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File: 1213

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Dear Sirs:

**Re: UNIFOR Local 467 –and– UNITE HERE, Local 40 (Larry Jandu)
Grievance and Jurisdiction**

UNITE HERE, Local 4 (the employer) imposed on Larry Jandu an indefinite, non-disciplinary suspension from his position as a full-time Union Representative after he was approved medical fit to return to work on December 1, 2015.

UNIFOR Local 467 (the union) grieves and seeks to have Mr. Jandu returned to work with compensation for lost wages and benefits. His annual salary of \$50,000 was agreed in the last round of collective bargaining for the current collective agreement for the term from September 1, 2012 to August 31, 2016.

The union and employer agree I am properly appointed as arbitrator with jurisdiction under their collective agreement and the *Labour Relations Code* to finally decide the merits of the grievance.

The arbitration hearing is scheduled for July 24, 25, 28 and 29, 2016.

The suspension is rooted in events in the September 2013 hiring process and Mr. Jandu's previous employment with Service Employees' International Union Local 1 Canada (SEIU) and B.C. Government and Service Employees' Union (BCGEU).

Background Overview

Mr. Jandu was employed by the BCGEU on successive fixed-term contracts as an Organizer from November 14, 2005 to December 31, 2010. The last term was for the calendar year 2010. On February 9, 2010, Mr. Jandu signed a confidentiality and proprietary information agreement as an employee of the BCGEU.

Mr. Jandu was subsequently employed as a Union Representative by the SEIU. In October 2011, the BCGEU sued him and the SEIU for an alleged breach of continuing obligations under the confidentiality and proprietary information agreement.

The civil claim was vigorously defended. There were examinations for discovery. The lawsuit was settled by an agreement concluded in July 2013. The claim was dismissed by consent order dated September 25, 2013.

In September 2013, Mr. Jandu was interviewed by President Robert Demand. He was hired for his current position and started work in October.

Whether Mr. Jandu disclosed the BCGEU lawsuit against him and the SEIU to Mr. Demand during the hiring interview is a disputed question of fact.

The employer asserts it first became aware of the lawsuit, but not the terms of settlement, in March 2015. At the time, Mr. Jandu was on a medical leave of absence. The employer wrote him on April 15, 2015 seeking a meeting to discuss what was alleged in the civil claim pleadings. In the meantime, the employer barred any access he had to the employer's premises, fellow employees and members of UNITE HERE, Local 40.

From April to December 2015, the employer pursued avenues to increase its knowledge of the allegations in the lawsuit. It requested disclosure of documents and information from the union. Discussions and statements by Mr. Jandu generated more employer requests to provide clarification and reconcile various statements.

Employer Application for Pre-hearing Document Disclosure

1. Union Agreement at Hearing Today to Disclose

Statements of particulars have been exchanged. The union has agreed to provide the following on or before May 16, 2016:

1. Particulars of the allegations in Paragraph 10 of the May 2, 2016 statement of particulars;
2. Particulars of the meetings referred to in Paragraph 12 of the May 2, 2016 statement of particulars; and
3. A copy of the letter of expectations referred to in Paragraph 14 of the May 2, 2016 statement of particulars;

The union has agreed to make its best efforts to obtain and disclose to the employer by May 16, 2016 a copy of the complaint and WorkSafeBC directions referred to in Paragraph 14 of the May 2, 2016 statement of particulars.

2. Lawsuit and Settlement Documents

The union opposes the employer's application for an order for pre-hearing disclosure of "All documents relating to the BCGEU lawsuit and its settlement." The union acknowledges the fact and subject of the lawsuit are relevant to whether the employer had justifiable cause to impose the suspension.

However, the union submits seeking disclosure of all documents related to the lawsuit is an effort to re-litigate what was settled by Mr. Jandu and his two previous employers without the necessity of adjudication of competing claims and conflicts in statements

during examinations for discovery. Such adjudication is not relevant to the employer's decision to suspend Mr. Jandu based on what was or was not disclosed during the hiring interview. It is prejudicial to Mr. Jandu. The time and resources to pursue this avenue will be disproportionate to any relevance or benefit to the core issue of alleged falsehood at the time of applying for employment.

The employer submits the gravity of the allegations in the lawsuit and the potential threat to the employer's role, status, services and relationships requires the employer to ascertain the truth. If there is no culpability attributable to Mr. Jandu, the employer will compensate him; return him to his pre-suspension responsibilities and work with the union, on an accommodated basis if necessary; and work with the union to mitigate adverse effects on his reputation.

Through the simple avenues of a court registry search and a summons to a responsible employee of the BCGEU, the employer has obtained the pleadings and settlement document in the lawsuit. With the exception of one document, a copy of a text message conversation, the documents relating to the defendants, Mr. Jandu and the SEIU, are in the possession and control of their lawyer in the lawsuit.

Determining which documents in that litigation file are covered by Mr. Jandu or SEIU's solicitor-client or litigation privilege is not a task for the union or its lawyer in this arbitration. It is a task for the defendants' lawyer.

Therefore, because of the extensive volume of documents the employer has; the limited additional documents union counsel has; and as a cautionary approach to protecting solicitor-client and litigation privilege, I grant the employer's application to a very limited extent. The union is ordered to disclose to the employer no later than May 16, 2016 a copy of the text message conversation union counsel obtained from the defendants' counsel.

I make this order without making any determination about the relevance or admissibility of any of the litigation related documents. If the employer wishes to pursue this further, it has the option of summoning the defendants' lawyer and exploring with him the nature and extent of any documents he has in his possession and control that the employer does not already have and are not covered by privilege.

3. Non-renewal of Fixed-term Employment with BCGEU

At the time of applying for employment, Mr. Jandu gave Mr. Demand the names of three persons who could be contacted as references – one person at each of the BCGEU, SEIU and BC Federation of Labour. Mr. Demand did not contact any of them.

The employer asserts Mr. Jandu explained to Mr. Demand a reason why he chose to leave employment with the BCGEU. The employer's investigation into the lawsuit has raised questions for it about that explanation. This appears to be a subject separate and distinct from the lawsuit.

Through a summons issued April 22, 2016, the employer gained access to "all documents relating to Larry Jandu's departure from the BCGEU." The union learned this at today's hearing. It heard from the employer that: "False statements made by Mr. Jandu during his interview with Mr. Demand about the reasons for him leaving the employment of BCGEU are relevant to this case."

Building on this and, perhaps, with the benefit of having read the BCGEU personnel file, the employer seeks an order that the union disclose all documents relating to Mr. Jandu's departure from the BCGEU.

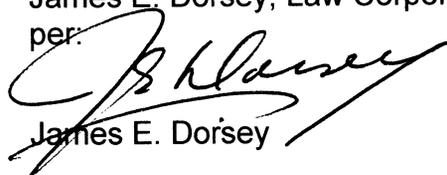
The union has not had an opportunity to address the alleged discrepancies between what the employer says Mr. Jandu said during the interview and what he stated under oath on examination for discovery.

The documents the employer seeks are potentially relevant to the issues of alleged falsehood during the interview and credibility.

On the condition the employer discloses to the union no later than May 12, 2016 a complete copy of all the documents it obtained from the BCGEU, I order the union to disclose to the employer no later than May 16, 2016 all other documents relating to the reasons for Mr. Jandu's departure from the BCGEU.

James E. Dorsey, Law Corporation

per:

A handwritten signature in black ink, appearing to read "J. Dorsey", written over the printed name "James E. Dorsey".

James E. Dorsey