

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

Between:

WILL OFFLEY, SHARON SHARP AND MARY JEAN LYTH

(“Applicants”)

-and-

BRITISH COLUMBIA NURSES’ UNION

(“Union”)

-and-

THE BCNU STANDING NOMINATIONS COMMITTEE

(“Committee”)

INTERIM AWARD

Arbitrator: Tom Hodges

Counsel for: Applicants

Carmela Allevato
Rachel Roy

Counsel for the BCNU

Jim Gould
Derek Knoechel
Carly Poissant

Counsel for the BCNU Committee

Sebastien Anderson

Counsel for BCNU President Gail Duteil, Christine Sorensen, Sharon Sponton

Scott Turner

Hearing: August 9, 10, 11, September 6, 7, 8, October 10, 11, 2017

Award: November 7, 2017

This the second Interim Award on the substantive issues in a matter which originally arose from applications to the British Columbia Labour Relations Board. The three applicant nurses, Will Offley, Sharon Sharp and Mary Jean Lyth were running on a slate for the 2017 election as president, vice president and treasurer respectively of the British Columbia Nurses Union. Voting was scheduled to commence on May 23, and end on June 2, 2017. On May 22, 2017, the applicants were removed from the ballot by the Respondent's Provincial Nominations Committee. Applications were 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.

I was given jurisdiction in this matter pursuant to a memorandum of settlement reached with the assistance of the Vice Chair of The British Columbia Labour Relations Board providing:

Memorandum of Settlement

1. Arbitrator Tom Hodges (the "Arbitrator") will be appointed to fully and finally resolve the following:
 - a. All issues relating to the fairness of the Nominations Committee process regarding the 2017 BCNU election for President, Vice-President and Treasurer;
 - b. The decision of the Nominations Committee to pull the Applicants from the ballot;
 - c. All allegations of discipline, or appeals of discipline, arising under the Constitution in relation to the Applicants;
 - d. Whether the Applicants are guilty of defamation; and
 - 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;
3. The costs of the Arbitrator/arbitration shall be borne by the BCNU;
4. The parties are in agreement to schedule the matter on the earliest 5 hearing dates for which the Arbitrator and the parties are available;
5. The Incumbents, Gayle Duteil, Christine Sorensen and/or Sharon Spanton, reserve the right to make an application for standing to the Arbitrator;
6. There shall be no blackout but any statements alleged to be defamatory made subsequent to this agreement may be relied upon as an ongoing breach in support of the defamation claim(s) referred to in paragraph 1;
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 there shall be no rights of appeal from the Arbitrator's award; and
 9. Vice-Chair and Registrar Jacquie de Aguayo shall remain seized with respect to the implementation of this settlement agreement.
- Dated at Vancouver this 1st, day of June, 2017.

An arbitration agreement was signed between this arbitrator and the parties dated June 10, 2017. Resolution of this dispute through mediation was not successful. On July 13, it was necessary to return to the Vice Chair of the Board over my interpretation of the Settlement Agreement that I have jurisdiction over the issue of the constitutional authority of the Nominations Committee to remove the Applicants from the ballot. My interpretation of that jurisdiction was confirmed by the Vice Chair.

The parties initially asked that I expedite the handling of this complex case. Scheduling expedited hearings in light of the number of parties, counsel, clients and witnesses has been, at best, a challenge. In addition, the parties have asked that I provide a bottom line decision on the first question to be addressed:

1. Did the Committee have the authority to remove the applicants from the ballot?

On September 4, 2017, I provided the first Interim Award and found:

All of the parties made submissions pursuant to question #1 as agreed. After considering those submissions I have concluded that I can make a determination of the disputed matter. I will not recount all the arguments presented by the parties. As an expedited process was necessary, it is understood that a prompt decision without a full written review of the facts, arguments or reasons would be part of that process.

In view of the foregoing and after considering the extensive submissions of the parties, I render an interim award (reasons to follow) reflecting my disposition of the first question:

1. Did the Committee have the authority to remove the applicants from the ballot?

I hereby issue this Interim Award, reasons to follow, finding that the BCNU Committee did have authority to remove the applicants from the ballot. The hearing into the matter of:

If the Committee did have the authority to remove the applicants from the ballot, was the decision made in a fair and reasonable manner will proceed on September 6, 2017, at 09:30.

Following the release of the Interim award hearings resumed on September 6, 2017 on the question of whether the Committee's decision to remove the Applicant's from the ballot was made in a fair and reasonable manner. The hearings proceeded with evidence from Michelle Nelson, Chairperson of the BCNU's Standing Nominations Committee and Applicant Will Offley. Additional written submissions were also provided. The hearings were extensive and on October 11, 2017, the parties agreed that the arbitrator was in a position to render a decision on the remaining issues outstanding from the Memorandum of Settlement of June 1, 2017, after final written submissions were made.

At the heart of the remaining issues contained in the Memorandum of Settlement is provision 2 giving the arbitrator jurisdiction to provide a remedy, including ordering a new election. The parties agree that the issue of ordering new elections is one that should be addressed on an expedited basis. In view of the parties' agreement and after considering the extensive submissions of the parties, I agreed to render an interim award (reasons to follow) reflecting my disposition of whether new elections will be ordered.

In view of all of the foregoing, I hereby issue this Interim Award, reasons to follow, finding that new elections will not be required as a result of my final decision on all the outstanding issues flowing from the Memorandum of Settlement between the parties dated June 1, 2017. I will prepare my final decision on all outstanding issues as soon as possible.

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

Dated this 7th, 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