BRITISH COLUMBIA LABOUR RELATIONS BOARD

MARTIN SCHULTZ

(the "Applicant")

-and-

FACULTY ASSOCIATION OF THE UNIVERSITY OF
BRITISH COLUMBIA

(the "Union")

-and-

THE UNIVERSITY OF BRITISH COLUMBIA

(the "Employer")

PANEL: Jacquie de Aguayo, Chair
Jennifer Glougie, Associate Chair
J. Nageeb Hassan, Vice-Chair and
Registrar

APPEARANCES: Daniel A. Sorensen, for the Applicant

CASE NO.: 2021-000163

DATE OF DECISION: April 21, 2021
DECISION OF THE BOARD

I. NATURE OF APPLICATION

The Applicant applies under Section 141 of the Labour Relations Code (the “Code”) for leave and reconsideration of 2021 BCLRB 24 (the “Original Decision”). The Original Decision dismisses the Applicant’s complaint that the Union breached Section 12 of the Code when it decided not to advance a discipline grievance to arbitration.

The Applicant alleges the Original Decision is inconsistent with principles expressed or implied in the Code because it did not correctly apply the Board’s test in concluding the Union’s conduct was not arbitrary within the meaning of Section 12. Specifically, the Applicant submits the Union “failed to show it was aware of the factors that would be relevant in determining that the grievance had merit” and had an “inadequate information base which makes it rationally impossible for the Union to come to any reasonable decision”. The Applicant submits that “[d]espite an absence of evidence, the Board has found that the Union’s representation was not arbitrary”.

II. ANALYSIS AND DECISION

An application under Section 141 of the Code must meet the Board’s established test for granting leave for reconsideration: Brinco Coal Mining Corporation, BLCRB No. B74/93 (Leave for Reconsideration of BCLRB No. B6/93) (“Brinco”). It must raise a serious question as to the correctness or fairness of an original decision.

The Original Decision correctly sets out the Board’s law and policy under Section 12 (paras. 33-41), including the description of the Board’s approach to assessing whether a union’s conduct is arbitrary (paras. 35-38). As noted in those paragraphs, a union is required to take reasonable measures to ensure it is aware of the relevant information and then come to a reasoned decision whether to proceed with a grievance. As the Original Decision correctly notes: “What is reasonable will depend on the particular circumstances of the case at hand” (para. 36).

Applying this test or approach to the Applicant’s Section 12 application, the Original Decision finds it did not meet the Section 13 requirement of disclosing a case that a contravention of Section 12 had apparently occurred. The Original Decision notes that the Union filed a grievance of the Employer’s discipline when requested to by the Applicant (para. 12) and met with the Employer for a “Step II” grievance meeting and took the position the discipline was excessive (para. 13). Having taken these initial steps to preserve its ability to advance the grievance to arbitration, the Union then sought and obtained a legal opinion from a labour lawyer “as to whether there was any reasonable prospect of success if the Grievance were pursued to arbitration” (para. 14).
As recorded in the Original Decision, the legal opinion concluded it was “extremely unlikely that the [Discipline] could be overturned at arbitration” (para. 14). It is evident from the Original Decision that the Applicant in his Section 12 complaint took issue with the legal opinion and the Union’s reliance on it. However, on leave and reconsideration, the Applicant does not take issue with the Original Decision’s dismissal of this aspect of the application and, in any event, we find no error or inconsistency with Code principles in the Original Decision’s analysis of this issue.

After obtaining the legal opinion, the Union’s Member Services and Grievance Committee (“MSGC”) met to consider whether to recommend advancing the grievance to arbitration and decided not to do so, setting out the reasons in a letter to the Applicant (para. 16). The Applicant then appealed the decision of the MSGC to the Union’s Executive Committee (para. 17). The appeal letter notes that the Applicant provided a written version of the event giving rise to the discipline to the Union and met with the Union on three occasions (para. 18). The Union’s Executive Committee heard oral submissions from the Applicant’s legal counsel in support of the Applicant’s appeal (para. 20).

The Union’s Executive Committee wrote a letter informing the Applicant that it concurred with the MSGC’s decision not to advance the grievance to arbitration (para. 21). The Executive Committee’s letter sets out that its decision was made “following a careful review of all the evidence before it and a considered discussion on the concerns as outlined in your submission and the presentation made by your legal counsel” (para. 22).

On leave and reconsideration, the Applicant does not dispute that the Union engaged in all of these steps before finalizing its decision not to advance the grievance to arbitration. We find the Original Decision did not err in concluding that there was no apparent case that the Union made this decision arbitrarily within the meaning of Section 12. As the Original Decision notes, Section 12 “does not require that the Union gather every relevant document or piece of information before it makes its decision”, merely to take “reasonable measures to ensure that it is aware of relevant information” (para. 46).

In this case, as the Original Decision notes, to the extent the Applicant asserts the Union “failed to consider the academic context... or indeed any other factor the Applicant considered relevant, ... the Union’s appeal mechanism provided an opportunity for the Applicant to correct that omission before the Executive Committee rendered its final decision” (para. 47). We therefore find the Applicant has not raised a serious question as to the correctness of the Original Decision’s conclusion that the Union’s decision was not arbitrary.

With respect to the Applicant’s submission that the Union “failed to show it was aware of the factors that would be relevant in determining if the grievance had merit”, we note the Union was not asked to respond to the Applicant’s Section 12 complaint. Under Section 13, it was for the Applicant to show an apparent case that the Union had contravened Section 12 in deciding not to pursue the grievance. We find the Applicant
has not raised a serious question as to the correctness of the original panel’s conclusion that the application did not do so. Among other things, the Union heard oral and written submissions from the Applicant’s counsel on appeal of its decision not to pursue the grievance. In these circumstances, we find there is no basis for asserting the Union made its decision with an “inadequate information base” or without awareness of the factors the Applicant considered relevant.

We find the Applicant’s Section 141 application indicates disagreement with the Union’s assessment of the merits of the grievance, but it does not raise a serious question as to the correctness of the conclusion in the Original Decision that the Union’s decision to abandon the grievance was not made in an arbitrary manner.

III. CONCLUSION

For the reasons given, leave is denied and the application is dismissed.

LABOUR RELATIONS BOARD

JACQUIE DE AGUAYO
CHAIR

JENNIFER GLOUGIE,
ASSOCIATE CHAIR

J. NAJEEB HASSAN
VICE-CHAIR AND REGISTRAR