> To implement changes in management and supervisory structures, any agreement or part thereof that expressly or by implication restricts or limits the authority of BCEHS to establish an appropriate supervisory structure of excluded and included personnel contained by reference within the BCEHS/CUPE Appendix to the Health Services and Support Facilities Subsector Collective Agreement is terminated effective March 31, 2014.

In the same letter, Ms. Jensen referenced the meeting scheduled for August 12, 2015 (the next day) and stated: "We are looking forward to

exchanging views on this issue with you; and after this discussion, if necessary, the Employer will provide the Union with a more formal position."

At the August 12, 2015 meeting several topics were discussed. In general, the Employer advised it was waiting for the preliminary ORH Report (expected any day). Supervisory issues were discussed further with reference to Unit Chiefs and duty supervisors. The creation of regular part-time positions was discussed. Also, the Union inquired about whether data (from the ORH Report) would inform the changes the Employer was seeking with regard to scheduling. The Union sought information or clarification on some issues. In the end, the parties agreed to meet again on September 28, 2015.

On August 14, 2015, Ms. Judy Doyle, Director of Strategic Labour Relations for BCEHS, wrote, on a without prejudice and without precedent basis, to Ms. Barter of CUPE 873 further to the discussions between the parties on August 12, 2015, in order to clarify the BCEHS' position regarding bargaining unit supervisory changes.

On August 31, 2015, Ms. Barter of CUPE 873 wrote to Ms. Jensen of the Employer stating that the Union and the Employer were scheduled to continue negotiations around three issues: Shift Scheduling, Regular Part-time Employees and Requirements for Unit Chiefs. The letter stated: "The parties were required to exchange information as specified in the MOU, no later than September 1, 2015" [emphasis in original document].

On September 3, 2015, Ms. Jennifer Whiteside, Chief Spokesperson for the FBA, wrote to Mr. Tony Collins, Vice-President, Knowledge, Management & Education, HEABC, referencing two previous letters from CUPE 873 to BCEHS that requested disclosure of information and bargaining proposals. The FBA stated: "The language of the MOU contains clearly defined process including strict deadlines. The Employer failed to meet the terms prescribed in the MOU

therefore we consider the MOU extinguished." The FBA pointed to the Joint Labour-Management meetings as a forum available to the BCEHS for ongoing discussions.

On September 3, 2015, Ms. Adrienne Hook, Executive Director, Health Authority Services & Benefits Administration, HEABC, wrote to Ms. Whiteside of the FBA, advising she has conduct of the issue and outlining the position that the MOU continues to be in effect between the parties. Ms. Hook wrote: "Prior to September 1, 2015, representatives from BCEHS and CUPE 873 met to review the process together and commence discussion of the identified issues in the MOU. Through these initial meetings, it is our understanding that the parties further identified the necessary information and next steps at this stage that will assist the parties in their local discussions…".

On September 23, 2015, Ms. Doyle of BCEHS sent an email to Ms. Barter of CUPE 873 advising of an additional attendee at the September 28, 2015 meeting. Ms. Barter replied the same day and stated "the FBA considers the MOU extinguished" and "Therefore, we will not be meeting with the employer with regards to the extinguished MOU". That scheduled meeting did not proceed.

A conference call occurred on October 7, 2015, involving the parties including the following participants: Carmen Hamilton, Strategic Negotiations Lead, for HEABC, Courtney Radford, Ms. Doyle for the Employer, Ms. Whiteside of the FBA, Ms. Barter of CUPE 873 and Mr. Victor Elkins. On October 8, 2015, Ms. Hamilton wrote to Ms. Whiteside outlining HEABC's position: "As we outlined during the teleconference, HEABC maintains that the MOU remains in full force and effect, and we are disappointed in CUPE 873's refusal to meet with BCEHS as agreed September 28, 2015. The Employer remains committed to exchanging proposals with CUPE 873 and working

towards resolving the outstanding issues between the parties, pursuant to the process that was bargained in good faith by HEABC and the FBA…".

On November 2, 2015, Ms. Hamilton wrote to Ms. Whiteside stating that since HEABC has not heard from the FBA, it presumed the FBA had not re-visited its position that the MOU is extinguished. Ms. Hamilton wrote: "HEABC remains committed to working towards a resolution on the outstanding issues but as we appear to have reached an impasse, we propose that the parties engage Vince Ready to mediate the matter…". On November 5, 2015, Ms. Hamilton again wrote to Ms. Whiteside to advise that Vince Ready was available to meet with the parties on November 18, 2015 to facilitate discussions pursuant to the MOU. Ms. Hamilton also wrote:

> The Employer and HEABC confirm that we are available on this date and prepared to engage in the mediation in a good faith effort to resolve these outstanding issues.
>
> We hope that the FBA and CUPE 873 will honour their commitments under the MOU and participate in the process. We remain optimistic that the parties can reach an amicable resolution to these outstanding issues…".

On November 6, 2015, Ms. Whiteside wrote to Ms. Hamilton stating that the Union would not agree to mediation but would agree to have a discussion in my presence. Commencing on November 10, 2015 and continuing for several months, a series of emails ensued between the parties and my office, attempting to schedule a meeting date.

During that time period, on January 13, 2015, Ms. Hamilton wrote to Ms. Whiteside stating:

> …When CUPE 873 declined to attend the meeting on September 28, 2015, HEABC reached out to the FBA in October and November seeking to resume discussions. The FBA maintained that the MOU was extinguished and would not engage in further

> dialogue. As such, HEABC invoked its right to mediation pursuant to the terms of the MOU and requests that the FBA attend and participate on January 22, 2016 so that the parties can continue to work towards resolution. The outstanding issues are set out in detail in the MOU, and BCEHS will be coming to the meeting prepared to engage in discussions on those topics…

The parties met with me on April 7, 2016 and were stalemated regarding the alleged extinguishment of the MOU.

Before delving into the main issues in dispute, I will deal with the issue of whether or not the MOU is part of the Collective Agreement, commencing with the challenge to CUPE 873's standing.

The Standing Granted to CUPE 873 by the FBA and the HEABC

The HEABC and the FBA have agreed on a "without prejudice and exceptional basis", to allow CUPE 873 to have standing to speak to the issue of whether the MOU is extinguished and of no further force and effect as a result of an alleged breach of the time lines outlined in the MOU [the "Standing Agreement"]. The precise arrangement was outlined briefly but succinctly by Ms. Sartison, Counsel for the HEABC, in her August 2, 2016 email to Mr. Tarasoff, Counsel for the FBA which reads, in part:

> …I have instructions to agree to FBA's proposal regarding standing on the extinguishment issue (i.e. that CUPE, 873 will have standing, on a without prejudice and exceptional basis, to speak to its argument that the MOU is extinguished and that the FBA will take no position on the extinguishment issue in light of that agreement)."

However, HEABC challenges the right of CUPE 873 to advance any other issues; including, specifically, CUPE 873's claim that the MOU does not form part of the Collective Agreement between HEABC and the FBA. The HEABC's position in that regard will be addressed later in this Award.

PRELIMINARY ISSUE – WHETHER THE MOU IS PART OF THE COLLECTIVE AGREEMENT

Positions of the Parties

In its submission of August 24, 2016, Counsel for CUPE 873 argues: "The Union asserts that the MOU is not part of the Collective Agreement and that Mr. Ready is therefore without jurisdiction under the [*Labour Relations] Code* to waive these timelines." CUPE 873 relies on: *Saam Smit Westminster v. Canadian Merchant Service Guild*, [2016], B.C.C.A.A.A. No. 59 (McConchie); *Nunavut*, (2015), 262 L.A.C. (4th) 241, *Telus,* (2013), 238 L.A.C. (4th) 203; *Telus v. Telecommunications Workers Union*, [2004] C.L.A.D. No. 179 (Germaine); *Emergency and Health Services Commission and Ambulance Paramedics of British Columbia – CUPE Local 873*, [2012] C.L.R.B.R. (2d) 31; *Central Saanich Police Board et al and the Victoria City Police Union*, [1995] B.C.L.R.B. No. B395/95 (Leave for Reconsideration of B221/94); and *City of Vancouver and Canadian Union of Public Employees, Local 1004*, [1975] B.C.L.R.B. No. 88/75.

Counsel for the Employer strongly asserts that CUPE 873 does not have standing to advance the issue of whether the MOU is part of the Collective Agreement in these proceedings because it is an issue CUPE 873 has not been granted standing to advance by the FBA and/or the Employer. The Employer relies on the specific terms of the Standing Agreement. Counsel argues that since CUPE 873 has only been granted standing to litigate the issue of whether the MOU has been extinguished, it does not have any standing to advance the issue of whether the MOU is part of the Collective Agreement. Under these circumstances, Counsel argues that I must decline to address it.

In the alternative, should I decide that CUPE 873 has standing to advance the issue, the Employer argues that the MOU is part of the Collective Agreement and, as such, I have jurisdiction over the dispute. The MOU was included in the FBA Tentative Agreement that was ratified by the members. Appendix C of the FBA Tentative Agreement is entitled "CUPE 873 appendices"

and the MOU is specifically included on that list of appendices. Therefore, the Employer submits that the MOU, negotiated by HEABC and the FBA, not by CUPE 873, is patently part of the Collective Agreement such that I have jurisdiction over the dispute with adequate authority to issue an appropriate remedy.

The Employer further asserts that the jurisprudence relied on by the Union is distinguishable.

In the alternative, the Employer argues that I have jurisdiction over the dispute by virtue of the consent of the parties. The Employer relies on *Teamsters Union Local 155 v. Canadian Affiliates of the Alliance of Motion Picture and Television Producers*, [2007] B.C.J. No. 943. In the further alternative, the Employer maintains that the MOU is an enforceable document, regardless of whether or not it is part of the Collective Agreement and, as such, an arbitrator appointed by the parties would be endowed with the authority to waive or extend timelines (pursuant to section 29(1) (f) and (k) of the *Domestic Commercial Arbitration Rules of Procedure*).

In its September 15, 2016 reply, CUPE 873 argues that the Standing Agreement should have included a provision allowing it to pursue its position that the MOU is not part of the Collective Agreement. CUPE 873 also re-emphasizes its belief that the decision in *Emergency and Health Services Commission, supra,* is on point.

Alternatively, CUPE 873 says it should be permitted to formally apply for standing at this point in the proceedings to address the issue of whether or not the MOU is part of the Collective Agreement.

By letter dated September 7, 2016 the FBA advised that it takes no position on the question of whether or not a breach of the time limits in the

MOU might serve to extinguish it. The FBA has not submitted any position on either CUPE 873's issue of whether the MOU is part of the Collective Agreement or the question of whether CUPE 873 has standing to raise it.

DECISION – WHETHER THE MOU IS PART OF THE COLLECTIVE AGREEMENT

It is trite to observe that the exclusive bargaining agent for the Union is the FBA and the exclusive bargaining agent for the BCEHS is the HEABC. In my view, this preliminary issue can be determined based on the Standing Agreement between the FBA and HEABC, reached on a without prejudice and exceptional basis, which permitted CUPE 873 to argue the MOU extinguishment issue on its own. In the Standing Agreement both the FBA and the HEABC have agreed to a very precise (unambiguous) description of the limited scope of CUPE 873's standing: to speak to its argument that the MOU is extinguished.

CUPE 873's argument is premised on its belief (outlined by Ms. Barter in her August 31, 2015 letter to BCEHS) that: "The parties were required to exchange information as specified in the MOU, no later than September 1, 2015." It is clear to me that this correspondence outlines the extinguishment argument contemplated by the FBA and the HEABC in the Standing Agreement.

Put succinctly, nothing in the plain language of the Standing Agreement suggests that the FBA and HEABC contemplated granting standing to CUPE 873 to allow CUPE 873 to speak to the broader issue of whether the MOU is part of the Collective Agreement; the authority to pursue an argument of that scope rests within the exclusive bargaining agency of the FBA.

In the result, I conclude that CUPE 873 does not have standing to address the issue of whether the MOU is part of the Collective Agreement.

That issue is not within the scope of the issue referred to me for determination. The issue before me is whether the MOU has been extinguished.

In its last submission of September 15, 2016, CUPE 873 seeks an opportunity to apply for that standing formally if I determined it was not granted by the Standing Agreement. Having determined that the broader issue (of whether the MOU is part of the Collective Agreement) is not properly before me as part of this referral by the FBA and HEABC under the MOU and since CUPE 873 does not have the authority to unilaterally refer it, any application for standing by CUPE 873 to speak to it in these proceedings would be moot and cannot be granted.

THE ISSUE OF WHETHER THE MOU HAS BEEN EXTINGUISHED

I now turn to the central issue of whether the MOU has been extinguished by the alleged failure of the Employer to provide CUPE 873 with disclosure of information and formal bargaining proposals prior to September 1, 2015.

Positions of the Parties on the Merits of the Extinguishment Issue

The FBA takes no position on the preliminary issue of whether the MOU is extinguished.

CUPE 873 argues that by failing to provide particulars or specifics of their proposals by the September 1, 2015 deadline, the Employer failed to meet the clearly-stated deadline in the MOU and, as a result, the MOU has been extinguished; meaning that it is no longer enforceable since it is no longer of any force and effect.

CUPE 873 points to its correspondence dated March 19, 2015 and June 29, 2015 as evidence that it had requested information and the Employer's proposals prior to the September 1, 2015 deadline. CUPE 873 also relies on

the August 31, 2015 letter to the Employer which includes the statements: "The parties were scheduled to continue negotiations around three outstanding issues: Shift Scheduling (Art A1.01), Regular Part-time employees and Requirements for Unit Chiefs (Art 13 and F5.01). The parties were required to exchange information as specified in the MOU, no later than September 1, 2015."

In the event I determine that timelines were breached, CUPE 873 states that the timelines under the MOU are binding on me and are mandatory. Alternatively, CUPE 873 submits that I should not exercise my discretion under either the MOU or the Collective Agreement (if I determine it is applicable to me) because the delay is unreasonable and unexplained; and prejudice to the Union will accrue if I grant relief.

CUPE 873 relies on *Pacific Forest Products Ltd. (Sooke Logging Division) and International Woodworkers of America, Local 1-118*, 17 L.A.C. (3d) 435 (Munroe); *Coast Mountain Bus Co. v. Canadian Auto Workers, Local 111*, 129 L.A.C. (4th) 333 (Chertkow); *Hotel Dieu Cornwall* (1997), 63 LAC (4th) 72; *MukiBaum Association v. OPSEU*, [2008] OLAA No. 316 citing Section 2:3210 of *Canadian Labour Arbitration* (4th ed., (Canada Law Book) Brown and Beatty; *Kitchener (City) v. Canadian Union of Public Employees, Local 791 (Kitchener City Hall Office, Clerical and Technical Staff)*, 71 L.A.C. (4th) 223 (Newman).

The Employer argues that the time lines were not breached because there was an ongoing and continuing exchange of information pertaining to the key issues that the Employer was seeking to advance. In addition, the Union was aware that the Employer was awaiting the ORH Report in order to have a more informed and specific discussion regarding some of the issues in dispute.

The Employer points to the plain language of the MOU which reads that the parties must "exchange information as required and discuss resolution"

commencing no later than September 1, 2015. Therefore, in light of the fact that the parties had met and began to exchange information, the Employer submits that the threshold has been met based on the ordinary dictionary meaning of the word "commence" and the way the term "commence" is used in other places in the Collective Agreement such as Article 5.01 (Dues Deduction), Article 12.01 (Seniority), Article 19.01 (Annual Vacations), Article 21.04 (Maternity Leave) and Article 21.06 (Parental Leave), etc.

In the submission of the Employer, CUPE 873's position that formal proposals were required by September 1, 2015 is not supported by the ordinary meaning of the wording of the MOU and if a different meaning other than the ordinary meaning was intended, the Union was required to indicate that intention in clear language; no such indication can be found in the MOU either in an express or implied sense.

Furthermore, the Employer maintains that at the August 12, 2015 meeting it provided information such as an overview of its position on the differences between rural and metro needs for the RPT Position; its wish to align shift schedules to call volumes at certain locations and the fact that it did not intend to convert full-time positions to RPT positions.

The Employer further argues that even if the timelines were breached, which is denied, the result is not an extinguishment of the entire MOU. Timelines are discretionary pursuant to Article 10.05 of the Collective Agreement and there is no language in the Collective Agreement, including the MOU, which states that extinguishment is the response to a violation of timelines.

In addition, the Employer asserts the Union would be estopped from claiming such relief under the circumstances before me where the Union is substantially or entirely responsible for any delay in exchanging information.

The Employer relies on *Canadian Labour Arbitration*, Canada Law Book, Brown and Beatty, 4th Edition, section 2:3128 and section 4:2110; *Insurance Corporation of British Columbia v. Canadian Office and Professional Employees' Union, Local 378*, 223 L.A.C. (4th) 306 (Taylor); *Finning (Canada), a Division of Finning International Inc. v. International Association of Machinists and Aerospace Workers' Union, District Lodge 250*, [2013] B.C.C.A.A.A. No. 111 (Lanyon) (citing *Pacific Press Graphic Communications International Union, Local 25*, [1995] B.C.C.A.A.A. No. 637 (Bird)); *Lilydale Inc. v. United Food and Commercial Workers Union, Local 1518*, [2012] B.C.C.A.A.A. No. 135 (Glass); *Doman-Western Lumber Ltd.*, [2000] C.L.R..B.R. (2d) 256 (Hickling); *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, [2011] 3 S.C.R. 616; *Husband Food Ventures (c.o.b. IGA Store No. 11) v. United Food and Commercial Workers Union, Local 1518*, [2012] B.C.C.A.A.A. No. 120 (Glass); *Northwest Drywall and Building Supplies Ltd.*, 10 C.L.R.B.R. (2d) 180; and *Westfair Foods Ltd. and United Food and Commercial Workers' Union, Local No. 777*, [2003] B.C.L.R.B.D. No. 268 (Leave for Reconsideration of BCLRBD No. B124/2002).

In addition, the Employer challenges the Union's interpretation of *Saam Smit, supra*, and argues that the Union's jurisprudence is distinguishable.

In its final reply submission, the Union asserts that the August 12, 2015 meeting was conducted on without prejudice basis and relies on the Employer's notes of an October 7, 2015 meeting in which Ms. Barter is shown to have stated that the August 12, 2015 meeting was without prejudice.

With respect to the Union's assertions that the August 12 meeting was without prejudice and without precedent, I find that this could not be the case with respect to this issue. First, the Union relies on the August 12, 2015 meeting in support of its argument that timely disclosure of information did

not occur and claims its representatives "walked away from the August 12, 2015 meeting without any information about, or in support of, the Employer's desired changes regarding any of the issues identified in the MOU." Furthermore, I take from the submissions that at the August 12 meeting the parties agreed to meet again in September to continue their discussions.

DECISION RE EXTINGUISHMENT OF THE MOU

The MOU set out above requires the parties "to exchange information as required and discuss resolution of the identified issues" commencing no later than September 1, 2015.

The Union's case is a very technical one. It cannot assert that there was not an exchange of information because the communication demonstrates otherwise. Instead, at its heart, the Union is asserting a delay by the Employer in exchanging all of its formal proposals; a much higher standard than the one contemplated by the plain language of the MOU.

Based on the information before me, I do not hesitate to conclude that the threshold described in the MOU has been met and the MOU has not been extinguished. The parties had commenced to exchange information and discuss resolution prior to September 1, 2015. The MOU only requires that the process have commenced by September 1, 2015. The MOU does not require that the process be completed nor does it require that formal proposals be exchanged.

Examined objectively, and in a general sense, without prejudice to any commitments which may have been made, the meeting notes of August 12, 2015 relied on by both parties, indicate the parties engaged in discussions pertaining to bargaining issues. These include the Employer's desire to change the supervisory structure; the issues involving Unit Chiefs and Duty Supervisors. The notes of the meeting reveal the discussions to be informative

and included questions pertaining to the use of the ORH Report. The Union and the Employer agreed that the next meeting would occur on September 28, 2015. This date was a mutually agreed-upon date. The notes do not disclose any pre-conditions advanced by the Union prior to agreeing to schedule the September 28, 2015 meeting.

Additionally, when agreeing (on August 12, 2015) to meet on September 28, 2015, CUPE 873 did not state that a failure to meet prior to September 1, 2015 would extinguish the MOU nor did CUPE 873 state that failing to receive formal proposals from the Employer by September 1, 2015 would lead to cancellation of the September 28, 2015 meeting because the MOU would be extinguished. I find that the absence of such statements at that time demonstrates the intention of both parties that they believed they were engaging in and committing to further negotiations pursuant to their obligations under the MOU. In my view, having engaged in discussions pertaining to the key areas being advanced by the Employer, it was logical that there would be an absence of any statements asserting the requirement to receive formal proposals by September 1, 2015 (or the meeting would be cancelled).

Also, by that time, the Union was aware of the need of the Employer to wait for the ORH Report to formalize its position. The Union had engaged in discussions about the use of the ORH Report by the Employer. Nothing in the communication between the parties suggests that the Union ever took issue with awaiting the ORH Report and the parties had discussed its use. The Union had never stated to BCEHS or HEABC that waiting for the ORH Report to finalize formal proposals would lead to a breach of the timelines in the MOU.

While at the August 12, 2015 meeting, the Union challenged the Employer's ideas about changes the Employer wanted to advance and requested further information and clarification; it did not directly place any

deadline for the receipt of that additional information or advise the Employer that a failure to provide the sought-after information by September 1, 2015 would extinguish the MOU. This omission makes sense because it is clear to me from the notes of those discussions that the parties were making progress and intended to continue with the ongoing sharing of information. This open interaction is the exact process contemplated by the MOU.

The only discussion of a deadline indicated by the Union during the August 12 meeting was a statement from the Union representative indicating the Union wanted the Employer's information, particularly information on scheduling, for discussion at its convention in October; a request that supports the Employer's position that negotiations under the MOU were intended to continue. If the Union honestly believed there was a September 1, 2015 deadline in place for the exchange of the information, there would not have been any need for the Union representative to specifically request and seek scheduling information from the Employer by September 1st for use at its October convention. The Union would be certain that either the information would already be received by September 1st or that there would not be a need for the information because the MOU process would have ended. Placed in context, the Union's statement makes sense because, as previously stated, information was flowing and positive steps had been made under the MOU process. Information was being exchanged, commencing prior to September 1, 2015, consistent with the purpose of the MOU.

While Ms. Barter's letter to the Employer at the penultimate moment, on August 31, 2015, ostensibly reminded the Employer about a September 1, 2015 deadline, there is simply no doubt that an exchange of information had commenced by that time. In light of the ongoing discussions pertaining to the ORH Report, the Union could not reasonably have formed an expectation that formal proposals would be forthcoming from the Employer by September 1, 2015. The Union knew the final ORH Report was over two months away and it

was reasonable to conclude the information contained in the ORH Report was important, if not, critical to the Employer's forthcoming proposals. I conclude that both parties had commenced to exchange information as was required and the Union understood and accepted that further clarity from the Employer would be forthcoming.

The circumstances before me demonstrate that not only was this delay reasonable and the reason for it was explained to, and understood by the Union, but the Union also acted in a manner that demonstrated that it accepted the delay in receiving the formal position of the Employer.

Based on the facts in evidence before me, the corresponding jurisprudence, and the intent and wording of the MOU, it is clear to me that the HEABC and the FBA and their members, BCEHS and CUPE 873 (respectively), reached a creative and progressive method for ongoing negotiation of key issues in dispute following ratification of the Tentative Collective Agreement, including the MOU. That process must be permitted to continue in order to bring finality to those negotiations.

Collective agreements are the product of ongoing labour relations and it would be contrary to those relations and to the purposes outlined in the *Labour Relations Code*, to allow one party, through sleight of hand, to yank the rug from beneath the feet of the other as they travel together down a path of their own creation in furtherance of the concluding a collective agreement. Parties making reasonable efforts to conclude a collective agreement should be encouraged in that endeavour.

Having concluded that the Employer has met the requirements of the MOU in a timely manner, it is not necessary for me to address the balance of arguments advanced by the parties including arguments pertaining to whether the MOU contains discretionary time limits; whether Article 10.05 of the

Collective Agreement would have permitted me to extend the time limits outlined in the MOU; or the related arguments advanced by CUPE 873 as to my legal ability to exercise my discretion and CUPE 873's strong belief that I should decline to do so.

Therefore, the preliminary argument of CUPE 873 is dismissed.

I order the parties to continue with their negotiations under the MOU and the parties agree to bargaining dates over the next 45 days and any matters unresolved by the end of the 45 day period be referred back to me for a final and binding decision.

It is so ordered.

Dated at the City of Vancouver in the Province of British Columbia this 31st day of October, 2016.

Vincent L. Ready