

BRITISH COLUMBIA LABOUR RELATIONS BOARD

RADISSON BLU VANCOUVER AIRPORT HOTEL AND
MARINA

(the “Employer”)

-and-

UNITE HERE, LOCAL 40

(the “Union”)

PANEL: Gurleen S. Sahota, Vice-Chair

APPEARANCES: Susanna Allevato-Quail and Joy Wahba,
for the Union
Kevin Nanne and Priya Thind, articulated
student, for the Employer

CASE NO.: 2023-001186

DATES OF HEARING: September 8 and 13, 2023

DATE OF DECISION: May 13, 2024

DECISION OF THE BOARD

I. **NATURE OF APPLICATION**

1 The Union alleges the Employer, and in particular, Sukhminder Rai, one of the
owners of the Employer, breached Section 6(3)(d) of the *Labour Relations Code* (the
“Code”) by making certain promises to employees and also by threatening employees.
The Union also alleges that the Employer breached Sections 11 and 27 of the Code by
negotiating terms and conditions of employment directly with its employees rather than
the Union.

2 The Employer denies it breached the Code.

3 I held an oral hearing on September 8 and 13, 2023. I have considered, but not
exhaustively recited, all of the evidence, and submissions the parties provided.

II. **BACKGROUND AND EVIDENCE**

4 The Employer operates a hotel providing rooms and event spaces (the “Hotel”).

5 The Union is certified to represent the Employer’s employees at the Hotel. The
Employer and the Union are parties to a collective agreement which expired on June 30,
2018.

6 On May 3, 2021, the Union commenced a lawful strike, which is still ongoing as of
the date of this decision.

7 The Employer also has a restaurant called the Deck, which is located in a separate
building from the Hotel (the “Deck”). Prior to the strike, bargaining unit members
performed restaurant functions and food preparation for the Employer at the Deck.

Union’s witnesses

8 At the hearing, the Union called six witnesses: Kiranjit Dhillon, who had worked as
a housekeeper for the Employer; Harshbir Bhullar, who worked in the Employer’s kitchen;
Ravinder Binning and Pardeep Thandi, who also worked for the Employer in
housekeeping; Ravinder Nijjer, who worked in the Employer’s maintenance department;
and Michelle Travis, who is employed by the Union as a Research Director.

9 The Union called Dhillon as its first witness. She had worked in housekeeping
since 2003 but the Employer terminated her employment during the strike. She said she
had only spoken to Rai on one occasion.

10 Dhillon said that she was on the picket line with other employees as Rai was driving
by. She said Rai asked the picketers, including Dhillon, why they were sitting outside for
so long and said that they should come inside and talk to him. According to Dhillon, Rai

said that he knew everything was expensive, that he could give the employees “very good pay rate[s] and benefits”, and that he was ready “to give them everything”. She also said that Rai mentioned that there were some ladies who are going to retire and that they did “not need to come inside”. According to Dhillon, Rai said that he would “pay some money to those ladies”, and that these “ladies c[ould] enjoy their retirement and spend time with their grandchildren”.

11 Travis, who is, as noted above, a staff employee with the Union, later testified that Dhillon contacted her about Dhillon’s interaction with Rai after it happened and that the incident occurred around the end of June 2023. During cross-examination, Dhillon stated that Rai never threatened to fire her though Rai did say anyone who had already been terminated could not come back to work. In re-examination, Dhillon confirmed that her employment had been terminated.

12 The Union’s second witness was Bhullar. She worked in the Hotel kitchen as a second cook and had worked at the Hotel and its predecessors for 28 years. She testified that she only had one interaction with Rai where he approached her and Binning on the picket line. He asked them why they were there and said that they need to look for a new job as he did not have a job for them. When Bhullar asked about the Hotel kitchen, Rai responded that there is no longer a kitchen and that he was not going to open the kitchen again. According to Bhullar, Rai left, came back a few minutes later, showed Bhullar pictures on his phone of the kitchen under construction and reiterated that there would no longer be a kitchen, that there were no jobs in the kitchen anymore, and that Bhullar could work in housekeeping. In her subsequent testimony, Travis said that Bhullar contacted her after this interaction and that the interaction occurred in approximately mid-June 2023. During cross-examination, Bhullar stated that Rai never threatened to fire her though he did say there were no more jobs for those who worked in the kitchen.

13 The Union’s next witness was Binning. She said she worked as a room attendant in housekeeping. She testified that she had two interactions with Rai. Binning testified that in approximately November 2022, she, along with four other picketers, were on the picket line when Rai approached them with coffee and donuts. He then asked the picketers to come inside and said that he would give them jobs and was ready to hire them. When the picketers asked Rai why he was not telling this to the Union, Rai replied that he had tried calling the Union many times and that the Union was not ready. He then asked one of the picketers, here referred to as AB, who was of retirement age, why she did not stay home and take care of her grandchildren. I have anonymized AB with random initials as she did not testify in this proceeding. When AB responded that she needed money, Binning testified that Rai said he would give her money. Rai also said that he would not be re-hiring anyone who was terminated and that anyone who worked in the Hotel kitchen would also need to find new jobs as the kitchen was now closed.

14 Binning testified that her second interaction with Rai was two or three months later when she and Bhullar were on the picket line together. Bhullar asked about the Hotel kitchen and Rai said there was no kitchen anymore. He also showed pictures of the

kitchen on his phone to confirm that the kitchen was closed. In cross-examination, Binning acknowledged that Rai never threatened her.

15 The Union's next witness was Thandi. Thandi worked as a housekeeper and had been employed at the Hotel and one of its predecessors for approximately 27 years. She testified that she has been attending the picket line regularly and has also been involved in making many public statements to the press on TV and radio regarding the strike on behalf of the employees and the Union.

16 Thandi said she has had several interactions with Rai on the picket line. Of note was one particular interaction where Thandi said she had been blowing a plastic horn on the picket line near the main entrance to the Hotel. She testified that Rai was driving by in his vehicle and stopped his vehicle. He then rolled down his window and commented to Thandi about playing the horn. He said she was playing the horn very well, that his daughter's wedding was going to be in two years and that she could come to the wedding and play the horn there. Thandi testified that this comment was incredibly insulting given the cultural connotations of playing a horn at a wedding. She said that playing a horn at a wedding is a very shameful task for a woman to do in Punjabi culture and said that she could not express how much hurt that comment caused her. In her testimony, Travis said that she saw Thandi when this incident occurred and that it was near the end of July 2023.

17 Thandi testified that on one other occasion, Rai was hosting a party at the Deck and asked Thandi where her horn was because there was an audience for her that evening. Travis also recounted this incident in her testimony and said it occurred on approximately August 11, 2023. In its re-direct of Thandi, the Union produced the same type of plastic vuvuzela horn Thandi played on the picket line and asked Thandi to blow into the horn in the same manner as at the picket line in order to describe the sound to the Board. Thandi also described an interaction where Rai suggested she sell samosay or hot dogs to make money. In cross-examination, Thandi acknowledged that Rai never threatened her.

18 The Union's next witness was Nijjer. He said he had worked in the maintenance department at the Hotel for 30 years. He testified that he knows Rai through a mutual family connection and once ran into him at a wedding reception. He said he does not hang out socially with Rai but had run into him in the community a couple of times. He said he had also interacted with Rai on the picket line numerous times.

19 Nijjer testified about one particular interaction where he was on the picket line with several other picketers and one of the picketers was looking into the Hotel with a pair of binoculars. Nijjer said that Rai came up to the hedges near them, waved at him, asked him to come inside the Hotel, and said that Nijjer did not need binoculars to look inside. Nijjer did not recall if he was using binoculars that day but acknowledged he might have been using binoculars. Nijjer said he told Rai to "let them be" to which Rai replied with words to the effect of, "[Nijjer], the day after I settle, you know, I can fire you." Nijjer said he asked if that was a threat to which Rai replied, "No, I'm just saying."

20 Nijjer said he certainly perceived Rai's comments as a threat and said that because Rai was the owner of the Hotel, he could only assume Rai's comments were true. Nijjer also said the only reason he currently holds another job is because he could be fired from the Hotel at any time, though he acknowledged in cross-examination that he also needed this other job to pay the bills.

21 The Union's final witness was Travis, who works as a Research Director for the Union. She testified as to the timelines of various interactions the witnesses had with Rai where these witnesses approached Travis after their interactions with Rai. The relevant details of this testimony are noted above, in relation to each respective witness. Travis also testified that the Employer made a bargaining proposal to the Union on August 15, 2023.

Employer's witness

22 Rai was the only witness for the Employer. He confirmed that he is one of the owners of the Hotel and has been so since December 13, 2019. He acknowledged that he talked to the picketers all the time and that he has often spoken to them in Punjabi. Rai expressed his displeasure with employees making public statements about him, his company, and the strike on Punjabi radio stations.

23 Rai acknowledged that since becoming an owner, the Employer had terminated the employment of approximately 140 Hotel employees as per the terms of the Collective Agreement after they had been laid off for more than 12 months. He said he did not know and nor could he recognize which employees had been terminated and which had not.

24 Rai did not recall any specific interaction with Dhillon but said that he never bargained directly with the employees. He said he would tell workers on the picket line that they needed to get their whole Union group together to discuss their concerns and that it was nothing more than that.

25 Rai also testified about the two interactions with Thandi where he made comments about her playing the horn. During the first interaction, he said he was simply complimenting her and said that he would love for Thandi to perform at his daughter's wedding in a couple of years. In cross-examination, he acknowledged that he had not spoken to his daughter about music at her wedding but agreed his daughter would not mind someone playing a plastic blow horn at her wedding.

26 Rai said the second interaction with Thandi occurred on August 11, 2023. He said there was an event at the Deck and that he simply told Thandi that today was the day she needed to be playing the horn as there was a greater audience there. Rai also acknowledged that he was aware of the cultural connotations of playing a horn at a wedding, but he reiterated that he was simply complimenting Thandi and thought she would feel good about his comments. He denied knowing that she took offence or that there was any reason for her to take offence.

27 Regarding the interaction with Nijjer, Rai said he saw Nijjer and two other individuals looking into the Hotel with binoculars. Rai said he stopped his truck by Nijjer, told Nijjer to come inside the Hotel, and said that he (Rai) was not hiding anything and that they did not need to use binoculars. Rai said he could not recall the exact conversation and does not remember telling Nijjer that he could be terminated when he came back. Rai also said that he has a distant familial relationship with Nijjer through marriage.

28 Regarding conversations with picketers about the kitchen, Rai acknowledged that he would tell kitchen staff on the picket line that there were no more jobs for them – he said he did this on a weekly basis. He said he told them that he was not going to be opening the Deck again. He said he was being honest with his employees and that he did not think there was anything wrong with telling them the truth.

29 When asked if he ever told picketers that he did not need them anymore, Rai responded that he only said there was not a kitchen anymore and that they would have to go into different positions like housekeeping. For those for whom there were no jobs, Rai said he was not sure what to do with them. In cross-examination, he acknowledged that there was still going to be a small functioning kitchen with two cooks (first cook and second cook) but that the Deck would not be reopened. He said he was not in the business of losing money and that he had offered to lease the Deck to the picketers, including those who testified at the hearing, for one dollar. He said anyone who leased the Deck would fail.

III. POSITIONS OF THE PARTIES

Union

30 The Union says the Employer has breached Sections 6(3)(d), 11, and 27 of the Code. The Union acknowledges that employers can speak to picketers but it cannot be done in a manner that is a breach of the Code. The Union says the Employer breached Section 6(3)(d) in two ways: (1) through offers to pay people to retire as was done with AB, and (2) through threatening and intimidating behaviour as was done with Bhullar, Dhillon, Thandi, and Nijjer.

31 The Union says when Rai told Nijjer he could fire him, that was a breach of Section 6(3)(d). The Union says the interactions with Bhullar and Dhillon about not having a kitchen anymore were also breaches of Section 6(3)(d). The Union says the interactions between Rai and Thandi were also a breach of Section 6(3)(d) as they were insulting, harassing, and intimidating. The Union says Thandi has been quite visible during the strike and had done press interviews and a press conference and has therefore become a special target of Rai's ire.

32 The Union also says the Employer breached Sections 11 and 27 of the Code by attempting to negotiate terms of employment with employees directly and thereby attempting to undermine the Union's exclusive bargaining authority. As examples of this,

the Union cites the incident where Rai told Binning, Dhillon, and the other picketers to come inside and talk to him and that he was ready to give them jobs.

33 The Union also cites the interaction between Rai and AB where he told her that she should stay home and take care of her grandchildren and that he would give her money, as both an example of making a promise contrary to Section 6(3)(d) and also as an example of attempting to negotiate directly with employees contrary to Sections 11 and 27. The Union also points out that the interaction between Rai and AB happened in November 2022 and the Employer did not provide the Union with a bargaining proposal until August 2023. Further, the bargaining proposal still included some kitchen staff though significantly fewer staff than before.

Employer

34 The Employer denies it breached the Code. It says there is no evidence that Rai threatened bargaining unit members to leave the Union or attempted to compel or induce them to leave the Union. The Employer notes that AB did not testify and there were no specifics of what this alleged retirement pay would be and that rather, this was simply a discussion about a broader bargaining proposal that had yet to come. The Employer denies breaching Sections 11 and 27 and says it is the only party who has made efforts to conclude a collective agreement and only the Employer has provided any bargaining proposal to date.

35 Regarding the interaction with Dhillon and Binning about there being no kitchen anymore, the Employer denies that Rai told the picketers that they needed to find other jobs and in fact offered them different forms of employment with the Employer such as housekeeping.

36 Regarding the interaction with Nijjer, the Employer says it is important to note that the comment Rai is alleged to have said is, "you know, I can fire you." The Employer says this was not a direct threat to fire or terminate and that even if Nijjer took it as a threat, Nijjer was experienced enough to know the protections a unionized work environment provides. Further, the Employer says that when Nijjer directly asked Rai if it was a threat, Rai clarified and said, "No, I'm just saying."

37 Regarding the interaction in November 2022 with Dhillon, the Employer says that was not an invitation to bargain with individual bargaining unit members but rather, it was about getting everyone including the bargaining unit committee and Union leadership to resolve these issues. Further, no Union witness alleged that Rai provided them with any documents pertaining to bargaining or any other specific terms or conditions of employment. The Employer says that because there have been no bargaining sessions with the Union and it is only the Employer who has even provided a bargaining proposal, it is understandable that Rai may not be familiar with who would and would not be present at the bargaining table.

38 Regarding the interactions with Thandi, the Employer says none of those interactions are a breach of the Code and specifically, Section 6(3)(d). The Employer says

whether Rai's comments about playing a horn at his daughter's wedding were a compliment, or an immature joke that was distasteful in nature, neither are a breach of the Code.

39 The Employer reiterates that at no time did the Employer attempt to compel or induce anyone to refrain from continuing to be a member of the Union.

IV. ANALYSIS AND DECISION

40 The Union alleges the Employer breached Section 6(3)(d) of the Code in relation to certain interactions Rai had with picketers, and Sections 11 and 27 of the Code by bargaining directly with employees. The Union also says the Employer breached all the noted sections of the Code by offering certain employees, including AB, payments to retire from employment with the Employer. I will first address the allegations specifically with respect to Section 6(3)(d). This section reads as follows:

6 (3) An employer or a person acting on behalf of an employer must not

* * *

(d) seek by intimidation, by dismissal, by threat of dismissal or by any other kind of threat, or by the imposition of a penalty, or by a promise, or by a wage increase, or by altering any other terms or conditions of employment, to compel or to induce an employee to refrain from becoming or continuing to be a member or officer or representative of a trade union

41 In *Emergency and Health Services Commission*, BCLRB No. B197/2011 ("*Emergency and Health Services*"), the Board noted that Section 6(3)(d) contains a "proscription against intimidation" and provided detail on this as follows:

The proscription against intimidation is found under Section 6(3)(d). Intimidation includes the use of threats for the purpose of controlling or influencing conduct: *Excell Agent Services Canada Co.*, BCLRB No. B172/2003. Section 6(3)(d) prohibits the use of intimidation as a means to compel or to induce an employee to refrain from becoming or continuing to be a member, officer or representative of a trade union. The test applied is objective; what would be the impact on a reasonable employee in the circumstances of this particular workplace?

(para. 98)

42 In *7-Eleven Canada Inc.*, BCLRB No. B91/2000 ("*7-Eleven*"), the Board also noted that an assessment under Section 6(3)(d) of what may constitute intimidation is contextual:

... Words take meaning from their context. In the context of Section 6(3)(d) the specific kinds of “intimidation” or “threats” to which reference is made all involve pressure being brought to bear directly upon the employee, whether it takes the form of hostile action, such as intimidation, dismissal, threats of dismissal, or the imposition of a penalty, or beneficial changes such as wage increases. Conferring benefits or making promises to do so may be equally effective in bring [sic] home the employer’s message and controlling an employee’s action. The grant of a benefit may contain an implicit threat, for a benefit that is granted unilaterally may just as easily be withdrawn.

(para. 224)

43 The Board has further noted that:

In determining whether certain conduct amounts to a [sic] unfair labour practice, the Board considers the relative power of the parties. Thus, it is more likely that a violation will occur when pressure is being exerted by an employer or a person who exercises employer-like influence[.]

(*North Shore Association for the Mentally Handicapped*, BCLRB No. 474/99, para. 55)

44 The Union says a number of Rai’s interactions with picketers are breaches of Section 6(3)(d), including comments the Union alleges Rai made to Nijjer, to the Hotel kitchen staff, and to Thandi. I note, with respect to these allegations, that many of the employees testified that they did not feel threatened by Rai’s comments. I also note that the employees are still on strike and continuing to picket, despite Rai’s actions. However, as noted above, the Board has stated the test for finding a breach of Section 6(3)(d) is objective – I must determine what the impact of Rai’s actions would be “on a reasonable employee in the circumstances of this particular workplace” (*Emergency and Health Services*, para. 98). Given this, while the employees may have stated they subjectively did not feel threatened, I have considered the objective impact of Rai’s comments in the specific context of this workplace, in determining whether these comments constitute a breach of Section 6(3)(d).

45 I turn first to the allegations regarding Nijjer. Nijjer testified he was on the picket line when Rai said he could fire him the day after the strike ended. Nijjer said that he took that comment as a threat. Rai testified that he does not recall making that comment. However, Nijjer’s recollection was clear and not exposed to any inconsistencies on cross-examination. Accordingly, I accept that Rai made that comment to Nijjer. I am also not persuaded that Rai, as the owner of the Hotel, was “just saying” this comment, and find he was in fact threatening Nijjer’s employment while Nijjer was on the picket line and supporting the Union. In this context, I find that this comment is a breach of Section 6(3)(d) of the Code. While Rai did not explicitly tell Nijjer to discontinue his Union membership, I

find his comment, in threatening dismissal while Nijjer was on the picket line, has the impact of exerting pressure on Nijjer to this effect.

46 With respect to the interaction with Bhullar and Binning regarding the Hotel kitchen, Rai does not deny telling picketers that the kitchen was closed. In fact, Rai testified that he would regularly tell the employees on the picket line that there was no kitchen anymore and no jobs for the employees in the kitchen who previously worked there. Rai said he was being honest and that he did not think there was anything wrong with telling them the truth. However, during cross-examination, he acknowledged that the Employer would continue operating a very small kitchen with a first cook and second cook.

47 I accept that by telling employees that there was no longer a Hotel kitchen and no jobs for them there, Rai was implying to them that there may no longer be work for them with the Employer, despite any possibility they could have moved to housekeeping. These comments are problematic. Firstly, the comments were not completely true as evidenced by the Employer's bargaining proposal in August 2023 which included some kitchen staff, namely a first cook and second cook. Secondly, Rai made these comments to employees while they were on the picket line. While Rai says he was just being honest, I am not persuaded he was simply conveying operational realities to employees, especially when the information was inaccurate and also had not yet been conveyed to the Union.

48 While the employees acknowledged they did not feel threatened by Rai, objectively, the inference I draw from the totality of evidence is that through his comments, Rai was attempting to dissuade the employees from continuing to picket and support the Union, including through their membership by making what can be construed as threats in relation to their employment status. In effect, the manner and frequency in which the comments were made leads me to find Rai repeatedly implied that the employees' picketing and ongoing support of the Union was futile because the employees would not have their jobs to return to. In this context, I find the comments amount to intimidation of these employees. The comments could have the impact of compelling these employees to discontinue their support of, and membership in, the Union. Accordingly, I find Rai's comments to the picketers about the kitchen being closed are a breach of Section 6(3)(d) of the Code.

49 With respect to Rai's comments to Thandi, and in particular, the offer to have Thandi to play a plastic vuvuzela horn at his daughter's wedding, I do not accept that Rai meant this offer as a compliment. It is not believable that he would sincerely want Thandi to play a plastic horn at his daughter's wedding. I have also considered Thandi's testimony regarding the negative cultural connotations of playing a horn at a wedding, and in addition, when the horn was played during the hearing, it did not produce a pleasant sound. I accept that this comment was meant to intimidate Thandi.

50 Rai's comments to Thandi may not be a breach of the Code when considered in isolation. Not every insult to a picketer amounts to a breach of the Code. I appreciate that tempers can flare and interactions can get heated during a strike. However, there are limits to what an Employer can say or do. These limits are outlined in the Code. When I consider all of Rai's comments and conduct in context, including the comments to Thandi

about selling samosay or hot dogs to raise money or playing a horn at Rai's daughter's wedding, I infer that Rai was sending a message to Thandi: she needed to find other sources of income because staying on the picket line was pointless.

51 Again, while Thandi testified that she did not subjectively feel threatened by Rai's comments to her, when considering the circumstances objectively, Rai is not simply a manager employed by the Employer – he is one of the owners of the Hotel. I therefore find there was a significant power imbalance present. I also note that Thandi is a member of the Union's bargaining committee, and a vocal critic of the Employer, including in the media. Based on the particular facts of this case, I accept that in this context Rai's comments were intended to pressure Thandi to leave the picket line and quit her job. His comments are a form of intimidation – an attempt to dissuade Thandi from remaining on strike and continuing to support, and be a member of, the Union. Accordingly, I find Rai's comments to Thandi regarding the horn are a breach of Section 6(3)(d).

52 I will now address the Union's allegations specifically involving Sections 11 and 21 of the Code. As noted above, the Union alleges the Employer has breached these sections by bargaining directly with employees.

53 Section 11 of the Code states:

11 (1) A trade union or employer must not fail or refuse to bargain collectively in good faith in British Columbia and to make every reasonable effort to conclude a collective agreement.

(2) If a trade union and the employer have concluded a collective agreement outside British Columbia, it is invalid in British Columbia until a majority of the employees in British Columbia covered by the agreement ratify it.

54 Section 27 of the Code states:

27 (1) If a trade union is certified as the bargaining agent for an appropriate bargaining unit,

(a) it has exclusive authority to bargain collectively for the unit and to bind it by a collective agreement until the certification is cancelled,

(b) if another trade union has been certified as the bargaining agent for the unit, the certification of that other trade union is cancelled for the unit, and

(c) if a collective agreement binding on the unit is in force at the date of certification, the agreement remains in force.

(2) Despite subsection (1) (c) and except if the trade union party to the collective agreement obtains the certification, the rights and obligations that were conferred or imposed by the collective

agreement on the trade union party to the collective agreement cease insofar as that trade union is concerned, and are conferred or imposed on the trade union certified as the bargaining agent.

55 As noted in *British Columbia Automobile Association*, BCLRB No. B498/99, at paragraphs 122-123:

... Section 27 of the Code grants a union the exclusive authority to bargain on behalf of the employees in the bargaining unit. In order to create an environment that is conducive to productive collective bargaining, an employer must accept the union as the employees' representative, not just from a statutory point of view but from a practical perspective as well. Actions of an employer cannot undermine the role of a union.

That does not mean that an employer cannot communicate with its employees during collective bargaining. However the content and timing of communications may run afoul of the principles set out above. An employer is free to communicate a proposal, and the rationale behind the proposal, *after* it has been given to the union and *after* the union has been given a reasonable opportunity to make an informed decision about the offer. To do otherwise would undermine the union and result in bargaining directly with the employees. The communication must be an accurate recitation of the proposal and rationale given to the union.

(emphasis in original)

56 In the present case, the Union alleges that the Employer breached Sections 11 and 27 in two ways: (1) by repeatedly asking workers to come inside and talk to Rai, and (2) by offering retirement payments to workers. With respect to the Union's first allegation, Dhillon and Binning both testified that Rai came to them and said that they should come inside and talk to him. Dhillon testified that Rai said he was ready to give them good pay and benefits. Binning testified that Rai said he was ready to give them jobs.

57 Rai testified that he was referring to the "whole Union group" and not just the employees who were picketing at that time. Neither Dhillon or Binning said that Rai provided them with any documents related to bargaining or discussed any specific terms or conditions of employment. He simply told them to come inside and that he was ready to give them jobs or pay. While the Union says Rai was bargaining directly with these employees, the inference I draw on the whole of the evidence is that Rai was simply inviting all of the employees, including the Union's bargaining committee, to come inside and talk to him and that he was signaling he was ready to settle the labour dispute. Accordingly, I am not persuaded these comments are a breach of Sections 11 or 27 of the Code.

58 I next turn to the Union's allegations regarding the Employer's offers of retirement payments to employees. I note that the only employee who was allegedly offered a retirement payment was AB, who did not testify. However, Binning testified that she was

present during this interaction in November 2022. Binning testified that Rai told AB she should stay home and take care of her grandchildren and that he would pay her money to do so. Dhillon also testified about an interaction with Rai in June 2023 where he also made comments about paying certain ladies to retire and spend time with their grandchildren though she did not mention whether AB was present.

59 Rai did not specifically testify about either of these interactions though he did deny generally that he ever bargained directly with employees. I accept the evidence of Binning. She was forthright in her answers both in direct and cross-examination and given Rai's lack of specificity regarding this particular interaction, I accept that it is more likely than not that he made the comments to AB. To be clear, I accept that Rai told AB she should retire and take care of her grandchildren and that he would pay her money to do so.

60 Rai's comments to AB were made in November 2022. The Employer did not make a bargaining proposal to the Union until August 2023. Further, there is no mention of any retirement payment in the Employer's proposal. The Employer's offer regarding retirement was only made to AB and it was made approximately eight months prior to the Employer's bargaining proposal to the Union. Rai made a specific offer to a specific individual who was of retirement age. I accept that Rai was attempting to bargain directly with a bargaining unit member thereby undermining the Union's exclusive bargaining authority. Accordingly, I find that Rai's offer to AB that he would pay her money to stay home and take care of her grandchildren is a breach of Sections 11 and 27 of the Code.

61 I find this comment is also a breach of Section 6(3)(d) as it was an offer of money to an employee to retire and thereby no longer be a member of the Union. In doing so, I note that Rai made this offer while AB was on the picket line and supporting the Union. As noted above, the Board has found an offer to grant a benefit to an employee can also constitute intimidation or an implicit threat – such an offer may be “equally effective in bring[ing] home the employer's message and controlling an employee's action” (*7-Eleven*, para. 224). I find that was the case here, when considering the context within which the Employer's comments were made. In effect, this offer has the impact of dissuading AB from continuing to picket, and instead, compelling her to retire and discontinue her Union membership.

62 In summary, I agree with the Union that there is no prohibition on employers from speaking to picketers. However, the Employer cannot threaten or intimidate employees while picketing such that it would be reasonable for these employees to quit and thereby cease to be members of the Union. Further, the Employer cannot directly bargain with picketers and make offers to picketers regarding terms and conditions while excluding the Union from these discussions. When considering the context of Rai's actions and comments in this case, I find all of this has occurred.

V. CONCLUSION

63 I declare the Employer has breached Sections 6(3)(d), 11, and 27 of the Code for
the reasons stated above.

64 I order the Employer to cease and desist from further breaches of the Code.

LABOUR RELATIONS BOARD

“GURLEEN S. SAHOTA”

GURLEEN S. SAHOTA
VICE-CHAIR