

In the matter of an arbitration under the *Labour Relations Code*

Between:

TODD DECKER

(“Applicant”)

-and-

BRITISH COLUMBIA NURSES’ UNION

(“Union”)

Arbitrator: Tom Hodges

Applicant
Todd Decker

Counsel for the BCNU
Carly Poissant
Jim Gould

Hearing: October 16, 2017

Award: November 8, 2017

DECISION

This matter which originally arose from an application to the British Columbia Labour Relations Board. An applications was made to the Board pursuant s.10, s.139(k), and s.133(1)(a) of the Labour Relations Code. v. British Columbia Nurses Union (BCNU).

The Applicant, Mr. Decker is a Licensed Practical Nurse at Surrey Memorial Hospital. He has been an employee by the Fraser Health Authority since October 26, 2004. His current status is as a casual employee. He is a member of the British Columbia Nurses' Union.

Except for a period of six months in 2013, Mr. Decker was employed by the BCNU, first as a temporary staff member and then on a permanent basis, from February 2012 until November 3, 2016 when the Union eliminated his position and he was laid off.

On April 20, 2017, Mr. Decker was informed by letter that the BCNU Council had unanimously voted to declare that he was no longer a member in good standing on the basis that he had violated the Constitution and By Laws.

On April 21, 2017, Mr. Decker filed a Section 10 complaint against the BCNU with the British Columbia Labour Relations Board in regards to Council's declaration. As part of the Complaint, Mr. Decker sought an interim order setting aside Council's declaration, the effect of which would be to allow Mr. Decker to run in the Provincial election for Executive Councillor. While before the Labour Relations Board, the parties entered into a settlement agreement dated April 27, 2017 setting out the terms upon which Mr. Decker's Complaint would be resolved.

I was ultimately given jurisdiction in this matter pursuant to a June 1, 2017 Memorandum of Settlement reached with the assistance of the Vice Chair of The British Columbia Labour Relations Board. The Memorandum of Settlement includes the following terms:

1. Arbitrator Tom Hodges (the "Arbitrator") will be appointed to fully and finally resolve the following:

...

- e. The existing Code complaint and allegations of discipline, or appeals of discipline, arising under the Constitution in relation to Todd Decker.
- 2. In resolving the issues in paragraph 1, the Arbitrator shall have the discretion to issue any remedy he deems just and reasonable in the circumstances, including but not limited to ordering a new election, an order of costs, and/or damages for defamation;
- ...
- 7. The parties agree to a statement arising from this settlement that shall be:
 - a. In the interests of the Union, the parties have agreed to refer all matters in dispute between them to an arbitrator to be dealt with on an expedited basis.
- 8. The parties agree that there shall be no rights of appeal from the Arbitrator's award.

At the outset of the hearing the jurisdictional dispute of whether only allegations that were in existence as of June 1, 2017 and the subject of Mr. Decker's *Code* complaint can be properly within my jurisdiction was addressed.

I found that there is nothing in the Memorandum of Settlement that detracts from a Hearing Board's powers. The parties have conferred upon me even broader jurisdiction, including the discretion to issue any remedy he deems just and reasonable in the circumstances. In addition, there is nothing in the Settlement Agreement that would limit the ability of the Hearing Board (or the Arbitrator) to hear and consolidate additional disciplinary charges that were not part of Mr. Decker's *Code* Complaint or that might be filed after the date of the Settlement Agreement.

On the issue of the scope of jurisdiction conferred by the parties, the wording of the Memorandum of Settlement is quite broad. BCLRB Vice-Chair de Aguayo also confirmed in her June 2, 2017 correspondence to the Arbitrator that the intent was to capture not just the matters before the Board, but also "related issues" between the parties. In her correspondence, Vice-Chair de Aguayo highlighted the need for "an expeditious, fair, neutral, and comprehensive resolution" of the various matters at issue. It is in the context contemplated by both the Memorandum of Settlement and the understanding confirmed by the Board I advised the parties that I would proceed in providing a decision on an expeditious basis.

The issues flowing from this dispute are significant to the Applicant and the Union. Election of other officers has been delayed pending the resolution of this matter. In that regard I advised the

parties that after a review of all argument, submissions and case law provided, I would provide an expedited bottom line decision.

I have considered the facts established by the Union in this case. They are significant and reason for discipline has been established. However, as Unions often submit, other factors should be considered by arbitrators in determining the appropriateness and quantum of discipline assessed. Consideration for the ability of the Applicant to restore trust with his union as well as some of those commonly considered by arbitrators:

1. Application of progressive discipline
2. The previous good record.
3. Provocation.
4. Evidence that the company rules of conduct, either unwritten or posted, have not been uniformly enforced, thus constituting a form of discrimination.
5. Any other circumstances which should properly take into consideration.

I have considered all of the forgoing and find that disciplinary action by the BCNU was warranted. I find that the facts established were significant in their potential impact on the union and members. However, in consideration of recognized factors the Applicant should be given the opportunity to restore the level of trust necessary to restore his membership to one of good standing. He will however, remain in his current status with the Union for a period not to exceed two election cycles.

I remain seized with respect to interpretation of this Interim Award.

Dated this 8th, Day of November, 2017.

A handwritten signature in black ink, appearing to read "Tom Hodges". The signature is written in a cursive, flowing style.

Tom Hodges, Arbitrator