

BRITISH COLUMBIA LABOUR RELATIONS BOARD

SIMON FRASER UNIVERSITY

(the "Employer")

-and-

TEACHING SUPPORT STAFF UNION

(the "Union")

PANEL: Brent Mullin, Chair
Richard S. Longpre, Vice-Chair
Jitesh Mistry, Vice-Chair

APPEARANCES: Patrick Gilligan-Hackett, for the Employer
Leo McGrady, Q.C. and Sonya Sabet-
Rasekh, for the Union

CASE NO.: 65241

DATE OF DECISION: May 27, 2013

DECISION OF THE BOARD

1 The Union applies under Section 141 of the *Labour Relations Code* (the "Code") for leave and reconsideration of BCLRB No. B20/2013 (the "Original Decision"). The Original Decision made the following determinations:

 In conclusion, I find that in the circumstances of this case, the inquiries by the Employer do not amount to intimidation and coercion and therefore dismiss the complaints under Section 6(3)(d), 9 and 68(3) of the Code.

 I find the inquiries by the Employer concerning whether the TSSU members will cross their own picket line would breach Section 6(1) unless the collective agreement provides the Employer with the right to ask employees. This issue is moot as the dispute between TSSU and the Employer has settled and the interpretation of the collective agreement is more appropriately dealt with by an arbitrator. I also find the inquiries to TSSU members concerning whether they would cross another union's picket lines is not a breach of Section 6(1) regardless of the terms of the collective agreement. (paras. 44-45)

2 The Union summarizes the bases upon which it seeks leave and reconsideration as follows:

1. the following aspects of the Original Decision are inconsistent with the principles expressed or implied in the *Code* and with the duties outlined in section 2 of the *Code*:
 - a. erring in delineating between expressing support for an employee's own union's job action, and another union's job action;
 - b. improper conclusion on the non-existence of coercion or intimidation; and
 - c. inconsistencies within the Original Decision regarding its findings of interference and coercion; and
2. the Original Decision violated the principles of natural justice and procedural fairness by deciding determinative

issues without seeking submissions from either party, particularly on the issues of:

- a. whether there is a distinction between inquiring whether a TSSU member will cross a picket line set up by another union as compared to crossing their own picket line; and
- b. referral to arbitration.

3 In terms of remedy, the Union

...requests that the reconsideration panel:

- a. Quash the Original Decision; and,
- b. Remit the matter to the original panel to be determined afresh with further submissions by the parties.

4 The Employer opposes the Union's application.

5 An application under Section 141 must meet the Board's established test before leave for reconsideration will be granted. An applicant must establish a good, arguable case of sufficient merit that it may succeed on one of the established grounds for reconsideration: *Brinco Coal Mining Corporation*, BCLRB No. B74/93 (Leave for Reconsideration of BCLRB No. B6/93), 20 C.L.R.B.R. (2d) 44.

6 We have reviewed and considered the submissions of the parties. Once again, however, we need to note in that regard the nature of the submissions from the Employer and one of its unions in relation to the task which is before us here in respect to the leave and reconsideration application: see *Simon Fraser University*, BCLRB No. B81/2013 (Leave for Reconsideration of BCLRB No. B22/2013), paras. 4-5. While the leave and reconsideration application in the present matter is concise and reasonably clear, we have found that the parties' later submissions devolved into excessive length and procedural wrangling, which were not of assistance to the panel.

7 Both parties to this matter see the issues in this matter as being of significant importance to them. The Union has also submitted that in its view the issues are of significance to the labour relations community at large. Unfortunately the described devolution of the submissions tended to obfuscate these key matters. As a result, the submissions are of less assistance to the panel than they might have been.

8 We have read and considered the points made in all of the submissions. As in the other recent *Simon Fraser University* case cited above, we note that it is not our task here in respect to this leave and reconsideration application to answer all of the

arguments which have been raised in the lengthy submissions. Rather, our task is to consider the submissions and then render a timely, and hopefully concise and therefore accessible, decision in respect to the case and the specific grounds for leave and reconsideration which have been brought forward in the application: see subsection 2(e) of the Code and *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65 and *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

9 We turn to the substantive bases upon which the Union seeks leave and reconsideration of the Original Decision. Those bases rest upon the ground that certain determinations in the Original Decision are inconsistent with principles expressed or implied in the Code. The specific determinations at issue are 1.a.-c., as set out in paragraph 2 above.

10 We will address first the conclusions in the Original Decision regarding the Union's own picket line. The conclusions in paragraph 44 of the Original Decision regarding intimidation and coercion apply to both the Union's own picket line and a situation involving another union's picket line. The further, specific conclusions regarding the Union's own picket line are in the first two sentences of paragraph 45 of the Original Decision:

I find the inquiries by the Employer concerning whether the TSSU members will cross their own picket line would breach Section 6(1) unless the collective agreement provides the Employer with the right to ask employees. This issue is moot as the dispute between TSSU and the Employer has settled and the interpretation of the collective agreement is more appropriately dealt with by an arbitrator.

11 Having reviewed the parties' submissions and the Original Decision in respect to the issues regarding the Union's own picket line, we find that resolution of these issues may at least be affected by the interpretation of the collective agreement provision at issue in this matter: see Original Decision, para. 10. In the particular circumstances of this case, we further find that the determinations in the Original Decision regarding the Union's own picket line should not have been made without an interpretation of the collective agreement provision at issue. Without that collective agreement interpretation, we are absent a foundational piece in respect to the dispute regarding the Union's own picket line. As a result, absent that interpretation, we find the Original Decision should not be followed.

12 In the circumstances, we are also not prepared to proceed further with the substantive issues raised in the Union's leave and reconsideration application and original application in respect to the Union's own picket line. We find those issues moot in the present circumstances of the case and do not exercise our discretion to proceed in any event of the mootness.

13 Turning to the determinations in the Original Decision regarding other unions' picket lines, we find that they need to be addressed under the Union's natural justice and

procedural fairness bases for seeking leave and reconsideration of the Original Decision: see 2.a. in paragraph 2 above. In the circumstances of the case, we find there was a lack of natural justice and procedural fairness in the Original Decision in determinations having been made on this issue without having sought submissions from the parties in respect to it. As a result, we find the determinations in the Original Decision regarding other unions' picket lines must be overturned on this basis.

14 Given that result, we need not substantively consider the determinations in the Original Decision regarding other unions' picket lines. The issues can be addressed through further application to the Board if circumstances and the need arise.

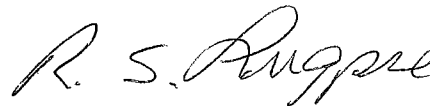
15 For clarity, we add we are not making any determinations in this decision in respect to the appropriate interpretation and application of subsection 6(1) of the Code regarding the facts and issues in this case. As a result, the parties are at liberty to make the applications and take the positions they wish in further circumstances.

16 In conclusion, we grant the Union's request to quash the Original Decision. Leave and reconsideration are granted in the terms set out above.

LABOUR RELATIONS BOARD



BRENT MULLIN
CHAIR



RICHARD S. LONGPRE
VICE-CHAIR



JITESH MISTRY
VICE-CHAIR