BRITISH COLUMBIA LABOUR RELATIONS BOARD

MICHAEL VANNEY AND WAI-CHING ALFRED KONG
  (the "Applicants")

-and-

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

-and-

THE UNIVERSITY OF BRITISH COLUMBIA
  (the "Employer")

PANEL: David Duncan Chesman, Q.C., Vice-Chair

APPEARANCES: Michael Vaney and Wai-Ching Alfred Kong, self-represented

CASE NO.: 2021-001029

DATE OF DECISION: May 12, 2022
DECISION OF THE BOARD

I. NATURE OF APPLICATION

1. I understand the Applicants to allege the Union's interpretation of Part 7, Article 5 of the July 1, 2019 to June 30, 2022 collective agreement between the Union and the Employer (the "Collective Agreement") constitutes arbitrary, bad faith, and discriminatory representation in contravention of Section 12 of the Labour Relations Code (the "Code") (the "Application").

2. The Application was filed on September 17, 2021 and expressly identified the applicants as: "UBC Continuing Sessional Lecturers as represented by Continuing Sessional Lecturers Wai-Ching Alfred Kong and Michael Vaney".

3. By a letter to the Applicant Vaney dated October 6, 2021, the Board asked that all applicants be identified by name.

4. By an email to the Board dated March 15, 2022, the Applicant Vaney attached a February 25, 2022 letter to the Board, executed by the Applicant Kong, authorizing "Michael Vaney to act on my behalf for the application". In the result, I understand the Applicants to be the only applicants before me.

5. A Section 12 application must satisfy certain procedural requirements, including the prior exhaustion of the respondent trade union's internal appeal procedures.

6. Further, under Section 13(1)(a) of the Code, a Section 12 application may proceed only where it discloses a prima facie case of an apparent contravention of Section 12.

7. Based on my review and consideration of the allegations of fact in the Application and the three documents attached to the Application, I find I can decide the Application on the basis of both Section 12 procedural requirements and Section 13(1)(a).

II. BACKGROUND

Documents

8. All documents quoted below are quoted on a "reproduced as written" basis, meaning without the identification or correction of errors.

9. The Application was filed with three attached documents, the potentially relevant portions of which are quoted below.
By its October 29, 2015 letter to Kong, the Employer confirmed Kong's "continuing status as a Sessional Lecturer" as follows:

I would like to congratulate you on having attained continuing status as a Sessional Lecturer, effective July 1, 2014. Your appointment during this academic year was for 8 months at 100% (full-time) load. The Department of Economics is the academic unit responsible for your continuing appointment.

Pursuant to Article 5 of the Agreement on Conditions of Appointment for Sessional and Part-Time Faculty Members, a Sessional Lecturer with continuing status is entitled to be appointed in subsequent years for the same length of time and at the same load as in the academic year when continuing status was achieved, subject to certain terms and conditions. In addition, your Professional Development Reimbursement Fund eligibility is now $1,100 per year (more information can be found at the following link):

http://www.hr.ubc.ca/faculty_relations/compensation/pdrfund.html

As background information, a Sessional Lecturer achieves continuing status by virtue of having accumulated 36 months of full-time equivalent (FTE) service within a period of 6 years. For the purpose of calculating FTE service, each course taught outside of the regular winter session is to be given the same weight as it is given when taught during the regular winter session.

Please find attached a spreadsheet detailing the history of your appointments at UBC up to the most recent term and the calculations of your FTE months of service.

(the "Kong Letter")

Part 7, Article 5 of the Collective Agreement states:

Article 5. Continuing Appointments

5.01 a) When a Sessional Lecturer's appointments cumulatively equal three (3) years of full-time equivalent service over a period of six (6) or fewer consecutive academic years (July to June) as outlined in Appendix A, they are a Continuing Sessional Lecturer.

b) The Sessional Lecturer's Continuing Appointment is effective on the completion of the relevant number of credits taught as outlined in Appendix A.

c) The University shall extend the periods in paragraphs (a) and (b) to accommodate maternity leaves. The Parties will resolve individual cases of temporary,
emotional, or physical incapacity in accordance with the usual practice.

5.02 A Continuing Sessional Lecturer has a right to:

a) reappointment for a period of time equal to the same length of time and on the same basis, full or part-time, as the appointment they held in the winter session of the academic year (July to June) in which the Continuing Appointment becomes effective, subject to Article 10.01; and

b) assignment to a course load in any academic year at least equal to the number of credits taught during the appointment upon which their Continuing Appointment is based, subject to Articles 6.02 and 10.01.

This Article does not preclude the University from changing course assignments or other duties, or the terms in which teaching is assigned. Any increases in workload shall be subject to Article 2.03 of this Agreement.

5.03 By implication of Article 5.02a) the individual course load entitlement of a Continuing Sessional Lecturer should be received during the winter session. If it is, the Continuing Sessional Lecturer is not entitled to appointment or any course load or course assignment in the summer session. If the individual course load entitlement is not received in the winter, the Continuing Sessional Lecturer is entitled to appointment in the summer session and to be assigned courses in priority over other Sessional Lecturers to the extent necessary to ensure the individual course load entitlement is received during the academic year. In both cases, they may be assigned additional courses in the summer session as per Article 5.06.

5.04 Notwithstanding Article 5.02(a), where a Sessional Lecturer's course assignment at the time they achieve a Continuing Appointment is greater than a ten percent decrease from their average course assignment in the preceding two years, the University shall calculate the Continuing Appointment on the basis of that average.

5.05 If, in any year, due to Articles 10.01(b) or (c), the University assigns a Continuing Sessional Lecturer to a course load less than the level to which they are entitled pursuant to Article 5.02(b) then their course load entitlement in the following year shall not be affected.

5.06 A Continuing Sessional Lecturer may, from time to time, have additional course assignments, but such additional
course assignments shall not affect the nature of the Continuing Appointment.

5.07 Notwithstanding the provisions of Article 5.06, a review of each Continuing Appointment shall be conducted every three (3) years. The purpose of the review is to determine whether, on the basis of an emerging pattern of course assignment, the percentage of time of the Continuing Appointment should be increased or decreased.

By its June 25, 2021 email to a "Catherine Douglas", the Union stated:

The Collective Agreement is bargained between the Faculty Association and the University and as such it is the Parties who establish interpretations of the language. If you and/or your colleagues would like to see changes to the language or interpretation of this language than the next step would be to raise your concerns during the next round of bargaining consultations. You may do so in the written survey that is distributed at the time or at bargaining workshops, if held. The Bargaining Committee will take them into consideration.

Allegations of Fact

The Application was filed on the Board's online Section 12 application form (the "Form") which asks: "Tell us what happened?". In response the Applicants say:

Complainants: UBC Continuing Sessional Lecturers as represented by Continuing Sessional Lecturers Wai-Ching Alfred Kong and Michael Vaney. Issue: Interpretation of Collective Agreement between UBC and UBCFA, July 1, 2019 to June 30, 2022, Part 7, Conditions of Appointment for Sessional Lecturers, Article 5 (the collective agreement). Internal Recourse: All internal recourse has been exhausted and foreclosed, and this complaint has not been raised elsewhere. Complaint: [1] The Complainants are the approximately 95 Continuing Sessional Lecturers at the University of British Columbia. [2] Sessional Lectures are hired under a less than 12-month period to teach credit courses or run laboratories. [3] "Continuing" Sessional Lecturers are Sessional Lecturers that have completed the equivalent of 3 years of teaching in a 6-year period. [4] Continuing Sessional Lecturers acquire additional rights; germane to this application is the right to a minimum number of courses, "individual course load entitlement". (Article 5, page 119, the collective agreement) 5.02 A Continuing Sessional Lecturer has a right to: a) reappointment for a period of time equal to the same length of time and on the same basis, full or part-time, as the appointment they held in the winter session of the academic year (July to June) in which the Continuing Appointment becomes effective, subject to Article 10.01; and b) assignment to a course load in any academic year at least equal to the number of credits taught during the appointment upon which their Continuing
Appointment is based, subject to Articles 6.02 and 10.01. This Article does not preclude the University from changing course assignments or other duties, or the terms in which teaching is assigned. Any increases in workload shall be subject to Article 2.03 of this Agreement. [5] For clarification, normally, a one-term course may be translated into 3 credits (e.g. 6 courses would be equivalent to 18 credits). The academic year is defined as 1 July to 30 June of the next year. [6] The individual course load entitlement is determined by the number of credits taught during the term of the contract appointment in which the Sessional Lecturer is declared "Continuing" by UBC. [7] For example, if the Sessional Lecturer were declared a Continuing Sessional Lecturer on 1 January 2010, and their employment contract with a term of 1 September 2009 to 30 April 2010 assigned 21 credits, then this would define this lecturer's minimum individual course load entitlement at 21 credits (7 courses). [8] The designation of Continuing Sessional Lecturer status is confirmed by letter from UBC to the employee. [9] This Letter of Continuing Sessional Lecturer Status confirms this reading of Article 5 of the collective agreement. See Appendix B for an example of a Letter of Continuing Sessional Lecturer Status. [10] Moreover, the collective agreement has been revised over the years to make the language of Article 5 more clearly in support of the Complainants' position. [11] The ordinary and usual reading of Article 5 and the Letter of Continuing Status is clear. [12] The case law provides unambiguous direction that if the reading of a collective agreement is clear, there is no need to embark on an archeological investigation into extrinsic evidence and inapplicable general legal principles. [13] Such an unnecessary and questionable inquiry by the Faculty Association would be both arbitrary and in bad faith. [14] Furthermore, the Continuing Sessional Lectures have relied on the clear reading of Article 5 and their Letters of Continuing Status to their detriment; the Faculty Association is thus estopped from denying the clear reading of these documents. [15] With regard to discrimination, full-time research faculty are governed by the general guideline for workload by what is referred to as the "40-40-20 Rule" - 40% of their time spent on teaching, 40% on research, and 20% on administrative duties. Their teaching duties are generally expected to comprise 4 courses (12 credits) per academic year. [16] Similarly, Contract Teaching Faculty (read 12-month Lecturers) are generally contracted on a "80-20 Rule" - 80% of their time teaching, and 20% on administrative duties. Their teaching duties are generally expected to comprise 8 courses (24 credits) per academic year. [17] Applying these rubrics, full-time teaching course loads are equivalent to 10 courses (30 credits). [18] Continuing Sessional Lecturers, Contract Faculty and Research Faculty teach the same courses. [19] Application of an alternative determination of course load for Continuing Sessionals by the Faculty Association is discriminatory. [20] The Faculty Association's application of Article 5 of their collective agreement is not transparent, intelligible, nor justified; it is internally inconsistent and not based on a rational
chain of analysis. In sum, it is arbitrary, discriminatory and in bad faith.

The Form then asks: "When did it happen?". In response, the Applicants say: "June 25, 2021".

III. APPLICANTS' POSITION

The Applicants' position is as stated in their responses to the information requested, and questions posed, by the Form. Those responses are quoted below on a "reproduced as written" basis, meaning without the identification or correction of errors.

The Form asks: "Explain why you say the Union's representation or response was arbitrary, discriminatory, or in bad faith". In response, the Applicants say:

Continuing Sessional Lecturers, Contract Faculty and Research Faculty teach the same courses. Application of an alternative determination of course load for Continuing Sessionals by the Faculty Association is discriminatory. The Faculty Association's application of Article 5 of their collective agreement is not transparent, intelligible, nor justified; it is internally inconsistent and not based on a rational chain of analysis. In sum, it is arbitrary, discriminatory and in bad faith.

The Form asks: "Did you attempt to appeal the Union's decision through the Union's internal appeal procedure?". In response, the Applicants say: "No".

The Form then asks: "Why not?". In response, the Applicants say:

This was not presented as an option. Please see email from UBC Faculty Association which is included as an attachment.

Under the Form's "Requested Resolution", the Applicants request that "the Board direct the University of British Columbia Faculty Association to interpret and enforce the clear and ordinary meaning of Article 5 and the Letters of Continuing Status".

IV. ANALYSIS AND DECISION

1. Law

Section 12

Section 12(1) of the Code states:

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.

The application of Section 12 is limited to trade union representation in the
context of a trade union's collective agreement or collective bargaining relationship with
an employer (Tom Smith, BCLRB No. B15/2004 (Leave for Reconsideration of BCLRB
No. B218/2003)).

The Board's leading Section 12 decision is James W.D. Judd, BCLRB No.
B63/2003 ("Judd").

Section 12 contains a narrow right and protection. It provides that a trade union
must not represent a bargaining unit employee in a manner that is arbitrary,
discriminatory, or in bad faith. The Board does not consider the correctness of the trade
union's impugned representation under Section 12 but, rather, whether the trade union
acted in an arbitrary, discriminatory, or bad faith manner in its representation of a
bargaining unit employee (Judd, para. 30).

"Arbitrary" representation is defined as representation "not [based] upon any
course of reason [and] exercise of judgment" (Judd, para. 58). To discharge its Section
12 duty of fair representation a trade union must (i) ensure it is aware of the relevant
information, (ii) make a reasoned decision, and (iii) not carry out representation with
blatant or reckless disregard (Judd, para. 61).

"Discriminatory" representation includes unequal treatment on the basis of any of
the prohibited grounds in the Human Rights Code, R.S.B.C. 1996, c. 210 ("HRC") and
may include personal favouritism absent a relevant difference in the relevant parties'
circumstances (Judd, paras. 55 and 56).

"Bad faith" representation "will typically involve either representation with an
improper purpose or representation with an intention to deceive" (Judd, para. 49). For
example, it would be representation with an improper purpose for a trade union "to
attempt to bring about circumstances in which [a bargaining unit employee] was likely to
be disciplined" (Judd, para. 51). An intention to deceive does not include isolated
falsehoods unrelated to the quality of a trade union's representation but may include
union dishonesty that directly affects the quality of the trade union's representation of a
bargaining unit employee's interest(s) (Judd, para. 53). Absent an improper purpose or an
intention to deceive, trade union representation detrimental to a bargaining unit
employee's interest(s) is not "bad faith" representation under Section 12. It is not, for
example, "bad faith" representation for a trade union, having appropriately assessed a
situation, to arrive at the same conclusion as the employer, even where that conclusion is
detrimental to a bargaining unit employee's interest (Judd, paras. 51-52).

Further to the above, a union's duty under Section 12 "is not to be equated with
legal advocacy on behalf of an individual worker, but rather to be seen as the union's
exercise of its agency, of which advocacy on behalf of a worker is one aspect" (Budgell v.
When a trade union interprets a collective agreement to which it is a party "it is doing its job of representing the employees" covered by that collective agreement (Judd, para.42).

It is not the Board's role under Section 12 to investigate the applicant's allegations or to make the case for the applicant. As the Board said in Judd:

In this next section, we hope to correct the misconception: "make a complaint to the Board and they'll look into it". The Board is not a government agency that investigates unions. It is an independent and impartial adjudicative body like a court. If someone alleges a party has violated the Code, and wants to obtain a remedy for that violation, it is up to them to establish that the Code has been violated. It is up to them to make their case.

(para. 72)

Section 12: Internal Appeal

Unless it would be impractical or ineffective to do so, a Section 12 applicant must exhaust the respondent trade union's internal appeal procedures, if any, prior to filing a Section 12 application (Judd, para. 97). The exhaustion of the respondent trade union's internal appeal procedures prior to the filing of a Section 12 application is a requirement and "not an option" (Kevin Humber, BCLRB No. B16/2005, para. 11; Yul Hill, BCLRB No. B130/2018, para. 50; S.K., BCLRB No. B76/2019 (Leave for reconsideration denied, BCLRB No. B95/2019), para. 98; Rebecca Weiss, BCLRB No. B163/2019 (Leave for reconsideration denied, BCLRB No. B183/2019), para. 33); Linda Salisbury, 2021 BCLRB 40, paras. 34-37; Phong (Ryan) Ngo, 2021 BCLRB 139, paras. 26, 32-35).

Section 13(1)(a)

Particulars are allegations of fact in support of an application under the Code.

Under Section 133(4) of the Code, the Board may dismiss an application that fails to provide sufficient particulars to establish a prima facie case (Best Facilities Services Ltd., BCLRB No. B133/2013, paras. 14-17).

Consistent with the foregoing, the Board does not decide applications based on speculation, bare assertions, or bald allegations (Kamloops Forest Products Ltd., BCLRB No. B379/2000, paras. 29-31; Sodexo MS Canada Limited, BCLRB No. B187/2004 (Leave for reconsideration denied, BCLRB No. B323/2014), para. 14; Overwaitea Food Group LP, BCLRB No. B28/2019, para. 34; Glen William Fraser, 2021 BCLRB 19, para. 11).
Section 13(1)(a) states:

If a written complaint is made to the board that a trade union, council of trade unions or employers' organization has contravened section 12, the following procedure must be followed:

(a) a panel of the board must determine whether or not it considers that the complaint discloses a case that the contravention has apparently occurred…

Under Section 13(1)(a) of the Code, the Board may dismiss a Section 12 application that fails to provide sufficient particulars to establish a *prima facie* case of the respondent trade union's contravention of Section 12.

Consistent with the Board's general jurisprudence, bald allegations or bare assertions of trade union representation in contravention of Section 12 are insufficient to sustain a Section 12 application. As the Board said in *Judd*:

When employees make a Section 12 complaint to the Board, they are asking the Board to adjudicate that complaint and to make a legal determination in their favour. The initial determination which the Board must make is whether the *facts alleged* establish a violation of Section 12. The Board cannot decide that a union violated Section 12 simply because the complainant says the union was "arbitrary" or "discriminatory", "did nothing for me", "disregarded my interests", or "acted in bad faith".

Rather, the complaint must show what happened, when it happened, how it happened, who said or did what and what aspects of the conduct are alleged to be arbitrary, discriminatory or in bad faith. If the facts set out in the complaint do not, by themselves, establish a violation of Section 12, the complaint should be dismissed: Section 13(1)(a)…

(paras.76-77, emphasis in original).

2. Analysis

Internal Appeal

As above, a Section 12 applicant must exhaust the respondent trade union's internal appeal procedure prior to filing a Section 12 application, unless it would be impractical or ineffective to do so.

The Applicants acknowledge they did not appeal the Union's impugned interpretation of the Collective Agreement through a Union internal appeal procedure. They say such an appeal "was not presented as an option" which, as I understand it, means the Union did not advise the Applicants of an internal Union appeal procedure by which they could appeal the Union's interpretation of the Collective Agreement.
I understand the Applicants to be laypersons. While the Board allow laypersons some latitude, they are expected to familiarize themselves with the legal practices and procedures relevant to their case (Martina Steffen, BCLRB No. B73/2018 (Leave for Reconsideration of BCLRB No. B103/2016), para. 19; E.L., 2020 BCLRB 33 (Leave for Reconsideration denied, 2020 BCLRB 71), para. 32; Lisa Gregory, 2022 BCLRB 37, para. 38).

As above, the Applicants had a responsibility to familiarize themselves with the legal practices and procedures attending the Application. Such legal practices and procedures include the requirement that a Section 12 applicant must exhaust the respondent trade union's internal appeal procedure prior to filing a Section 12 application, unless it would be impractical or ineffective to do so.

The Applicants did not appeal the Union's interpretation of the Collective Agreement through the Union's internal appeal procedure. Further, the Applicants do not assert the absence of an internal Union appeal procedure, nor do they assert it would have been impractical or ineffective to engage the Union's internal appeal procedure.

In the result, I find the Applicants failed to exhaust the Union's internal appeal procedure and I dismiss the Application on that basis.

Section 13(1)(a)

In any event of the foregoing, I next consider whether the Application discloses a prima facie case of a contravention of Section 12, as required by Section 13(1)(a).

Introduction

As I understand the Applicants to be laypersons, and as the Board allows laypersons some latitude, I have given the Application a sympathetic reading without, at the same time, investigating or making the case for the Applicants. To that end, I have read the Application and its attached documents with a view to identifying express and, where reasonable, implicit allegations of Union representation in contravention of Section 12.

Where I have identified an express allegation, or have reasonably inferred an implicit allegation, of arbitrary, bad faith, or discriminatory Union representation, I have considered whether the Application provides sufficient particulars of any such allegation to establish a prima facie case of a contravention of Section 12, as required by Section 13(1)(a).

As my point of departure, I note the Application suffers from a general lack of clarity occasioned by a general lack of particulars.

For example, the Application says the Union's alleged contravention of Section 12 occurred on June 25, 2021 and attaches a June 25, 2021 Union email to a "Catherine Douglas". The Application does not, however, identify "Catherine Douglas"
and, in the result, I cannot know whether "Catherine Douglas" has any substantive connection to, or involvement with, the Application.

Further, the Union's June 25, 2021 email to "Catherine Douglas" references a "Collective Agreement", but the Application does not identify it as the Collective Agreement identified in this decision. Further, the Union's June 25, 2021 email to "Catherine Douglas" references an "interpretation of this language", but the Application does not identify the "language" to which the Union refers. Absent such identification, I cannot know if the Union's reference is to Part 7, Article 5 of the Collective Agreement. Absent such particulars, the Union's June 25, 2021 email to "Catherine Douglas" is a document upon which I cannot rely.

As a further example of the Application's lack of particulars, the Application does not disclose the "chain of analysis", "extrinsic evidence", or "inapplicable general legal principles" upon which the Union is alleged to have based its impugned interpretation of the Collective Agreement. Particulars of such allegations would, at a minimum, require the disclosure of the Union's written interpretation of the Collective Agreement, if any. Absent such documentation, an identification of the Union's impugned analysis; "extrinsic evidence"; and "general legal principles" upon which the Union's interpretation of the Collective Agreement is allegedly based, was required.

**Merits**

The Applicants expressly allege the Union's interpretation of the Collective Agreement constitutes arbitrary and bad faith representation in contravention of Section 12. In connection with those express allegations, the Application says the Union conducted an "unnecessary and questionable inquiry" to arrive at an interpretation of the Collective Agreement, based on an other than "rational chain of analysis" and "extrinsic evidence and inapplicable general legal principles", that is contrary to "the ordinary and usual reading of [Part 7] Article 5 [of the Collective Agreement] and the Letter of Continuing Status" (Kong Letter), which are "clear".

The Applicants also expressly allege the Union's interpretation of the Collective Agreement constitutes discriminatory representation in contravention of Section 12. In connection with that express allegation, the Application says:

"Continuing Sessional Lecturers, Contract Faculty, and Research Faculty teach the same courses. [The] [a]pplication of an alternative determination of course load for Continuing Sessionals by the [Union] is discriminatory".

Based on the foregoing, I understand the Applicants to say the Union has interpreted the Collective Agreement to determine Continuing Sessional Lecturers' course loads in a different manner than those of other faculty covered by the Collective Agreement based on an other than "rational analysis" and "extrinsic evidence and inapplicable general legal principles", contrary to its "clear" meaning and that of the Kong Letter.
Implicit Allegation: Incorrect Interpretation

By their description of the Union's interpretation of the Collective Agreement as based on an other than "rational chain of analysis" and "extrinsic evidence and inapplicable general legal principles", contrary to its "clear" meaning, I understand the Applicants to allege the Union's interpretation of the Collective Agreement is incorrect. On a sympathetic reading, the Application may be understood to implicitly allege the Union's incorrect interpretation of the Collective Agreement constitutes arbitrary, bad faith, or discriminatory Union representation.

A collective agreement is a collectively bargained agreement between a trade union and an employer. In the exercise of their collective bargaining agency, trade unions are routinely required to interpret the collective agreements to which they are a party. The interpretation of a collective agreement to which it is a party is, therefore, an instance of a trade union "doing its job of representing employees" (Judd, para. 42) and the Board does not consider the correctness of a trade union's representation under Section 12 (Judd, para. 30).

In the result, to the extent the Application implicitly alleges the Union's incorrect interpretation of the Collective Agreement constitutes arbitrary, bad faith, or discriminatory Union representation, it does not disclose a prima facie case of a contravention of Section 12.

Express Allegation: Arbitrary Representation

On a sympathetic reading, I understand the Applicants' express allegation of arbitrary Union representation to be that the Union interpreted the Collective Agreement contrary to its "clear" meaning, based on an other than "rational chain of analysis" and "extrinsic evidence and inapplicable general legal principles".

As above, arbitrary trade union representation is representation that lacks an awareness of relevant information; lacks a reasoned decision; and/or is made with reckless and blatant disregard (Judd, para. 61).

On a sympathetic reading, I note the Applicants' allegation that the Union's interpretation of the Collective Agreement is based on an other than "rational chain of analysis" may be understood as synonymous with an allegation that the Union's interpretation of the Collective Agreement is other than a "reasoned decision" (Judd, para.61). If so, the allegation is an allegation of arbitrary Union representation that requires particulars to proceed.

The Application does not provide any particulars of the Union being unaware of information relevant to the interpretation of the Collective Agreement; failing to make a reasoned decision; or acting with reckless disregard. Absent such particulars, the Applicants' express allegation of arbitrary representation is a bald allegation or bare assertion of arbitrary representation and, as above, Section 12 applications based on bald allegations or bare assertions may not proceed.
For the above reasons, I find the Application fails to disclose a *prima facie* case of arbitrary Union representation in contravention of Section 12.

**Express Allegation: Bad Faith Representation**

On a sympathetic reading, I understand the Applicants' express allegation of bad faith Union representation to be that the Union interpreted the Collective Agreement contrary to its "clear" meaning, based on an other than "rational chain of analysis" and "extrinsic evidence and inapplicable general legal principles".

As above, bad faith trade union representation in contravention of Section 12 is representation for an improper purpose or an intention to deceive (*Judd*, para. 49).

The Application does not provide any particulars of an improper purpose or intention to deceive attending the Union's impugned interpretation of the Collective Agreement. Absent such particulars, the Applicants' express allegation of bad faith representation is a bald allegation or bare assertion and, as above, Section 12 applications based on bald allegations or bare assertions may not proceed.

For the above reasons, I find the Application fails to disclose a *prima facie* case of bad faith Union representation in contravention of Section 12.

**Express Allegation: Discriminatory Representation**

The Applicants expressly allege that the Union's interpretation of the Collective Agreement constitutes discriminatory representation in contravention of Section 12 because it applies "an alternative determination" of Continuing Sessional Lecturers' course loads to that applied to other faculty.

As above, discriminatory trade union representation in contravention of Section 12 is representation that constitutes unequal treatment based on any of the prohibited grounds in the *HRC*, or personal favouritism (*Judd*, paras. 55 and 56).

The Application makes no mention of prohibited grounds under the *HRC*. On a sympathetic reading, however, the Application may implicitly allege that the Union's impugned interpretation of the Collective Agreement is the result of the Union favouring other faculty over the Applicants or, more generally, Continuing Sessional Lecturers. Such an allegation, like all allegations of a contravention of Section 12, would require particulars to proceed. Further, and more specifically, such particulars would need to disclose a *prima facie* case that there were no circumstances relevant to the other faculty to explain the Union's impugned interpretation of the Collective Agreement (*Judd*, paras. 55 and 56).

The Application does not provide any particulars of unequal Union treatment, based on any of the prohibited ground of the *HRC* or personal favouritism, attending the Union's impugned interpretation of the Collective Agreement. Absent such particulars, the Applicants' express allegation of discriminatory Union representation is a bald
allegation or bare assertion and, as above, Section 12 applications based on bald allegations or bare assertions may not proceed.

For the above reasons, I find the Application fails to disclose a *prima facie* case of discriminatory Union representation in contravention of Section 12.

V. CONCLUSION

For the above reasons, I find the Application was filed absent the required, prior exhaustion of the Union’s internal appeal procedure and I dismiss the Application on that basis.

Further, in any event of the foregoing and for the above reasons, I also find the Application fails to disclose a *prima facie* case of arbitrary, bad faith, or discriminatory Union representation in contravention of Section 12 and, in the result, I dismiss the Application under Section 13(1)(a).

LABOUR RELATIONS BOARD

[Signature]

DAVID DUNCAN CHESMAN, Q.C.
VICE-CHAIR