BRITISH COLUMBIA LABOUR RELATIONS BOARD

MARTIN SCHULZ
(the "Applicant")

-and-

FACULTY ASSOCIATION OF THE UNIVERSITY OF BRITISH COLUMBIA
(the "Union")

-and-

THE UNIVERSITY OF BRITISH COLUMBIA
(the "Employer" or the "University")

PANEL: Brett Matthews, Vice-Chair
APPEARANCES: Daniel A. Sorensen, for the Applicant
CASE NO.: 2020-000785
DATE OF DECISION: February 8, 2021
DECISION OF THE BOARD

I. NATURE OF APPLICATION
1. The Applicant asks the Board to find that the Union breached Section 12 of the Labour Relations Code (the "Code") when it decided not to advance to arbitration a grievance which concerned discipline issued to the Applicant by the Employer.

2. Pursuant to Section 13 of the Code, I must decide whether the Applicant has disclosed sufficient evidence that a contravention of Section 12 has apparently occurred.

II. BACKGROUND
3. The Applicant is employed by the University as an associate professor in the Organizational Behaviour and Human Resources Division of the Sauder School of Business at the University of British Columbia.

4. On or about February 27, 2018, the Applicant's Division Chair advised the Applicant via email that he would not be teaching a doctoral seminar that he had taught for the past 16 years. The Applicant went immediately to talk to his Division Chair in person (the "Meeting"). What transpired at this Meeting precipitated the Applicant's discipline.

5. On or about March 2, 2018, the Employer gave the Applicant a letter to advise that an investigation meeting would take place; that the Applicant would not be allowed to be present on the University campus or communicate with students or with members of the University community; and that he would be provided with details of the investigation and the allegations made against him at a later date.

6. The Employer conducted an investigation pertaining to the Applicant's conduct between March and May 2018.

7. By letter dated May 29, 2018, the Dean of the Sauder School of Business (the "Dean") wrote to the President and Vice-Chancellor of the University recommending discipline for the Applicant for his conduct at the Meeting and for his conduct at other division meetings and seminars (the "Dean's Letter"). The Dean's Letter summarizes the evidence from three witnesses pertaining to the Applicant's conduct at the Meeting as follows:

In summary, [the witnesses] describe [the Applicant] as standing in the doorway of [the Division Chair's] office yelling at her in an aggressive and hostile tone accusing her of playing games with him. The reason for his anger was that [the Division Chair] had earlier emailed him about his teaching assignment for 2018-19 in which a PhD course he taught for a long time was assigned to a different faculty member. [The Division Chair] felt alarmed and
unsafe due to his unpredictability and how furious he was. One witness in the vicinity was concerned about her safety and another ensured that someone stayed in the area so that she was not alone with him. They had heard [the Applicant] yell at her before but told me this was much worse, louder than usual, aggressive and threatening. They described it as more intense and personal with him accusing her of playing games and not being fit for the position of Division Chair. During the incident, [the Applicant] demanded that she go with him to the Dean's office. [The Division Chair] was concerned that he would grab her and a witness told me that she did not think [the Applicant] would hit [the Division Chair] but was worried if no one was there he would and no one would be there to witness it. This witness felt if others were around, it made it a safe zone.

In his application to the Board, the Applicant describes what occurred at the Meeting as follows. He says he asked the Division Chair to provide an explanation for her decision, but that she declined to do so. He says that he and the Division Chair expressed different views of the role of a Division Chair and the necessary level of transparency needed during the decision-making process. Finally, the Applicant says he offered, as an alternative, that he teach another graduate seminar. He says the Division Chair declined to consider this suggestion. He says the meeting concluded when he and the Division Chair agreed to consider alternative solutions and to discuss them at a later date.

In response to the allegation that he was yelling and angry during the Meeting, the Applicant offers the following:

It should be noted that [the Applicant] is naturally a loud speaker, with a deep voice tone and is taller in stature than average. [The Applicant] notes that with his loud voice, he does not need nor use a microphone to teach classes in large auditoriums holding up to 150 students. Even when teaching in such an auditorium, instructors in adjacent classrooms have come to the auditorium asking [the Applicant] to be quieter. All of these characteristics are integral and unchanging elements of [the Applicant's] identity [which] cannot be changed. In addition, [the Applicant] has been recognized as extremely passionate, especially in the context of discussing issues related to his profession, research, and academic interests.

In addition to the Applicant's conduct at the Meeting, the Dean's Letter references other conduct which the Dean thought warranted discipline. In particular, the Dean's Letter describes the Applicant's conduct during Division meetings, job talks, and seminars. The Applicant does not address this aspect of the Dean's allegations in his application to the Board.

On December 9, 2019, the Employer: (1) suspended the Applicant from all duties and directed him not to attend on campus or to interact with students, staff or
colleagues between January 1, 2020 and January 31, 2020; (2) directed the Applicant to meet with the University's Director of Dialogue and Conflict Engagement to discuss the University's Statement on Respectful Environment, and to determine a coaching plan and manage the Applicant's impact on his colleagues; (3) directed the Applicant to register for an anger management and conflict resolution course; (4) prohibited the Applicant from attending Division meetings, job talks or seminars until July 1, 2020; and (5) required the Applicant to meet with the Dean every three months to discuss the Applicant's interactions with other faculty members (collectively, the "Discipline").

The Applicant asked the Union to grieve the Discipline on December 12, 2019 and the Union did so on January 15, 2020 (the "Grievance").

The Union and the Employer met on January 16, 2020 for a "Step II Meeting" as contemplated by the applicable collective agreement provisions. At this grievance meeting, the Union took the position that the Discipline was excessive. On February 13, 2020, the Employer denied the Union's grievance.

On or about June 3, 2020, the Union obtained a legal opinion from an experienced labour lawyer who practices in British Columbia ("Union Counsel") as to whether there was any reasonable prospect of success if the Grievance were pursued to arbitration (the "Legal Opinion"). Union Counsel concluded that it was "extremely unlikely that the [Discipline] could be overturned at arbitration, either on the basis that there was no misconduct, or that the [Discipline] is excessive".

The Applicant specifically cites the following conclusory paragraph from the Legal Opinion (the "Cited Legal Opinion Paragraph"):

The conduct alleged is hostile and confrontational conduct towards [the Division Chair] even when she made it clear that the conduct was unwanted and inappropriate. Those allegations are supported by multiple witnesses, and when specifically put to [the Applicant] are in fact, not denied. This conduct is aggravated by [the Applicant's] dismissive response to the allegations, disputing their veracity and legitimacy, attacking those tasked with investigating them, and claiming throughout that his conduct was acceptable academic discourse. The penalty is a one-month suspension, along with workplace counselling, relevant coursework, and exclusion from certain meetings pending completion of the coursework. There is, in our opinion, grounds for discipline, and the discipline imposed is well within the range of what is reasonable in the circumstances. We understand that this constitutes a very serious black mark on [the Applicant's record], and will be a significant factor in any future similar misconduct. Nonetheless, we consider there to be no reasonable basis on which a grievance contesting this discipline could succeed.

On June 4, 2020, the Union's Member Services and Grievance Committee ("MSGC") met to consider whether to recommend that the Grievance be advanced to arbitration. It decided not to do so. The reasons for the MSGC recommendation are set
out in the Union's letter to the Applicant dated June 5, 2020 (the "MSGC Letter"). The Applicant specifically cites the following paragraph from the MSGC Letter (the "Cited MSGC Letter Paragraph") in his application to the Board:

After a considered and lengthy discussion regarding the facts and substantive merits of your file, the MSGC concluded that it will not recommend to the Executive that the grievance be advanced to arbitration. The MSGC concurs with legal counsel that it is extremely unlikely that the discipline imposed in this case could be overturned at arbitration, either on the basis that there was no misconduct or on the basis that the discipline is excessive. The findings that you engaged in hostile, confrontational, unwanted, and inappropriate conduct toward [the Division Chair] are supported by multiple witnesses. Also, we can find no basis upon which to advance the argument that your rights to procedural fairness have been violated. We therefore concur with legal counsel and [the University President] that given the serious nature of the misconduct, as well as your continued failure to take responsibility for your behaviour, there are grounds for discipline, and both the disciplinary and remedial measures imposed upon you are reasonable.

On or about June 24, 2020, the Applicant, by letter from his counsel, appealed the MSGC's recommendation to the Union's Executive Committee (the "Appeal Letter"). The Applicant, through his counsel, asserted in the Appeal Letter that the decision of the MSGC was "primarily based" on the Legal Opinion, and that the MSGC "effectively relied upon the conclusions drawn in the [Legal Opinion]" in deciding not to advance the Grievance to arbitration. The Applicant, through counsel, asserted that the MSGC "grounds its decision on the contents located within the [Legal Opinion] in relaying [Union Counsel's] words and phrases as their own". The Appeal Letter then sets out why the Applicant says the Legal Opinion is wrong.

In the Appeal Letter, the Applicant notes that he had provided the Union with written accounts of what transpired at the Meeting on at least three occasions: on April 19, 2018; April 27, 2018; and May 1, 2018. The Applicant notes additionally that he met with the Union without Union Counsel being present: in March 2018; on May 1, 2018, and on October 1, 2019.

The Applicant says that, in a series of emails sent between June 10, 2020 and June 16, 2020, he asked the Union a number of questions related to the procedure and decision of the MSGC. On June 13, 2020 the Union's President sent him an email (the "June 13 Email") stating:

[The Union's MSGC Chair] and [the Union's Executive Director] have received a number of emails from you in the last week as a result of the decision/recommendation of the MSGC. Those emails, in our view reflect a troubled state of mind. We understand that the MSGC's decision was not the outcome you wanted, and so it may be that your correspondence is simply reflective of your opposition
to that decision. In light of your recent emails however, we want to be sure that you currently feel fit and able to participate in the appeal you wish to pursue before the Executive Committee, and if not, we wish to offer you the opportunity, if it is needed, to seek any necessary treatment before pursuing that process any further.

On June 30, 2020, the Applicant's counsel made oral submissions to the Union's Executive Committee in support of the Applicant's appeal (the "Oral Presentation"). The Applicant describes the arguments advanced in the Oral Presentation as follows:

The presentation advanced the following position:

(a) The Executive Committee should take [the Applicant's] personal life experiences into consideration as they may result in reaction and communication different from others. For example, [the Applicant] spent the formative years of his life growing up in poverty and in Northern Germany in a family of four children, with the oldest being disabled and his father having a prosthetic leg obtained during WWII;

(b) The Executive Committee should consider [the Applicant's] prominent professional reputation….

(c) Multiple examples of cases before the Labour Relations Board wherein an employee's union chooses to primarily rely on a legal opinion may constitute arbitrary representation due to the Opinion Letter's significant errors and weaknesses;

(d) [The Applicant's] conduct was not "discriminatory" as defined by s. 4.4 Policy #3 of B.C.'s Human Rights Code as [the Applicant's] behaviour was catalyzed by a managerial decision made by [the Division Chair] (i.e. allocation of courses) and was not aggravated by any characteristic enumerated under the [Human Rights Code]. In other words, [the Applicant] had a bona fide and reasonable justification for his conduct towards [the Division Chair]; and

(e) [The University] failed to take the necessary steps to educate [the Applicant] on how his behaviour may have amounted to bullying or harassment in order to maintain respectful working environment. Instead of implementing reasonable and more appropriate alternative measures such as conducting a series of personal mediation-approached meetings to eliminate the workplace issues between [the Division Chair] and [the Applicant] or an education and sensitivity training course for [the Applicant] to complete on bullying and harassment. Instead, [the University] responded with temporary suspension, [which] has taken a large toll on [the Applicant's] personal well-being and professional reputation amongst his students at UBC Sauder School of Business.
Following the Oral Presentation, the Union’s Executive Committee wrote to the Applicant to inform him that it concurred with the MSGC’s decision not to advance the Grievance to arbitration (the "Appeal Decision Letter"). The Appeal Decision Letter set out the nature of the question before the Executive Committee and what the Executive Committee considered:

The Executive Committee’s role is to review the MSGC’s decision and to examine whether there are sufficient grounds for potential success at arbitration. The Committee considers the merits of the case within the context of the Collective Agreement and University Policies, appropriate law, and the evidence before them. Before the meeting, the Executive Committee was provided with the following material for review:

- The recommendation from the Dean to the President;
- the President’s decision on discipline;
- the written grievance letter;
- UBC’s response to the grievance;
- the materials that were before the MSGC;
- the [MSGC Letter];
- Correspondence between … yourself and [the MCGC Chair and [the Union’s Executive Director] following receipt of the MSGC’s decision;
- correspondence between [the Union President] and yourself;
- correspondence between [the Union President] and your daughter; and
- the submission for the Executive Committee provided by your legal counsel …. 

The Executive Committee also considered the presentation made by your legal counsel on your behalf at the meeting.

The Appeal Decision Letter sets out the decision reached as follows:

I must inform you that 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, the Executive Committee concurred with the recommendation of the MSGC and voted unanimously with one abstention not to advance the grievance to arbitration.
On or about July 16, 2020, the Applicant received the materials relied on by the Executive Committee. The Applicant says those materials did not include the following documents (collectively "the Documents Not Considered on Appeal"):

a) The initial statements made by the Applicant and the witnesses to the Meeting.

b) A summary of the allegations of inappropriate conduct prepared by a University official who the Applicant describes as the assistant to the Dean (but who is elsewhere in the Applicant's documents identified as Managing Director, Faculty Relations).

c) Correspondence between the Applicant and the Dean regarding the Dean's request that the Applicant provide medical information;

d) Correspondence related to the Applicant's ability to be successfully integrated into a new workload policy at the Sauder School of Business in which the Applicant says he asked his Union representative to "protect" him from the "ill-designed teachings schedules" of the Division Chair; and

e) Correspondence relating to the Applicant's response to the question of whether he would prefer an internal or external investigator. The Applicant says he chose an external investigator because he had concerns about the Dean's biases. The Applicant says that the communication further indicates that, despite the Applicant's concerns, it was the Dean who acted as investigator.

III. POSITIONS OF THE APPLICANT

The Applicant says the Union's representation of him in relation to the Grievance was arbitrary and discriminatory, in breach of Section 12 of the Code.

The first broad category of arguments advanced by the Applicant which I will describe are premised upon the Applicant's assertion that the Union relied, "primarily" on the Legal Opinion, and "abstain[ed] from forming an independent decision". Elsewhere, the Applicant says the Union "effectively relied" upon the Legal Opinion, "ground[ed] its decision on the contents located within the [Legal Opinion]", and that the Union "relay[ed] … words and phrases [from the Legal Opinion] as their own ". The Applicant explains:

[The Union] carried out its representation with blatant or reckless disregard for [the Applicant's] interests by failing to make a reasoned and informed decision on the merits of his case, independent to the [Legal Opinion]. This conclusion may be determined due to the striking similarities between the [MSGC Letter], located at paragraph 15 of Appendix B [of the Applicant's Section 12 application], and the conclusion of the [Legal Opinion], located at paragraph 14 of Appendix B. The almost identical reasoning in [the] two letters' conclusion that the Grievance would not succeed at arbitration allows for the [inference] to be drawn that
the Union relied on the Legal Opinion in making their ultimate decision.

Read in context, I infer the Applicant intended to refer to paragraphs 17 and 16 respectively (rather than paragraphs 15 and 14). Paragraph 17 cites the Cited MSGC Letter Paragraph while paragraph 16 cites the Cited Legal Opinion Paragraph.

The Applicant says that the Cited MSGC Letter Paragraph "bears an almost identical resemblance" to the Cited Legal Opinion Paragraph.


The Applicant says that, just as the union in Larson relied on a flawed legal opinion, so too did the Union in the present case. He says the Legal Opinion in the present case similarly failed to consider relevant factors including what the Applicant says is his unblemished employment record. Moreover, he says the Legal Opinion "exhibited additional errors, flaws and overly broad assumptions [which] were clearly presented in [the Applicant's] written submissions to the Executive Committee". The Applicant cites Chris Knowles, BCLRB No. B49/2011 (Application for reconsideration granted, BCLRB No. B124/2011) (the "Knowles Original Decision") for the proposition that a legal opinion "based at least in part, on erroneous or incomplete material facts … cannot assist [the Union] in establishing it represented [the Applicant] fairly": Knowles Original Decision, para. 146.

In light of my analysis, I need not set out the Applicant's arguments in detail in this regard but, briefly stated, the Applicant says the Legal Opinion made unwarranted assumptions and drew inappropriate conclusions.

In addition to his arguments based upon the Union's reliance on the Legal Opinion, the Applicant says the Union also breached Section 12 of the Code by failing to consider all relevant evidence related to the Grievance. Specifically, the Applicant points to the Documents Not Considered on Appeal as documents and information he says should have been, but was not, considered by the Union in coming to its decision. The Applicant says that, not only would this information have provided a more coherent and complete picture of the circumstances relevant to the Union's decision, but it would have allowed the MSGC and the Executive Committee to examine the evidence and make a subsequent decision based on their own assessment of the credibility of that evidence, rather than relying on the Legal Opinion. The Applicant says, in addition, the Union failed to consider the academic context in which the alleged misconduct occurred. In this regard, he explains:

This is a very special context unlike most workplaces. There is a decision-making hierarchy where it is normal to discuss decisions with individuals affected by the decision. In an academic context, it is very important who teaches what, who does research and what
the coursework looks like. [The Applicant's] discussion with [the Division Chair] must be reviewed in this context where it is common to raise questions and have discourse related to decisions.

The Applicant’s claim that the Union's representation of him was discriminatory rests on the following argument:

Further, while [the Applicant] may have a loud voice, an inherent need to confront perceived injustices, and holds a large physical stature, these are hardly grounds for the assumption [Union Counsel] has drawn in the [Legal Opinion] and, moreover, are inappropriately relied upon in assessing the potential success of the Grievance. In contrast, the central issue of the Grievance concerns the tone and volume of [the Applicant's] voice directed towards [the Division Chair] during the incident. As such, the [Legal Opinion] provided by [Union Counsel] is built upon a weakened and improper foundation that contains little relevance to the substance of the Grievance. Further, [the Applicant] states that the unchallenged references to him having a loud voice and a large physical stature, and the related inferences drawn from those unalterable attributes are discriminatory.

Based on the reasoning displayed in the [MSGC Letter], [which] relies on the [Legal Opinion], it would appear that the [Union] finds [the Applicant's] personality to be difficult and undesirable. However, the perceived likability of a member should not allow for their grievance to receive an unfair and biased assessment of its potential success at arbitration. As such, the assumptions made by [Union counsel] concerning [the Applicant's] ability to recognize the effect of his actions on others, his ability to apologize for allegations he deems to be inaccurate, and apparent tendency to deflect blame are inappropriate and ill-placed in her assessment of the Grievance's potential success at arbitration.

The Applicant says that the Union's representation of him was coloured by its preconceived and unwarranted assessment of his character. In particular, the Applicant points to the June 13 Email as evidence of the Union's bias against him personally. He points specifically to the June 13 Email's reference to his "troubled state of mind".

IV. ANALYSIS AND DECISION

Section 12 provides that a trade union must not act in a manner that is arbitrary, discriminatory, or in bad faith in representing members in a bargaining unit. It provides a narrow right and protection: *James W.D. Judd*, BCLR No. B63/2003 ("Judd"), para. 26.

Section 12 is designed to ensure a union exercises its judgment and acts based on proper considerations: *Judd*, para. 44. In assessing whether a union has breached Section 12, the Board will look to the union's conduct as a whole, from the beginning to the end of the grievance process: *Judd*, para. 45. A Section 12 application is not a
The Board will not find a union has represented an employee in an arbitrary manner if it: "(i) ensure[s] it is aware of the relevant information; (ii) make[s] a reasoned decision; and (iii) [does] not carry out representation with blatant or reckless disregard": Judd, para. 61. It is not arbitrary for a union to merely make an error or handle a matter poorly: Judd, paras. 69-70.

As the board in Judd explained, Section 12 requires that the union take "reasonable measures" to ensure that it is aware of the relevant information: Judd, para. 64. What is reasonable will depend on the particular circumstances of the case at hand: Judd, paras. 62-64.

Once the Union has collected the relevant information, the Union must put its mind to the case and come to a reasoned decision whether to proceed. A reasoned decision is demonstrated by a reasonable and rational connection between relevant considerations and the decision made: Judd, para. 65. The Board in Judd noted that a reasoned decision:

... may include considering collective agreement language, the practice in an industry or the workplace, taking into account how similar grievances have been handled in the past, and supplying reasons for a decision. A union may weigh the credibility of the grievor and potential witnesses in reaching its decision. In cases of discipline or dismissal, a union should consider mitigating circumstances and whether the punishment fit the crime. A legal opinion is not required but, if obtained, may be considered as some evidence that the union took a reasoned view of the grievance.

(Ibid, emphasis added)

A union that demonstrates blatant or reckless disregard for the interests of an employee in carrying out an employee's representation will be guilty of arbitrary conduct within the meaning of Section 12. The Board has cautioned, however, that unions are not law firms and should not be held to the standards required of a lawyer: Judd, para. 70.

Discriminatory representation under Section 12 includes, but is not limited to, discrimination based on prohibited grounds under human rights legislation. It may also include differential treatment based on personal favouritism: Judd, para. 56.

When a Section 12 application is filed, it is the union's conduct that is at issue. In the present case, the Union turned its mind to the merits of the Grievance. It sought out the opinion of an experienced labour lawyer to assist in its decision making. This
provides some evidence that the Union undertook a considered and reasoned analysis of the merits of the Grievance: *Judd*, para. 65.

Section 12 is not an avenue to impugn the correctness or the completeness of the Legal Opinion sought by the Union. It is the Union's conduct, not its lawyers conduct, that is at issue on a Section 12 analysis. Unlike the original panel in *Larson*, I am not able to conclude, from the facts before me, that the Union turned the question of whether the Grievance had merit and should be arbitrated entirely over to its lawyer. I do not accept that any similarity between the Cited MSGC Decision Paragraph and the Cited Legal Opinion Paragraph (or indeed between the MSGC Decision as a whole and the Legal Opinion as a whole, or any other evidence before me) leads to that conclusion.

Rather I conclude from the evidence before me, that the Union conducted an investigation which included, at a minimum, collecting statements from the Applicant, and interviewing the Applicant (separately from any interviews conducted by Union Counsel). The facts put before me suggest the Legal Opinion was but one of the pieces of information relied upon by the Union in coming to its decision not to advance the Grievance to arbitration. Consequently, even if I were to conclude that the Legal Opinion was flawed, misunderstood the facts, made unwarranted findings, or failed to consider factors which Section 12 requires that the Union consider – and I expressly make no such finding – that conclusion would not assist the Applicant in establishing that the Union had apparently breached its obligation to come to a reasoned decision. As noted above, a reasoned decision in this context need not be a correct decision.

It follows that I am unable to accept the proposition advanced by the Applicant, citing the *Knowles Original Decision*, that obtaining a legal opinion "based at least, in part, on erroneous or incomplete material facts" cannot assist the Union in establishing that its representation of the Applicant was not arbitrary. I note that the *Knowles Original Decision* was "cancelled" on reconsideration in *Chris Knowles*, BCLRB No. B124/2011 (Leave for Reconsideration of No. B49/2011) (para. 44), with the reconsideration panel noting as follows at paragraph 34:

> Given [the panel's determination on procedural fairness], it is not strictly necessary that we go on to consider the second argument in the Union’s Cross-Appeal. However, we find it important to do so because we find there is in [the *Knowles Original Decision*] a standard of review of the Union’s actions which is inconsistent with the statutory requirement in Section 12 of the Code, as explained in the Board’s leading decision on that provision in [*Judd*]. We find that there is a more exacting standard of review in [the *Knowles Original Decision*] than exists in Section 12 of the Code.

Consequently, I decline to consider the Applicant's arguments directed at impugning the methodology, analysis, or the conclusion reached in the Legal Opinion. I dismiss that aspect of the Applicant's application pursuant to Section 13 for its failure to disclose a case that the Union apparently breached Section 12.
The Applicant further asserts that the Union failed to consider all relevant evidence and information, including the Documents Not Considered on Appeal and the academic context in which the allegations resulting in the Discipline occurred.

Firstly, Section 12 does not require that the Union gather every relevant document or piece of information before it makes its decision. To do so would be to set an impossibly high bar. Rather, unions are required to engage "reasonable measures" to ensure that they are aware of relevant information. What is reasonable will depend on the circumstances of each case. Assuming, without deciding, that some or all of the Documents Not Considered on Appeal are relevant to the Union's assessment of the merits of the Grievance, and that the Union did not consider them, I am nonetheless satisfied, from the facts before me, that the investigation conducted by the Union was sufficient for it to make a reasoned decision as to the merits of the Grievance.

Secondly, even if I were to find that the MSGC failed to consider the academic context surrounding the Meeting, or indeed any other factor the Applicant considered relevant, the Applicant was given an opportunity to appeal that decision to the Executive Committee, to provide both written and oral argument, and to do so through counsel of his choice. To the extent the Union might have missed a relevant mitigating factor, the Union's appeal mechanism provided an opportunity for the Applicant to correct that omission before the Executive Committee rendered its final decision.

I dismiss this aspect of the Applicant's application for failure to disclose a case that the Union has apparently contravened Section 12.

Lastly, the Applicant says the Union's representation of him was discriminatory.

The Applicant has variously asserted, as grounds for the discrimination he says he suffered at the hands of the Union: his naturally loud voice; his large physical stature; his need to confront perceived injustices; and, generally, his perception that the Union harboured personal animosity towards him.

I am not satisfied, however, that the Applicant has provided the Board with sufficient evidence to establish an apparent case that the Union treated him differently because of any of those alleged characteristics. Put another way, even if I were to accept that the evidence established the Union harboured a dislike of the Applicant, the Applicant has not established an apparent case that the Union treated him differently because of that.

In any event, I am not satisfied that the Applicant has established an apparent case that the Union or its representatives disliked the Applicant personally. In particular, I am not satisfied that the June 13 Email demonstrates that the Union harboured animosity toward, or was biased against, the Applicant. To the contrary, the June 13 Email, read completely and in context, reflects the Union's attempt to ensure that its processes were procedurally fair to the Applicant. It does not establish bias or animosity.
Consequently, I also dismiss this aspect of the Applicant’s Section 12 application for its failure to disclose a case that a breach of Section 12 has apparently occurred.

V. CONCLUSION

For the foregoing reasons, I find the Applicant has failed to disclose a case that the Union apparently contravened Section 12 of the Code.

The application is dismissed pursuant to Section 13.

LABOUR RELATIONS BOARD

BRETT MATTHEWS
VICE-CHAIR