BRITISH COLUMBIA LABOUR RELATIONS BOARD

2025 BCLRB 96 (CanLII)

JESSIE BAINS

(the "Applicant")

-and-

HOSPITAL EMPLOYEES' UNION

(the "Union")

-and-

PROVINCIAL HEALTH SERVICES AUTHORITY

(the "Employer")

PANEL:	Andres Barker, Associate Chair
APPEARANCES:	The Applicant, self-represented Kirby Smith, for the Union
CASE NOS.:	2024-001334, 2024-001437, 2024-001478, 2024-001491, 2024-001576, 2025-000359, and 2025-000464
DATE OF DECISION:	April 30, 2025

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 The Applicant filed seven applications (the "Applications") pursuant to Section 12 of the *Labour Relations Code* (the "Code") asserting the Union breached its statutory duty of fair representation.

2 A different panel was initially established to adjudicate the first five applications. Pursuant to Section 13 of the Code, that panel invited the Union and Employer to provide a response submission to those applications. The Board letter inviting submissions noted that the Applicant, without having specifically mentioned Section 10(1) of the Code, also alleged that he was denied the application of the principles of natural justice in respect of certain disputes relating to internal Union matters. The Union was therefore invited to provide submissions addressing that section of the Code as well. The Union addressed the merits of the first five applications under Section 10(1) of the Code, and the Applicant referred to Section 10(1) in his final reply. The Employer did not participate in the written submission process.

3 Submissions were not sought from the Union and Employer on the Sixth and Seventh applications.

4 I find I am able to decide this matter on the basis of the parties' written submissions and without an oral hearing.

II. BACKGROUND

5 As noted, the Applicant filed seven applications under Section 12 of the Code. The Applicant asked for this panel to "strike" certain paragraphs of the Union's response as being irrelevant. There is no specific process under the Board's rules for striking portions of application submissions that is akin to the Supreme Court Civil Rules, and I have considered the entirety of the Union's response to the extent it is relevant to the specific basis on which I have assessed and dismissed the Applications.

The Applicant's Dismissal and the Initiation of the Grievance Process

6 On August 25, 2023, the Applicant filed a harassment grievance with the Employer (the "Harassment Grievance") making a number of allegations about the Employer's conduct. Following Step 3 of the grievance procedure, the Employer initiated the "Respectful Workplace" investigation process and hired an external investigator to consider the Applicant's harassment allegations. The Investigator issued a "Summary of Conclusions" document on January 9, 2024. Within the document, the investigator concluded that all the allegations were unfounded and that an allegation the Applicant had made of racism constituted bad faith within the applicable Employer policy.

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7 On March 4, 2024, the Employer terminated the Applicant's employment while alleging just cause on the basis the Applicant had allegedly filed the Harassment Grievance in bad faith. The Union grieved the dismissal (the "Termination Grievance"). Union Representative [redacted] attended the dismissal meeting as the Applicant's representative and she would continue to represent the Applicant throughout the Termination Grievance.

8 The background to the Applications includes the history of communications between the Applicant and the Union. Many of the emails and letters that make up the background are lengthy, and my intention in reviewing them is not to exhaustively detail the content but rather to give a basic overview of their purpose and the chronology of events.

9 On April 17, 2024, the Applicant wrote to [redacted], Director of Membership Services, asking what will happen to several prior grievances he had filed around the job selection process (the "Selection Grievances") if the Termination Grievance was unsuccessful. [redacted] stated the Selection Grievances would be redundant if the Termination Grievance was dismissed.

10 On April 22, 2024, [redacted] responded to several emails from the Applicant in which she stated the Union's position that the Termination Grievance needed to be dealt with before the Selection Grievances. She further noted that the Union would be referring the Termination Grievance to arbitration and set out a summary from a prior email updating the Applicant on the status of his grievances.

11 On April 27, 2024, the Applicant emailed [redacted] about various matters, including his disagreement with the decision to put the Selection Grievances on hold. At this early stage, the Applicant stated his belief the Union did not intend to pursue his reinstatement, was not taking his termination seriously, and was "diluting" his defence.

12 On April 29, 2024, [redacted], Union Coordinator of Public Sector Servicing, responded to several emails from the Applicant. [redacted] stated to the Applicant, among other things, that the Union had conduct of his grievance and would decide how to proceed and Union members do not direct Union representatives on matters of process, strategy, and resources. [redacted] also stated he had agreed to proceed with the Termination Grievance and placed the other grievances in abeyance. The Union points out that in this email, [redacted] stated to the Applicant he would not continue to respond to his numerous emails and directed him to ask his Union representative for an update in three weeks if he had not heard from her.

13 Under Article 9.09 of the parties' collective agreement, the Employer and the Union can refer a dispute about discipline to an "Industry Troubleshooter" process (the "ITS"), wherein the appointed "Troubleshooter", generally a labour arbitrator, investigates the difference, defines the issue, and makes written recommendations to resolve the matter. The parties referred the Termination Grievance to the ITS process under Article 9.09 with Arbitrator Christopher Sullivan acting as Troubleshooter ("Troubleshooter Sullivan").

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14 On May 19, 2024, the Applicant wrote to [redacted] requesting a representative from the Union's Legal Department to be assigned to represent him. He set out his complaints about L[redacted]s representation, including that she did not promptly call him after they both attended the virtual termination meeting on March 4, 2024 and that she sided with the Employer on a number of his Selection Grievances.

15 On May 21, 2024, [redacted], Coordinator of Public Sector Servicing, called the Applicant providing him with various updates. Later that day, the Applicant wrote to [redacted] thanking her for the phone call and stating that no Union representative had called him or agreed to an in-person meeting to discuss his grievances despite his emails.

16 On June 2, 2024, the Applicant wrote to [redacted] claiming that [redacted] had "conducted herself in bad faith, demonstrated through personal hostility and political interference". On June 7, 2024, the Applicant wrote to [redacted] stating that he did not get a reply to two prior emails in which he requested external legal counsel or another representative and he stated that the Union was supporting him in bad faith.

17 On June 12, 2024, the Applicant, [redacted], [redacted], and [redacted] attended a video conference meeting. The following day, [redacted] wrote to the Applicant giving his own summary of the meeting. In the email, [redacted] stated [redacted] would remain his representative and [redacted] would assist at the ITS hearing. [redacted] also advised the Applicant he had informed other Union staff to not respond to the Applicant's emails going forward.

18 On June 13, 2024, the Applicant wrote to [redacted] stating the Union was not acting in good faith by telling Union representatives to avoid communicating with him. [redacted] responded the following day.

19 On June 20, 2024, the Applicant wrote to Union Secretary-Business Manager Lynn Bueckert, copying [redacted], [redacted], and other persons with Union email addresses, to complain about [redacted]'s representation due to her failure to respond to a request for the investigation findings as well as an asserted personal dislike of him and noting that, despite providing the Union with details, it had not assigned someone new. The Applicant had previously requested a copy of the investigation findings from [redacted] on June 15, 2024, as he already had the summary of evidence.

20 On June 28, 2024, the Applicant wrote to [redacted], copying 30 other persons with Union email addresses, including members of the Provincial Executive, disagreeing with the Union's strategy for the upcoming ITS hearing and asserting that the Termination Grievance was "handled with blatant malice and political [interference]". [redacted], who the Union says was covering for [redacted], responded on June 28, 2024, referred to [redacted] June 13, 2024 email communication, informed the Applicant that [redacted] would continue to represent him, and stated that [redacted] had assigned her to assist [redacted] at the ITS hearing.

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21 On July 4, 2024, the parties attended the ITS hearing before Troubleshooter Sullivan. The process included an attempted mediation which was not successful. The Union and the Employer presented their positions to Troubleshooter Sullivan and agreed to provide him with written submissions.

22 On July 8, 2024, prior to the provision of the written submissions, the Applicant wrote to the Union requesting to include in the Union's submissions a statement he had drafted. The Union agreed to do so.

23 The Applicant wrote to [redacted] on July 15, 2024, expressing disagreement with a settlement offer made by the Union during the ITS mediation. Neither party stated in their submissions what specific terms were offered. The Applicant stated he was not willing to agree to a settlement unless he was reinstated or given a just financial settlement. He also expressed that he believed the Union was engaging in politically motivated or perfunctory representation and the Union wanted a financial settlement so that he was no longer a member. On July 15, 2024, [redacted] responded to the Applicant.

24 On July 19, 2024, the Applicant emailed Bueckert, copying 29 others, asking for a lawyer to be assigned immediately to make submissions to Troubleshooter Sullivan. He accused [redacted] of lacking the necessary legal knowledge and understanding of allegations of "bad faith" in the context of his Termination Grievance. Within the email, the Applicant also accused the Union leadership of preferring a financial settlement over reinstatement for political reasons and he generally disparaged [redacted]s "good faith", "integrity", and "self-respect".

25 On July 20, 2024, the Applicant emailed Bueckert to provide further complaints about the quality of [redacted] representation and to request that he be able to provide his own submissions to Troubleshooter Sullivan. He attached the submissions to the email.

26 On July 26, 2024, the Applicant emailed Bueckert again, copying a large number of Union staff, continuing to raise his concerns with [redacted] and asking that the Termination Grievance be assigned to external counsel.

27 On July 30, 2024, the Applicant emailed Bueckert asking for an update on the Termination Grievance as he had not yet received the Employer's submissions. He once more asked that the Termination Grievance be reassigned to external representation.

28 On August 2, 2024, the Union submitted its written submissions to Troubleshooter Sullivan, including the Applicant's statement.

29 Also on August 2, 2024, the Applicant sent two emails to Bueckert and various other individuals expressing his disapproval of the Union's representation.

30 On August 17, 2024, the Applicant emailed Bueckert and others, expressing his dissatisfaction with the Union's handling of the Termination Grievance, including his

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ongoing requests for external legal representation. This included raising concerns with the Union making a counter-offer he did not approve of.

31 On August 19, 2024, the Applicant sent another email to Bueckert in which he continued to express his concerns to the Union and sought external representation.

32 On August 25, 2024, the Applicant emailed Bueckert to provide what he described as a formal complaint about [redacted]'s representation. His email contained various complaints regarding [redacted]s representation. Some of the complaint appears to be related to the Applicant's ability to access local Union meetings. He also accused [redacted] of contributing to divisions within the local and speculated that she had asked an individual to rescind their resignation with the sole purpose of preventing the Applicant from assuming the role of the chair of the local.

33 On September 5, 2024, the Applicant wrote to Bueckert seeking confirmation that the "charge" from his August 25, 2024 email was moving forward.

34 On September 12, 2024, the Applicant wrote to Bueckert, copying various other Union representatives, again following up on his request for an investigation into [redacted]. On September 20 and 24, 2024, the Applicant again wrote to Bueckert, asking for an update on his request for an investigation into [redacted]. On September 25, 2024, he wrote again to Bueckert, again copying many others, expressing his dissatisfaction with the lack of response to his prior emails.

Matters Related to the Union Convention and the Outcome of the ITS Process

35 On September 24, 2024, [redacted] wrote to the Applicant following several emails that the Applicant had sent to a multitude of individuals regarding his intention to attend the Union convention (the "Convention") without delegate status. In the email, [redacted] accused the Applicant of being disrespectful and in some cases aggressive in his email, and stated that, as previously advised, staff reporting to [redacted] would not be responding to the Applicant's emails or other communications.

36 On September 27, 2024, Troubleshooter Sullivan issued his report (the "ITS Report"). It is unnecessary to summarize the full details of the ITS Report. It will suffice to say that while Troubleshooter Sullivan found discharge would likely be found to be excessive, various other factors concerning the Applicant's behaviour had contributed to "fundamental and irreconcilable trust issues" between the Applicant and the Employer. Troubleshooter Sullivan gave recommendations for resolving the matter that did not include reinstatement as he believed the case before him represented "one of those unique cases where reinstatement is not an appropriate remedial outcome".

37 The Union states it reviewed the ITS Report and determined the recommendations represented a reasonable settlement of the dispute.

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38 The Union states [redacted] met with the Applicant on October 2, 2024, and then wrote to him advising the Union would be accepting the ITS Report recommendations.

39 On October 2, 2024, the Applicant appealed the Union's decision. He expressed disagreement with Troubleshooter Sullivan's recommendations and stated he expected the Union to provide external representation and take the Termination Grievance to arbitration.

40 On October 8, 2024, [redacted] sent the Applicant an email attaching a letter dismissing the Applicant's appeal and upholding the Union's decision to settle the Termination Grievance based on the ITS Report recommendations. [redacted] stated, in part, that it was the Union's opinion an arbitrator would not likely award a greater sum than that recommended in the ITS Report. [redacted] concluded the letter by telling the Applicant it would be advising the Employer the Union agreed with the recommendations and would be closing the grievance files, and that was the conclusion of the Union's appeal process.

Applicant's Exclusion from Union Affairs

41 On October 9, 2024, [redacted] wrote to the Applicant concerning emails sent by him from October 2 to 7, 2024, that related to the Applicant's attendance at Union local meetings. [redacted] response included stating that it was appropriate for a Union representative to advise the Applicant he was unable to attend a local meeting on the Employer's property when the Employer had terminated his employment.

42 Also relevant to the Applicant's allegations are certain charges he laid under the Union's Constitution against various Union officials and his attempts to attend the Union Convention.

43 On October 11, 2024, Bueckert wrote to the Applicant advising him that he was not credentialed by his local to attend the Union Convention. The full text of the letter is as follows:

> Subject: Confirmation of non-attendance
>
> I write in response to various email communications addressed to HEU's leadership and staff where you appear to request or claim HEU Convention delegate or alternate status.
>
> The purpose of this email is to confirm your non-attendance at Convention, in that you have not been credentialed by your local to Convention.
>
> HEU will not issue a credential or any type of access to Convention or official HEU events occurring in conjunction with Convention.

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> Accordingly, we expect you will not attend Convention or official HEU events occurring in conjunction with Convention.
>
> Thank you very much for your anticipated cooperation.

44 The Applicant emailed Bueckert on October 20, 2024, stating he intended to attend the Convention as an observer.

45 On October 21, 2024, the Applicant attended the Convention, signed-in, and received a guest pass to observe from what he describes as the public area, though it does not appear this was an area open to members of the general public. [redacted] informed the Applicant he had to leave the Convention because he was no longer a Union member. The Applicant says he explained he still had active grievances that remained unresolved and he had not received any official or non-official communication indicating his membership had been terminated. The incident ended with [redacted] escorting the Applicant from the area.

46 Later that day, the Applicant wrote to Bueckert and Union President Barb Nederpel providing his summary of what occurred at the Convention.

47 With respect to the Applicant's charges, between May 10, 2024 and October 25, 2024, the Applicant filed charges on 13 separate occasions. The charges were against eight Union officials.

48 On October 31, 2024, [redacted], Coordinator of Private Sector & Special Projects, wrote to the Applicant stating that his previously filed Article 19 charges would not proceed as he was no longer a member of the Union. In the letter, [redacted] stated the Union did not revoke the Applicant's membership but rather the Constitution and Bylaws are definitive in respect of members whose employment had been terminated. [redacted] cited the Constitution as stating Union members who had been suspended or terminated maintain their membership until they had exhausted all avenues of recourse, and at the time of the letter the Applicant had exhausted all such avenues. The letter concluded with the following:

> Article 19 pertains to HEU members in good standing, and the proceedings contemplated by Article 19 are intended to apply to HEU members. In that you are no longer a member in good standing, Article 19 no longer applies to you.
>
> This means you may not initiate an Article 19 complaint against an HEU member, nor can such a complaint be initiated against you.
>
> Accordingly, the Article 19 charges you filed, the charges filed against you, and the investigation undertaken by [redacted], will no longer proceed.

49 The Applicant disputes that his membership ended at the time of the Convention as he states his paystub shows he paid Union dues until the pay period ending November 7, 2024.

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III. LAW AND POLICY OF THE CODE

Section 12 of the Code

50 The portion of Section 12 of the Code relevant to the Applications states as follows:

> 12(1) 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. …

51 The Board's approach to applications under Sections 12 and 13 of the Code is comprehensively set out in *James W.D. Judd*, BCLRB No. B63/2003 ("*Judd*"). As noted in *Judd*, Section 12 confers a focused right and protection upon employees (para. 26). The Board in *Judd* held that "it is not the Board's role to decide if a union was right or wrong as long as the union has not acted in an arbitrary, discriminatory, or bad faith manner" (para. 30).

52 What the Applicant must demonstrate in the present case is that the Union represented him in an arbitrary, discriminatory, or bad faith manner. Avoiding arbitrary representation encompasses three elements; a union must: ensure it is aware of the relevant information; make a reasoned decision; and not carry out representation with blatant or reckless disregard (*Judd*, para. 61). Discriminatory representation is that which is motivated by unequal treatment, including on the basis of the prohibited grounds in the *Human Rights Code*, R.S.B.C. 1996, c. 210, s. 25 or on the basis of personal favouritism (*Judd*, paras. 55-56). Bad faith representation will typically involve either representation with an improper purpose or representation with an intention to deceive the employee in a manner that affects the quality of the union's representation of the employee's interests (*Judd*, paras. 49-54).

53 Where a union decides not to proceed with a grievance due to relevant considerations, such as its own assessment that a grievance lacks sufficient merit, it is undertaking its job of representing its members as a whole and it is free to decide on the best course of action without that decision amounting to a violation of Section 12 (*Judd*, para. 42). This is because unions hold the discretion to make decisions regarding the negotiation and administration of the collective agreement, and the purpose of Section 12 is not to place those functions in the hands of the Board. An applicant may take issue with a union's conclusions, but the Board's assessment of whether a union made a reasoned decision does not include deciding if a union acted unreasonably in not pursuing a matter because, in the opinion of the Board, the applicant had an arguable case.

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54 Where it concerns a union's decision to settle a matter, the Board has stated as follows:

> ... The grievor does not have a veto over whether or not the grievance should be settled, or what the terms of the settlement ought to be. It is of course best for the union to consult the grievor before agreeing to a settlement, though it is not necessarily required. Ultimately, however, whether to accept the settlement agreement is for the union to decide.
>
> (*Judd*, para. 95)

55 As the Board further explained in *Judd*:

> ... An employer knows that the union could take any given case to arbitration if it wished. It also knows that the union is likely to accept a reasonable settlement if one is offered. With that type of relationship, the employer may be motivated to make reasonable offers to settle some matters by agreement, without litigating every issue. In that way, employees achieve the greatest gain with the least expenditure. By contrast, if individual employees could take every grievance to arbitration whenever they wished, the amount of litigation in the workplace would multiply and employees would very quickly find their collective resources depleted. ...
>
> (para. 37)

56 The Applicant's allegations also raise issues with the level of detail particularized in the applications. In *Judd*, the Board held that there is an obligation on applicants to "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" (para. 77).

57 The Board also requires applicants to do more than attach documents that accompany a general allegation. As noted in *Judd*, the Board does not investigate a union's conduct, and it is up to applicants to make their case within their application (para. 72). Similarly, in *John Murphy*, BCLRB No. B37/2005 (Leave for Reconsideration of BCLRB No. B359/2004), the Board held that it is not the Board's task to review documents submitted with an application to determine if an applicant might have a case:

> I would add that it is not enough for a complainant to raise a bald allegation of impropriety and attach a body of documents and expect that the Board will divine how those documents demonstrate a breach of the Code or support the bald assertions of impropriety.
>
> (para. 9)

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58 In this respect, I note that the Applicant has attached many emails and correspondence to his applications but often does not precisely state what portions of the documents demonstrate a breach of the Code and how.

59 The basic requirement to provide an explanation of how a breach is alleged to have occurred is reinforced in the Board's Rules. Labour Relations Board Rule 2(2) requires that an application contain an outline of the facts and circumstances upon which the applicant intends to rely, including when and where relevant facts occurred and who engaged in the alleged breaches of the Code.

60 Finally, I also note that the Board's jurisdiction under Section 12 of the Code is limited to matters arising out of the collective agreement and the union's collective bargaining relationship with the employer (*Gustav Gonske*, BCLRB No. B249/93 (Leave for reconsideration denied, BCLRB No. B330/93), p. 12). Matters that properly relate to the internal affairs of a union are not matters governed under Section 12 of the Code. The Board's jurisprudence is clear that an application to review internal union matters is not within the scope of Section 12 (*Judith G. Thorne*, BCLRB No. 181/2012, para. 17). As the Board explained in *Linda Karpowich*, BCLRB No. B370/98, at paragraph 24:

> The duty of fair representation is confined to an individual's employment and does not extend to review of internal union matters: *Charles Johnston*, BCLRB No. 7/75 [1975] 1 Can LRBR 362, at p. 371. Section 12(1)(a) is designed to protect individuals as employees, rather than as union members: *Vancouver General Hospital*, BCLRB No. 31/78, [1978] 2 Can. LRBR 508, at p. 513; and *Charles Johnston*, BCLRB No. 14/76, [1976] 1 Can. LRBR 321, at p. 330. …

Section 10 of the Code

61 The relevant portion of Section 10(1) of the Code states as follows:

> 10(1) Every person has a right to the application of the principles of natural justice in respect of all disputes relating to
>
> (a) matters in the constitution of the trade union,
>
> (b) the person's membership in a trade union, or
>
> (c) discipline by a trade union.
>
> * * *

62 The guiding principles of Section 10(1) of the Code were well-summarized in *United Brotherhood of Carpenters and Joiners of America Local 1998 and Local 1237,* BCLRB No. B77/2000. In that decision, the Board clarified that the focus in Section 10(1) is not on the substantive decisions made or the actions taken by a union, but on the process leading to the decision. Provided the natural justice requirements set out in Section 10(1) are met, a union's constitution is considered an internal matter between

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the members and the union; disputes over the interpretation of or non-compliance with the constitution that do not raise issues of breaches of natural justice are outside the Board's jurisdiction (para. 51).

63 If the focus of an application is the substantive decision made by a union or the interpretation of a union's constitution, as opposed to the process leading to that decision, that matter must be pursued through the courts (*Terry Thompson*, BCLRB No. B444/2003, paras. 10-11).

64 I note that the Applicant did not invoke Section 10(2) in any of his applications, nor were the parties invited on the motion of the original panel to address Section 10(2) of the Code. It is therefore not considered in this decision.

IV. ANALYSIS AND DECISION

The First Application

65 The Applicant asserts the Union's removal of him from the Convention demonstrated an arbitrary and unjustified denial of his union rights, and in particular his right to attend the Convention as a member in good standing until all his grievances were resolved. He further says the Union's actions in removing him from the Convention were a blatant display of bad faith. He says he received no official communication regarding his membership status or the resolution of his grievances prior to his removal and this constitutes a violation of procedural fairness. The Applicant also asserts that [redacted] lied when he claimed his membership had been terminated as termination of membership requires formal notification to the member but no notification was provided to him.

66 The Applicant alleges that his removal appears to be nothing more than a retaliatory action in response to charges he filed against the Union leadership. He says it directly violates the Union's Constitution and Bylaws which are designed to protect the rights of all members regardless of internal disputes.

67 As remedy, the Applicant asks that the Board acknowledges the Union's violation of his rights and that his status as a Union member in good standing be recognized.

68 The Union asserts the First Application should be dismissed for mootness as the Convention has passed and the Applicant is no longer a member, and there is therefore no longer a live controversy.

69 As it concerns Section 10(1) of the Code, the Union states it did not deny the Applicant natural justice when it did not permit the Applicant to attend its Convention as a delegate. The Union says it followed the requisite procedure in the Constitution and Bylaws governing access to Convention, which is not an automatic right possessed by each Union member, and all members must get authorization from their local to attend. The Union further says there is nothing in the Constitution regarding the right to attend

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the Convention as an observer and therefore this matter falls outside the scope of the Board's review.

70 The Union further says the First Application does not engage the duty of fair representation, which is confined to an individual's employment and does not concern internal Union matters.

71 I first find the First Application does not raise issues that invoke Section 12 of the Code. As set out earlier in this decision, Section 12 does not provide the Board with the general statutory authority to investigate and regulate internal union affairs, and I find the Union's decision to bar the Applicant from the Convention is unrelated to its statutory obligations to represent the Applicant in his employment with respect to a specific collective bargaining relationship.

72 Regarding Section 10(1) of the Code, I first note this is not a circumstance where the Applicant's membership in the Union was terminated due to allegations of misconduct or through a formal trial process under the Constitution as a result of charges having been laid against him. Rather, the Applicant lost his employment and the Union chose to resolve his grievance in a manner that precluded reinstatement. The Union's decision to deny the Applicant access to the Convention given his employment status was therefore centered on the Union's interpretation and understanding of the Constitution, which was that the Applicant's membership had ended when it resolved the Termination Grievance.

73 I further note that the Applicant is entitled to natural justice with respect to the process followed by the Union in respect of disputes relating to matters in the Constitution of the Union, and not the outcome of that process. The Applicant does not specify what participatory process the Union Constitution affords him in a circumstance such as this one within which he was denied natural justice. Specifically, there is no assertion by the Applicant that the Constitution affords him something akin to the trial procedure wherein persons who have lost their employment and exhausted internal appeal remedies can maintain their Union membership or challenge the Union's decision to deem them no longer a member. As a result, what remains is the Applicant's disagreement with the Union's decision that he was no longer a member at the time the Convention was taking place and therefore he had no right to attend. This is not a matter of natural justice but rather one of the correct application of the Union Constitution. I am therefore unable to find the Union breached Section 10(1) of the Code.

74 To the extent the Applicant believes the Union was in error or being dishonest about his membership status because his wage statement says he paid union dues until November 7, 2024, which is after the date of the Convention, the Union has a differing opinion and it is beyond my jurisdiction under the focused grounds of Section 10(1) of the Code to adjudicate whether the Union was wrong in its assessment and therefore should have allowed the Applicant to attend the Convention.

75 I therefore dismiss the First Application.

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The Second Application

76 The Applicant states the charges he filed against various members of the Union under Article 19 must continue as he was a member in good standing and the Constitution does not mandate dismissing charges if membership status changes after the filing of charges.

77 The Applicant further states the Union's refusal to proceed with the charges solely due to a change in his membership status is arbitrary and inconsistent with the Constitution. He says that by disregarding the charges, which are deeply tied to the mishandling of the Termination Grievance, the Union avoids accountability and shields its leadership from scrutiny. He says this refusal not only appears retaliatory but further compounds the bad faith that characterized the handling of the Termination Grievance. He states the refusal to investigate the charges points to a serious conflict of interest, particularly as the individuals named in his charges were directly involved in the grievance process that resulted in his dismissal. He says dismissing these charges after a change in his membership status undermines the Constitution's democratic intent, suggesting the Union selectively applies its governing rules to avoid addressing misconduct within its ranks.

78 Under the framework of Section 10 of the Code, the Union states the application is moot. It says the Applicant is no longer a member because the Termination Grievance was settled and he has exhausted all avenues of recourse. The Union says its investigation into his Article 19 charges will no longer proceed because the Applicant is no longer a member and such investigations are intended to apply to active members.

79 The Union further says that the issue in the Second Application is that the Applicant disagrees with the Union's interpretation of Articles 19 and 2(H)(2) of the Constitution, which hold that the Applicant was no longer a member able to pursue charges once the Union dismissed the appeal of the Termination Grievance. It says the Applicant's disagreement constitutes an interpretation and application of the Union's Constitution and is therefore outside the Board's jurisdiction.

80 The Union further says the principles of natural justice were followed in deciding not to proceed with the Article 19 charges. It says it followed the procedure in the Constitution and Bylaws as: under Article 19(a), Bueckert delegated conduct over the charges to [redacted]; under Article 19(d), [redacted] appointed an external lawyer to conduct a preliminary investigation; and the investigation ceased after the Applicant ceased to be a member. The Union says it then notified the Applicant his charges would not proceed given his membership status. It says there is no basis for the assertion the Union failed to follow the rules set out in the Constitution or Bylaws or failed to apply the principles of natural justice.

81 As it concerns Section 12 of the Code, the Union states this application does not engage the duty of fair representation as it concerns internal union matters.

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82 The Applicant in reply states, in part, that the Constitution does not explicitly void Article 19 charges due to a change in membership status, the Union's delay in investigating his charges raises questions about procedural fairness, and the Union's procedural requirements should be interpreted in a manner that does not undermine accountability.

83 I first address the Second Application under Section 12 of the Code. I find the Union's handling of the Applicant's charges against certain members under Article 19 of the Constitution are internal union matters outside the Board's jurisdiction under Section 12 and there is no remedy available before the Board under that Section.

84 Under Section 10(1) of the Code, I again find what is at issue is not the principles of natural justice as it concerns the Union's process for laying and prosecuting charges, but rather the Union's substantive decision that, as a non-member, the Applicant no longer had standing to continue prosecuting the charges. It is beyond the role of the Board under Section 10(1) of the Code to engage in an interpretation of the Union's Constitution for the purpose of deciding whether the Applicant should be permitted to continue prosecuting the charges he laid as a member even after he ceased to be a member. As such, any recourse the Applicant has is with the courts and not with the Board. The Second Application is therefore dismissed.

The Third and Fourth Applications

85 In the Third Application, the Applicant states the Union declined to pursue his grievance because it had no genuine interest in achieving his reinstatement. He says that, instead, the Union aimed to close his grievance as quickly as possible and strip him of his membership for political reasons to prevent his attendance at the Convention and ensure his charges were not pursued.

86 The Applicant states that Bueckert, in her role as Secretary-Business Manager, failed in her responsibilities and demonstrated neglect, lack of representation, and bad-faith conduct. He specifically states that she did not answer 14 urgent emails sent between June 20, 2024, and September 25, 2024 asking for updates on his grievance and requesting external legal representation.

87 The Applicant says the Union also failed to investigate a complaint he filed against [redacted] on August 25, 2024, and that Bueckert neglected her leadership responsibilities. The Applicant states her role required transparent communication with members and impartial handling of grievances, and her failure to respond to or act on his repeated requests constitute a breach of her duty.

88 The Applicant further states his grievance was handled in bad faith, with his own representatives indicating a preference for a cash settlement over pursuing his reinstatement due to internal politics. He states that instead of advocating for his best interests, the Union immediately accepted non-binding recommendations without attempting to negotiate improvements or adjustments such as categorizing payments as damages, a confidentiality agreement, or other terms that may have benefitted him.

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89 The Applicant filed the Fourth Application with the Board the day after filing the Third Application. Within this application, the Applicant asserts [redacted] ignored his appeals for support including his requests for external legal representation. He states the Union's internal appeal process also failed to address his concerns.

90 The Applicant says there are outstanding Selection Grievances for which he has received no status updates. He states that if these grievances have been resolved, he should have been provided with copies of the resolutions.

91 The Applicant further argues [redacted] failed to act in the members' best interests by accepting Troubleshooter Sullivan's recommendations without engaging in settlement discussions with the Employer. As with the Third Application, the Applicant states the Union made no effort to negotiate a better settlement.

92 The Applicant also states [redacted] rejected his requests for alternative representation despite evidence of bias and personal conflicts. In elaborating on this assertion, the Applicant says he has known [redacted] for 15 years and during this time he has had serious disagreements with him on various issues and they have not been able to work effectively together. The Applicant says he has had a longstanding conflict with [redacted]' spouse, who serves as a Union representative at the Provincial office. He states that, given this, it is perplexing why [redacted] refused to recuse himself from handling his file. He further states that since his dismissal, neither [redacted] nor any representative under his purview has reached out to him or conducted an in-person interview to discuss his grievance or address his concerns. He says he believes [redacted] accepted the ITS Report recommendations without securing any form of settlement agreement, acting in coordination with Bueckert to benefit Nederpel. The Applicant believes this was part of a deliberate effort to close his grievance, deny him access to Convention, and dismiss his Article 19 charges.

93 In stating that there has been bad faith representation and conflicts of interests, the Applicant asserts he had made multiple formal requests to have [redacted] removed from handling the Termination Grievance based on "clear conflicts of interests and [her] involvement in local union politics, which compromised her impartiality".

94 The Applicant says [redacted] also issued directives instructing Union staff to cease all communication with him, which further isolated him from the Union at a critical stage in his grievance process, and [redacted]' refusal to communicate or investigate his claims contributed significantly to the handling of his case.

95 The Applicant additionally argues that at the ITS hearing, [redacted] failed to present any defence or evidence in support of his case and afterwards [redacted] accepted the non-binding recommendation of Troubleshooter Sullivan without any attempt at negotiation. He also asserts that the Union withheld the ITS Report recommendations for nearly two weeks, ultimately providing him with less than 48 hours left to review. He states this deprived him of adequate time to consult legal counsel. He says throughout the grievance process, the only meeting provided was a brief 30-minute video

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conference call focused solely on a cash settlement, with no attention to his reinstatement or broader concerns.

96 In response, the Union says it satisfied its duty of fair representation when it decided to settle the Applicant's grievances based on the recommendations of Troubleshooter Sullivan. The Union says it reviewed the ITS Report, including the facts laid out therein, the legal analysis, and the conclusions. It says it then made a reasoned conclusion to accept Troubleshooter Sullivan's recommendations after considering the ITS Report and its knowledge of the relevant grievance files. It says that just as a union may obtain a legal opinion and rely on that opinion as some evidence that it took a reasoned view, so too here can the Union rely on the thoroughly reasoned opinion of an esteemed arbitrator whose recommendations were found in the ITS Report.

97 The Union says its internal appeal process likewise satisfied Section 12. It says it examined relevant facts and law and the ITS Report before concluding it was not likely a better outcome could be achieved at arbitration.

98 The Union says that it did not seek to negotiate the characterization of the settlement funds as damages, which it understands to mean human rights damages which are nontaxable, because the Applicant argued he never intended to advance an allegation that the Employer was racist towards him. It says it is difficult to see how the Union could ask the Employer to characterize the settlement funds as human rights damages when the Applicant denied that he made an allegation of racist conduct against the Employer.

99 The Union also denies engaging in bad faith representation. It says a review of the facts sets out a clear pattern wherein the Applicant learns someone does not agree with him and he responds with intimidation or allegations of bad faith in an attempt to deter people from making decisions he does not agree with. As an example, the Union refers to the circumstance in April 2024 where the Union told the Applicant the Termination Grievance would proceed before the Selection Grievances and he asserted that the Union did not intend to pursue his reinstatement and was not taking his termination seriously. The Union says the Applicant's unfounded theory that it was acting in bad faith and would not pursue his reinstatement appears to have started less than two months after his termination and before the Union had even decided which forum to choose to advance his grievance.

100 The Union further says it was not required to provide the Applicant with legal representation and there were no deficiencies in the representation provided to him. It says, regardless, it is well established that unions under Section 12 are not expected to meet the standards required of a lawyer.

101 On the issue of the status of the Selection Grievances, the Union refers to a communication from [redacted] to the Applicant on April 17, 2024, in which [redacted] stated the Selection Grievances would be redundant if the Termination Grievance were dismissed. The Union says that once the Termination Grievance was settled, the Union followed through on its commitment to not proceed with the Selection Grievances.

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102 In his reply, the Applicant states, among other things, that the Union did not provide Troubleshooter Sullivan with case law or precedent that could have supported his reinstatement, failed to challenge the Employer's reliance on post-termination conduct as a decisive factor, and ignored legal arguments that could have demonstrated post-termination concerns should not outweigh the lack of just cause for termination.

103 The Applicant says a reasonable union would have at the very least attempted to negotiate a non-disclosure agreement, favorable tax treatment for the settlement, and a sealing of records. It says the Union had a duty to at least attempt to negotiate these terms.

104 In reviewing the Union's overall conduct throughout the grievance process surrounding his dismissal, I consider that it filed a grievance, attended the ITS hearing with the Applicant, made a written submission to Troubleshooter Sullivan that was supplemented with the Applicant's own submission, reviewed the ITS Report, and then decided that the recommended terms of settlement in the ITS Report were reasonable. The Applicant suggests the Union did not do a proper investigation, but he does not explain why, in the context of the above process, he was unable to provide the Union with relevant information and also does not say specifically what information the Union allegedly did not consider or should have investigated further.

105 In the October 8, 2024 letter denying his appeal, [redacted] on behalf of the Union, outlined the grievance process that the Union undertook, reviewed aspects of the ITS Report, and provided reasons for why the ITS Report was persuasive. [redacted] then stated that taking into consideration the Applicant's length of service and all the foregoing points, the Union found it unlikely there would be a different outcome if they were to proceed to arbitration and that Troubleshooter Sullivan recommended a settlement amount that would likely be greater than what would be achieved at arbitration.

106 I emphasize that the Board's policy under Section 12 of the Code is not to consider whether a union's decision was unreasoned because, in the opinion of the Board, an applicant had a better case than the union perceived it. In the present case, I am satisfied the Union provided the Applicant with an opportunity to tell it the relevant facts, it presented facts and argument to Troubleshooter Sullivan, and it then considered the ITS Report to be a good indicator of whether or not it would succeed at arbitration. I emphasize that the ITS Report was issued by an experienced labour arbitrator who was thorough in his recitation and assessment of the issues, though for clarity I have not considered the merits of his findings and comments. While I will address the Applicant's more specific points under the Third and Fourth Application, I find that, as a general overview, the process the Union followed is one that complies with its statutory obligations under the Code.

107 Turning to the Applicant's specific assertions, he states that the Union had no genuine interest in pursuing his reinstatement and instead aimed to close his grievance as quickly as possible and strip him of his membership for political reasons. I find that

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while the Applicant may believe this to be the case, I am unable to find an apparent case on the face of his application submissions that this is what occurred. Even on a broader scrutinizing of the supporting documentation, which I repeat is not generally how the Board adjudicates applications, I am unable to find an apparent case supporting the Applicant's assertions of political motives.

108 The Applicant also accuses Bueckert of failing in her responsibilities as Secretary-Business Manager, and demonstrating neglect, lack of representation, and bad faith conduct. He points to what he asserts are various unanswered emails as part of these allegations. In addressing the allegations, I reiterate that the Board does not investigate applications and Applicants are obligated to fully particularize their claims. I find that, with the exception of the assertion Bueckert did not respond to his emails, the Applicant's allegations are generally bare allegations that do not make out a breach of the Code.

109 As it concerns the Union's alleged lack of responsiveness to the Applicant's emails, the Board's policy is that "it does not have jurisdiction to entertain complaints from employees about what they perceive as poor service from their unions; complaints about rudeness or delay in replying to phone calls or correspondence. Those are matters for the union's internal complaint process or for consideration when the leadership of the union local runs for re-election" (*Judd*, para. 71).

110 This is not to say unions are free to ignore their members without consequences from the Board. However, in order for a union's lack of response to an applicant's communications to amount to a breach of Section 12, the lack of communication must affect the ultimate quality of the union's representation, keeping in mind that the Board considers the union's conduct as a whole from the beginning to the end of the grievance process. This is because the issue under Section 12 is whether the union has represented the employee in a manner that is arbitrary, discriminatory, or in bad faith and not whether it committed isolated acts that may fit one of those descriptions (*Judd*, para. 45). In this sense, the fact that an applicant is left frustrated by a lack of responsiveness or a delay in addressing concerns or requests does not mean that the union will have breached Section 12 of the Code.

111 In this case, the Applicant sent many emails to the Union expressing his concern about the quality of his representation, accusing the Union of acting in bad faith, and making multiple requests that it provide him with external legal representation. In reviewing the record provided by both parties, I find that while the timing of the Union's responses were not to the standards expected by the Applicant, it is apparent the Union considered all these requests and rejected them. In this context, I am unable to find that any lack of readiness on the part of the Union to respond to each email in a faster manner affected the quality of the Union's representation with respect to its ultimate assessment and advancement of the Termination Grievance.

112 Turning to the Applicant's assertions that the Union breached Section 12 of the Code by not negotiating adjustments to the settlement agreement, such as a non-disclosure agreement and tax-advantageous structuring of damages, I find the law and

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policy of the Code does not place these specific obligations on a trade union in the context of settling a grievance. As already noted, grievors do not have a veto on such matters as the terms of settlement and I am unable to find that the Union breached the Code by not seeking the specific amendments referred to by the Applicant. I also find that, in any event, the Applicant does not particularize any occasion where he informed the Union that he would have accepted a deal that contained these amendments.

113 I am also unable to find the Union breached Section 12 of the Code through the quality of its submissions to Troubleshooter Sullivan. The Board's role under Section 12 is not to scrutinize the quality of a union's advocacy against a particular benchmark. To the extent a union's representation could be arbitrarily negligent or perfunctory through not advancing specific arguments or case law, those deficiencies would need to be clearly particularized and detailed in an application, which is not the case here. To put it another way, it is not my role to parse the Union's submissions to Troubleshooter Sullivan and then declare the Union breached Section 12 of the Code because the submissions were not to the standards expected by the Applicant or because, in my own opinion, the Union could have argued certain points more thoroughly or forcefully.

114 In the Fourth Application, the Applicant asserts [redacted] ignored his appeals for support including his requests for legal representation. I have already addressed the issue of the Union's response to the Applicant's inquiries, and I further find that there is no inherent right for a union member to receive independent legal representation because they are unhappy with their existing representative. I further note that [redacted] was not anyone against whom the Applicant was actively pursuing Article 19 charges under the Constitution. I also find that the Applicant's claim that [redacted] was acting in bad faith or undermining him for political motives is not properly particularized in the Applicant's written submissions and, even if I were to rely on my own review of the documents submitted by the Applicant, what is on the face of these documents does not lead me to find an apparent case that the [redacted] was acting under such motives.

115 Continuing on the matter of [redacted]' involvement in the Termination Grievance, the Applicant asserts [redacted] should not have been involved in the matter because of serious disagreements they have had and conflict between him and [redacted]' spouse. I find the Applicant does not fully particularize the nature of these conflicts and explain how, given their specific nature, the involvement of [redacted] demonstrates that the Union breached Section 12 of the Code. The Applicant also does not state in his submissions that he actually raised this concern with [redacted] or someone else at the Union at any point in the process for the purpose of asking that [redacted] not be involved.

116 I also find the Union did not breach the Code through not providing status updates of the Selection Grievances. The Union was clear in correspondence to the Applicant in April 2024 that the Selection Grievances would not be pursued in the event the Termination Grievance did not result in the Applicant's reinstatement. That is precisely what occurred and the Applicant does not particularize the basis on how the Union breached Section 12 of the Code by not pursuing selection grievances for an employee who was no longer employed.

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117 The Applicant next asserts that the Union withheld Troubleshooter Sullivan's recommendations for two weeks and only gave him 48 hours to review them which deprived him of time to consult legal counsel. The Applicant does not state whether he specifically sought more time from the Union to seek legal counsel, and I further note the Applicant has made it clear through the internal appeal process and the Applications that he would not, in any event, have accepted the offer.

118 As it concerns the Applicant's claim that the only meeting he had during the grievance process was one 30-minute Zoom meeting, I find that this is contradicted by the Applicant's own submission materials. Specifically, in the Applicant's email to the Union of July 19, 2024, in which he criticized [redacted]'s lack of contact with him, he expressly states that he met with [redacted] by video conference on June 12, 2024 to review the investigation report, on June 27, 2024, to prepare for the ITS hearing, and on July 4, 2024, at the ITS hearing.

119 In summary, the Third and Fourth Applications are dismissed.

The Fifth Application

120 The Fifth Application states the Union mishandled the Harassment Grievance and this mishandling led to severe consequences including his unjust dismissal. He states that, upon accepting his Harassment Grievance, it became the Union's responsibility to evaluate its validity and protect him as a member. He states that, instead, the Union allowed the Employer to appoint its own investigator without challenging the fairness of the independence of the investigation. He says this negligence contributed to his dismissal and the unfounded accusations against him.

121 The Applicant adds the further allegations that the Union advanced the Harassment Grievance without proper review or consultation with legal advisors, failed to insist on a Union-led investigation, and neglected to challenge the Employer's actions.

122 The Union argues the Fifth Application must be summarily dismissed as it is untimely. It says Step 3 of the grievance process for the Harassment Grievance concluded on October 3, 2023, and if, as the Applicant contends, the Union failed to properly investigate this grievance, that inadequate analysis was completed by October 2023, some 14 months before the Harassment Grievance application was filed. It says the Applicant has provided no rationale for the late filing of the Fifth Application. The Union says there is significant prejudice due to the delay because, should the complaint proceed, many events have occurred over the course of time which may obscure the facts in this case.

123 On the merits of the Fifth Application, the Union states this is a novel application as, unlike normal circumstances where the complaint is that a union has refused to file or advance a grievance, the applicant complains that the Union chose to advance his Harassment Grievance as he wished and now blames the Union for his termination. The Union says its decision to pursue the Applicant's grievance does not violate Section 12

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of the Code. It says it obtained relevant information, made a reasoned decision to pursue the harassment allegations advanced by the Applicant, and carried out its representation with due regard for the Applicant. It asserts [redacted]'s representation provided to the Applicant during the investigation process also meets the Section 12 criteria.

124 In his reply, the Applicant asserts, among other things, that the Union failed to grieve the Employer's access to his private emails. He further says the Union did not challenge an earlier letter of expectation given to him which allowed for the creation of a disciplinary record which was later used to justify his termination. I note these allegations were not included in the Applicant's original application submissions for the Fifth Application.

125 It is apparent from the parties' submissions that the Union filed the Harassment Grievance at the request of the Applicant and the Employer then engaged a process for investigating the matter. The Applicant does not explain on what grounds the Union would have had the authority under the collective agreement to prevent the Employer from appointing a particular investigator or to insist on a "union-led investigation". The Applicant also provides little information about this grievance and the ensuing process except to accuse the Union of improper action with respect to it. I also note that the Union remained entitled to, and did, grieve the discipline that arose out of the Employer's investigation. These reasons all favour the dismissal of the Fifth Application.

126 The Applicant's additional allegations in his final reply that the Union failed to grieve the Employer's access to his private emails and did not challenge an earlier letter of expectation issued to him were not part of the Fifth Application as originally filed and it is beyond the scope of permissible reply for the Applicant to add them within his final reply. Regardless, the Applicant again does not include enough detail about either of these events to make out an apparent case of a breach of the Code. Specifically, the Applicant does not particularize if or when he asked the Union to grieve these incidents, with whom he spoke about filing a grievance, and what reasons if any, the Union provided for not pursuing these matters through the grievance process.

127 I would, in any event, have found the Fifth Application is untimely. The Board stated in *Judd* that a complaint filed within two months of the underlying events is generally acceptable, but a delay "of several months may cause the complaint to be dismissed" and "a complaint filed a year after the event will generally be dismissed unless very compelling reasons for the delay are provided" (para. 97). In the present case, the Applicant waited approximately 14 months from the relevant events to file the Fifth Application and I find he has not provided a compelling explanation for the delay.

128 For the above reasons, the Fifth Application is dismissed.

The Sixth Application

129 The Applicant filed the Sixth Application under Section 12 of the Code stating he filed a complaint with the Union Ethics Commissioner regarding election tampering at

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the Union Convention but no action was taken. He states the Ethics Commissioner has a clear conflict of interest as she was appointed by the very individuals involved in the election tampering. He states that instead of accepting his complaint, the Union claimed he was no longer a Union member and so he could not file a complaint.

130 He further states that at the Convention, there was a coordinated attempt by certain persons to manipulate the election process. He states this included blocking microphone access, spreading misinformation regarding legal expenses, manipulating the voting process, engaging in advocacy based on identity politics, and engaging in prohibited campaigning.

131 I find the Applicant's complaint about the Union's internal election procedures has no relation to any statutory obligation on the part of the Union to represent its members with respect to a specific collective bargaining relationship. It is entirely a matter related to internal Union governance. It is therefore a matter outside the jurisdiction of the Board under Section 12 of the Code.

132 Further, as has been made apparent in this decision, the Board is not a body with broad statutory authority to investigate and regulate internal union affairs. The Applicant, at a time when he was no longer a Union member, attempted to file a complaint with the Union Ethics Commissioner about election interference. He states the Union rejected his complaint for the reason he had no standing to bring it as he was no longer a Union member. Even if I construed the Sixth Application as concerning a dispute relating to the matters in the Constitution of the Union under Section 10(1) of the Code, I am unable to find a breach of the principles of natural justice through the act of the Union not accepting a complaint from a non-member. The fundamental issue is that, as with the Article 19 charges, the Union takes the substantive position that the Applicant is not entitled to pursue his complaint as he is not a Union member. If the Applicant believes the Union's interpretation of the Constitution in this regard is incorrect then his recourse is with the courts, not with the Board.

The Seventh Application

133 The Seventh Application alleges "a broader breach" of the Union Constitution by the Union's Provincial Executive. The Applicant states this matter concerns political spending decisions by the Provincial Executive that fall outside the grievance or member complaint process.

134 The specific issue raised by the Applicant is that the Union spent more than the limit specified in the Constitution on political advertising. He states there was no opportunity for delegates to authorize or retroactively approve the overage. He says the Union has not provided any avenue for members to appeal financial decisions made between Conventions though he was a member and "had standing" during the period the breach occurred. He says that the individuals responsible for investigating such matters are also the same leadership that breached the Constitution.

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135 The Union's internal decisions respecting political advertising are not a matter that falls within the purview of Section 12 of the Code. The Seventh Application also does not raise matters of natural justice under Section 10 of the Code. Rather, what the Applicant raises is a concern with the Union's compliance with its spending restrictions. As already noted, the Board does not involve itself in the internal affairs of unions outside of the focused grounds provided for in the Code. In this case, it is outside the jurisdiction of the Board to adjudicate whether the Union's political advertising spending breached the limits imposed by the membership.

V. APPLICATION FOR RECUSAL

136 As noted in the introduction to this decision, a different panel of the Board was initially seized with the first five applications. Following the initial panel's departure from the Board, I reassigned the first five applications to myself pursuant to my delegated authority as Associate Chair. I assigned the Sixth and Seventh Applications to myself for the purpose of adjudicative efficiency because they are part of a sequence of events that gave rise to multiple issues the Applicant had with the Union and they raise common issues of the effect of the Applicant's membership status on his ability to pursue concerns about internal Union matters. I have consolidated all these applications together (the "Applications").

137 On March 11, 2025, the Applicant wrote to the Board Registrar following the reassignment of the First through Fifth Applications to this panel asking that the matters be reassigned because this panel articled with a public sector union ending approximately thirteen and a half years ago. The Applicant states he has been actively lobbying the Provincial Government to introduce legislation mandating financial transparency and accountability from public sector unions. He states the Union is one of the largest donors to the NDP and there is a strong public interest in ensuring his case is reviewed by an impartial panel member with no prior affiliation with a public sector union. I responded to the parties stating I had treated the Applicant's letter to the Registrar as an application for me to recuse myself due to a reasonable apprehension of bias. I advised by way of a bottom-line decision on March 12, 2025 that I dismissed the recusal application and would provide written reasons in any final decision.

138 The Applicant filed a second application seeking my recusal on April 8, 2025, after receiving notification that I was established as the panel for the Sixth Application and that the Sixth Application had been consolidated with the earlier applications. In addition to the reasons already stated, the Applicant asserted it was procedurally irregular and troubling that the First through Sixth Applications were assigned to the same panel. He stated that this consolidation, without transparency or explanation, raises legitimate concerns regarding the fairness of the Board's administrative process and the potential for undue influence or predisposition.

139 The Applicant also stated that because my current term is scheduled to conclude on April 30, 2030, legitimate concerns are raised about the long-term capacity for impartial oversight and institutional bias, particularly because unresolved issues may

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extend beyond the conclusion of the term and there will be a lack of continuity in adjudication.

140 In assessing the Applicant's recusal application, I am firstly not persuaded that my prior one-year involvement with a public sector union which ended approximately thirteen and a half years ago, and which I note is in any event not the same union as the one named in the present matter, creates a reasonable apprehension of bias. As stated in *Sean Parr*, BCLRB No. B211/96 (Leave for Reconsideration of BCLRB B81/96) ("*Parr*"), "courts have recognized that, given the nature and functions of the Board, Vice-Chairs are necessarily drawn from one side of the labour community or the other, and are bound to have some prior association with the parties coming before the Board" (para. 31). The Board in *Parr* further stated that courts have found that, after a suitable period of time, past professional or business relationships generally do not provide a ground for alleging disqualifying bias (*ibid.*). Accordingly, the Board has adopted a policy that generally, after "a minimum period of six months following their appointment to the Board", a Vice-Chair is not precluded from dealing with applications that involve former professional relationships (*ibid*.).

141 With respect to the manner of the assignment of the Applications, the Board must manage its scarce resources in an expeditious manner, which includes avoiding having applications with overlapping or similar allegations, issues, or factual backgrounds and which involve the same parties go through separate adjudicative processes. In this respect, I find the first Five Applications are intertwined as part of the same sequence of events, and I note the Applicant did not raise an objection that these applications were being heard by the same panel. As it concerns the Sixth and Seventh Applications, they repeat issues of the Union's alleged lack of recognition of the Applicant's membership status in relation to his ability to raise complaints with the conduct of Union officials, and as such it was a matter of administrative efficiency that they be heard by the same panel. For that reason, again using my delegated authority as Associate Chair, I established myself as the panel so they could be consolidated with the earlier matters.

142 Finally, the timeline of a panel's appointment at the Board has no relation to a reasonable apprehension of bias and, in any event, the concerns about this panel's ability to conclude the adjudication of the Applications within the remaining term are rendered moot by this decision.

143 To the above, I would add the following comments from the British Columbia Court of Appeal on the issue of judicial impartiality, which I find are applicable to the present case:

> There is a strong presumption of judicial impartiality that is not easily displaced: *Yukon Francophone School Board* at para. 25. Judicial impartiality requires judges to approach each case with an open mind, free from inappropriate or undue assumptions: at para. 22.

* * *

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As summarized in *Taylor Ventures Ltd. (Trustee of) v. Taylor*, 2005 BCCA 350 [*Taylor*], the question of whether there is a reasonable apprehension of bias should be considered with the following principles in mind:

a) a judge's impartiality is presumed;

b) a party arguing for disqualification must establish that the circumstances justify a finding that the judge must be disqualified;

c) the criterion of disqualification is the reasonable apprehension of bias;

d) the question to be determined is what would an informed reasonable and right-minded person, viewing the matter realistically and practically, and having thought the matter through, conclude;

e) the test for disqualification is not satisfied unless it is proved that the informed, reasonable and right-minded person would think it more likely than not that the judge, whether consciously or unconsciously, not decide fairly;

f) the test requires demonstration of serious grounds on which to base the apprehension; and

g) each case must be examined contextually and the inquiry is fact-specific.

Taylor at para. 7, referencing *S.(R.D.)*.

* * *

The strictness of the criteria required to show a reasonable apprehension of bias reveals that judges must necessarily not habitually yield to parties who want them to step down. Doing so would erode the administration of justice and damage the reputation of the judiciary. Judges have a duty to hear the cases assigned to them, which cannot be displaced by a party selecting one judge over another preferentially and without good reason. An additional danger of frequent recusals is that parties could use such motions strategically, which includes attempting to judge-shop or delay the proceedings: *De Cotiis v. De Cotiis*, 2004 BCSC 117 at paras. 10–11; *Anderson* at para. 16; *Liszkay v. Robinson*, 2003 BCCA 506 at para. 53.

(*Pereira v. Dexterra Group Inc.*, 2023 BCCA 201, paras. 11, 15, and 17)

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144 Applying the above to the present case, I am not satisfied any of the reasons provided by the Applicant demonstrate a basis on which to find a reasonable apprehension of bias exists with this panel.

145 For all the above reasons, the Applicant's applications for recusal are dismissed.

VI. CONCLUSION

146 For the reasons given, the Applications are dismissed.

LABOUR RELATIONS BOARD

"ANDRES BARKER"

ANDRES BARKER
ASSOCIATE CHAIR

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