Case Name:
Mick (Re)

**Daniel Mick, et al. (the "Complainants"), and
Teamsters Local Union No. 155 (the "Union"), and
Canadian Film and Television Production Association
(the "Employer")**

[2012] B.C.L.R.B.D. No. 132

BCLRB No. B132/2012

Case No.: 60851

British Columbia Labour Relations Board

Panel: Bruce R. Wilkins, Vice-Chair

Decision: June 20, 2012.

(38 paras.)

Appearances:

Daniel Mick, for the Complainants.

Michael J. Prokosh, for the Union.

Donald J. Jordan, Q.C., for the Employer.

DECISION OF THE BOARD

I. NATURE OF THE APPLICATION

1 The Complainants say the Union's implementation of an arbitration award by Arbitrator Vincent L. Ready (the "Arbitrator"), *Canadian Affiliates of the Alliance of Motion Picture and Television Producers and Bargaining Council of British Columbia Film Unions*, Ministry No. A-164/06, [2006] B.C.C.A.A.A. No. 246, dated September 20, 2006 (the "Ready Award"), is in violation of Sections 5, 6, 8, 9, 10, 12 and 27 of the *Labour Relations Code* (the "Code").

II. BACKGROUND FACTS

2 The Complainants are members of the Union who work in security in the film industry. In early 2008 the production they were working on entitled "Space Buddies" was certified by the Union. Further factual background to this matter is set out in *Chuck Greig*, BCLRB No. B24/2011 ("*Greig*"). In *Greig*, I found the Union's decision to implement the Ready Award in the manner it did was not in violation of Sections 10 and 12 of the Code. The Complainants submitted one of a number of concurrent applications which arose out of the same or similar facts. A decision has also been rendered in *Vittorio DeFrancesco and Andrzej Wrzosek*, BCLRB No. B200/2011 ("*DeFrancesco*").

3 In *Greig*, I made the following findings, among others:

> Had Local 155 immediately implemented the Ready Award upon its release, Greig would have been placed in Group 2 because he was a Permittee at the time. There is no evidence which would establish as a fact that, had the Union immediately implemented the Ready Award in 2006, Greig would later have been put into Group 1 when he became a full member of Local 155 in 2008. Neither the Ready Award nor the Clarification stipulated that future full Union members would automatically be placed into Group 1. In fact, the Ready Award specifically says that Permittees who were placed in Group 2 would become members of the Union. I conclude therefore, that under the Ready Award, full membership in the Union does not necessarily mean inclusion in Group 1.
>
> * * *
>
> I find the Union's decision to place Greig in Group 2 was not discriminatory or in bad faith because the Release Date is one which the Union used to differentiate between drivers based upon a driver's status on a particular date, not based on personal characteristics or personal biases towards any particular driver. I find this is demonstrated in the fact that not all Group C members were put into Group 2, but only those who were Permittees as of the Release Date. The fact that Greig and others who became Local 155 members after the Ready Award was rendered were not placed in Group 1 is not a prohibited ground of discrimination, but is a distinction based upon a neutral criterion-membership status as of the Release Date. Lastly, while the date of the Ready Award provided a means of differentiating between drivers, it did so on the basis of that person's objective membership status at that point in time, and did not do so upon any discriminatory ground which is prohibited. (paras. 42 and 47)

4 In *Chuck Greig*, BCLRB No. B136/2011 (Leave for Reconsideration of BCLRB No. B24/2011), *Greig* was upheld. As a result of this, I wrote the following letter dated August 17, 2011 to the parties concerning the Complainants' application:

> A reconsideration panel of the Board (BCLRB No. B136/2011) has recently upheld my Decision in *Chuck Greig,* BCLRB No. B24/2011 ("*Greig*") (copies enclosed). This means the reasoning in the *Greig* decision has been upheld and stands as good policy under the *Labour Relations Code* ("the Code") in the facts of that case.
>
> I now invite the applicants to bring to my attention any difference in your case from the *Greig* case with respect to Sections 10 and 12 of the Code which you feel would lead to a possibly different result in your case.
>
> I am aware in your case numerous other provisions of the Code have been referred to, notably Sections 5, 6, 8, 9 and 27 of the Code. I already have submissions on those Sections of the Code and I do not require any new submissions on them. I will adjudicate those provisions of the Code when I receive your further submissions concerning Sections 10 and 12 of the Code.
>
> The Union will be copied on this letter and will be given a right to reply to your submissions. You will then have a right of final reply. ...

5 One difference between this matter and the matters of *Greig* and *DeFrancesco* is the Complainants' application alleges violations of the Code other than under Sections 10 and 12.

6 The Complainants have submitted some transcripts of the Union's General Membership Meeting which occurred on October 4, 2009. I have included a portion of these below. I note that all emphasis and commentary has been added by the Complainants.

> Bruce Scott: "There are about sixty people that have come in here and they've been in here for three years, so are you going to tell them to get out of the Union now?"
>
> Brad Swannie: "They're still in the Union."
>
> Oullette: "They would be in Group 2 instead of Group 1"
>
> Bruce Scott: "*Our Lawyer advised us that if* ***those people were already in Group 1****, and they've been here for two-and-half to three years and you're gonna tell them to* ***get out*** *(of Group 1)* ***and get intoGroup 2*** *that you're gonna have lots of litigation - lots of lawsuits*" (Emphasis added) (parentheses added for clarity)
>
> 01:03:10 John Webster: "Do I have a case to complain about discrimination?" (Because members that were certified were working ahead of him)
>
> Bruce Scott: "You wouldn't have a lawsuit *because the Union made a decision not to do the groupings*." (Emphasis added) (parentheses added for clarity)

* * *

00:41:10 Bruce Scott: *"The appeal that came from the members was that they wanted to be protected-they want their jobs protected from the people that are new that are coming in-what better way of doing this than to form the Groups... there is no point in allowing new people to come in and have access to that little bit of work." ...*

...

00:46:00 Bruce Scott: "We were approached by drivers to do this grouping thing. ..."

...

00:50:35 Ken Marsden: *"Who is the group of Drivers?" (That approached the Union on groupings)*

Bruce Scott: "*They were out there working alongside people that had been certified. A couple of guys were saying-throwing it in their face that they didn't have to get their 180 days*, but also concerns in the future; Why would these people that got certified get lumped into the same group and compete with us for *our work* and should we close it off, and can we do it by forming the groupings?"

...

00:56:50 Bruce Scott "Let's be honest. We are trying to protect our jobs, and I know some of you guys just got sworn in today and that may seem harsh for you to hear... we are trying to keep them out as long as we can." (Emphasis added for clarity)

* * *

00:35:50 Bruce Scott: "The part that we don't like, and I'm sure we can all agree, is that on a certification you have to take all those people in and they are automatic members ... The labour code says they automatically become members ... They jump the queue ... and now essentially can take your job from you-*in a full name request scenario*-they can take your job from you." (Emphasis added)

...

00:42:50 Bruce Scott: "- If you draw the line in the sand at September 20, 2006 ... form the groupings from that date?"

Oullette: "Yeah"

* * *

01:05:45 Ross Kulak: "How are you going to decide?" (The grouping date)

Bruce Scott: "I value the opinion of the lawyer... there's 180 driver permittees out there and we're trying to keep those 180 people from getting on the main list."

...

Bruce Scott "How do we un-ring the bell?"

7 A Union News Bulletin in June 2009 contained a message from Bruce Scott, who was, at that time, the Secretary Treasurer of the Union. It reads, in part, as follows:

> NEGOTIATIONS ran a total course of 4-5 months from December 2008 to May 2009. The first big disappointment of the process was to discover I.A.T.S.E. 891 was not tabling one proposal to win back seniority for their membership. Whether it was the crucial Seniority issue at hand the appalling Replacement language (Article 10.05) that was parachuted into the agreement in 2003. I.A.T.S.E. were clear that these rights and protections were ancillary to an incremental wage and benefit increase.
>
> With that in mind it was evident our work was cut out for us so we pressed onward anyway, on our own, in unrelenting fashion to win back *any form of Seniority provision* and to both protest and request the removal [of] Article 10.05 from the current contract. We acted as any good trade union would, our priorities were fundamental rights and protections, our presentations on those issues were meaningful and consistent and our principles were unwavering. Unfortunately the union was unsuccessful in every endeavour to win these 2 changes: 155 members can hold their heads high though, no stones were left unturned, we fought hard for our members rights and I can safely say no one can question our effort.
>
> Where do we go from here? Seniority is off the table temporarily but has not left the room. Your union will continue to fight for those rights until we win them back. In the meantime members must plug their noses and swallow the name request pill for now. We must mentally adjust to 3 more years of this system and begin working on your best selling feature, your reputation. Represent yourself, be proud of the work you do, lead by example, and be proud of your team and

> their accomplishments. If you follow that track, the rest will fall into place for you and your union. Professionalism, respect and a good reputation will result and jobs should flow to those who concentrate on those basic principles ... . (emphasis in original)

III. THE COMPLAINANTS' ARGUMENT

8 The Complainants allege violations by the Union of Sections 5, 6, 8, 9 and 27 of the Code in addition to Sections 10 and 12.

9 The Complainants allege the manner in which the Union removed them from dispatch eligibility and blocked attempts to appeal constitutes intimidation under Sections 5(1) and 9 of the Code. They say a letter the Union wrote to members threatening discipline to those members who did not follow dispatch rules, and a letter the Union sent saying the Employer would not dispute the Union's interpretation of the groupings, is a threat of penalty which violates Section 9 of the Code.

10 The Complainants say the Union's own false accusation of intimidation towards Daniel Mick is a violation of Sections 5, 8 and 9 of the Code. They also say the manner in which they were identified as members who got their membership through certifications is also a violation of Sections 5 and 9 of the Code.

11 The Complainants say the Union's suggestion they should approach the Arbitrator for a clarification of the Ready Award is prohibited under Section 27 of the Code.

12 The Complainants say that people who made outbursts towards Mick at meetings with the Union violated his speech rights under Section 8 of the Code. They say they were intimidated under Section 9 of the Code in that such behaviour could reasonably have the effect of compelling the Complainants to cease to be members of the Union.

13 The Complainants say the Union has tried to silence and intimidate them contrary to Sections 5 and 9 of the Code. For example, the Complainants say the Union's comments with respect to how expensive their lawyer was silenced them and had the effect of intimidation prohibited by Sections 5 and 9 of the Code.

14 The Complainants say a Union representative told them to turn in their membership cards and work for ACFC West. They say that was prohibited conduct under Section 9 of the Code because it put pressure on them to no longer be members of the Union.

15 The Complainants say the Union retaliated against them for appealing the decision to form Groups 1 and 2 by denying them positions as Security Captains and Co-Captains. The Complainants allege the Union is applying the rules in a discriminatory manner.

16 In response to my letter of August 17, 2011, the Complainants say their matter differs from *Greig* fundamentally. They say they have included evidence of the Union's motive and intent, and that the scope of the dispute is different. The Complainants say the evidence of motive and intent which was not led in *Greig* will likely lead to a different result.

17 The Complainants say, unlike in *Greig,* they have shown the Union's choices were discriminatory in intent and to the detriment of the minority of the newest Union members, Permittees, and those certified on the productions "Space Buddies" and "Triple Dog". They say this amounts to blatant and reckless disregard for the interests of the Complainants on the Union's part, and also bad faith and discrimination under Section 12. They say explicit comments were made by the Union to

say the reason for the implementation of the groupings was to stop certified members from getting work.

18 The Complainants argue that by placing all of those that received memberships through certifications in Group 2, the Union penalized them in a discriminatory fashion and incurred an illegal special levy under Section 10. The Complainants say this is proved by the transcripts of the October 4, 2009 General Membership Meeting, which demonstrate the reason to implement the seniority groupings was discriminatory and done in bad faith, aimed specifically at those who received memberships from certifications. The Complainants say the real reason the Union formed the groupings was the desire to take away work from the Complainants and other certified members because of personal favouritism. The Complainants argue the Union could have chosen another date for implementation of the Ready Award.

19 The Complainants say the applicant in *Greig* did not dispute the accuracy of the implementation of the Ready Award. The Complainants say they have shown the entirety of the requirements for membership in the Union are in direct contradiction to the Ready Award and the Collective Agreement.

20 The Complainants argue the Union has done as it pleases and then has claimed that it had to do so because of the Ready Award. They say the Union made a decision for the exclusive purpose of monopolizing work and that this is personal favouritism (*Group of Seagrams Employees,* BCLRB No. 85/77, [1978] 1 Canadian LRBR 375). They say it is a mistake to say the Union did it for the principle of seniority.

21 The Complainants assert they were given unrestricted full name-request membership with all the privileges of Group 1 by the principle officer's decision in 2008 as a part of their agreement to join the Union. They say I did not have the jurisdiction to find, as I did in *Greig*, that full membership in the Union does not necessarily mean inclusion in Group 1. The Complainants say there was a valid deal when they joined the Union. They say the deal was broken by the Union's new administration in 2010 in violation of Sections 10 and 12 of the Code.

22 The Union argues the Complainants' application does not disclose a case that contraventions of Sections 5, 6, 10, 12 and 27 of the Code occurred. It argues Section 6 of the Code applies to employers, not to unions. The Union further says the breaches of Sections 8 and 9 of the Code did not occur. The Union further argues the Complainants have failed to exhaust internal avenues of appeal as required under Sections 10 and 12 of the Code.

23 With respect to the Complainants' arguments concerning the issue of Security Captains and Co-Captains, the Union says there is no specific pay rate in the Collective Agreement for Security Captains or Security Co-Captains. The Union appended Appendix 17 of the Master Agreement to demonstrate its point. The Union says it has filed a grievance with respect to a similar issue and that it is trying to resolve the issue with the Employer.

IV. ANALYSIS AND DECISION

24 Unlike the applications in *Greig* and *DeFrancesco*, the Complainants' application includes Sections 5, 6, 8, 9 and 27 of the Code. In my view, however, the facts pled do not fit within these Code provisions either because the subject matter of the specific complaints are not meant to be remedied by the provisions of the Code cited, or because the allegations of fact are too minimal.

25 The facts pled by the Complainants illustrate the Union's formation of Groups 1 and 2 was a very contentious and emotional issue because it involved significant and conflicting economic interests among the Union's members. Those who favoured the interpretation of the Ready Award eventually adopted by the Union were trying to protect access to work they felt entitled to because of the seniority they had earned over many years in the Union. Junior members who came into the Union because of certifications enjoyed dispatch by unrestricted name-request for a number of years while the Union attempted to overturn the Ready Award in a bid to reinstate seniority dispatch rights. Given these facts, there is no surprise that hard feelings resulted, and that feelings at Union meetings and elsewhere were expressed in an emotional manner. In my view, the fact Union members and executives expressed such feelings does not provide the basis for an application under Sections 5, 8 and 9 of the Code.

26 The Complainants say the Union intimidated them by sending a letter to them threatening discipline if they violated dispatch rules. They also say the Union intimidated them by sending a letter informing members the Employer would not be disputing the formation of Groups 1 and 2. They say they were intimidated when the Union also made a comment about how expensive their lawyer was. This kind of behaviour simply does not constitute intimidation under the Code. In my view, almost all of the incidents referenced in the Complainants' application are so minimal they are not sufficiently serious to merit the Board's attention.

27 Another fact pled by the Complainants was that a Union executive told Mick that if he did not like the groupings, he should turn in his Union membership card and go work for ACFC West. While this might be somewhat confrontational and provocative, it does not fall within what the Legislature was trying to remedy when it enacted Section 9 of the Code.

28 When some of the Complainants pled their case at Union meetings and directly before Union executives in appeal, they received negative feedback, often expressed in an unpleasant manner. For instance, when Mick was trying to express his view at Union meetings, he was interrupted, and people tried to use technical means from rules of order to block what he was trying to say. There is no doubt that because the Complainants have spoken against the formation of Groups 1 and 2 and against members of the Union's executive, there have been hard feelings and angry discourse going back and forth between various stake holders. This is not surprising given the nature of the issue. However, none of the behaviour described in the Complainants' application crosses the threshold into the kind of intimidation or coercion which is prohibited under the Code. It is not the kind of behaviour that falls within what the Legislature was trying to remedy with Section 8 of the Code. Short of behaviour prohibited under the Code, it is not for the Board to be the referee at union meetings or of communications between members and a union's executive.

29 I have found the factual allegations are not severe enough to fall within the scope of the behaviour the Legislature was trying to remedy under Sections 5, 8 and 9 of the Code. I therefore dismiss the Complainants' application under those Sections of the code. The Complainants' application under Section 27 is also dismissed. The fact the Union did not go to the Arbitrator for further clarification and suggested the Complainants do it themselves does not constitute a violation of Section 27. That Section of the Code merely outlines the effect of a certification. To the extent that the Complainants apply under Section 6 of the Code, I note it is clear on reading Section 6 that it applies to actions of an employer or a person acting on behalf of an employer. Section 6 of the Code does not assist parties complaining about a union's conduct. Consequently, the Complainant's application under Section 6 of the Code is dismissed.

30 The question which remains before me is whether the Complainants have raised arguments which would cause me to make a different finding under Sections 10 and 12 of the Code than I did in *Greig*. The Complainants allege the Union has also violated Section 12 by denying them the opportunity to act as Security Captains and Co-Captains by placing them in Group 2.

31 With respect to the issue of Security Captains and Security Co-Captains, my consideration of the applicable provisions of the Collective Agreement confirms what the Union says. There is no specific rate in the Collective Agreement for Security Captains or Security Co-Captains. What is specifically referenced are rates for Transportation Coordinators and Captains. The Union's position that Security Captains and Co-Captains are not mentioned in the Collective Agreement has, therefore, a reasonable basis in fact and is not arbitrary. The Union says it is dealing with this issue with the Employer. In considering these facts, I am consequently not convinced the Union has taken the position they have in retaliation against the Complainants. While it is not my role to interpret and apply the terms of the Collective Agreement, I am unable to conclude the Complainants even had an entitlement under the Collective Agreement which would help to ground a complaint under Section 12 of the Code.

32 The Complainants argue they have presented evidence of intent and motive which was not present in *Greig*. In doing so, they rely on transcripts of tape recordings of the October 4, 2009 Union meeting. In considering all of the transcripts provided to me, I have come to the conclusion they do not prove bad faith or discrimination. In my view, the transcripts demonstrate that Union executives were trying to cope with a very complex and contentious issue which created a stark division between the junior and senior members of the Union. The transcripts also reveal that different Union executives struggled to cope with the policy direction the Union should take in the wake of the Ready Award. I believe it is fair to say this was not an easy issue for Union executives to deal with. The issue was made complex and contentious because of the different economic interests of the Union's senior and junior members, and the fact that an *ad hoc*, unrestricted name-request system occurred immediately after the Ready Award was rendered.

33 The evidence demonstrates that different policy directions were taken by different Union executives. It appears an earlier Union executive took one policy approach, and was reluctantly resigned to the notion that the only way to proceed after the Ready Award was to put everyone who was a member of the Union into Group 1. This is reflected in the Union's News Bulletin of June 2009. The eventual policy direction a later different Union executive took was that of implementing the Ready Award as of its release date, through the creation of Groups 1 and 2. It did so after exhausting its appeals of the Ready Award. This undoubtedly had the effect of negatively impacting the employment opportunities of more junior members who had benefitted from the period where all members were being name-requested without any regard for seniority whatsoever. The tension between these two policy directions is clearly demonstrated by the transcripts provided by the Complainants of the Union's October 4, 2009 General Membership Meeting.

34 In *Greig,* I found the policy direction ultimately taken by the Union did not violate Sections 10 or 12 of the Code, and nothing in my reading and analysis of the transcripts provided by the Complainants gives me any reason to change the decision I made in *Greig*. The Union and its executives had to make a difficult policy decision which would be very unpopular among various stake holders within its membership, regardless of the decision they made. As such, as I found in *Greig* and *DeFrancesco*, I find the Union did not act in an arbitrary, discriminatory or bad faith manner in the Complainants' case, nor did it violate Section 10 of the Code.

35 With respect to the Complainants' assertion that I do not have the jurisdiction to find full membership in the Union does not necessarily mean inclusion in Group 1, that was a finding I made in *Greig,* and the Complainants do not have standing to appeal that decision. Furthermore, I note that when I made those comments in *Greig*, I was merely reflecting what the clear effect of the Ready Award was. I was not making my own ruling on that issue.

36 I note the Complainants admit they were aware of the Union's efforts to reinstate the prior seniority dispatch regime through challenges to the Ready Award. Throughout the entire seniority dispatch issue, the Union clearly stated its intention to reinstate its members' seniority rights. This was stated even by previous executive members who thought all new members who came into the Union via certifications had to be included in Group 1.

37 There is no doubt the decision to apply the Ready Award as of its release date resulted in harsh economic consequences for a significant number of the Union's members. In my view, however, given there has not been a violation of the Code, the solution for those who disagree with the Union's decision in implementing the Ready Award lies within the political processes of the Union.

V. CONCLUSION

38 The Complainants' application is dismissed.

LABOUR RELATIONS BOARD

BRUCE R. WILKINS
VICE-CHAIR

cp/e/qllqs