

BCLRB No. B88/2005
(Leave for Reconsideration of BCLRB No. B330/2004)

BRITISH COLUMBIA LABOUR RELATIONS BOARD

UNIVERSITY OF BRITISH COLUMBIA

(the "University" or the "Employer")

-and-

UNIVERSITY OF BRITISH COLUMBIA FACULTY
ASSOCIATION

(the "Faculty Association")

PANEL: Brent Mullin, Chair
Michael Fleming, Associate Chair
Sharon Kearney, Vice-Chair

APPEARANCES: Donald J. Jordan, Q.C., for the University
Allan E. Black, Q.C., for the Faculty
Association

CASE NO.: 52558

DATE OF DECISION: April 7, 2005

DECISION OF THE BOARD

1 The Employer applies under Section 141 of the *Labour Relations Code* (the "Code") for leave and reconsideration of the decision of the Labour Relations Board (the "Board") in BCLRB No. B330/2004 (the "Original Decision"). In the Original Decision, the Board dismissed the Employer's application under Section 99 of the Code for review of an arbitration award issued by Marguerite Jackson, Q.C. (the "Arbitrator") on April 15, 2004 (the "Award"). The background in this matter can be found in the Original Decision.

2 In the present application for reconsideration, the Employer says that the Original Decision is inconsistent with principles expressed or implied in the Code in that it upheld the Award, which was in violation of Section 2(b) of the *Canadian Charter of Rights and Freedoms* (the "Charter") and conflicted with certain other statutes. The Employer says that the Original Decision also adopted a reading of the Award which attributed findings to it not made by the Arbitrator.

3 The Faculty Association has joined issue with the Employer on all points. Both parties presented extensive legal argument by way of written submissions.

4 To obtain leave, an applicant must establish a good arguable case of sufficient merit that may succeed on one of the established grounds for reconsideration as set out in *Brinco Coal Mining Corporation*, BCLRB No. B74/93 (Leave for Reconsideration of BCLRB No. B6/93), (1994), 20 CLRBR (2d) 44. The Board's approach to granting leave is set out in *RG Properties Ltd. et al.*, BCLRB No. B378/2003 (Leave for Reconsideration of BCLRB No. B252/2003).

5 We thank the parties and their counsel for their extensive legal arguments. However, at the end of the day, we find that we do not need to deal with them in detail.

6 The reality in the present matter is that the parties had a dispute under their collective agreement. That dispute included disagreements in respect to the facts and the interpretation of their collective agreement. As in the normal course under Part 8 of the Code, they placed that dispute before an arbitrator. After hearing the matter, the Arbitrator made determinations in respect to the facts and the issues of collective agreement interpretation and rendered her Award.

7 The essence of the Award is that the President of the University had only one reason or basis upon which she did not recommend the promotion of the grievor. On the basis of the facts which she found and her interpretation of the collective agreement, the Arbitrator found that reason or basis for not promoting the grievor was not valid. As a result, the one reason for the President not recommending the promotion of the grievor was removed. That left only the possibility of the President recommending the promotion of the grievor.

8 Under the system of collective agreement arbitration in Part 8 of the *Code*, and
the grounds for review of awards under it in Section 99 of the *Code*, the Board gives
deference to both the findings of fact and collective agreement interpretation of an
arbitrator.

9 There is nothing in the present matter which would cause us to depart from that
policy of deference. The essential determination in the Award, is simply the
consequence of the Arbitrator's findings of fact and interpretation of the collective
agreement. These are the essential tasks of an arbitrator and ones to which the Board
is to give deference. The remedy ordered by the Arbitrator logically flows from the
Arbitrator's findings of fact and interpretation of the collective agreement.

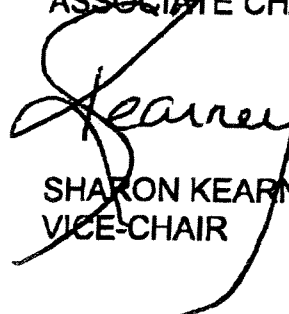
10 These findings of fact, interpretation of the collective agreement, and the logical
consequence flowing from them in the remedy do not raise a *Charter* issue, nor do they
raise a concern in respect to the interpretation and application of other statutes.

11 In any event, we find no error in paragraph 37 of the Original Decision.

12 As well, in our view paragraph 38 of the Original Decision is sufficient to justify
the result reached by the original panel, given the Board's restricted role under Section
99 of the *Code*. Otherwise, we find the original panel's reasons sufficient to answer the
Employer's arguments: *RG Properties Ltd., supra*.

13 We do not find that the present application raises a serious question regarding
the correctness of the Original Decision. Accordingly, leave is denied and the
application for reconsideration is dismissed.

LABOUR RELATIONS BOARD

BRENT MULLIN
CHAIRMICHAEL FLEMING
ASSOCIATE CHAIRSHARON KEARNEY
VICE-CHAIR