B.C. Rapid Transit Co. Ltd.
("the employer")

and

C.U.P.E. Local 7000
("the union")

(Becker Grievance)

PRELIMINARY ISSUES

For Company: **Paul Devine**

For the Union: **Leo McGrady, Q.C.**

Before: **M.A. Hickling**

Date of Hearing: **December 5, 2008**

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INTRODUCTION

I. The Issue

1. The central issue in the case is the interpretation and application of Article 21.00 which declares "retired employees with five or more years of service to be eligible for coverage" under extended health, dental care and Medical Service Plan (MSP) provision of the collective agreement [Article 21.06, 27.07 and 27.08].

2. By a letter dated August 23, 2007 the union launched two grievances, one on behalf of itself (under Article 3.01) and the other an employee grievance on behalf of David Becker (under Article 3.03). It alleged that the employer was attempting unilaterally to amend the collective agreement by attaching additional limitations to retirees' eligibility for benefits [Exhibit 2, tab 173].

II. The Union's Opening

3. It is the union's position that the language is mandatory, and that on the plain meaning of the term an individual may still properly be described as a retired employee of B.C. Transit, even though he may seek or actually obtain work with another employer. In his opening, Mr. McGrady indicated that the company had specified that in the future, it may require proof that retired employees remain retired and not, subsequent to retirement, take full-time employment. It was Mr. McGrady's understanding that the company would, however, permit part-time employment. The rationale given for this policy is that the employer does not wish to subsidize other companies.

4. The union characterized the company's action as arbitrary and capricious since it lacks any sound rational basis. It does not, for example, distinguish between full-time employment with companies that offer benefits with those that do not. When benefits are provided by the new employer, it is immaterial whether those benefits are inferior, equal to or superior to those offered by B.C. Rapid Transit. The retiree would become ineligible for the benefits under Article 21. The union claims that in most instances the past retirement found by the company's former employees carries either inferior benefits or no benefits at all

5. It was further alleged that the company policies towards its own retirees and retirees from other employers are inconsistent in that while it denies benefits to its own retirees, it routinely hires retirees from other employers, such as ex-R.C.M.P. officers, who are in receipt of pension and health benefits from the R.C.M.P.

6. In addition, the company sometimes hires back retired employees on a casual basis or as consultants.

7. The company's policy, it was contended, had the effect of limiting what retirees could do on their own time. That was at odds with the limitations placed by the jurisprudence on an employer's ability to regulate the conduct of employees on their own time.

8. Finally, it was contended that the result sought by the company could only be achieved through collective bargaining, which was still a year away.

III. The Company's Position

9. The company contends that there has been no change in policy. It claims that it has consistently applied the same interpretation in its dealings with individual employees claiming benefits. It emphasizes that effect must be given to all the words. It focuses on the word "retired", which it defined as the "cessation of active employment". It is not sufficient simply to cease to work for B.C. Transit. The individual must have ceased working. On this view, a person who is actively seeking work or actually obtains is not truly retired. It would also seem to follow that a person who having retired, re-enters the workforce, ceases to be eligible for benefits for so long as he or she is actively working.

10. Mr. McGrady had also raised in his opening statement the position of Skytrain retirees who are hired back as consultants or on a casual basis, as trainers, for example. They would already be in receipt of benefits under the contract. They do not lose them by returning as consultants. Mr. Devine, in effect, confirmed that.

11. Mr. Devine then proceeded to refer to an incident in which an employee gave notice of his intention to take early retirement. His memorandum was treated as a resignation since by taking a "contract position" with a major construction firm on a "project" in Kuala Lumpur" he was not actually retiring. The exact nature of that "contract position" is unclear, but according to the company's statement it was sufficient to render the claimant ineligible. In any event, according to company statements of policy, the fact that the individual went to work outside B.C. would be sufficient to disentitle [see Company's Statement of Particulars of November 24, 2008, at paragraph 8].

12. Rejecting the union's claim that the words were plain and unambiguous, Mr. Devine gave notice of his intention to adduce extrinsic evidence on the historical origin and evolution of the benefit provisions, and past practice in their administration. Evidence would be given by Mr. Gary May, the manager of human resources, as to the discussions he had with employees contemplating or approaching retirement. During counseling sessions with the over 50s he would learn if the retirees were contemplating other employment and explain the consequences as to them. He would draw the distinction between part-time work, which would disentitle the employee to benefit and casual work which would not.

13. Dealing with the contention that the company policies are arbitrary and capricious and the reference to the hiring of former RCMP officers, Mr. Devine indicated that the company would "not hire someone who has a pension plan". He also noted the co-ordination of benefits between carriers. That was not a matter for the company, he said.

14. During the life of the clause, no issue had ever been raised about the interpretation and application of the benefit clauses. There had been no grievances, prior to this, and in Mr. Devine's submission, the company was not guilty, in the dealings with individual applicants, of negotiating terms different from those of the agreement.

15. I would note, however, that while the incompatibility between active employment and the state of retirement was explained as early as November 17, 1995 to an individual who had disclosed his acceptance of work with another company [see Exhibit 2, tab 174], the correspondence between Mr. May and the employee was not supplied to the union. Whether or not such a failure in that or any similar case would have constituted a breach of the company's obligations under the collective agreement [see Article 1.05(b)(ii)] was not directly raised, and I express no opinion on it. I simply note that, on the basis of the information before me, that particular channel of communication had not resulted in the employer's interpretation coming to the union's attention. On the basis of the submissions of counsel and admissions made in the course of the proceedings to date, this appears to be one of those circumstances in which the employer and the union had different perceptions of the meaning of the agreement but neither was aware of the other's position until the present case arose.

16. The meaning of words may vary according to the context. "Retire" commonly means to give up one's regular work or employment. It is usually because of advancing age though there could be other reasons. It does not necessarily import an intention to give up work together. The fact that an individual returns to his chosen profession as a consultant, for example, does not necessarily preclude one from describing the departure from his earlier job as a "retirement". The history of negotiations and past practice may provide keys to the meaning of the word in a particular context.

17. Anticipating the possibility of argument on this issue at a later stage, the attention of counsel is drawn to the classic statement on the use of past practice in *John Bertram and Sons Ltd.* (1967) 18 L.A.C. 362 (P.C. Weiler) – Quicklaw version at pp. 5-6]. It would require proof of acquiescence in the practice by someone in the union hierarchy "who have some real responsibility for the meaning of the agreement". One should also bear in mind the requirements of the modern doctrine of estoppel, should that be invoked.

18. As Mr. McGrady pointed out, retirees may increasingly be driven to seek work as the value of their pensions diminishes with the decline in the stock markets. The work available may often be part-time or casual and carry no benefits.

19. The distinction drawn by the company between part-time and casual work can produce anomalous results, with individuals arguably being treated differently without any rational basis. Thus in its ordinary usage, a part-time employee means one who regularly works significantly less than the standard hours of work. That could cover a broad range from half a day, for example, to thirty hours (the figure used by Statistics Canada in its labour force reviews to mark the line between part-time and full-time work). A "casual employee" ordinarily means one who is called upon to work intermittently, rather than on a regular basis, to meet an employer's short-term needs. While a person with casual tenure may be in a more precarious position, he or she could well earn more than a part-time employee with low weekly hours of work.

20. With that introduction, let us turn to the union's request for particulars

IV. The Particulars Sought

1. Hirees in Receipt of Benefits from Another Employer

21. The union's first request was for

> 1. Names of any individuals hired by the company since the introduction of the policy that is the subject of this arbitration who have retired from other employment and who are in receipt of benefit coverage from that other employment."

The union claimed that there are a number of them and that they may include retired police officers and military personnel.

22. In view of Mr. Devine's response, set out earlier, it would first have to be ascertained if B.C. Transit does, in fact, knowingly hire personnel who are in receipt of retirement benefits from another employer. Do those responsible for hiring even ask? Or is it left to the insurance companies that carry the plans for B.C. Rapid Transit and the former employer to co-ordinate the coverage to avoid duplication?

23. While the information sought may be of interest in negotiating amendments to the plans, I am not entirely convinced of its relevance to the question whether the company is in violation of the benefits provisions. The focus of the inquiry is whether the employer is in breach of the terms of the collective agreement. Has it treated its own employees, once hired, differently? Has it granted benefits to some, but denied them to others? Whether a person hired by B.C. Rapid Transit should continue to receive benefits under an agreement between him and his former employer is a matter for the latter. B.C. Rapid

Transit could, subject to any provisions in its collective agreement, make the hiring conditional on an applicant foregoing benefits from his previous employer. But it cannot, once an applicant is hired, deny him the benefits to which he is entitled under Exhibit 1 [the B.C. Rapid Transit collective agreement].

24. Not being convinced of the relevance of the information sought to the issue before me, I deny the first request.

2. Personal Information Relating to Retirees

25. Next, in two separate paragraphs relating to (a) retirees who have received, and (b) to those who have been denied benefits under Article 21, the union seeks the disclosure of their names, addresses and telephone numbers. Since the two requests raise the same issue of privacy, they can conveniently be treated together.

26. The B.C. Rapid Transit Company is a public body subject to the Freedom of Information and Protection of Privacy Act: see section 1, and Schedule 2. One of the prime purposes of the statute is to protect personal privacy by preventing the disclosure by public bodies of personal information in their possession: see s. 2(1)(d). Section 33 requires a public body "to ensure that personal information in its custody or under its control is disclosed only as permitted under section 33.1 or 33.2". Those sections spell out the circumstances in which personal information may be disclosed. Section 33.1 has no application here. Section 33.2 lists eleven separate circumstances in which disclosure is permitted. Of those, three are relevant to the present discussion namely (a), (b) and (h).

27. The first permits disclosure of personal information for the purposes "for which it was obtained or compiled or for a use consistent with that purpose". Section 34 establishes a two-fold test for determining consistency. First the use must have "a reasonable and direct connection to that purpose". Secondly, it must also be "necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that disclosed the information or causes" it to be disclosed.

28. The second permits the public body to disclose personal information

> "to comply with a subpoena, warrant or order issued or made by a ... person or body ... with jurisdiction to compel the production of information."

29. The third authorizes disclosure to a representative of a bargaining agent who has been authorized in writing by the employee whom the personal information is about to make an inquiry. Quite apart from the question whether the retirees are employees, there is no suggestion that the union in this case has been given written authorization to seek any information about

any retiree (other than Mr. Becker). The fact that the Act makes specific provision for the union to obtain information with the express consent of the individual, does not preclude the union from invoking section 32.2(a) and/or (b) if the facts fit: see *Coast Mountain Bus* at paragraph 68; *Economic Development Edmonton* at paragraph 32. Even if the union could meet the requirements of paragraph (h), or had other means of obtaining the information, that would not preclude the union from seeking the information from the employer: see *Millcroft Inn* at paragraph 32; cited in *Buhler Manufacturing* at paragraph 18; and *Coast Mountain Bus*; *supra*.

3. Are We Dealing with Personal Information?

30. The first question that has to be addressed is whether the information sought is "personal information". The term is defined as "recorded information about an identifiable individual other than contact information" [Section 1, Schedule 1]. It will be noted that it does not say identifiable by name. There are other ways by which an individual may be identified, such as by description, title or position. Further, the "contact information" exception is limited in scope. The term is defined as:

> information to enable an individual at a place of business to be contacted and includes the name, position, title, business telephone number, business address, business e-mail or business fax number of the individual [see section 1, Schedule 1]. [Emphasis added.]

31. A comment made by the Labour Relations Board in *Hudson's Bay* suggests that the employer might be permitted to disclose, without the consent of the individuals, a list of the names of employees. In dealing with the similar, but not identical language of the Personal Information an Protection Act, it states

> 19. "Contact Information" means information to enable a person to be contacted, including the name, position or title and the business contact numbers for the individual. Therefore, employee names and position titles are not "personal information" and are not protected from disclosure under *PIPA*."

That is not quite accurate. Apart from substituting "person" for individual (which may well be immaterial) it omits the phrase "at a place of business" which qualified the word individual in the statutory definition [see *PIPA*, section 1]. The purpose appears to be to facilitate contacts at the place of business. An individual's name is quintessentially personal information. The name of the position or title he holds is not. It is no means clear to me that the language of either the *PIPA* or *FOIPPA* contemplates the employer distributing a list of employees without their consent. Fortunately, it is not necessary for me to decide the point. The union is not seeking a bare list of names. Without a home address, telephone number or e-mail address,

disclosure would not do much to facilitate communications between the union and the retired employees.

32. In the present case, the employee has already supplied, on a voluntary basis, some information. This includes, first, correspondence dated November 9, 1995 between one former employee who sought early retirement but was denied on the grounds that having accepted a position with another company, he was not truly retiring. He was treated as having resigned [Exhibit 2, tab 174].

33. The second item, dated November 3, 2008 consisted of summaries of bargaining unit employees and exempt personnel, who had left the company at the age of 55 or greater. Of the unionized employees, four were deceased. One had been terminated. Seven (including two who had sought but had been denied early retirement) were stated to have resigned. The remaining thirty-seven had retired with benefits. The breakdown of the exempt employees reveals that two had died; two were terminated; two (of whom one had sought, but had been denied, early retirement) were classified as having resigned, and the remaining 13 retired with benefits.

34. A spreadsheet (tab 176) provided a breakdown of the two lists, showing the dates of birth, termination dates, age on termination, and the reason for leaving the company. However, only one, the individual grievor, was identified by name. The remainder were identified by initials only.

35. Of the unionized employees who retired with benefits, a dozen took their leave at age 65. Half a dozen were older than 65 by margins ranging from .5 to 4.9 years. The remainder retired between 55 and 65. A similar breakdown for exempt personnel, shows 6 retiring at 65; one at 65.6 and the remainder between 55 and 65.

36. However, the documentation provides no information on whether any of those retiring at 65 or older had been asked to provide an assurance of their intention not to seek active employment. Nor does it indicate if anyone, other than Mr. Becker, the individual grievor, had been monitored and deprived of benefits for taking on part-time or full-time work following early retirement.

37. It might be possible for the union to identify some of the retirees from their initials or dates of departure, but the lack of home addresses and telephone numbers represents a significant obstacle to the union's ability to communicate effectively with the bulk of them.

4. Application of Section 33.2(a) and (b)

38. Neither sections 33.2(a) or (b) require the consent of the individual to whom the information relies. Both are of general application and are not confined to the employment relationship.

(a) Was the information sought for the purpose for which it was originally compiled or obtained for a use consistent with that purpose?

39. Section 34 defines what constitutes a consistent purpose. It must (1) have a reasonable and direct connection to the original purpose, and (b) be necessary for performing the statutory duties or for operating a legally authorized program of the public body that uses or discloses the information: section 34(1)(b). A reasonable and direct connection is one which is "logically, or rationally, connected to the original purpose": see the *Coast Mountain Bus* case, at paras. 58-60. The Court of Appeal in that case adopted as one test of a consistent use the guideline suggested in the *FOIPPA Policy and Procedures Manual* ["*PPM*"] published by the government. That is whether the person concerned would expect the personal information to be used in the proposed way, even if that use had not been spelled out [at paragraph 61].

40. On the second requirement, that the use be necessary for performing the public body's statutory duties, the Court again referred to the *PPM*'s interpretation of the words, namely that "the personal information is needed to perform duties or obligations required by legislation". In that case the union was seeking information contained in job applications in order to determine whether or not there had been a breach of the collective agreement and whether to pursue a grievance. The court concluded that it was not a strained interpretation of section 34(1)(b) to say that the use of the information by the union was necessary for the employer to carry out its statutory duty of running a bus company. Quite apart from that, the employer was required by sections 48 and 49 of the Labour Relations to carry out the terms of the collective agreement. Disclosure was necessary to ensure that that statutory obligation was met [see paragraphs 65 and 66].

41. Similarly in the present case, it could be argued on the union side that it was entitled to the information sought for the purpose of assessing whether or not the company's policies relating to group benefits complied with the provisions of the collective agreement. The information was obtained for the purposes of administration of the employment relationship. The ability to communicate with its personnel is essential to the effective conduct of the company's business. It operates in a unionized work environment where relationships are governed by the terms of a collective agreement with which by statute, as well as by contract, the company is bound to comply. The union's main purpose was to determine if the collective agreement had been breached. It needs to be able to contact the retirees in order to check the company's claim as to the assurances it had sought from them when they were contemplating retirement as to their future plans. It is reasonable to conclude that they would be aware of the fact that their entitlement to benefits was covered by the collective agreement, and if issues arose as to that eligibility, the union might find it desirable, indeed necessary, to communicate with them. Indeed, if a retired employee wishes to challenge the employer's action, his course of redress is through the grievance procedure under the collective agreement, not through

the courts. Access to that process is controlled by the union: see Labour Relations Code, Part 8, sections 82, 84(2). *Weber* v. *Ontario Hydro* and the decisions flowing from it, have conferred upon arbitrators sole jurisdiction to deal with disputes that arise inferentially or expressly from the collective agreement. Here the dispute arises directly out of the collective agreement. The company initially questioned the grievor's right of access to the grievance procedure on the grounds that he was no longer an employee [Company particulars, paragraph 22]. By the time of the hearing, that was no longer an issue. In any event, his status would not have precluded the union from raising essentially the same issue through a policy grievance.

42. In commenting on *Coast Mountain*, Mr. Devine drew attention to the fact that the union was seeking information about people who were no longer employed by the company. He suggested that the company was obliged to respect their privacy. Further, in his submission, the company had exceeded its obligations in providing the information set out in Exhibit 2, tab 174.

43. It is true that the "retired employees" were no longer on the payroll. However, they do enjoy rights under the collective agreement. While not currently engaged in active employment they, along with present employees, have an interest in ensuring the proper administration of the collective agreement. Retired employees stand to be affected not only by unilateral changes in policy by the company but also by any changes in their entitlement negotiated by the union and the company through the process of collective bargaining. Pensions and other benefits for retired employees are legitimate topics for collective bargaining.

44. It is not my intention to explore the meaning of employee in the context of the various provisions of the B.C. Labour Relations Code. The retirees may not fall within the scope of the duty of fair representation which is owed by the union under section 12 of the B.C. Labour Relations Code to "employees"; or have a right to participate in a representation, strike or ratification vote [sections 24, 60], but the "retired employee" link with the employer has not been severed completely. It cannot be said that they are "strangers to the collective agreement" [see *Coast Mountain Bus*, at paragraph 78]. They still enjoy valuable rights under it and the union has a *bona fide* labour relations interest in being able to communicate easily and readily with them; to raise grievances on their behalf, to shepherd them through the grievance procedure and, if necessary, through arbitration.

45. In dealing with the duty of fair representation owed by a union to employees, the Ontario Labour Relations Board in *Millcroft Inn Ltd.* at paragraph 22, stated:

> A union must be able to pursue grievances on behalf of the employees. It must be able to investigate those grievances and to act promptly to achieve their resolution. It must be able to

> communicate with employees to ensure that the collective agreement is being properly administered by the employer concerned. It needs to be vigilant. It is responsible for the enforcement of the employees' rights under the collective agreement. If a union is not vigilant, it may face a claim of estoppel if it allows rights of or the employees possess to fall into disuse and to be overridden or ignored by the employer...

Those observations, which have been quoted with approval in a number of British Columbia decisions [see *University of British Columbia*, at pages 14-15 and the cases cited therein; and *Hudson's Bay*, at paragraph 25] are equally applicable, *mutatis mutandis*, to the retired employees in the present case.

46. In conclusion, I find the requirements of section 33.2(a) of *FOIPPA* to have been met.

(b) Compliance with Subpoena, etc.

47. This brings us to section 33(2)(b), another provision that is not confined to employment. The introductory provisions of the *FOIPPA* declare in section 3(2) that

> This Act does not limit the information available by law to a party to a proceeding.

"Proceeding" is not defined but section 33.2 declares that a public body may disclose personal information to comply with an order made by a person or body with jurisdiction to compel the production of information. Arbitration boards have a discretionary power to order the production of documents [see Labour Relations Code, section 93(1)].

48. There is no doubt that the language of section 33(2)(b) of *FOIPPA* encompasses arbitration proceedings under the Labour Relations Code [see the *University of British Columbia* case at pages 233 to 234 of the L.A.C. report]. It was not disputed in the present case. Further, when an order is made, the disclosure is not at the discretion of the employer. Disclosure is mandatory, in compliance with the order: see *Coast Mountain*, at para. 56.

49. The issues in the present case are (i) whether that discretion should be exercised in the present case; (ii) if it is, what the scope of the order should be; and (iii) what restrictions, if any, should be placed in the use of any information disclosed pursuant to the order.

5. Scope and Nature of the Order

(1) Relevance to the Issues

50. The information sought must at a minimum be relevant or potentially relevant to the adjudication of a particular claim: see *International Paper Industries*. It may be necessary, especially in the case of a policy grievance to canvass a much broader range of material than would be required in an individual grievance.

(2) Disclosure of Names, etc.

51. Blanket orders for the production of the names and addresses and telephone numbers of all employees in the bargaining unit may be appropriate in some cases. They have been granted by Labour Relations Boards to enable a union to communicate with employees about developments in collective bargaining for a first collective agreement [see *Economic Development Edmonton*]; or if the failure to disclose interferes with the union's representational rights [see *PIPSA*, paragraph 81]. If the issue concerns particular individuals or groups within the bargaining unit, the range of information necessary to prepare for the proceedings or ensure a fair hearing on the issue, may be much more limited. In a job appointment or promotion case, for example, the information necessary to adjudicate a specific claim of improper denial may vary from case to case: see *UBC* at page 233. Thus a blanket request for the application forms, résumés and interviews of all applicants may be rejected in favour of more limited disclosure.

52. In *Coast Mountain* the Court of Appeal emphasized that disclosure must be limited to what is necessary to ensure that the company's obligations under the collective agreement were met. Specifically, that meant in that case giving preference to union members in the hiring process. Determining whether there had been a breach or whether to pursue a grievance did not require the job applications of unsuccessful non-members. All that was required were the job applications of successful candidates and of the local union's members. Further, information that did not relate to the ability to perform the job or to seniority should be blocked out. In a statement that requires qualification, the court also indicated that a person's privacy could further be protected by removing personal identifiers such as name and contact information. One assumes that the court meant by "contact information" personal addresses, personal telephone numbers and the like. The Act does not prevent the employer from disclosing the individual's name, position or title, business address or business telephone number. They are not "personal information" as defined in the Act [see definitions of personal information and contact information in Schedule 1; and commentary, *supra*, at paragraph 30].

53. One should perhaps note the reference in *Coast Mountain* at paragraph 73, to the fact that "this information is not necessary at this stage" and the observation in paragraph 77 that a "grievance arbitrator can make an order for disclosure of <u>additional information necessary for a fair hearing</u>". [Emphasis

added.] Thus, the possibility of a later application is not ruled out, should the requirements of a fair hearing demand it.

54. In *Coast Mountain* the union had filed a number of policy and individual grievances disputing the manner in which the employer had filled vacancies. In the course of the grievances it sought production of documents containing information about the particular job competition and information about identifiable individuals other than the grievor. It asserted that it needed this information in order to determine if the grievances should be pursued. The employer refused to provide the documents unless the particular individuals consented to the disclosure. Most of the applicants were employees; some members of a different union; and some were exempt employees who were not members of any union. In some instances the individuals were not employed by the employer at the time the information was collected or at the time disclosure was sought.

55. The employer provided some information including a summary of internal applicants with the names and other identifying features blacked out, seniority dates and overall evaluation scores. But it refused, without the consent of the individuals to disclose job applications, resumes, interview questions and responses and certain other information. The parties had agreed on a series of specific questions to be put to the arbitrator relating to information about whether the individual was an employee of the employer, a member of a union, or a member of the bargaining unit, and whether the information requested would be disclosed in the individual grievance and if so, the conditions for disclosure and use. To cut the story short, the arbitrator held that the employer was not permitted to disclose information about an identifiable individual without written consent, but did not rule out an order for disclosure in a specific case having regard to the circumstances and the labour relations context of the case.

56. The court concluded that the learned arbitrator had erred in her analysis, and that the requirements of section 33.2(a) had been met. Nonetheless, even union members still had the right to privacy. Section 33.2(h) recognized that. The employer must still ensure that it discloses only the minimum amount of personal information necessary to meet the union's purpose; that is, assessing the employer's hiring decisions [paragraph 71] and ensuring that the provisions of the collective agreement were being properly carried out. The aim is to provide sufficient information to determine if the grievance has merit, while infringing on individual privacy rights as little as possible [paragraph 78]. Determining whether or not there had been a breach and whether to pursue a grievance, did not require that it know the job qualifications of unsuccessful candidates who were not union members. The only information required to ensure that the employer's obligations under the collective agreement were observed were the job qualifications of the successful candidate and of members of the local union. It further qualified that, holding that information that did not relate to their ability to perform the

vacant job or to seniority should be redacted since that information was not required at this stage.

57. The court made one comment that requires clarification. To ensure that no more information than necessary was supplied, it indicated that personal privacy should be further protected by removing personal identifiers such as name and "contact information" [paragraph 72]. It seems reasonable to conclude that the court meant personal address and personal telephone numbers since (as noted earlier) "contact information" in the sense in which it is used in the statute is confined to business related information. An individual's business address and telephone number can be disclosed without the individual's consent. That information is not caught by section 32 to 34 at all.

58. It will be noted that the court did not rule out the possibility of the union obtaining information at a later stage. In paragraph 73 it refers to information about ability to perform the vacant job or seniority being "not necessary at this stage".

6. Application to Particular Facts

(1) Names and Addresses of Retirees

59. Should names, addresses and telephone numbers of all retirees who have received or been denied health benefits under Article 21 of the collective agreement be disclosed?

60. Information about (a) the past practice of the company with respect to benefit entitlement of employees; (b) communications between the company and applicants for retirement, either individually or in a group, touching upon their eligibility or continued eligibility; (c) answers written or oral, that are or have been required by the employer to determine the eligibility or continued eligibility of employees retiring early; (d) communications, if any, pertaining to the eligibility or continued eligibility of those employees retiring at or after 65; and (e) the distinction drawn by the employer between part-time or casual work for the purpose of determining the initial eligibility or continued eligibility of retirees, are all, it seems to me, potentially relevant to a determination of the issues in this case.

61. It is understood that there were or may have been pre-retirement meetings, conversations or discussions at which benefit entitlement was raised. It would be helpful if particulars or dates and names of those participating could be provided, along with any related notes, minutes, letters, e-mails or records that were kept whether written or in electronic form. If none exist, so be it.

62. It was the understanding of counsel that applicants have not been required to give assurances that were firm or in writing. Any efforts that can be made to

provide more precise information, and to particularize if possible, would be appreciated.

63. I note that while the insurance company providing coverage for at least some of the benefits requires an application form to be completed, none of the forms contained in the two books of documents [Exhibit 2 and 3] require proof of eligibility. That appears to be left to the employer's determination.

64. The union is seeking, not the names and addresses of all members of the bargaining unit, but those of all retirees who have received or have been denied benefits. That would include nineteen exempt employees. The employer had earlier provided information that included data on exempt employees as well as bargaining unit members who retired [Exhibit 2, tabs 176 and 176]. However, in its letter of particulars on November 24, 2008, it objected to the further disclosure of information on managerial employees who had received a similar benefit. It repeated that position at the hearing, while at the same time admitting that the employer administers benefits for retired management personnel in the same way as for members of the bargaining unit. Whether or not the employer has provided benefits on similar terms to exempt employees under a separate contractual arrangement with them is not relevant to the interpretation and application of the collective agreement, and I decline to make any order that would require the disclosure of further personal information relating to them.

65. The employer also objects to the disclosure of the names and addresses of retirees who were formerly members of the bargaining unit. I am not swayed by the argument that they are no longer employees, for reasons explained earlier. They are entitled to the benefits under the collective agreement. Their entitlement is at the core of the grievance.

66. The employer argues that at most any such order should be confined to those who were denied benefits. There were seven from the bargaining unit who were classified as having resigned. Of those, two had applied for early retirement, but were treated as having resigned and denied benefits. There is no evidence that the other five had even applied. Of the two denied benefits, one was the subject of the correspondence in Exhibit 2, tab 174. By comparing his projected retirement date of December 27, 1995 [see tab 174] with the date supplied by the employer in tab 116 it is possible to identify the person concerned by his or her initials. From that it would be a relatively short step to find the name.

67. To adopt the company's suggestion would seriously hamper access to the thirty-seven who had retired or benefits, including a couple who had left in 1994. It would make it much more difficult for the union to find witnesses with information about the company's past practices, in particular, about the assurances it required from benefit applicants. It would shackle the cross-examination of Mr. May, the former Manager, Human Resources, whose oral