BRITISH COLUMBIA LABOUR RELATIONS BOARD

JEAN BERNARD ARDILA

(the "Complainant")

-and-

EDUCATION AND TRAINING EMPLOYEES ASSOCIATION

(the "ETEA" or the "Union")

-and-

641962 B.C. LTD. (D.B.A. GREYSTONE COLLEGE) AND ILSC (VANCOUVER) INC. WHICH THE BOARD HAS DECLARED PURSUANT TO S. 38 OF THE LABOUR RELATIONS CODE TO CONSTITUTE ONE EMPLOYER FOR THE PURPOSES OF THE CODE

(the "Employer")

PANEL:	James Carwana, Vice-Chair
APPEARANCES:	Jean Bernard Ardila, for himself Leo McGrady, Q.C., for the Union Chris E. Leenheer, for the Employer
CASE NO.:	67381
DATE OF DECISION:	November 6, 2014

DECISION OF THE BOARD

I. INTRODUCTION

1 The Complainant has filed a complaint applying under Section 12 of the *Labour Relations Code* (the "Code").

2 I find that I am able to decide the application on the basis of the parties' submissions and the material attached to them.

II. BACKGROUND

3 The ETEA is the certified bargaining agent for instructors at the Employer. The Federation of Post-Secondary Educators of BC ("FPSE") "is a federation of faculty associations formed in 1980 to provide educators at British Columbia post-secondary institutions with a provincial voice". The "ETEA is affiliated with FPSE, but is an autonomous union".

4 There have been five previous collective agreements between the Employer and the ETEA, the most recent of which expired on December 31, 2013. In the bargaining for a new collective agreement, the parties met for 14 bargaining sessions between January and May 23, 2014. A staff representative from the FPSE, Sean Hillman, assisted the ETEA in the negotiations for the new collective agreement.

5 In February of 2014, the Union conducted a survey to obtain information from members to assist it in collective bargaining.

6 On April 3, 2014, there was a strike vote with 96% of those who voted being in favor of job action. On May 8 and 9, 2014, job action was taken which included a demonstration by Union members.

7 On May 20, 2014, the Union Bargaining Committee wrote to the members. This document set "out in detail the course of bargaining to date and details of management's last proposals". There were 12 bullets identifying various elements of "what management proposed last", with class size as one of the 12 bulleted items.

8 On May 22, 2014, the Bargaining Committee sent an email to members, calling for an emergency meeting later that day in relation to the negotiations. At the May 22, 2014 meeting, a motion was put forward by the Complainant to provide direction to the Bargaining Committee on the issue of class size maximums. The class size numbers put forward in the Complainant's motion were as follows:

> Two specific programs would have a maximum class size of 14. All other programs would have a maximum class size of 15 in the months of October to May with the maximum going to 16 for the months of May to October. This would be for both morning and afternoon classes.

9 The Complainant says the Bargaining Committee did not make those at the May 22, 2014 meeting aware that the Union had already tabled a proposal at bargaining on an aspect of class size which was higher than provided for in the motion.

10 The Complainant's motion at the May 22, 2014 meeting passed. At collective bargaining the next day, that motion regarding class size was presented to the Employer by the Bargaining Committee.

11 The Employer indicates that it found the class size language in the previous collective agreement "extremely cumbersome". In this respect, the Employer had explained to the Union at the beginning of the negotiations "that more restrictive class size language was a 'deal breaker'". The Employer's proposal on class size was a cap of 18.

12 Negotiations ultimately resulted in a tentative agreement. The language on class size in the tentative agreement had a cap of 15 for some courses and 16 for other courses.

13 On May 23, 2014, an email was sent to members indicating that "a tentative agreement with the employer on a new collective agreement" had been reached following "an intense day of negotiations". The date of May 26, 2014 at 4:30 p.m. was set for "a Special General Meeting" where the tentative agreement would be presented to the members and there would be a vote "in favour or against" ratification. A further email was sent on May 25, 2014 with an agenda for the May 26, 2014 meeting.

14 The meeting on May 26, 2014 was held at a hotel in downtown Vancouver and 74 of 104 members of the local Union attended the meeting. The meeting lasted for a period of about two and a half hours and various people spoke at the meeting. During the meeting, a motion was made to delay the ratification vote, which motion was defeated.

15 Information was presented at the May 26, 2014 meeting by those involved with the bargaining. They spoke to the tentative agreement, did a 28 slide power point presentation which included the language agreed to in the tentative agreement, and used a bargaining chart document given to the members to review the final result of negotiations in light of the proposals made at bargaining. At the May 26, 2014 meeting, the Bargaining Committee for the Union "stated that they were in favour of ratification of the collective agreement". The Bargaining Committee also said "they would step down if the ratification vote rejected the proposed agreement".

16 A secret ballot vote was held and 83% of the votes were in favour of ratification.

17 The collective agreement which was ratified took effect retroactive to January 1, 2014. It included "a retroactive pay increase, which was paid out in July 2014", according to the Union.

18 On May 28, 2014, a member of the Bargaining Committee, who was also President of the Local Union, sent an email on her own behalf to members of the Union. She apologized for not giving those voices who disagreed with ratification more time to speak and indicated that, while it was true she and the bargaining team would have stepped down if the agreement had not been ratified, the manner in which it was communicated was not appropriate. The point of her email was to indicate that she was sorry and wished that she had "managed to conduct a more professional meeting". In her email, she stated that the views expressed were hers only and that "neither the Bargaining Committee nor the Executive Committee had any part in writing it".

III. POSITIONS OF THE PARTIES

THE COMPLAINANT

19 The Complainant's allegations relate to "bad faith" and are summarized in the Complaint as follows:

i. functionaries of the local union acted in bad faith at the ratification meeting;

ii. the staff representative from FPSE acted in bad faith at the ratification meeting; and

iii. the staff representative from FPSE "acted in bad faith and with dishonesty of purpose in the final five days of bargaining" relating to the Collective Agreement which was negotiated.

20 On the first item above, the Complainant alleges that the ratification meeting "took on the feel of a debate between members *opposed* to the deal and the bargaining team" rather than an "open discussion period" (emphasis in original). The Complainant references the email from the Local President sent two days after the meeting in this regard and alleges the Union functionaries did not provide "those opposed to ratification an opportunity to speak and to speak up in a way that opposing voices could be heard".

21 The Complainant elaborates on these matters. He states that the Bargaining Committee threatened that "they would be stepping down" if the tentative agreement was not ratified. He says that this "created fear and anxiety" among members prior to voting and "put pressure on people in regards to the vote just prior to it". The material submitted by the Complainant also says that the Union President was emotional at the prospect of the vote being against ratification and it is alleged that this swayed people into voting "yes".

22 The material filed by the Complainant alleges the ratification meeting was not conducted in a professional manner or in accordance with Robert's Rules of Order. He

further says that members were not provided "with as *complete and accurate* information as possible so that all members could undertake an informed vote" (emphasis in original).

23 On the second item noted in paragraph 19 above, the Complainant says that the FPSE staff representative "contributed to the disorder" at the ratification meeting and "did not act in a way to help bring order to the meeting" when "voices opposed to ratification were shouted down and interrupted". The Complainant says that when questions were asked about what would happen if the deal was sent back, the staff representative "did not answer the questions clearly or as best he could" and "did not reasonably address the range of possibilities". According to the Complainant, the effect of this influenced the members in the direction of ratification.

24 In terms of the third item set out in paragraph 19 above, the Complainant alleges that the FPSE staff representative displayed "hostility to a bargaining position approved by the members". This relates to an unfavourable comment made by the FPSE staff representative at the May 22, 2014 meeting when the Complainant's motion on class size was passed as well as what occurred at the May 26, 2014 ratification meeting. The Complainant elaborates on this as follows:

> Four days later, at the May 26 meeting I rose to speak to the members. I told them that the Employer had their demands for a new class maximum. I also told them that the Employer could not impose this on us. We needed to agree to anything and everything in the contract before it became the new agreement. I told them that we had the power to say "no" to any and all Employer demands but that the bargaining process could still continue.
>
> Our staff rep interrupted me at that moment to argue against my point. He stated that the provision on class caps is not an Article of the CA but rather is contemplated in a Letter of Understanding. Therefore, according to his argument, if no LOU was signed or re-signed by both Employer and Union, the provision on class caps would disappear and there would be no class caps at all. The staff rep's comment was misleading and misrepresented my point for the members. As well, I had to veer from my point to rebut his. For the second time in four days the staff rep challenged me while I attempted to voice a position on class size.

25 The Complainant recognizes that the Board gives trade unions "wide latitude with respect to the manner in which negotiations are conducted"; however, he says that this is subject to "complete good faith and honesty of purpose" and that the staff representative displayed a dishonesty of purpose in bargaining the class size provision.

26 The Complainant further cites inconsistencies between what was told to the members and what occurred. He says that although the Bargaining Committee "claimed to want direction from the membership" prior to the May 22, 2014 meeting, they did not follow the directives in bargaining. He says that the "actions of bad faith follow from this context" and their actions in "stifling debate" resulted in members being

prevented "from understanding how some provisions in the tentative agreement differed from positions the Bargaining Committee and membership had embraced throughout the negotiations".

THE UNION

27 The Union denies that it acted in a manner contrary to Section 12 of the Code. In addressing the Complainant's allegations, the Union describes the entire context of the bargaining. Various documents related to the bargaining are attached to the Union's submission including:

- the results of the bargaining and job action survey conducted in February 2014;
- letters and emails about the bargaining;
- a copy of the 28 slide power point presentation used at the ratification meeting "which included all of the language agreed to in negotiations with the Employer";
- a bargaining chart given to members at the ratification meeting "which compared the initial proposals of both the Union and the Employer, along with the final negotiated result of those proposals"; and
- a document which a Bargaining Committee member spoke to at the ratification meeting that showed "how individual members would benefit from the new pay scale and salary increases negotiated at the bargaining table".

28 With respect to the Complainant's allegations noted in paragraph 19 above which are directed toward the FPSE and its staff representative, the submission is that the bargaining unit is certified to the ETEA. The FPSE is not certified to the Employer, nor bound by any collective agreement with the Employer. It is contended that Section 12 "imposes a statutory duty only on a certified union or certified council of unions" and the FPSE falls into neither category. As such, it is argued that the FPSE does not "have any section 12 duty".

29 In terms of the ratification meeting, the Union indicates that the meeting lasted for a period of approximately 2½ hours. It references the attachments to its submission regarding the information provided. The Union says the procedure adopted for the meeting was "a procedure, consistent with Robert's Rules of Order, that members who have not yet spoken on a topic are provided an opportunity to do so prior to those who had already commented, speaking for a second time". The Local President's email after the meeting where she apologized for not giving those voices opposed to ratification more time to speak is said to be "her attempt to begin mending fences with those members" who were opposed to the new agreement and an "attempt to connect with those members who do not normally speak up at Union meetings".

30 Regarding the complaint that Bargaining Committee members said they would be stepping down if the tentative agreement was not ratified, the Union says there is nothing unusual or wrong with taking such a position. Since the rejection of a collective

agreement which a bargaining committee is recommending "is a vote of non-confidence in that committee", the step of resigning is commonly followed in such circumstances.

31 With respect to the Bargaining Committee advocating for ratification, the Union says that the Committee "stated that they were in favour of ratification of the collective agreement" and, again, this is not unusual. The Union explains:

> When the Committee reached agreement with the Employer on the tentative agreement, they agreed as part of the tentative agreement to request that members vote in favour of the agreement. This is a standard practice for union bargaining committees once they have reached a negotiated settlement with the Employer.

32 In response to the allegations of a lack of clarity in answering questions on what would happen if the proposed agreement was rejected, the Union says this was because the matter was, by its nature, unclear. The Union says:

> The Bargaining Committee could not know how the Union could proceed in that situation, as it would depend on the Employer's reaction to a rejected agreement.

33 Regarding the role of the staff representative and whether he ought to have acted to make things more orderly, the Union points out that this individual "is an employee of FPSE" and "does not have the authority to take control of ETEA meetings".

THE EMPLOYER

34 The Employer cites various cases relating to Section 12. It notes the bad faith concept is described as meaning "the union has made a decision based on ill will, hostility or revenge toward an individual" (*Douglas Layfield*, BCLRB No. B185/2003, ("*Layfield*") at para. 28)

35 In terms of the collective bargaining, the Employer says that the law recognizes that unions have "a 'wide latitude' in negotiating the terms of a new collective agreement". Choices will need to be made in collective bargaining and it is argued that "the Board does not review the union's choices in order to determine whether they were 'unreasonable' or 'unfair'".

36 The Employer submits there is no basis in the evidence to find that the Union acted out of "ill will, hostility or revenge" in relation to collective bargaining. The Employer says there were contentious issues between the Union and the Employer and in particular in relation to class size. The Employer notes that "while the negotiations were professional, the bargaining was intensive with each party having to agree to substantive compromises to reach an agreement". The decisions made by the Union in respect of collective bargaining "were not made with any malicious intent" and were decisions which the Union had the right to make.

37 With respect to the complaints about the ratification meeting, the Employer says that "the Board will generally not intervene in the union's conduct of collective agreement ratification votes". Unions are not required to hold ratification meetings and such votes "are largely outside the scope of the Board's oversight".

38 The Employer notes that union meetings can become heated and "members may believe that they were not given an adequate opportunity to express their opinion, or feel that they were interrupted or that the negative feedback was unpleasant". The Employer, however, notes the Board has held that "it is not for the Board to be the referee at union meetings or of communications between members and a union's executive" (*Daniel Mick, et al.*, BCLRB No. B132/2012, 214 C.L.R.B.R. (2d) 285 ("*Mick*") at para. 28).

IV. ANALYSIS AND DECISION

39 Section 12(1) of the Code provides as follows:

> (1) A trade union or council of trade unions must not act in a manner that is arbitrary, discriminatory or in bad faith
>
> > (a) in representing any of the employees in an appropriate bargaining unit, or
> >
> > (b) in the referral of persons to employment
>
> whether or not the employees or persons are members of the trade union or a constituent union of the council of trade unions.

40 The Board's approach under Section 12 is set out in the Board's jurisprudence. In particular, there are two principles which emerge from the jurisprudence which relate to the analysis of the Complaint.

41 The first principle is that "Section 12 contains a narrow right and protection": *James W.D. Judd,* BCLRB No. B63/2003, 91 C.L.R.B.R. (2d) 33 at para. 26 ("*Judd*"). The wording of Section 12 limits the Board's review of a union's representation to conduct which is demonstrated to be one of "arbitrary, discriminatory or in bad faith". The case law provides that "it is not the Board's role to decide if a union was right or wrong as long as the union has not acted in an arbitrary, discriminatory, or bad faith manner" under the Code (*Judd*, para. 30).

42 The second principle is that the Board considers "the union's conduct as a whole" when examining a union's representation under Section 12. The Board in *Judd* stated as follows:

> ...when assessing a union's conduct in representing an employee, the Board considers the union's conduct as a whole, from the beginning to end of the grievance process. That is because the issue under Section 12 is whether the union has *represented* the

> employee in a manner that is arbitrary, discriminatory or in bad faith -- not whether it has committed isolated acts that may fit one of those descriptions. (at para. 45, emphasis in original)

43 The Complainant's allegations are based on "bad faith" conduct. Such conduct, in violation of the Code, occurs when a "union has made a decision based on ill will, hostility or revenge toward an individual" (*Layfield*, para. 28). It has been held that bad faith under Section 12 "involves personal animosity or hostility, absent which a decision would not have been made" (*Kenneth A. Olychick*, BCLRB, B167/99 ("*Olychick*"), para. 49).

44 The test for establishing bad faith under Section 12 has been described as "a stringent one" and the Board has held an "allegation of bad faith is a serious allegation". In *Olychick*, the Board said:

> **An allegation of bad faith is a serious allegation and involves personal animosity or hostility, absent which a decision would not have been made.** The proof required to support an allegation of bad faith is summarized in *Gloria Cain et al.,* IRC No. C50/87, as cited in *Brian Rosie, supra:*
>
> > **The test imposed to determine if there has been a violation of this branch of the duty of fair representation is a stringent one. Mere speculation of bad faith will not suffice.** The Council, like the Labour Relations Board, requires objective evidence that the Union handled the grievances in the way it did **because of political revenge or personal animosity, or, at the very least, that there is no other reasonable explanation** for the way in which the Union handled the complaint, see Ross Kulak, BCLRB No. 18/86.
> >
> > As the Labour Relations Board stated in Brian Davies, BCLRB No. L81/83, the duty of fair representation is not violated simply because the Union member has a reasonable apprehension of bias on the part of the union officers; it must be shown that union representatives actually acted in bad faith. (pp. 12-13) (para. 49, underlining in original, bolding added)

45 On my reading of the Complaint, the allegations here do not indicate "**personal** animosity or hostility"(*Olychick*, para. 49, emphasis added). Nor do they demonstrate that the Union has acted "based on ill will, hostility or revenge **toward an individual**" (*Layfield*, para. 28, emphasis added). Rather, a review of the allegations indicates that the Bargaining Committee's motivation for the impugned conduct was an **opposition to the position** being put forward by those speaking against the tentative agreement - not who the people were themselves.

46 The Complaint alleges there was "hostility to a bargaining position" contrary to the position being advocated on behalf of the Union, and describes the conduct directed towards that contrary bargaining position. However, conduct motivated by opposition or hostility to a bargaining position is different than conduct based on personal hostility. Where the alleged conduct amounts to being "hostile" towards a contrary bargaining position, such "hostility" does not constitute "bad faith" under Section 12 of the Code.

47 Similarly, the complaint about the ratification meeting is essentially that it "took on the feel of a debate between members *opposed* to the deal and the bargaining team" (emphasis in original). The Complainant discusses how "those opposed to ratification" were treated and what happened when "an opposing voice spoke". The affidavit of Patrick Terrence McGuire, filed by the Complainant, states that certain persons from the Bargaining Committee "were aggressive to any point of view that differed from their own".

48 This is not a complaint based on personal hostility or revenge toward an individual, but a complaint that opposition to a differing point of view engendered the impugned actions from the Bargaining Committee. Indeed, the Complaint indicates that any comments against ratification were treated in a similar fashion, regardless of which individual made the comments. Where the complained of conduct results from opposition to the point of view espoused, it is not conduct motivated by "personal hostility" or "revenge toward an individual" as those terms are described in the case law, and it is not grounds for a bad faith complaint under Section 12.

49 In terms of the stringent test for finding "bad faith" under the Code, I find that the test has not been met. The material does not demonstrate that the Union handled the negotiations or the ratification meeting in the way it did because of the personal circumstances of those involved, but because of a differing point of view. Furthermore, there is another reasonable explanation for the Bargaining Committee's actions: the Bargaining Committee believed it had done the best it could in bargaining, and the Bargaining Committee was advocating for the tentative agreement because it had agreed to recommend the deal in negotiations with the Employer. In the circumstances, I find the matters complained of in the Complaint do not constitute "bad faith" under Section 12.

50 In addition to my finding that allegations do not constitute "bad faith" under the Code, I would dismiss the Complaint based on my review of the Union's conduct as a whole. An examination of the totality of the Union's conduct indicates the following actions taken by the Union:

- The Union engaged in 14 sessions of collective bargaining, which included "intensive" negotiations;
- The Union conducted a survey of its members in February 2014 to gather information relating to bargaining and job action;
- The Union took job action on two days;

- The Union wrote a two-page letter to members on May 20, 2014 providing details on the bargaining and management's latest proposals;
- The Union advised the membership in the May 20, 2014 letter of the possibility of "job action escalation";
- The Union had a meeting with members on May 22, 2014 regarding the bargaining and to obtain further information to assist it in bargaining;
- The Union presented the motion made at the May 22, 2014 meeting to the Employer at bargaining;
- The Union negotiated class size provisions which were closer to the Union's position than the Employer's position;
- The fact that the Bargaining Committee was of the view that an increase in job action would be necessary if there was going to be the possibility of an enhanced offer was a conclusion it was entitled to make;
- The Union was not required to conduct a ratification meeting, but did so;
- A 28 slide power point presentation was presented at the ratification meeting setting out the language agreed to in the negotiations;
- A bargaining chart was given to members at the ratification meeting relating to the initial proposals and the final negotiated results;
- Those involved with the bargaining spoke at the ratification meeting to explain the tentative agreement;
- There was a period for questions and answers during the ratification meeting, where the Complainant and others spoke querying the tentative agreement;
- The Complainant was allowed to speak at the ratification meeting and, even when he was interrupted by the staff representative, the Complainant was permitted to continue and rebut what was said by the staff representative;
- The ratification meeting lasted for a period of approximately two and a half hours;
- The Union was not required to hold a ratification vote, but did so; and
- The vote on ratification was held by secret ballot.

51 The actions taken by the Union, viewed as a whole, are not indicative of bad faith. The Union sought guidance from members at the May 22, 2014 meeting, which it did not have to do, and presented the motion from members at the bargaining table. The Union subsequently held a ratification meeting which was lengthy and involved the

presentation of a significant amount of material. The test under Section 12 does not, again, focus on isolated acts such as unfavourable comments or interruptions by those involved with the bargaining, and the whole of the Union's conduct indicates that the Union went beyond what was legally required (see *Micah B. Rankin, et al.*, BCLRB No. B220/2013, para. 86).

52 The case before me is similar to *David Habberley, et al.*, BCLRB No. B118/2005 ("*Habberley*"). There the union had negotiated a closure agreement which led to contentious feelings among bargaining unit members. The applicants alleged bad faith in relation to an information meeting held by the union regarding the closure agreement and a ratification vote conducted a number of days later. The Board dealt with the "bad faith" complaints by explaining the union had gone above the legal requirements:

> ...The Union went above the legal requirements with respect to the communications it made with the members, and with respect to holding the ratification vote. A union is not required to go to its members to solicit or develop bargaining proposals. Nor is a union required to obtain approval of proposals from the bargaining unit before they are brought to the employer. Furthermore, a union is not required to obtain ratification of the members to the agreement it has negotiated on their behalf: *Board of School Trustees of School District No. 39 (Vancouver)*, BCLRB No. 72/78; *William F. Burditt, et. al.*, BCLRB No. B249/2000. The parties agreed on these legal principles. (*Habberley*, para. 118)

53 In *Habberley*, the Board also dealt with bad faith allegations "about a lack of information given by the Union to the membership" at the information meeting by again noting the union "was not obligated at law to even hold a meeting before the vote" (para. 116). Further, it was held there was no bad faith as the union had "made reasonable efforts to make the membership aware of the terms of the Agreement before ratification" (*Habberley*, para. 119).

54 I find the same applies to the case before me – the Union was not obligated to hold either the May 22, 2014 meeting about bargaining or the May 26, 2014 ratification meeting. Reasonable efforts were made by the Union to make the membership aware of the terms of the tentative agreement at the ratification meeting through the extensive material provided including the power point presentation, the bargaining chart, and discussions.

55 Underlying a number of the Complainant's specific criticisms is the allegation that the Bargaining Committee was not taking a neutral position on the question of ratification and, thus, the meeting "took on the feel of a debate between members *opposed* to the deal and the bargaining team" (emphasis in original). In my view, however, the bargaining team was entitled to take a position in support of the tentative agreement and to argue for ratification. As the Union says, it is common for the terms of a tentative agreement to include a commitment by a union bargaining committee to recommend the deal to the membership. Having made such a commitment in this case, it was incumbent upon the Bargaining Committee to honour its commitment by

advocating for acceptance. In *Judd*, the Board noted that a "union must be able to make commitments that the employer can rely upon if the union expects to receive anything in return" (para. 35). In *Mark Croxall*, BCLRB No. B335/96 ("*Croxall*"), the fact that a union representative "pushed" for ratification of an amendment to a collective agreement and "advanced his own views" did not constitute a violation of Section 12 (*Croxall*, at paras. 4 and 5).

56 With respect to the complaint that the members of the Bargaining Committee indicated that they would be stepping down if the tentative agreement was not ratified, I agree with the Union that this does not amount to bad faith. It is not unusual for a bargaining committee to take such a step if a tentative collective agreement which is being recommended does not pass. A bargaining committee is within its rights to view such a result as a vote of non-confidence in its ability to negotiate for the bargaining unit. Furthermore, there may be difficulties for such a committee in attempting to deal with the employer at the bargaining table thereafter where the committee has shown it cannot deliver on what it has negotiated and recommended.

57 While it may have created anxiety among Union members for the Bargaining Committee to indicate it would step down, there was nothing wrong with making members aware of that consequence. The Complainant notes he told his fellow members they still "had the power to say 'no'" to what the Bargaining Committee had negotiated. That is true, and voting to reject the tentative agreement was the recourse available to the members. However, the members did not have the right to expect the Bargaining Committee to continue on as if the rejection of its recommendation meant bargaining could continue as it had in the past. Rather, it was within the right of the Bargaining Committee to indicate that it would step down if the members chose to reject the recommendation. Such a step taken by a bargaining committee is not proof of bad faith.

58 As the Complainant notes, "wide latitude" is given to unions "in settling new collective agreement terms" (see *Michael F. Robson*, BCLRB No. B67/99, 51 C.L.R.B.R. (2d) 53 at para. 28). To the extent the Complaint raises issues with the manner in which the Union conducted the bargaining and the handling of the motion from the May 22 meeting, I find that such matters fall within the wide scope given to unions in bargaining. Judgments have to be made by unions on how to deal with such matters which arise in bargaining and the evidence does not demonstrate that those representing the Union were motivated by bad faith in making such judgments and carrying out the bargaining related activities.

59 When they are held, ratification meetings are part of the bargaining process and a significant degree of leeway is given to unions in conducting ratification meetings in line with the "wide latitude" recognized for bargaining matters. Tensions may run high at such meetings with the possibility of escalated job action and the uncertainty of what will occur in the event of rejection. The Board has held it was not a violation of Section 12 for a union representative to be "both self-centered and rude" in advancing his own views at a ratification meeting (*Croxall*, para. 5). Similarly, it has been held that "angry discourse going back and forth between various stake holders", and the expression of

feelings "in an emotional manner", at a union meeting did not amount to a violation of the Code (*Mick*, paras. 28 and 25). In my view, the complaints here, such as the allegations about interruptions or questions not being answered in the best way, do not amount to a breach of Section 12 in all the circumstances and particularly when seen in the context of a ratification meeting.

60 The conduct of such meetings may be governed by provisions in a union's by-laws. However, even where there may be non-compliance with such provisions, such non-compliance is not in and of itself a basis for a Section 12 complaint. So while there may be a disagreement between the Complainant and the Union about whether the ratification meeting was run in accordance with Robert's Rules of Order, such a matter would not constitute a breach of Section 12. Likewise, while the allegations may indicate that the ratification meeting could have been conducted in a more "professional manner", the failure to do so is not a violation of Section 12.

61 As a final matter, I make a number of additional specific findings regarding the FPSE, and its staff representative Hillman. As indicated in *Judd*, "Section 12 of the Code sets out a union's 'duty of fair representation' to its bargaining unit members" (para. 6). It is the ETEA which is the certified bargaining representative for employees in the bargaining unit at issue and it is the ETEA which owes them a Section 12 duty. While the ETEA may have made arrangements to associate itself with the FPSE for various purposes, including the use of Hillman's services, the responsibility under Section 12 remains with the ETEA and not the FPSE.

62 With respect to Hillman and the ratification meeting, the evidence does not establish that Hillman, rather than someone else such as the President of the Local Union, was in charge of the ratification meeting or had the duty to bring order to the meeting. In fact, the opposite conclusion is indicated with, for example, the emails of May 23, 2014 and May 25, 2014 about the ratification meeting coming from the Local President and the Local President saying she wished she conducted a more professional meeting afterwards. In terms of Hillman and the bargaining, the evidence does not demonstrate Hillman was in charge of the collective bargaining or had a duty separate from the Union Bargaining Committee. It was not proven that Hillman was a member of the Union, nor was any reason established for him to act in bad faith towards a Union member. These are additional grounds for the findings herein that a breach of Section 12 has not been established, and in particular with respect to the FPSE and its staff representative.

V. SUMMARY

63 The underlying basis for the Complainant's allegations is the alleged hostility to an opposing bargaining position and to a differing point of view on the part of those negotiating for the Union, whether such hostility occurred at the May 22, 2014 meeting and the bargaining afterwards or at the ratification meeting. Such allegations do not constitute bad faith under Section 12. Furthermore, viewing the Union's conduct as a whole demonstrates the Union has not acted in bad faith as alleged. This includes the fact the Union went above its legal requirements in holding a ratification meeting and

vote, as well as the significant amount of material presented at the meeting. There are additional grounds for dismissing the Section 12 application relating to the FPSE and Hillman given the responsibility for the matters complained of, and the duty under Section 12, is that of the Union. In all the circumstances, I find it has not been demonstrated, as alleged, that the functionaries of the local union acted in bad faith contrary to Section 12 at the ratification meeting; or that the staff representative from FPSE acted in bad faith contrary to Section 12 at the ratification meeting; or that the staff representative from FPSE "acted in bad faith and with dishonesty of purpose in the final five days of bargaining" contrary to Section 12 regarding the Collective Agreement which was negotiated.

VI. CONCLUSION

64 For the reasons given, the Complainant's application is dismissed.

LABOUR RELATIONS BOARD

JAMES CARWANA
VICE-CHAIR