BCLRB No. B136/2011
(Leave for Reconsideration of BCLRB No. B24/2011)

BRITISH COLUMBIA LABOUR RELATIONS BOARD

CHUCK GREIG

("Greig")

-and-

TEAMSTERS LOCAL UNION NO. 155

(the "Union" or "Local 155")

PANEL:	Brent Mullin, Chair Allison Matacheskie, Vice-Chair and Registrar Philip Topalian, Vice-Chair
APPEARANCES:	Craig T. Munroe, for Greig Leo McGrady, Q.C., for the Union
CASE NO.:	61836
DATE OF DECISION:	July 28, 2011

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 Greig applies for leave and reconsideration of BCLRB No. B24/2011 (the "Original Decision"), which dismissed his complaint against the Union under Section 12 of the *Labour Relations Code* (the "Code"). He applies on two grounds: denial of natural justice and inconsistency with the principles expressed or implied in the Code.

II. ANALYSIS AND DECISION

2 Greig's natural justice argument focuses on paragraph 34 of the Original Decision, which dismissed certain allegations on the basis that they were improperly made for the first time in Greig's final reply submission. Greig argues this incorrectly included his allegation about a March 14, 2010 meeting (the "March 14, 2010 allegation"), which was made in the original complaint.

3 On review of the Original Decision, we find paragraph 34 did not include the March 14, 2010 allegation. This is apparent on the face of the Original Decision.

4 The Original Decision deals distinctly with the March 14, 2010 allegation and Greig's allegations concerning the October 4, 2009 meeting (the "October 4, 2009 allegations"). The Original Decision lists the March 14, 2010 allegation among those that were made in Greig's complaint and notes that it was then denied by the Union in its submission (para. 20). The October 4, 2009 allegations, on the other hand, are expressly noted to be raised for the first time in Greig's final reply (para. 29).

5 In its analysis, the Original Decision decides in respect to the two sets of allegations on separate bases. In paragraph 33, the Original Decision accepts the March 14, 2010 allegation on its merits, deciding it was not necessary to resolve the factual dispute concerning it in order to decide the merits of the Section 12 complaint (para. 33). The Original Decision then in paragraph 34 addresses the allegations raised for the first time in final reply, dismissing them on that basis (para. 34). The allegations raised for the first time in reply had earlier been identified as the ones relating to October 4, 2009 (in para. 29).

6 We also find it would not be reasonable to read paragraph 34 of the Original Decision as additionally referring to the March 14, 2010 allegation, because the Original Decision had just disposed of that allegation in paragraph 33.

7 Accordingly, reading the Original Decision as a whole, it is clear it was not referring to the March 14, 2010 allegation among those it dismissed in paragraph 34 on the basis that they were raised for the first time in reply. Greig's natural justice argument, which is premised on this assertion, is therefore dismissed.

8 Greig's argument that the Original Decision is inconsistent with Code principles concerns the Original Decision's conclusion on the merits, which found that the Union had not violated Section 12 by implementing the Ready Award as of the date of its issuance, September 20, 2006. The Original Decision found this was "not arbitrary

because it is based upon a specific date which is objectively set by the Ready Award itself": para. 45. We agree with that conclusion and with the original panel's conclusion that the Board's jurisdiction under Section 12 is limited to determining whether a union's representation is arbitrary, discriminatory or in bad faith.

9 Within that context, we find no reviewable error in the Original Decision. Accordingly, Grieg's application for leave and reconsideration is dismissed.

10 Though it is not necessary to our decision (which is limited to the Board's jurisdiction under Section 12 as noted above), there are two arguments made by the parties worth brief comment. Greig argues there is no forum other than the Board under Section 12 of the Code that can determine whether the Union has applied his seniority rights in a manner that is inconsistent with the order of an arbitrator. The Union disputes this proposition. The Union, for its part, argues the same deference is due to a union's interpretation of an arbitration award as to its interpretation of a collective agreement.

11 Both of these arguments may be doubtful. In respect to Greig's argument, we note that the Code allows a party or person affected by an arbitration award which has not been complied with, to file it in Court, where it is enforceable as an order of the Court: Section 102.

12 In respect to the Union's argument, no authority was submitted supporting the proposition that a union's interpretation of an arbitration award should be treated by the Board in the same manner as the union's interpretation of its collective agreement, the cases submitted dealing only with a union's interpretation of its collective agreement. Further to Section 102 of the Code, the deference accorded the latter may not be applicable to the former. However, that issue has not arisen in this case as we have found, consistent with the reasoning of the original panel, that the Union had ultimately complied with the Ready Award by implementing it in accord with the date in that Award (para. 8 above).

LABOUR RELATIONS BOARD

BRENT MULLIN
CHAIR

ALLISON MATACHESKIE
VICE-CHAIR AND REGISTRAR

PHILIP TOPALIAN
VICE-CHAIR