

HASTINGS

LABOUR LAW OFFICE LLP

1 February 2018

By Email

Labour Relations Board
Suite 600, Oceanic Plaza,
1066 West Hastings Street,
Vancouver, BC, V6E 3X1

Attention: Koml Kandola, Acting Registrar and Vice-Chair

Dear Sirs/Mesdames:

**Re: Sobeys West Inc. – and – United Food and Commercial Workers International Union,
Local 1518
Illegal lockout (complaint pursuant to section 59(2))**

We are counsel for the United Food and Commercial Workers International Union, Local 1518 (the “UFCW 1518”) in this matter. Please find enclosed UFCW 1518’s complaint filed against Sobeys West Inc. (“Sobeys”) alleging a violation of section 59(2) of the *Code*. Please charge our pre-approved account for this complaint.

NATURE OF THE APPLICATION

Sobeys has commenced an unlawful lockout. Sobeys and UFCW 1518 have a collective agreement that does not expire until 2023. Sobeys has not provided the notice required to commence a lockout, and legally it cannot give such a notice.

Over the last seven months, the relationship between Sobeys and UFCW 1518 (and in fact, many UFCW locals throughout Western Canada) has deteriorated significantly.

The parties initiated collective bargaining as of October 6, 2017, when Sobeys gave notice for mid-contract negotiations.

Sobeys and UFCW 1518 were set to meet on January 18, 2018, to discuss collective bargaining and other issues. On January 17, 2018, Sobeys abruptly cancelled the meeting for the following day. On January 19, 2017, UFCW 1518 proposed that the parties meet on January 31 and February 1 for collective bargaining.

On January 23, 2018, Sobeys wrote to UFCW 1518 stating that it would be closing ten stores as of May 5, 2018, at 6:00 p.m. (except for one store that would close on July 28, 2018, at 6:00 pm). The closure will result in over 1,000 employees losing their employment, including approximately 660 UFCW 1518 members. For at least three of the stores, Sobeys had not identified any recent concerns about their economic performance. Sobeys also communicated that five stores could re-open depending on the outcome of collective bargaining negotiations. In fact, Sobeys stated that it would continue operating parts of the store after the alleged store closure while the parties

negotiate. Sobeys communicated this to UFCW 1518, UFCW 1518 members, and the Minister of Labour.

On January 25 and 26, 2018, Sobeys wrote to UFCW 1518 confirming that five of the stores would re-open depending on the collective bargaining negotiations between the parties.

While the Board often has to infer the subjective element of an illegal lockout, here Sobeys has expressly, and repeatedly, stated its intention: five of the stores, at least, would re-open “depending on the outcome of negotiations for new collective agreements”.

Consequently, the necessary objective and subjective element for a lockout are present.

UFCW 1518 asks the Board to declare that Sobeys is in violation of the *Code*. Further, UFCW 1518 seeks an order that all ten stores remain open and its members made whole.

PARTIES

APPLICANT

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Attention: Chris Buchanan

RESPONDENT

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INTERESTED PARTIES

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Attention: Will Clements

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Attention: Sandra Bannister, Q.C.

FACTS

1. Sobeys is a wholly owned subsidiary of Empire Company Limited (“Empire”).
2. Empire, through its subsidiaries, franchisees and affiliates, employs approximately 125,000 people in more than 1,500 stores throughout Canada, which would include stores operated by Sobeys West Inc.
3. Empire has various related companies that are also involved in Sobeys’ grocery business. For example, Empire owns subsidiary companies, Crombie Real Estate Investment Trust and SDLP Snowcat Limited, that own and manage real estate on which many of its retail grocery stores operate.
4. Shortly after the UFCW 1518 and Canada Safeway agreed to the new collective agreement, with a term of 2013-2023, Sobeys/Empire purchased Canada Safeway, including Canada Safeway’s real estate holdings. The purchase was announced in June 2013.
5. At present, Sobeys operates approximately 60 stores in the Province under the Safeway banner.

UFCW 1518

6. UFCW 1518 represents workers throughout British Columbia. Its members work in retail, healthcare, industrial, and other areas of employment.
7. The majority of UFCW 1518's members are employed by either Sobeys or by Overwaitea Food Group ("OFG"), under its various banners.
8. Presently, almost 5,000 of UFCW 1518's members are employed at Safeway. These members work primarily as clerks, clerk cashiers, bakery and pharmacy staff, and coffee bar staff. They are responsible for, among other things, the handling and selling of products in the store.
9. At Safeway stores throughout the province, UFCW 247 represents employees working in the meat and deli departments.
10. In some Safeway stores, the Bakery, Confectionary and Tobacco Workers and Grain Millers International Union, Local No. 468 (the "Bakers"), represent production bakery employees.

Collective Agreement

11. The collective agreement in force between the UFCW 1518 and Sobeys runs from April 1, 2013, to March 31, 2013.
12. As part of the current collective agreement, the parties created a process for mid-contract negotiations, if required. This process is set out in Letter of Understanding #1 ("LOU#1") which provides:

The Union and Employer agree as follows:

1. Within six (6) months immediately preceding March 31, 2018, or any subsequent anniversary date thereafter, either party may give notice to the other party to negotiate changes to the current collective agreement.
2. If the parties are unable to agree on what if any changes the collective agreement are to occur, the parties shall resolve their dispute through final offer selection interest arbitration for a binding settlement
3. The parties will agree to the appointment of the interest arbitrator.
4. Each party shall formulate their own final offer, which shall include the items previously agreed to in their negotiations.
5. The final offer selection arbitrator shall hear submissions from each of the Parties and then select one of the final offers. The final offer selection

arbitrator shall take into consideration the economic and competitive climate of the Employer's business, and the interests raised in 2012/2013 bargaining.

6. The final offer selection arbitrator shall not have the power to change the expiration date of this collective agreement which is March 31, 2023. Subject to what the Parties agree to at the first full re-opener in 2018, there shall be additional full re-openers prior to March 31, 2023, upon request by either party

13. This is a new provision that was not previously in the collective agreement.

Collective bargaining commences

14. On October 6, 2017, Sobeys gave written notice to commence negotiations under LOU #1.

15. At the same time as Sobeys provided notice to the UFCW 1518 under LOU#1, Sobeys provided notice to UFCW 247 under a similar provision in the collective agreement between Sobeys and UFCW 247.

16. In October and November 2017, UFCW 1518 and Sobeys exchanged various letters relating to collective bargaining. In short, UFCW 1518 sought to have Sobeys produce to UFCW 1518 various financial and other documents before the first face-to-face meeting of bargaining so that it could prepare its bargaining proposals. UFCW 1518 believed such disclosure would expedite the collective bargaining process. Sobeys's position on disclosure repeatedly changed over that period. As we set out later in this application, Sobeys viewed UFCW 1518 as setting an unlawful condition before agreeing to bargaining dates.

17. While the parties were exchanging various letters, UFCW 1518 continued with its bargaining preparation.

- a. UFCW 1518 and its members have already expended well over 3,000 hours in preparation for negotiations with Sobeys and OFG. The negotiations involve over 15,000 members in the province. It involves a large majority of the Union's membership. It is a significant commitment for UFCW 1518 and its members. The immense effort in preparation for the negotiations is a function both of the size of the employers and the impact of the negotiations on the Union and its members.
- b. Since Sobeys provided notice to negotiate under LOU#1, and while the above correspondence was flowing back and forth, UFCW 1518 proactively engaged with its membership through several channels to enable it to develop informed bargaining proposals. For example, between October 25 and November 16, 2017, UFCW 1518 sent out a series of e-mail invitations to its membership inviting them to fill out an online survey. UFCW 1518 also created a special e-mail address and invited members

- via mail, Facebook and e-blast to submit their bargaining ideas, concepts and proposals. UFCW 1518 representatives also canvassed members in stores and encouraged them to submit their ideas.
- c. UFCW 1518 convened a Bargaining Conference to give members a chance to put forward their concerns and to elect bargaining committee members. The conference was held November 20-24, 2017. 175 members from across the Province attended. In addition to the members, UFCW 1518 officers and about dozens of staff members also attended. The attendees participated in focus groups and developed recommendations for the bargaining committee, focusing on the bargaining priorities the leadership had identified from the membership. The attendees also elected members of the bargaining committee.
 - d. Consequently, with the outreach to the members, the UFCW 1518 received 8,000 submissions on bargaining ideas, concepts and solutions.
 - e. As part of the UFCW 1518's overall preparation for negotiations with Sobeys, UFCW 1518 has undertaken to prepare a "recovery plan" on how Sobeys can change its operations, including parts of the collective agreement, for the benefit of the members and the business. UFCW 1518 has retained industry consultants, and others, to assist it with the development of the recovery plan.
 - f. UFCW 1518 believes Sobeys will agree that Sobeys bungled its takeover of Canada Safeway. Sobeys has lost market share in the Province. It has alienated or frustrated many of its customers. Traditional negotiations would involve the employer demanding that the union simply negotiate over what concessions should be made and the depth of those concessions. Instead of that approach, the UFCW 1518 is undertaking an innovative, proactive process to present Sobeys with a recovery plan – a plan benefitting its members and Sobeys's business.
18. On or about December 6, 2017, Sobeys filed a bad faith bargaining complaint alleging that UFCW 1518 had set an unlawful precondition before agreeing to bargaining dates, based on the communication referred to in paragraph 16 above. UFCW 1518 opposed the application, asserting the complaint was meritless, and it made an application to have the complaint dismissed or deferred. The complaint and the application remains outstanding.
19. In January 2018, Sobeys and UFCW 1518 agreed to meet on January 18, 2018, to discuss collective bargaining and other issues.
20. Late on January 17, 2018, Sobeys cancelled the meeting scheduled for the following day.
21. On January 19, 2018, UFCW 1518 wrote to Sobeys, in part:
- We suggest that the negotiating committees meet on January 31st and February 1st for the purpose of exchanging proposals and hearing details

of Sobeys' decisions, which were announced to the investor community and directly to our members.

After the initial exchange of proposals and information, our negotiating team is prepared to meet with yours from February 6th through the 9th and continuing until we conclude negotiations for this collective agreement reopener

We have enclosed a copy of this letter with this complaint at Schedule "A"

Announced "closure" of 10 stores

22. On January 23, 2018, Sobeys announced that it would be closing ten stores in British Columbia. Sobeys had given notice to Ivan Limpricht, President of UFCW 1518, of the closures a day earlier, on the basis that it would remain confidential until the following morning.
23. We have attached Sobeys January 23, 2018, letter to UFCW 1518 as Schedule "B" to this complaint. The letter provides, in part:

Pursuant to section 54 of the British Columbia Labour Relations Code and section 64 of the British Columbia Employment Standards Act this letter is notice that effective May 5, 2018, at 6:00pm, a number of Safeway stores in B.C. will close and cease operations for financial reasons, with the exception of City Square, which will close on July 28, 2018, at 6:00p m.

This will result in the termination of employment for all bargaining unit employees working in each store on the above-noted dates. The stores which will close and the numbers of employees who will be terminated (subject to any collective agreement bumping rights) are as follows:

....

We will be issuing termination letters to each affected employee and will be confirming that they will receive any notice and/or severance to which they are entitled under their collective agreement. The letters will also confirm bumping rights are available where those are provided for in the collective agreement.

The Blundell, Broadmoor, Newton Town Centre, Strawberry Hills and Mission stores will close but may re-open as FreshCo locations depending on the outcome of negotiations for new collective agreements. The pharmacies in these locations will remain open through the negotiations and potential renovations. If the stores re-open as FreshCo locations the intention is to have these pharmacies in the new stores.

(emphasis added.)

24. That same morning, Sobeys also notified the Minister of Labour of its decision. We have attached a copy of that letter as Schedule "C" to this complaint. In that letter, Sobeys states, in part:

Please be advised that Sobeys Inc. is announcing the closure of 10 underperforming Safeway stores in British Columbia. The closure of these stores is being announced publicly today, January 23rd. At the same time, we will announce that five of these 10 stores may reopen in the FreshCo discount format depending on the outcome of negotiations with the relevant B.C. labour unions.

...

By this letter, Sobeys West Inc., Safeway Operations, provides group notice of termination pursuant to section 64 of the British Columbia *Employment Standards Act*.

On May 5, 2018, at 6 p.m., a number of employees at the Safeway stores in British Columbia listed herein will be terminated from their employment as the stores at which they are employed are being closed for financial reasons, with the exception of City Square Safeway, which will close on July 28, 2018, at 6 p.m. The total number of jobs impacted by the closures will be determined in the coming weeks, as we move through the process where employees can transfer to stores based on seniority or "bumping rights".

The customer files from the pharmacies in the store locations that will be closed permanently will be transferred to nearby Safeway locations. The pharmacies in locations that may reopen as FreshCo stores will remain open during the store closure and any necessary renovations.

(emphasis added.)

25. Further, Sobeys directly communicated to its employees about its announcement. Sobeys' communication was consistent with what Sobeys told UFCW 1518 and Minister of Labour. In particular, Sobeys conveyed that five stores could re-open depending upon the negotiations with UFCW 1518 and that the pharmacies at the five stores would remain open during the negotiations and renovations.
26. Of the ten stores in Sobeys' announcement at least three had not been identified as stores that Sobeys had recent concerns about their performance. For example, store #4945 Point Grey, #4954 Royal Oak, and #4951 Mission, had not been identified in the recent communication between Sobeys and UFCW 1518 as stores which Sobeys had concerns about their performance. For example, on June 12, 2017, Sobeys wrote about 20 stores. We have enclosed a copy of that letter as Schedule "D" to this complaint.

Subsequent communication

27. On January 24, 2018, Sobeys wrote to UFCW 1518 with respect to bargaining. We have enclosed a copy of that letter as Schedule "E" to this complaint. In that letter, Sobeys states, in part:

I have reviewed your suggested dates with the company's bargaining committee. I suggest we schedule February 1, 7 and 8 for the first set of meetings between our respective committees. We can set further dates once we meet.

...

With respect to dates, I propose that we use February 1" for the committees to meet, and to allow the company to make a presentation on its current market and financial situation. I anticipate inviting Ralf Mundel, our Vice President Operations to attend and participate in the presentation, to discuss the operating and financial environment that we are facing in B.C. Our committee will also be in attendance.

During the course of the meeting I would also like to discuss a parallel process to negotiate a new banner collective agreement for FreshCo. Given the announcement that was made today, it is important that we begin those negotiations now, to see if an agreement can be negotiated (or if necessary arbitrated) that will enable five of the stores that are closing to reopen as FreshCo stores. We need to have these negotiations for a FreshCo agreement running in conjunction with the reopener negotiations as there will undoubtedly be issues that need to be addressed at both tables.

(emphasis added.)

28. On January 25, 2018, UFCW 1518 wrote to Sobeys stating that it was prepared to have the bargaining committees meet on February 1, 7 and 8. We have enclosed a copy of this letter as "Schedule "F" letter with this complaint.
29. On January 26, 2018, Sobeys wrote to UFCW 1518. We have enclosed a copy of this as "Schedule "G" letter with this complaint. In that letter, Sobeys states, in part

Because you previously indicated you were not available February 1, 2018 I scheduled other matters on that day. We are available to meet February 7 and 8 and agree to the Union's suggestion that the Union proceed first tabling its proposals on February 7 following a presentation by the company of its financial and operating status.

The company has fully informed the Union of its decision concerning store closures. There are ten stores which the company intends close. The company plans to open discount banner stores only if the parties can agree

to an appropriate discount banner collective agreement. If this does not happen there will be no discount stores opened in BC.

No Lockout notice

30. Sobeys has not provided lockout notice to UFCW 1518.

Sobeys deteriorating relations with UFCW 1518

31. Over the past year, the relationship between UFCW 1518 and Sobeys has deteriorated significantly.
32. In June 2017, Sobeys took the unprecedented step of writing UFCW 1518 wanting to have a quarterly review meeting involving 20 stores, although Sobeys later claimed that it had erroneously included one store. For this application, it is unnecessary to go into detail about how extraordinary Sobeys action was, but it was unprecedented.
33. Since the notice, Sobeys has repeatedly, and falsely, claimed that UFCW 1518 refused to meet with Sobeys under the quarterly review provision. It has made these false claims to the public, to Arbitrator Ready, and directly to UFCW 1518's members. We enclose a series of letters between the parties in October 2017: see letters attached as Schedule "H".
34. UFCW 1518 did not refuse to meet with Sobeys. UFCW 1518 stated it was prepared to meet with Sobeys to see whether the stores were experiencing financial difficulty and consider any necessary changes to protect the employment of the members, notwithstanding its view that the Sobeys could not rely on LOU#7. UFCW 1518 repeatedly wrote stating it would be prepared to meet with Sobeys, without prejudice to its position that Sobeys conduct was unlawful. Sobeys refused to meet. Further, when UFCW 1518 sought production of the financial records to determine whether the stores were experiencing difficulties, Sobeys, instead of producing that information it was required to produce under the collective agreement, wrote to Arbitrator Ready making false claims and alleging that UFCW 1518 was in contravention of the collective agreement.
35. Sobeys still has not followed up on UFCW 1518's offer to meet and discuss the stores which Sobeys has identified as stores it believes are experiencing financial difficulty.
36. Repeatedly misleading the public and UFCW 1518 members with the false claim that UFCW 1518 refused to meet was done to sow dissension among UFCW 1518's membership and put pressure on UFCW 1518 to agree to Sobeys' demands.
37. In December 2017, Sobeys filed a bad faith bargaining complaint against UFCW 1518. UFCW 1518 has made submissions setting out its position that the complaint is baseless and outside of the Board's jurisdiction. This complaint remains before the Board.
38. In that complaint, Sobeys falsely claimed that UFCW 1518 was going to make confidential financial information public. Even after receiving UFCW 1518's submission correcting

Sobeys' position, Sobeys did not retract its inflammatory allegation. Sobeys relied on this false claim to support its alleged concern about providing UFCW 1518 with the important information that would assist in making the initial bargaining dates more productive.

39. Since announcing the store "closures", Sobeys publicly claimed that UFCW 1518 declined to engage in conversations, which is false. Sobeys is quoted in a January 23, 2018, Globe and Mail article as follows:

Sobeys spokeswoman Jacquelin Corrado said in an e-mail that the company had invited Union Local 1518 to review stores that are under financial pressure last June and then again in October to discuss ways to help the unprofitable stores turn the corner to protect jobs and continue to serve customers.

"Unfortunately they declined to engage in the conversation both times," she said, noting that it's "no secret" that many of its Safeway stores in B.C. have struggled in recent years.

40. While we have set out some examples of the worsening relationship, we have not intended to set out all of the examples. We doubt that Sobeys will dispute that the relationship has deteriorated over the past year, but UFCW 1518 is happy to provide further particulars if this a matter in dispute.

Sobeys deteriorating relations with UFCW locals throughout Western Canada

41. Sobeys poor relationship is not restricted to UFCW 1518. Sobeys recently commenced collective bargaining in Manitoba with UFCW Local 832. That union publicly described the bargaining as following, as found on its website:

Company tables concessions then cancels bargaining

"The first day of bargaining talks with Sobeys was brief and unexpected. They came in for 90 minutes and presented a small list of proposals that would effectively gut the current collective agreement. Then they notified us that they were cancelling the remainder of the week of bargaining and potentially cancelling more dates. This is extremely unusual and we are very concerned with the proposals put forward and the fact that there are no further talks scheduled," stated President, Jeff Traeger.

Since Sobeys has taken over Safeway, they messed with the supply chain, understocked shelves, cut hours to the bone and now they're proposing major cutbacks at the bargaining table that will take money out of your pockets!

The company wants to:

"Restructure" your wages

Reduce your vacation time and make cuts to your vacation pay

Make you pay for your own benefits
Reduce or eliminate premiums including nights, Sundays and evenings
Cut the number of full-time jobs in half, meaning no new full-time positions
Stop paying into the education fund
Taking work away from you by outsourcing Kiosk spaces
Taking more work away from you by allowing outside vendors to do their own stocking of shelves.

This is the first step towards conversions to the FreshCo banner. It appears they have no interest in maintaining the rights and working conditions we have bargained for the last 50 years. It seems they don't respect the Safeway staff or their 90-year history – this is a new owner with apparently new intentions.

42. Sobeys is also about to commence bargaining with Local 401 in Alberta. In December 2017, Local 401 described Sobeys in the following manner, as found on its website:

**Sobeys Has Forgotten Who Matters Most in its Business...
Its Own Employees!**

UFCW Local 401 is very troubled by Sobeys' recent business announcement. Among other things, Sobeys says they're looking to convert a significant number of Safeway stores into a format called FreshCo.

It is well documented that the billionaire Sobeys family completely fumbled and bungled their takeover of Safeway in Western Canada. Since our last Union Contract was negotiated, they have turned Safeway upside down and into an entirely different business. Of considerable significance was the very rapid change in the product line that was so popular with Safeway customers. Also disturbing was the elimination of Safeway's loyalty program. Hours were cut for staff who had to defend the changes in their stores while corporate executives in Nova Scotia and the Sobeys family sat comfortably in their plush offices. Safeway union members are reporting all time lows in staff morale and record highs in staff anxiety.

Yet Sobeys somehow expects these very same employees to save their business from the mistakes that Sobeys executives have made.

Just as we are coming out of a downturn in the Alberta economy, and immediately prior to Christmas, Sobeys is announcing that Safeway employees face a deeply disturbing future in their employment relationship with the company. Sobeys has announced a plan for massive conversions of stores into FreshCo formats. A FreshCo store does not in any way resemble a Safeway business configuration.

....

Recently, Sobeys' boss Michael Medline sent Safeway employees a \$10 gift card to thank them for their efforts. In a video, he has told employees to work harder. Sobeys launched a cute little feel good website called *Safeway Talks* to reassure employees.

But Sobeys has truly ignored its staff and sneered at their importance through all of this. The thousands of employees who have made the company a success are not being consulted. Nor is the union that they've had for decades. Secret dealings of Sobeys bosses are later announced, blindsiding and shocking everyone. Store conversions, layoffs, closures, franchising, rebranding, and union busting are all issues they have put in our minds, and Sobeys' lack of transparency has made it impossible to feel positive about Sobeys.

Customers have agreed and the stock market is not optimistic about Sobeys either. **But the most important point to be made is that Sobeys has horrified its own employees at a time when they need them more than ever.** What kind of a business does that?

....

British Columbia UFCW members also face imminent negotiations along with UFCW members in Manitoba.

We all know that no grocery store, no Safeway, Sobeys, or FreshCo can or will operate if all the employees don't show up for work. We also know that these businesses will not operate if no customers shop there. Sobeys can create an environment of fear and intimidation but Safeway employees and their union also have methods available to them to resist this bullying. Sometimes you will see protesting workers chanting, "**no contract, no peace**". Sobeys will not be allowed to rollover Safeway employees smoothly and without interruption. Their business plan is faulted because they have not considered union members and their willpower. Even with their arrogance, surely Sobeys management knows that loyal and hardworking employees are critical to the success of their business.

Unfortunately, Sobeys really has forgotten its employees. The employees, through their union, should be approached honestly and transparently by the company. There should be dialogue, consultation, negotiation, and clear and honest consideration of your job security and respect for your hard work. A \$10 gift card accompanied by an announcement that threatens your job will only be met with anger.

43. Far from a UFCW 1518 problem, as Sobeys has tried to portray the events to its employees and the public, it is clear that Sobeys has problem respecting employees, and their unions, throughout Western Canada.

SUBMISSIONS

1 *Illegal lockout*

1.1 For the reasons that follow, the Board can grant this complaint summarily.

1.2 Ordinarily, when dealing with an illegal lockout complaint, the Board is forced to review circumstantial evidence to determine an employer's intention as an employer rarely states that its business closure is equivocal and linked to collective bargaining. But, here, Sobeys has repeatedly, and publicly, informed UFCW 1518, the Minister of Labour, and the employees, that its intention with the "closures" is to pressure UFCW 1518 and its members to agree to new terms and conditions of employment. Far from an unequivocal shutting, Sobeys has stated that it will re-open five of the stores if the parties reach agreement on new terms and conditions of employment. In fact, Sobeys intends to continue operating parts of the store even after the "closures" while the parties negotiate new terms and conditions of employment. The timing of the announcement, the equivocal closures, the deteriorating labour relations, among other factors, demonstrate that Sobeys' decision to "close" the stores is to soften the union's bargaining position and compel a favourable settlement of the dispute.

1.3 The *Code* includes a definition of "lockout" as follows:

"lockout" includes closing a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his or her employees, done to compel his or her employees or to aid another employer to compel his or her employees to agree to conditions of employment;

1.4 Section 63 allows an employer to close some or all of its operations as long as its conduct does not constitute a lockout

Rights preserved

63 (1) This Code must not be construed to prohibit the suspension or discontinuance by an employer of operations in the employer's establishment, in whole or in part, for a cause not constituting a lockout.

(2) The burden of proof that operations in his or her establishment are or were suspended or discontinued for a cause not constituting a lockout is on the employer.

1.5 In *Canada Cement Lafarge*, BCLRB No. B78/79, the Board set out the Board's approach as to determining what constitutes a lockout:

The second test is whether the members of the trade-union are lawfully on strike or are locked out. In the present case, the picketers' signs indicated that the picketing was mounted by Local 213 on the basis of a lockout of its member employees by CBC. A "lockout" is defined in Section 1(1) of the *Labour Code* as follows:

"lockout' includes the closing of a place of employment, a suspension of work, or a refusal by an employer to continue to employ a number of his employees, done to compel his employees, or to aid another employer to compel his employees, to agree to conditions of employment."

This definition requires that two conditions be met for a lockout to occur. The first condition is an objective one and is quite straightforward. The second, on the other hand, is subjective and often presents serious difficulties for the adjudicator.

...

In view of the extensive arguments made by counsel as to whether Local 213 was locked out by CBC, we now turn our attention to that issue. The coincidence of an employer closing all or part of its operations at the same time that it is embroiled in a collective bargaining dispute with the trade union does not result in an automatic conclusion that the employer has thereby "locked out" its employees within the meaning of the *Code*. **For the closure to be characterized as a lockout, the employer must be motivated by the subjective intention that is contained in the definition of "lockout" in the *Labour Code*. That is, the employer must have acted to further his own cause in collective bargaining.** This principle has been examined in a number of decisions by the Board including *British Columbia Distillery Company Ltd.*, BCLRB Decision No. 24/75, [1975] 2 Canadian LRBR 183; *B.C. Railway*, BCLRB Decision No. 35/76, [1976] 2 Canadian LRBR 240; *Weyer-haeuser Canada Ltd.*, BCLRB Decision No. 21/76, [1976] 2 Canadian LRBR 41; and *Horne & Pitfield*, BCLRB Decision No. 64/77.

It will be useful here to consider the analysis in the Weyerhaeuser decision:

"As that definition makes clear, in a lockout the employer closes down its operations so as to deprive its employees of work and the money they earn for working with the objective of softening the union's bargaining position and compelling a favourable settlement of an employment dispute. In the case before us, there was no doubt that the employer shut down the Kamloops mill: thus it satisfied the objective element in the definition. However, certainly not every suspension or discontinuance of operations amounts to a lockout under the *Code* ...

Whether or not the employer's action amounts to a lockout will depend on the employer's subjective motivation. For example, if this employer closed the mill down simply because the economic costs and physical dislocation stemming from the union's overtime ban made it difficult to continue mill operations, then that would be a legitimate defensive reaction by the employer, not a lockout. On the other hand, if a primary reason for the employer's action was to put pressure on the employees in order to compel the union to remove the overtime ban, that would be a lockout."

(at p. 47)

The coincidence of the closure of the employer's operations and the labour dispute does, however, give rise to a burden of proof that must be met by the employer. This burden of proof arises out of the provisions of Sections 83(1) and (2) of the *Labour Code*:

"83(1) Nothing in this Act shall be construed to prohibit the suspension or discontinuance by an employer of operations in his establishment, whether in whole or in part, for a cause not constituting a lockout.

(2) The burden of proof that operations in his establishment are or were suspended or discontinued for a cause not constituting a lockout is on the employer."
(Emphasis added)

1.6 Thus, the definition lockout contains an objective and a subjective element. UFCW 1518 has the burden of showing there has been a closing of a place of employment, a suspension of work, or a refusal to continue to employ employees. But after UFCW 1518 establishes the objective element, the evidentiary and legal burden shifts to the Sobeys to prove that the reason it took the actions were not, in whole or in part, to compel employees to agree to terms and conditions of employment.

1.7 Perhaps the leading case on illegal lockouts is *B.C. Distillery* [1975] 2 CLRBR 183. In that case, the Board found that a decision by that company to close its plant was motivated by an intent to compel its employees to agree to certain conditions of employment. The factors the Panel found most significant were: a) a history of deteriorating labour relations; (b) the timing of the closure (after notice to commence bargaining for a new agreement was given); and c) an equivocal letter to the employees holding out the possibility of further discussions. The facts in these circumstances demonstrate a very close similarity to the significant factors in *B.C. Distillery, supra*.

1.8 As with anti-union animus, any taint of an improper motivation is enough to have an illegal lockout declared. So even if there can be an economic justification for the action, the action will still be a lockout if any part of the decision is motivated to achieve a change in the terms and conditions of employment: see for example *Sparwood General Hospital Society*, BCLRB No. B22/93.

1.9 A lockout does not even have to occur when the parties are in bargaining. The Board recognizes that actions taken to soften a union's position on a particular issue or that is intended to have employees put pressure on the union is sufficient even if the events are far off. As stated in *Sparwood*, at paragraphs 52-3:

The Employer said that the Unions had mischaracterized the requirement for a lockout; a lockout must consist of an actual, proposed, implied, or at least chance of a change in the conditions of employment. That is technically correct, but it does not entirely meet the Unions' point, which is supported in the jurisprudence. The point is best captured in *Genstar* (referring to *Weyerhaeuser Canada Limited*, BCLRB No. 221/76, [1976] 2 Can LRBR 41, at 47):

The concession sought need not be something direct and immediate; it can equally be a longer-term objective or a relatively intangible concession such as softening of the union's position on particular issues, etc. (p. 9)

53 Further support for that theme can be found in *British Columbia Distillery Company Limited*, BCLRB No. 24/75, [1975] 2 Can LRBR 183, which refers to the employer's statements encouraging "employee pressure on the Union . . ." (p. 188).

1.10 An employer signal that a portion of its business is ceasing, even if no employee has officially been refused work, is a lockout: *Perimeter Transportation Limited*, BCLRB No. C90/90.

Here Sobeys' has signalled that parts of its business are ceasing through its decision to close ten stores.

1.11 Finally, with respect to lockouts, the Board in *United North Shore Transportation Society*, BCLRB No. 78/81 highlighted that to discharge the burden under now section 63, the decision must be unequivocal and not accompanied by a possibility of continuing operations conditional upon the agreement of employees to any changes with respect to the conditions of their employment. That is, as is here, where there is an equivocal partial closure accompanied by the offer that the business will re-open or stay open if the employees agree to the employer's proposal, the Board will find that this constitutes a lockout.

Sobeys has commenced an unlawful lockout

1.12 Applying the Board's test to the present facts, we say that UFCW 1518 has established that the Sobeys is breaching the *Code* through an unlawful lockout.

1.13 There can be little dispute that the first part of the test has been met: Sobeys is closing ten stores, approximately 16% of its stores in the Province. Sobeys has issued termination notice to approximately 660 members of UFCW 1518. Many of those employees will be able to exercise bumping rights into other stores, which will lead to layoffs at those other stores. Thus, 660 or so members will be laid off or terminated as a result of the ten store closures.

1.14 Even if one were to view this complaint as anticipatory, the facts have sufficiently crystallized, and a valid labour relations purpose exists, such that the Board ought to make a declaratory order: see for example *Johnston Terminals Limited et al.*, BCLRB L92/81, 238556 B.C. Ltd, BCLRB No L157/81); *Prince George Wood Preserving Ltd.*, IRC No. C276/88; *First Commercial Management Inc*, BCLRB No. B213/93; *Raychester Manor Inc. Operating as Malaspina Lodge*, IRC No. C138/88; *Fraser Valley Milk Producers Cooperative Association*, IRC No. C307/88; *Fletcher Challenge Canada Limited*, IRC No. C128/92. In the words of the Board in *Sparwood General Hospital Society*, BCLRB No. B22/93, and *Genstar Cement Limited*, BCLRB No. L3/82, there is a live issue and it is causing labour relations problems.

1.15 The closure will impact many third parties, including employees, customers and businesses that work with Sobeys. Further, there are substantive economic ramifications for the members of working at the ten stores "closing". In this case, more than 600 employees will be forced to make decisions as to their employment, many of which cannot be undone or cannot readily be undone. For example, employees may be facing an election of moving to different communities outside of the lower mainland to continue their employment.

1.16 Turning to the subjective element of the lockout test, both the direct and circumstantial evidence demonstrates that Sobeys took the step of closing the stores in whole or in part to advance its collective bargaining agenda. It was done to apply economic pressure on employees to apply pressure on UFCW 1518 to soften its position and agree to conditions of employment. The fact that Sobeys has not yet tabled its bargaining proposals does not alter the motivation for the closures or the legal consequences of that motivation. Merely because Sobeys has not yet stated the price

it will be seeking to extract from its employees, does not make the action lawful. Sobeys expects that its actions will put pressure on the UFCW 1518, to have it soften its position, and to compel UFCW 1518 members to put pressure on UFCW 1518, both before and after Sobeys tables its proposals. Sobeys' decision was clearly to place pressure on UFCW 1518 to accept Sobeys' position on new conditions of employment so that at least five stores would be re-opened and something like over 300 its members would remain employed.

1.17 Further, it does not matter whether Sobeys is successful in applying pressure on UFCW 1518. The Board is only concerned whether the impugned action was taken in whole or in part to have employees agree to conditions of employment, not whether the impugned was successful in its goal.

1.18 Other relevant factors we say are as follows:

- (a) A history of deteriorating labour relations between Sobeys and UFCW 1518, in fact the worsening labour relations extend to other UFCW locals in Western Canada;
- (b) Sobeys announced the closure of the stores after the notice to commence negotiations had been given and shortly before the parties were to meet to exchange proposals;
- (c) Sobeys has not irrevocably decided to close some or all of the ten stores;
- (d) Sobeys will continue to operate at five store locations after the stores have "closed" while the parties negotiate new terms and conditions of employment.

1.19 Further, stepping back and examining all of the circumstances, it is clear that the decision to close ten stores, on the eve of face-to-face bargaining, was intended to have UFCW 1518 and its members accept Sobeys' position in bargaining. That is, while Sobeys has announced that it may re-open five of the stores, it is clear that Sobeys closed the other five stores to put pressure on UFCW 1518 and its members to agree to Sobeys' bargaining position. Thus, the unlawful lockout is not simply at the five stores that may re-open, but at all ten of the stores since Sobeys is using the closures to put pressure on the UFCW 1518 to soften its position in bargaining and to compel employees to put pressure on UFCW 1518.

ORDER SOUGHT

The UFCW 1518 seeks the following orders:

- a) A declaration that Sobeys has breached sections 59 of the *Code* by committing an unlawful partial lockout;
- b) An order directing Sobeys to cease and desist from breaching the *Code*, including but not limited to an order that Sobeys cannot close any of the ten stores set out in its notice of January 23;

- c) A make whole order to the employees, including an order for all wages and benefits lost;
- d) An order that Sobeys not be permitted to close any store other until after the conclusion of the current negotiation for a new collective agreement or without prior approval of the Board; and
- e) Any other order that this Board may deem appropriate.

DEFERRAL

If Sobeys seeks to defer this complaint, UFCW 1518 may agree to the deferral on the following conditions:

- (1) Sobeys agrees that an arbitrator has jurisdiction to hear and decide the complaint, including interpreting and applying sections 59 of the *Code*, and sections 6 and 9 of the *Code*, if the UFCW 1518 amends its complaint to include those sections;
- (2) Since many of the arbitrators on CAAB's roster do not have experience or expertise in interpreting and applying Parts 1 and 5 of the *Code*, the Board appoint an arbitrator with the necessary experience, expertise and stature to hear a matter involving over 600 employees losing their jobs in the Province;
- (3) Unless otherwise agreed to by the parties, the hearing must commence no later than 43 days from the date of this complaint (derived from the 15 day grievance timeline in the collective agreement and the 28 days found in section 104 of the *Code*), and that the arbitrator's award must be issued no later than 21 days from the last date of the hearing; and
- (4) Any other condition that UFCW 1518 may seek after reviewing Sobeys' reply to this complaint, which could very well involve conditions on document production if Sobeys asserts that its decision was based upon financial circumstances.

RULE 27

Rule 27 requires a complainant to provide a copy of that Rule when an application is filed pursuant to Part 5 of the *Code*. Rule 27 provides as follows:

27. (1) A complaint under Section 133 or an application under Section 143 of the *Code* alleging that a provision of Part 5 of the *Code* has been or will be contravened shall comply with Rules 2(2) and 2(3) in particular, and shall
- (a) state the date, time and location that the applicant wishes to appear before the board to apply for the order it seeks, which shall be at least twenty-four (24) hours after a copy of the complaint and a copy of this Rule have

been served upon the Respondent Employer and any other interested party; and


- (b) where a hearing is requested earlier than is provided in paragraph (a), state that an expedited hearing of the complaint is requested and the reasons for the request, specifying the nature of any harm anticipated or resulting from the violations complained of.
- (2) A hearing of the complaint shall be held at the board's Vancouver office and at the date and time at which the applicant have notice under sub-rule (1)(a) unless, at the request of any party, or by the board on its own motion, another date, time or location is designated by the board.
- (3) When the board designates a date, time or location other than the date, time and location of which the applicant has given notice, the board shall notify or cause to be notified all interested parties.
- (4) For purposes of notice under sub-rules (1) or (3), notice to a trade union or employers' organization is deemed to be notice to those persons against whom the complaint is made and it has authority to act as bargaining agent.
- (5) A Respondent Employer or other party proposing to contest a complaint under this Rule shall, where required by the board, before commencement of any hearing into the complaint, file a rely with the board in accordance with Rule 4(2) and deliver a copy to the complainant and any other interested party.
- (6) For the purposes of this Rule, a complaint includes a complaint alleging a violation of Section 68 of the Code, an application for a declaratory opinion under Section 70 of the Code, and an application for permission to picket under Section 65(4)(a) or (b) of the Code.

SERVICE

We are serving a copy of this complaint on Sobeys. We are delivering, by email, a copy of the complaint to usual counsel for Sobeys as well as usual counsel for the interested parties.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours truly,



Chris Buchanan
Enclosure

cc: Client (by email)
Sobeys West Inc./Sean Naldrett (by courier)
Roper Greyell/Tom Roper, Q.C. (by email)
Koskie Glavin Gordon/ Will Clements (by email)
Banister & Co/Sandra Banister, Q.C. (by email)



WE FIGHT FOR FAIRNESS

Ivan Limpricht, President & Kim Novak, Secretary-Treasurer

January 19, 2018

Sent Via E-mail

Mr. Dave Fearon
Senior VP, Labour & Employee Relations
Sobeys West dba Canada Safeway ("Sobeys")
115 Kin Street
Stellarton, NS
B0K 1S0

Dear Mr. Fearon:

I write in response to your message cancelling our January 18th meeting and your request to reschedule. As our bargaining committee was aware, that meeting was to discuss process and dates in order to commence negotiations.

We suggest that the negotiating committees meet on January 31st and February 1st for the purpose of exchanging proposals and hearing details of Sobeys' decisions, which were announced to the investor community and directly to our members.

After the initial exchange of proposals and information, our negotiating team is prepared to meet with yours from February 6th through the 9th and continuing until we conclude negotiations for this collective agreement reopener.

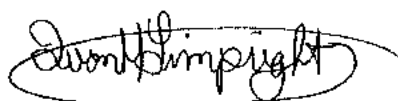
Our willingness to meet does not mean that we have withdrawn our request for information, which is essential to our ability to negotiate on behalf of our members and to understand the proposals we expect you to make. In fact, the need for information has become imperative given the major decisions the company has made around FreshCo and store closures.

We expect that on January 31st and February 1st the company will provide our negotiating committee with complete details on all of the decisions the company has made that will have a material impact on our members and this round of negotiations. These details should include but are not limited to: i) "25%" of stores in Western Canada being converted to FreshCo franchise stores; ii) the closure of stores; and iii) Project Sunrise.

Specifically, you should tell us the number of British Columbia stores to be converted; the locations and reasons why each of these stores is to be converted; whether there are any Thrifty's stores being converted; the schedule for these conversions; and, the locations, schedule and the reasons why each store is to be closed.

If we are to approach these negotiations in good faith and knowing how general announcements of conversions and closures without details is causing great dismay among your employees and our members, Sobeys must be fully transparent about its exact plans for its British Columbia operations. We will expect no less.

Yours truly,

A handwritten signature in black ink, which appears to read "Ivan Limpricht", is enclosed within a hand-drawn oval.

Ivan Limpricht, President
UFCW 1518

cc UFCW 1518 Shop Stewards (at Sobeys West stores)
All Staff, UFCW 1518



123 Foord Street, Stellarton, NS B0K 1S0 T 902 752 8371 sobeys.ca

Schedule "B"

January 23, 2018

Sent by Fax and Email

ivant@ufcw1518.com

604-540-1520

UFCW Local 1518
350 Columbia Street
New Westminster, B.C.
V3L 1A6

Dear Mr. Limpricht,

RE: Store Closures

Notice pursuant to Section 54, B.C. Labour Relations Code and Section 64, B.C. Employment Standards Act

Pursuant to section 54 of the British Columbia *Labour Relations Code* and section 64 of the British Columbia *Employment Standards Act* this letter is notice that effective May 5, 2018, at 6:00pm, a number of Safeway stores in B.C. will close and cease operations for financial reasons, with the exception of City Square, which will close on July 28, 2018, at 6:00p.m.

This will result in the termination of employment for all bargaining unit employees working in each store on the above-noted dates. The stores which will close and the numbers of employees who will be terminated (subject to any collective agreement bumping rights) are as follows:

<u>Store #</u>	<u>Address</u>	<u>Number of Employees</u>
4944	Lougheed Mall 9855 Austin Road, Burnaby, B.C.	117
4907	City Square 555 West 12 th Avenue, Vancouver, B.C.	70
4904	Sunwood Square 110-3025 Lougheed Hwy, Coquitlam B.C.	136
4945	Point Grey 4575 West 10 th Avenue, Vancouver B.C.	88
4954	Royal Oak 5235 Kingsway Avenue, Vancouver B.C.	57

4949	Blundell 6140 Blundell Road, Richmond B.C.	102
4957	Broadmoor 10151 No. 3 Rd., Richmond B.C.	72
4964	Newton Town Centre 7165 138 th Street, Surrey B.C.	124
4935	Strawberry Hills 7450 120 th Street, Surrey B.C.	127
4951	Mission 32520 Lougheed Highway , Mission B.C.	133

We will be issuing termination letters to each affected employee and will be confirming that they will receive any notice and/or severance to which they are entitled under their collective agreement. The letters will also confirm bumping rights are available where those are provided for in the collective agreement.

The Blundell, Broadmoor, Newton Town Centre, Strawberry Hills and Mission stores will close but may re-open as FreshCo locations depending on the outcome of negotiations for new collective agreements. The pharmacies in these locations will remain open through the negotiations and potential renovations. If the stores re-open as FreshCo locations the intention is to have these pharmacies in the new stores.

We would like to meet with you to discuss the development of an adjustment plan as stipulated by section 54 of the Code. Please contact myself or Sean Naldrett at your earliest convenience to schedule a meeting.

The decision to close stores is never easy. As a company, we have to take steps to strengthen our business in this highly competitive grocery market. It is no secret that many of our stores in British Columbia have struggled in recent years. It's important we take steps to transform the Company and ensure a strong future for Safeway. The work underway is focused on returning our stores to profitability and continuing to provide good, stable jobs for British Columbians.

If you have any questions, please contact me at any time.

Yours truly,



David Fearon
Senior Vice President, Labour Relations & IHM
Sobeys Inc.

Schedule "C"



Via Facsimile: (250) 356-5186
Via email: Harry.Bains@gov.bc.ca

January 23, 2018

Ministry of Labour
PO Box 9064,
Stn Prov Govt
Victoria, B.C. V8W 9E2

Attn: The Honourable Harry Bains

Dear Minister Bains:

RE: Section 64 - Group Termination Notice
Sobeys West Inc. – Safeway Operations

Please be advised that Sobeys Inc. is announcing the closure of 10 underperforming Safeway stores in British Columbia. The closure of these stores is being announced publicly today, January 23rd. At the same time, we will announce that five of these 10 stores may reopen in the FreshCo discount format depending on the outcome of negotiations with the relevant B.C. labour unions.

The decision to close stores is never easy. As a company, we have to take steps to strengthen our business in this highly competitive grocery market. The reality is these stores continue to lose money despite the best efforts of the hardworking teams in our stores and the Company.

At the same time, we're embarking on a company-wide transformation process to ensure a strong future for our business. By doing this we can continue to provide good, stable jobs for British Columbians and the more than 125,000 Canadians we employ across the country.

By this letter, Sobeys West Inc., Safeway Operations, provides group notice of termination pursuant to section 64 of the British Columbia *Employment Standards Act*.

On May 5, 2018, at 6 p.m., a number of employees at the Safeway stores in British Columbia listed herein will be terminated from their employment as the stores at which they are employed are being closed for financial reasons, with the exception of City Square Safeway, which will close on July 28, 2018, at 6 p.m. The total number of jobs impacted by the closures will be determined in the coming weeks, as we move through the process where employees can transfer to stores based on seniority or "bumping rights".

The customer files from the pharmacies in the store locations that will be closed permanently will be transferred to nearby Safeway locations. The pharmacies in locations that may reopen as FreshCo stores will remain open during the store closure and any necessary renovations

Eat better. Feel better. Do better.



The number of employees whose employment will be affected by these store closures are as follows:

<u>Store #</u>	<u>Address</u>	<u>Number of Employees</u>
4944	Lougheed Mall 9855 Austin Road, Burnaby, B.C.	117
4907	City Square 555 West 12 th Avenue, Vancouver, B.C.	70
4904	Sunwood Square 110-3025 Lougheed Hwy, Coquitlam, B.C.	136
4945	Point Grey 4575 West 10 th Avenue, Vancouver, B.C.	88
4954	Royal Oak 5235 Kingsway Avenue, Vancouver, B.C.	57
4949	Blundell 6140 Blundell Road, Richmond, B.C.	102
4957	Broadmoor 10151 No. 3 Rd., Richmond, B.C.	72
4964	Newton Town Centre 7165 138 th Street, Surrey, B.C.	124
4935	Strawberry Hills 7450 120 th Street, Surrey, B.C.	127
4951	Mission 32520 Lougheed Highway, Mission, B.C.	133

Eat better. Feel better. Do better.



Concurrent notice is being provided to the individual employees affected, and to the United Food and Commercial Workers Union, Local 1518; the United Food and Commercial Workers Union, Local 247; and the Bakery, Confectionery, Tobacco Workers & Grain Millers Union, Local 468.

- Ivan Limpricht, President UFCW Local 1518
- Suzanne Hodge, President UFCW Local 247
- Earl Lublow, Secretary, BCTGM Local 468

We will work closely with impacted employees to provide support as they transition to work in other stores or on to new career opportunities. We are sincerely grateful for their commitment and dedicated service to Safeway. We will also work with their respective unions in the coming weeks to ensure the terms of their collective agreements are met.

There are no plans for changes to the many important community programs we're proud to support in B.C. We remain committed to maintaining a strong store presence on the Lower Mainland and serving the local community as we have for many years.

I hope that, through this letter, we have given you some assurance that Sobeys Inc. and the Safeway team in the greater Vancouver area are strong, committed and will continue to be a locally-based, passionate advocate for this region.

Please don't hesitate to contact me for further information.

A handwritten signature in black ink, appearing to read "Ralf Mundel".

Yours truly,

Ralf Mundel
Vice-President
Operations, British Columbia
Sobeys Inc.

6649 Butler Crescent
Saanichton, British Columbia
V8M 1Z7

Ralf.Mundel@sobeys.com

Eat better. Feel better. Do better.



June 12, 2017

E-mail and Fax

Mr. Ivan Limpricht
UFCW Local 1518
350 Columbia Street
New Westminster, B.C. V3L 1A6

Dear Ivan:

Re: Letter of Understanding #7 – Joint Union/Management Quarterly Reviews

We are writing to confirm that on June 12, 2017, the Company announced that stores listed below will be brought forward under LOU #7 as we have concerns regarding their future viability.

- | | |
|-------------------------------------|---------------------------------|
| #182/4963 Powell River | #90/4934 English Bay Vancouver |
| #121/4944 Lougheed Mall Burnaby | #33/4907 City Square Vancouver |
| #92/4935 Strawberry Hills Surrey | #138/4949 Blundell Richmond |
| #1/4900 Surrey Central | #89/4933 Sahali Kamloops |
| #184/4964 Newton Town Centre Surrey | #14/4903 Sunshine Hills Delta |
| #62/4920 Fleetwood Surrey | #7/4902 Dilworth Kelowna |
| #161/4957 Broadmoor Richmond | #75/4926 100 Mile House |
| #20/4904 Sunwood Square Coquitlam | #2/4901 West Broadway Vancouver |
| #70/4924 Trail | #36/4908 Robson Vancouver |
| #84/4931 Collingwood Vancouver | #179/4962 Trenant Park Ladner |

We will contact you shortly to arrange to schedule a meeting to discuss these stores.

Yours truly,
SOBEYS INC.

Sean Naldrett
Sr. Director, Labour Relations

cc: Dave Fearon, Denise Hill, Ken Woo, Cliff Yeo

1020 – 64 Avenue NE
Calgary, AB T2E 7V8

P.O. Box 864, Strn. 'M'
Calgary, AB T2P 2J6



123 Foord Street, Stellarton, NS B0K 1S0 T 902 752 8371 sobeys.ca

January 24, 2018

Sent by Email

Dear Mr. Limpricht,

Thank you for your letter dated January 19, 2018.

I have reviewed your suggested dates with the company's bargaining committee. I suggest we schedule February 1, 7 and 8 for the first set of meetings between our respective committees. We can set further dates once we meet.

Our negotiations with Local 1518 will be led by Kim Thorne, who is a partner at Roper Greyell and who has a lot of collective bargaining experience. While Tom Roper will also attend our meeting on February 1st, he will not attend future bargaining sessions.

With respect to dates, I propose that we use February 1st for the committees to meet, and to allow the company to make a presentation on its current market and financial situation. I anticipate inviting Ralf Mundel, our Vice President Operations to attend and participate in the presentation, to discuss the operating and financial environment that we are facing in B.C. Our committee will also be in attendance.

During the course of the meeting I would also like to discuss a parallel process to negotiate a new banner collective agreement for FreshCo. Given the announcement that was made today, it is important that we begin those negotiations now, to see if an agreement can be negotiated (or if necessary arbitrated) that will enable five of the stores that are closing to reopen as FreshCo stores. We need to have these negotiations for a FreshCo agreement running in conjunction with the reopener negotiations as there will undoubtedly be issues that need to be addressed at both tables.

We would then use February 7 and 8 to exchange proposals for the reopener negotiations and fully explore each other's positions. I expect that both parties would want a few days to assess each other's proposals before resuming negotiations, so we should schedule another set of dates when we meet.

I hope you will agree to this approach. I am pleased that bargaining will now commence so that we can address important issues that are facing the company and your members. I am optimistic that with hard work on both sides, we can conclude agreements that will best serve us all going forward.

Yours truly,

A handwritten signature in black ink, appearing to read "Dave Fearon".

Dave Fearon
Senior Vice President Labour Relations & IHM
Sobeys Inc.

Cc: S. Naldrett; R. Mundel; D. Hill; T. Roper; K. Thorne



WE FIGHT FOR FAIRNESS

Ivan Limpricht, President & Kim Novak, Secretary-Treasurer

January 25, 2018

Sent Via E-mail

Mr. Dave Fearon
Senior VP, Labour & Employee Relations
Sobeys West dba Canada Safeway ("Sobeys")
115 Kin Street
Stellarton, NS B0K 1S0

Dear Mr. Fearon:

I write in response to your letter of January 24th.

We are prepared to meet with your committee at our offices on February 1, 7 and 8 but I would like to clarify the purposes of these meetings.

As I have stated previously, we need to be fully informed of all decisions made by the company which will have a material effect on Sobeys' operations in British Columbia including: the plan to open FreshCo stores in BC; the plan to close stores in BC; and, plans in respect of Thrifty Foods. We expect to be provided with all the detail that exists about the company's decisions.

And of course we look forward to hearing your comments about "current market" conditions and the company's financial situation.

At this time the union is not prepared to discuss process around your FreshCo announcement. The union needs to first hear details of the company's intentions.

The union foresees proceeding first with the tabling of its proposals on February 7th followed by the company's. We agree that after the proposals are tabled, both sides will need some time to consider their positions.

Please let me know if the approach described above is acceptable to the company.

Yours truly,

A handwritten signature in black ink that reads "Ivan Limpricht". The signature is written in a cursive style and is enclosed within a hand-drawn oval.

Ivan Limpricht, President
UFCW 1518

N:/H/C/W//fearon bargaining february 178

January 26, 2018

Via Email

UFCW, Local 1518
350 Columbia Street
New Westminster, BC V3L 1A6

**Attention: Ivan Limpricht,
President UFCW Local 1518**

Re: Safeway Store Closures

I am writing in response to your letter dated January 25, 2018.

Because you previously indicated you were not available February 1, 2018 I scheduled other matters on that day. We are available to meet February 7 and 8 and agree to the Union's suggestion that the Union proceed first tabling its proposals on February 7 following a presentation by the company of its financial and operating status.

The company has fully informed the Union of its decision concerning store closures. There are ten stores which the company intends close. The company plans to open discount banner stores only if the parties can agree to an appropriate discount banner collective agreement. If this does not happen there will be no discount stores opened in BC.

The company has fully informed the Union of its decisions regarding Safeway operations in BC and will continue to inform the Union of any further decisions affecting Safeway operations in BC if and when such decisions are made.

We look forward to meeting with the Union on February 7, 2018.

Sincerely,



Dave Fearon
Senior Vice President - Labour Relations and IHM
Sobeys Inc.

cc S. Naldrett; K. Thorne; D. Hill



WE FIGHT FOR FAIRNESS

Ivan Limpricht, President & Kim Novak, Secretary-Treasurer

October 13, 2017

Sent Via E-mail

Mr. Dave Fearon, Senior VP
Labour & Employee Relations
Sobeys West Inc.
115 King Street
Stellarton, NS B0K 1S0

Dar Mr. Fearon:

As you know, I recently assumed responsibility for the Union's response to Sobeys' attempt to rely on LOU #7 in respect of the 20 stores, later changed to 19, you identified in earlier correspondence.

As you should know, UFCW 1518 has not refused to hold discussions under LOU #7. In earlier correspondence we indicated that we would likely be available to meet with the company in September. We then exchanged views regarding our respective positions.

Without prejudice to our position on the legality of Sobeys' attempt to rely on LOU #7, our view that an arbitrator under LOU #7 is without jurisdiction to entertain your combined notice of Quarterly Reviews for multiple stores or any other position we may take or relief we may seek, we are prepared to meet with Sobeys to discuss the individual performance of the identified stores in accordance with the express provisions of LOU #7.

For us to be able to begin those discussions and as contemplated by the Collective Agreement, we will require that Sobeys provide us with full financial disclosure so that when meetings do take place they are both meaningful and substantive.

Therefore, we request the following financial disclosure as soon as possible and, in any event, before any meetings are scheduled.

1. Condensed profit and loss statements for each of the stores from 2013 to date, by week or bi-weekly, whichever is more convenient for you.
2. Any records provided by Canada Safeway to Sobeys, prior to the purchase of Safeway, about the actual or forecasted economic performance of each of the stores.

-
3. Labour-based costs for each of the stores for the period 2013 to date including sales per man hour by department and store; average hourly rate by department and store; and average ring (basket size) by department and store.
 4. Shrink results by year from 2013 to date by category, department, for each store.
 5. Records relating to any payments or contributions made by suppliers or merchandisers arising from the placement, sale or price of the goods at the store (such as payment for shelf space, payment as a result of sales targets, or price reductions through merchandising programs).
 6. Data from 2013 to date describing all warehousing, transportation, rental or other charges or back charges for each of the stores you have identified.

We may seek additional financial disclosure before or after the commencement of discussions.

We will be sharing this information with both the experts we retain and our legal counsel so that we can obtain a better understanding of the economics of your request to review the performance of the stores in question as well as obtaining from them the best possible advice.

Since the purpose of LOU #7 is to discuss stores that are experiencing "financial difficulties or whose continued viability is questionable", we trust that you have identified **all** the stores in the province that are presently experiencing difficulties or whose continued viability is questionable. We may seek to compare the stores not raised by you to demonstrate that the stores you have identified are in no worse financial difficulty than other stores the company has not identified. Also, in the future, if the company seeks to place any other stores in the LOU #7 process, we expect the company will be able to demonstrate that the store's financial circumstances have materially changed from today's date.

Further, the Collective Agreement provides that the parties will "review the competitive impact of other retailers on the company's business". So, please provide us the following documents prior to the commencement of discussions.

7. The competitors alleged to be having an impact on the store.
8. Documents relating to the alleged impact on each of the stores by each competitor.

As well, in advance of the commencement of discussions it would be helpful for us to have your answers to these questions.

1. Which measures can be taken within the Collective Agreement?
2. What are changes to the Collective Agreement you wish to bargain, if any.

Further, we will require that you provide us with the contact information for all employees at each of the stores identified including mailing addresses, email addresses and phone numbers. Please provide that information immediately so that we can begin consulting with our members at those stores.

As well, please let us know how you envision the parties dealing with such a large number of different negotiations involving separate meetings of the employees from each of the stores.

We also want to let you know in advance that we will require the process to be transparent. We will be keeping our members and the public fully informed about the nature and content of the discussions.

Finally and to avoid any confusion, while we are prepared to meet and commence discussions on a without prejudice basis, the Union will be continuing to dispute the legality of Sobeys' actions in respect of the identified stores.

Yours truly,



Kim Novak, Secretary-Treasurer
UFCW 1518



123 Foord Street.
Stellarton, NS B0K 1S0
(902) 752-8371

October 18, 2017

SENT VIA E-MAIL

Ms. Kim Novak
Secretary Treasurer
UFCW 1518

Hi, Kim...

Thank you for your letter dated October 13, 2017.

You say in your letter that "UFCW 1518 has not refused to hold discussions under LOU #7". I think if you carefully review the correspondence you will see that Local 1518 has been consistent in its position that LOU #7 has no application and that it is not prepared to meet under the LOU (see Ivan Limpricht's letter dated July 17, 2017). Rather the union has proposed "without prejudice" meetings.

As well, I am having trouble accepting your statement that you require financial disclosure "to be able to begin those discussions and as contemplated by the Collective Agreement..." when you disavow the applicability of LOU #7 altogether. Either the Union is prepared to begin discussions under LOU #7, in which case we would provide the same type of financial information relating to the stores as has been provided in the past, or the Union is not. If the Union is not prepared to meet under LOU #7, then we will proceed to arbitration before Mr. Ready as soon as possible to resolve the matter under LOU #7.

Given what we have experienced so far, you can understand my skepticism about entering into a process outside of LOU #7 that provides no mechanism for resolution, failing agreement. Your statement that you intend to keep "the public informed about the nature and content of the discussion" simply underscores my skepticism. The public disclosure about the losses being sustained by the listed stores and the discussions about the viability of our stores will simply hurt our business further, which is not in the interests of the company or your members.

In answer to a question raised later in your letter, the listed stores are not the only stores in the province that are experiencing financial difficulties, but are 19 stores in the worst financial difficulty.

Eat better. Feel better. Do better.



As I said to Ivan Limpricht in my letter of July 19, 2017:

"It is now over a month since we sent you our notice to engage in the quarterly review process for the identified stores that are in financial difficulty, and we are no further ahead. Local 1518 takes the position that the quarterly review process is not available and refuses to meet under that process."

It is now 4 months since we sent you our notice, and we are still no further ahead.

Kim...please let me know by return letter whether you will meet under LOU #7 to see if we can agree on changes that are required, and if we cannot agree have the matter resolved by Mr. Ready under LOU #7.

Sincerely,

Dave Fearon

Senior Vice-President
Labour & Employee Relations, Sobeys Inc.



WE FIGHT FOR FAIRNESS

Ivan Limpricht, President & Kim Novak, Secretary-Treasurer

October 25 2017

Mr. Dave Fearon, Senior VP
Labour & Employee Relations
Sobeys West Inc.
115 King Street
Stellarton, NS B0K 1S0

Dear Mr. Fearon:

Thank you for your letter of October 18, 2017.

I believe my last letter was very clear. However, a number of statements in your letter indicates that you may have misunderstood what I was saying to you.

In my letter, I indicated that the Union is prepared to meet to commence discussions under LOU #7. However, we are doing so without prejudice to our position that LOU #7 is inapplicable and Vince Ready is without jurisdiction, as well as any other legal position we may take. This is not suggesting a process outside of LOU #7 as you say. Instead, it is a very practical solution that allows for the commencement of the discussions under LOU #7 without the necessity of complex and timely litigation before we even start the discussions.

Further, our letters have been clear that the Union has not refused to meet. It is notable you do not quote any portion of Ivan's letters, or my letter, stating that the Union is refusing to meet. The letters speak for themselves and, with respect, do not say what you claim they do.

As to your suggestion that the process should not be open and transparent, our views will not change on this point. We will be keeping our members and the public fully informed. Sobeys has made no secret as to its claim that the nineteen stores are experiencing financial problems, so it is difficult to take your concerns about openness and transparency at face value. Indeed, far from causing harm, if Sobeys comes to the discussions in good faith, with a genuine desire to work with us, engaging the members and the public will provide an opportunity for Sobeys to grow its business not harm it.

To be clear, we are not suggesting that we will disclose confidential financial information provided to the Union and its advisors. The collective agreement has placed that limitation, and that limitation alone, on the information that can be provided to the members and the public.

In your letter, you say that there are other stores experiencing financial difficulties. We trust that what you are saying is that there are no other stores that presently meet

Sobeys' claimed requirements for LOU #7 to apply. If that is not what you are saying, please identify all stores which Sobeys is claiming presently meets the requirements for LOU #7 to apply as this is necessary information for us to have.

As to financial disclosure, each circumstance is unique. The claims being made by Sobeys now are in no way similar to the claims that were made in the earlier quarterly reviews with Canada Safeway. We look forward to receiving the financial information we have requested. If you refuse to disclose any of the specific information we have sought, we expect that you will provide us with a substantive explanation for that refusal (something more than in an earlier unrelated quarterly review the information was not disclosed) so that we can see if there is any merit to your refusal.

As well, please also provide the following information in advance of the commencement of the discussions:

- (1) Any planned or potential material changes in how Sobeys will operate the stores at issue;
- (2) Any planned or potential new stores (Safeway or Safeway Extras) or new banner stores in the communities for any of the stores at issue;

A number of newspaper articles such as in the September 14, 2017 edition of the *Globe and Mail*, indicate that Mr Medline is considering expanding the Freshco banner outside of Ontario, including converting existing stores to the Freshco banner. So, we are seeking

- (3) Any planned or potential conversions to the Freshco banner (or any other banner) for the stores at issue.

Finally, I look forward to receiving the other information asked in my earlier letter to you before the commencement of the discussions.

Yours truly,



Kim Novak, Secretary-Treasurer
UFCW 1518