BRITISH COLUMBIA LABOUR RELATIONS BOARD

VITTORIO DEFRANCESCO AND ANDRZEJ WRZOSEK

(the "Complainants")

-and-

TEAMSTERS LOCAL UNION NO. 155

(the "Union")

PANEL:	Bruce R. Wilkins, Vice-Chair
APPEARANCES:	Vittorio DeFrancesco and Andrzej Wrzosek, for themselves Michael J. Prokosh, for the Union
CASE NO.:	60949
DATE OF DECISION:	November 9, 2011

DECISION OF THE BOARD

I. NATURE OF THE APPLICATION

1 The Complainants apply pursuant to Section 12 of the *Labour Relations Code* (the "Code"). They say the Union's implementation of an arbitration award by Arbitrator Vincent L. Ready, *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") violates Section 12 of the Code.

II. BACKGROUND FACTS

2 The factual background to this matter is set out in *Chuck Greig*, BCLRB No. B24/2011 (the "Greig Decision"). In the Greig Decision, 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.

3 The Greig Decision was upheld on reconsideration in *Chuck Greig*, BCLRB No. B136/2011 ("B136/2011"). As a result of this, I wrote the following letter to the parties on 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 Section 12 of the Code which you feel would lead to a possibly different result in your case.
>
> 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.

4 I have now received and considered the submissions filed by the parties to the Complainants' application.

III. ARGUMENTS

5 The Complainants argue the Union has misrepresented them by not maintaining past practices and policies. They say the Union did so by taking the following actions: arbitrarily revoking their status as Group 1 members; discriminating against them by favouring senior members; and bad faith in hiring practices.

6 The Complainants say their case is different from the one considered in the Greig Decision because they have only filed under Section 12 of the Code, and that past practice and natural justice was never argued in that case. The Complainants say their case questions the timing of the implementation of the Ready Award, the implementation of a retroactive date of the decision, and the fact the Union ignored past practice when it implemented its decision almost four years after the Ready Award. The Complainants say another difference is they do not seek compensation, only inclusion in Group 1.

7 The Union says the Complainants' case is barred by the doctrine of *res judicata,* citing *Wal-Mart Canada Corp.,* BCLRB No. B51/2006, 127 C.L.R.B.R. (2d) 85. They also argue the Complainants' argument violates the rule against collateral attack, and that the complaint amounts to an abuse of process.

8 The Complainants reply that such principles as *res judicata* and *stare decisis* do not apply because the Board is a tribunal, not a court.

IV. ANALYSIS AND DECISION

9 In this matter, I have invited the Complainants to explain any differences between their case and the Greig Decision. With respect to the facts, I have found the Complainants in this case were affected in the same manner as the complainant in the Greig Decision, which was described in that case as follows:

> As can be seen from its letter above, Local 155 decided to implement the Ready Award as of the date of its release on September 20, 2006 (the "Release Date"). Accordingly, as of the Release Date, all Local 155 drivers who were in Groups A, B and C were collapsed into Group 1. Any drivers who were Permittees as of the Release Date, were placed into Group 2, including Greig. In February 2010, approximately 75% of the persons on the Group C list were placed into Group 1. Those drivers were qualified and had been on the Group C list as of the Release Date. Approximately 25% of the drivers who were not on the Group C list as of the Release Date were moved into Group 2. (para. 12)

10 The Complainants were among those Group C drivers who did not become members of the Union until after the release of the Ready Award in 2006. The Complainants were sworn in as members in November 2008 and obtained work by name request. When the Union decided, in 2010, to implement the Ready Award retroactively as of its release date in 2006, the Complainants were placed into Group 2,

just as the complainant in the Greig Decision was. This had the effect that the Complainants could not be name requested until almost all Group 1 drivers had been name requested first.

11 Having read and considered the Complainants' arguments with an open mind, I am of the view that the Complainants have not raised any new facts or arguments which would cause me to come to a different result than I did in the Greig Decision. It is my view that all of the arguments raised by the Complainants in their submissions were dealt with in the Greig Decision.

12 The Complainants' arguments that the Union's actions were arbitrary, discriminatory or in bad faith are essentially the same as those raised by the complainant in the Greig Decision and were dealt with in the reasoning in paragraphs 44-52 of that decision. The Complainants' argument concerning past practice does not change my view of the Greig Decision; the issue of the retroactive application of Groups 1 and 2 to the release date of the Ready Award was dealt with in the Greig Decision at paragraphs 42 and 47-49.

13 I note the Complainants say they rely on a natural justice argument, but such an argument was not present in their original application, nor was this argument explained or articulated in their later submissions. As such, the argument concerning natural justice is dismissed on the basis that it is inappropriate reply, and further, that it was not explained or articulated in any event.

14 I find the Complainants have not raised any arguments which would cause me to come to a different result in their case than I came to in the Greig Decision.

V. CONCLUSION

15 The Complainants' application under Section 12 is dismissed for the same reasons set out in the Greig Decision.

LABOUR RELATIONS BOARD

"BRUCE R. WILKINS"

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VICE-CHAIR