LABOUR RELATIONS BOARD OF B.C.
1275 WEST 6TH AVENUE, VANCOUVER, B.C. V6H 1A6 / 736-2421

No. L61/83

February 23, 1983

To Interested Parties

Re: Brian E. Davies, Complainant
-and- Western Carriers Ltd.
-and- General Truck Drivers and Helpers Union, Local No. 31
(Section 96(1), Ref: 96/501/82)
(Section 8, Ref: 7/91/82)

I

These are two inter-related applications flowing from an interpretation of the seniority provisions of the industry-wide collective agreements in force between Transport Labour Relations ("TLR") and the General Truck Drivers and Helpers Union, Local No. 31 ("Local 31"). First, we have an application pursuant to Section 96(1) of the Labour Code by Western Carriers Ltd. ("Western"), a member company of TLR. In its application, Western alleges an improper interpretation of the collective agreement seniority provisions. Second, we have an application pursuant to Section 8 of the Labour Code by Brian Davies, an employee of Western, alleging that Local 31 has violated the provisions of Section 7 of the Labour Code.

There are two collective agreements involved in this case, one applying to the office staff and dispatchers (the "Office Agreement"), the other applying to operational/trucking employees (the "Master and Freight Agreement"); however, for some companies in TLR there is only one certification, while in others there are two. Western's employees are covered by only one certification (the certification for operational employees was granted on June 18, 1968, and the certificate was varied by the Board in 1969 to include office employees), but by two collective agreements, the Office Agreement and the Master & Freight Agreement. Although seniority rights are dealt with in detail in both collective agreements and there are two separate seniority lists, there is no specific provision for the carrying over of seniority rights from one agreement to the other.

The dispute in this case arose over Davies' seniority rights. Davies began working for Western in October 1967 and from 1967 to 1979 inclusive (12 years), he performed various operational functions

falling under the Master & Freight Agreement. On occasion during the latter part of this 12 year period, Davies performed office duties such as pricing, call taking and dispatching.

In 1979, Davies became a regular employee in the office work force and only acted as a driver or warehouse person when called upon. In October 1980, he was transferred to the office employees' payroll, became a salaried employee rather than an hourly paid employee, and was thus brought under the terms and conditions specified in the Office Agreement.

During 1982, some of the employees of Western's office staff were laid off; one of the employees so affected was Archie Trotter, who had commenced employment with Western in 1977 and thus had five years' seniority in 1982. Trotter was first laid off temporarily in April 1982. At that time, the question of Trotter's seniority versus that of Davies was raised. Local 31's business agent, Mr. Price, advised that seniority was company-wide and therefore Davies had 15 years' seniority versus Trotter's five years; in his view, Western was correct in laying off Trotter rather than Davies.

Trotter was laid off again in August and the question of his seniority versus that of Davies became a matter of contention. At that time, Local 31's Al Walcott reversed the position that Local 31 had taken earlier and took the view that seniority was not company-wide but rather was restricted to each of the two collective agreements; as a result, it was argued that Davies had only two years' seniority (i.e., under the Office Agreement) while Trotter had five years' seniority and therefore Trotter should be recalled to work and Davies laid off.

It is important to note at this juncture that before effecting Trotter's lay-off, Clarence Schuurman of Western met with TLR staff and and was advised that it would be proper to lay off Trotter rather than Davies since company-wide seniority applied.

Trotter's layoff was grieved and, pursuant to Article 28 of the Office Agreement, the grievance was referred to the "Industry Committee" for resolution. Article 28 of the Office Agreement specifies as follows:

Section 1 Transport Labour Relations and the Union agree to co-operate in the establishment of an Industry Committee which shall meet not less often than once each calendar month during the term of this Agreement to deal with any matter regarding the interpretation or application of this Agreement as may be raised by either Transport Labour Relations or the Union, is referred under Article 27 of this Agreement.

Section 2 The Industry Committee shall consist of six (6) members, three (3) members who will be appointed by each of Transport Labour Relations and the Union. Such members shall have been part of the Negotiating Committee on the current Agreement.

Section 3 Submissions to the Industry Committee shall be in writing and shall clearly state the Section of the Collective Agreement to be interpreted together with a brief statement of the pertinent facts.

Section 4 The Industry Committee shall meet within seven (7) days of the referral of a question of interpretation of the Agreement from one of the Parties to this Agreement.

Section 5 If the Industry Committee arrives at a unanimous interpretation of a provision in the Office Agreement, such decision(s) shall be binding upon the Parties hereto and all companies and employees who are bound by the terms of the Office Agreement. If a unanimous decision is not reached, either Party may refer the question to arbitration as hereinbefore provided.

Section 6 The Parties to this Agreement to be bound by any rules of procedure which the Industry Committee by unanimous vote establish.

(emphasis added)

As specified in Section 5 of Article 28, a unanimous decision of the Industry Committee is binding upon TLR, upon Local 31, and upon all companies within TLR.

The Industry Committee members met on August 26, 1982; all were members of the negotiating team for the Office Agreement. The Committee considered

the grievance and came to a unanimous decision that seniority was limited to each of the collective agreements; specifically, and with respect to the Davies - Trotter question, it ruled that an employee who leaves the work jurisdiction encompassed by the Master & Freight Agreement and transfers to the work jurisdiction encompassed by the Office Agreement moves from one seniority list to another and has seniority under the Office Agreement only from the date he transfers to the office group.

In rendering its decision, the Industry Committee members relied upon their understanding of the intent of the parties during negotiations, on the existence of two separate seniority lists, and in part on Article 6, Section 10(b) of the Office Agreement. It reads as follows:

> When an employee within the bargaining unit covered by this Agreement receives leave of absence to take a position within the Company which is beyond the sphere of the bargaining unit, he may retain his seniority for a maximum of ninety (90) calendar days within the former unit. Notice shall be given to the Union in writing prior to the employee leaving the bargaining unit for any period of time.
>
> Employees who have been granted such leave of absence must remain a member of the Union and be covered under all benefits of the Collective Agreement but shall not perform any duties covered by the bargaining unit. In such appointments seniority shall be a consideration. The successful appointee shall not have the right to hire and fire during the ninety (90) day leave of absence.
>
> Not later than on the ninetieth (90th) calendar day of this period, the employee must exercise his seniority rights by returning to his former unit or relinquish all such seniority rights. Should the employee return or be returned to the bargaining unit for any reason, he must remain within the unit for a minimum period of one hundred and twenty (120) calendar days prior to exercising such privilege again.
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> (emphasis added)

Although the clause deals only with leave of absence, the Industry Committee felt that it indicated the parties' understanding that seniority was not company-wide but rather was limited to either the Office Agreement or the Master & Freight Agreement.

As a result of the Industry Committee's decision, Western was forced to recall Trotter and to lay off Davies. When this took place on August 30, 1982, Davies attempted to file a grievance but it was refused by Local 31. On the same day, Western filed an application to the Board pursuant to Section 96(1). In its application, Western takes issue with the Industry Committee's decision, arguing that the decision was not in accordance with the wording in the Office Agreement, and furthermore that it was contrary to Western's past practice of recognizing seniority on a company-wide basis.

Russ Orser, then General Manager of TLR (but who resigned from TLR in mid-November 1982), supported Western's arguments. In Orser's view, "...The Industry Committee's decision was, in all candor, a complete surprise to TLR staff". Orser emphasized, however, that the Industry Committee included TLR's representatives who had negotiated the Office Agreement, and the Committee's decision was "unchallengeable". That being the case, TLR stated:

> TLR had great difficulty in envisioning just how the Board could have accepted the S.96(1) application, unless it was on technical grounds of some kind.

While the Section 96(1) application was being processed by the Board, Davies applied to Local 31's Executive Committee to have his original seniority date of October 27, 1967 recognized for the purposes of the layoff and seniority provisions of the Office Agreement. He met with the Executive Committee on October 13, 1982, and was advised shortly thereafter that Local 31 concurred with the Industry Committee's decision.

On October 20, 1982, Davies filed an application to the Board pursuant to Section 8 of the Labour Code, alleging that Local 31 had violated the provisions of Section 7 of the Labour Code (i.e., by not allowing him to pursue a grievance on August 30, 1982, and also by not allowing him to personally make representations to the Industry Committee). Western has voiced support for Davies' application; Clarence Schuurman of Western has emphasized:

> Brian has become a victim of circumstances due to bad contract wording and undefined assumption regarding his seniority. It is

> my position as an employer that he is entitled to his seniority from the date he started with the Company ...

II

In its representations to the Board, Western takes issue with the Industry Committee's decision, arguing that it is not only contrary to Western's past practice and the collective agreement wording but also that it is, by its nature, unjust to the more senior company employees who have chosen to work in more than one facet of the company's operations. Furthermore, Western questions the Industry Committee's jurisdiction to render a decision on the issue of company-wide seniority since the Committee may only interpret "a provision in the Office Agreement" (See Section 5 of Article 28); it is argued that since the question of company-wide seniority is not specifically dealt with in the Office Agreement, it is beyond the Industry Committee's jurisdiction. Finally, it is argued that the Industry Committee's decision constituted a denial of natural justice since:

- no written reasons for the decision were provided;
- there was no consideration given to Western's past practice;
- there was no input from TLR staff who had advised Western that company-wide seniority prevailed; and,
- Davies was not asked to appear before the Committee and make representations.

Western argues that, at the very least, the Industry Committee should reconsider its decision.

In his representations to the Board, Davies argues that he should have been given an opportunity to appear before the Industry Committee on August 26, 1982, and should have been allowed to have some input into the decision-making process at that level. In Davies' view, that shortcoming was compounded by the fact that Local 31 refused to take up a grievance respecting his August 30, 1982 layoff.

In response to Western's application pursuant to Section 96(1), Local 31 argues that the 96(1) application is inappropriate since the seniority issue had been subject to a final and binding decision of the Industry Committee.

Local 31 regrets that, in April 1982, its business agent Price had given a mistaken interpretation of the seniority provisions but emphasizes that it has long held the view that seniority was restricted to each of the two collective agreements. That view was confirmed by the August 26, 1982 decision of the Industry Committee, which was comprised of representatives of TLR and Local 31, persons who were on the parties' negotiating teams and thus in the best position to rule upon the true meaning of the collective agreement provisions.

In response to Davies' complaint alleging a violation of Section 7 of the Labour Code, Local 31 argues that its treatment of Davies was not arbitrary, discriminatory or in bad faith; rather, its treatment of Davies was in keeping with the final and binding decision of the Industry Committee. Furthermore, it is argued that Davies was not asked to make representations to the Industry Committee since the issue under consideration was very broad in scope and did not necessarily require the participation of persons directly or indirectly affected by it.

III

Let us deal first with Western's application pursuant to Section 96(1) of the Labour Code. The intent of the application is to have the Board judge the merits of the August 26, 1982 unanimous decision of the Industry Committee respecting the seniority question. But, in accordance with Article 28 of the collective agreement between TLR and Local 31, the Industry Committee's unanimous decision is final and binding; that being the case, the Industry Committee performs much the same functions as an arbitration board.

Section 96(1) of the Code permits either party to file an application with the Board "...at any time prior to the appointment of an arbitration board or other body". In this case, that "other body", the Industry Committee, has already rendered a final and binding decision with respect to the seniority question. Therefore, an application pursuant to Section 96(1) is not appropriate in the circumstances.

That is not to say, however, that the Board is unable to question the decision of the Industry Committee. Rather, if we find that Local 31 has violated Section 7 in the manner in which it handled the seniority question in general and Davies' problem in particular, we could well find as a remedy that the Industry Committee reconsider its

August 26, 1982 decision. To do so, however, we must find a violation of Section 7; if we do not, then the Industry Committee's decision must be allowed to stand.

IV

Section 7(1) of the Labour Code reads as follows:

> A trade union or council of trade unions shall not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employees in an appropriate bargaining unit, whether or not they are members of the trade union or of a constituent union of the council.

The nature of that duty in grievance representation has been the subject of a number of Board decisions, most notably, Rayonier Canada Ltd., BCLRB No. 40/75; [1975] 2 Can LRBR 196:

> What is the content of the duty of fair representation imposed on a union? Section 7(1) requires that a trade-union not "act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees" in the unit. The relevance of the American background can best be appreciated by these quotations from Vaca v. Sipes which defined the scope of [its] judicially developed obligation:
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> > "Under this doctrine, the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct ... (at p. 18, 294).
> >
> > A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith ... (at p. 18, 299)."
>
> Under this language, which has been directly imported into our legislation, it is apparent that a union is prohibited from engaging in any

> one of three distinct forms of misconduct in the representation of the employees. The union must not be actuated by bad faith in the sense of personal hostility, political revenge, or dishonesty. There can be no discrimination, treatment of such factors as race and sex (which are illegal under the Human Rights Code) or simple, personal favouritism. Finally, a union cannot act arbitrarily, disregarding the interests of one of the employees in a perfunctory matter. Instead, it must take a reasonable view of the problem before it and arrive at a thoughtful judgment about what to do after considering the various relevant and conflicting considerations.
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> (at 201-202, emphasis added)

Section 7(1) has been interpreted by the Labour Relations Board as providing a union with "considerable latitude" in the manner in which it deals with the complaints/grievances of individual union members. In accordance with that section of the Labour Code, the Labour Relations Board's concern is limited to determining whether a union's action has been "arbitrary, discriminatory or in bad faith".

What then is involved in these three prohibitions?

(1) Dealing first with the "bad faith" violation, a union must not allow its personal feelings toward particular individuals to become a factor in deciding how or whether particular grievances are to be pursued. The union's manner of dealing with a particular grievance must not be motivated by such factors as personal hostility, political revenge, dishonesty, etc. (Rayonier, supra, at 201). It should be noted, however, that the duty of fair representation is not violated simply because the union member has a reasonable apprehension of bias on the part of union officers who are dealing with a particular matter in which he is involved; it must be shown that the union representative(s) actually acted in bad faith (See Ontario Board decision, Vision Nursing Home, [1979] OLRB Rep. 460).

(2) To avoid acting in a manner that is "discriminatory", the union must not distinguish among members in the bargaining unit unless there are good reasons for doing so. Like situations should be treated in a like manner unless some other treatment is justified by the circumstances.

Furthermore, and as stated in Margaret Cameron, BCLRB No. 46/81; [1980] 2 Can LRBR 435:

> ...the duty of fair representation encompasses the duty to refrain from acts of discrimination prohibited by the Human Rights Code of B.C.
>
> (at 442)

That decision was confirmed by a review panel of the Board (Margaret Cameron, BCLRB No. 19/82). In the review decision, the panel emphasized that:

> ...the Labour Code and the Human Rights Code require trade unions to treat persons who are members and/or employees on the basis of individual merit and ability, without distinction.

The union's manner of dealing with particular grievances must not be influenced by factors such as the grievor's age, sex, race, religion, marital status, etc.

(3) The prohibition against a union acting in a manner that is "arbitrary" functions to prevent a union from dealing with grievances in a superficial or perfunctory manner.

In making decisions respecting individual grievances, the union must be seen to have made these decisions on the basis of an informed reasoned judgment regarding the merits of the particular grievance; the union must be seen to have taken a reasonable view of the case before it and arrived at a thoughtful judgment.

But it is also necessary to distinguish arbitrariness from mere errors in judgment, mistakes, simple negligence and unbecoming laxness. Obviously flagrant errors in investigating or processing grievances - errors consistent with a "not caring attitude" - would be inconsistent with the duty of fair representation. However, the wording of Section 7(1) of the Labour Code is not sufficient to protect union members from a union's inadvertent errors, its poor judgment or mere negligence --- union officials are entitled to make honest mistakes. In order to breach Section 7(1), the union's shortcomings in processing the grievance must be so blatant as to demonstrate that the grievor's interests were pursued in an indifferent or perfunctory manner.

Each case must be decided on its own merits; suffice to say, however, that the Board may well find shortcomings in the manner in which the union dealt with a particular matter without finding that such shortcomings support a Section 7(1) complaint. The Board may well find that a union could have been more vigorous and thorough in its investigation of the facts in a particular case; it may even question the steps taken in dealing with a grievance and the ultimate decision made with respect to that grievance. However, that does not necessarily mean that a complaint under Section 7(1) will be substantiated. To substantiate a charge of arbitrariness, there must be convincing evidence that there was blatant disregard for the rights of the union member.

Both in processing employee grievances and in deciding to what extent these grievances should be pursued, the union must put its mind to the merits of the grievance and attempt to engage in a process of rational decision-making that cannot be branded as implausible or capricious.

If the union can be seen to have taken a "reasonable view of the problem before it and arrived at a thoughtful judgment about what to do after considering the various relevant and conflicting considerations" (Rayonier, supra, at 201), the Board will be very reluctant to "second-guess" a trade union either with respect to its decision to pursue or not pursue particular grievances of dissatisfied employees, or with respect to the manner in which the grievances are processed.

The Board will want to assure itself however that the union's decision not to pursue a grievance was not arrived at in a manner which was arbitrary, discriminatory or in bad faith (See Raymond Bey, BCLRB No. 27/80; Ruby Chow, BCLRB No. 45/81, [1981] 3 Can LRBR 43; Barry Clarke, BCLRB No. L196/82; Gary Ball, BCLRB No. L210/82; William Waugh, BCLRB No. L193/82; Charles Deane, BCLRB No. 75/81; Laslo Karasz, BCLRB No. L147/82).

Since Rayonier, a number of Section 7 complaints have succeeded in cases where the Board concluded that the union's decision not to pursue a particular grievance was made "...without any reasonable enquiry or deliberation" (See Herminio Borralho, BCLRB No. L23/77; Lorna Unraw, BCLRB No. 51/78; Christine Leach, BCLRB No. 52/82; Okanagan Beverages Ltd., BCLRB No. 51/78).

As stated in Charles Morgan, BCLRB No. 89/79; [1980] 1 Can LRBR 441:

> ...Clearly, where the union is not aware and makes no effort to discover what are the circumstances and possible merits of the grievance, its refusal to proceed with the grievance would be perfunctory and therefore arbitrary.
>
> (at 455)

In cases where the union drops a grievance and the union member affected by that decision applies to the Board pursuant to Section 7 of the Labour Code, the Board's investigation is not limited solely to the manner in which the union dealt with the particular grievance. Rather, the merits of the grievance must also be considered. As the Board stated in Ruby Chow, supra:

> ...where there is an allegation that the Union, in arriving at that judgment, has acted in breach of Section 7(1), the Board is often called upon to assess the prima facie merits of the Complainant's case. That is because, although the Union is not obliged to be right in its assessment, the degree of care which must be exercised by the Union may fluctuate in accordance with the prima facie worthiness of the grievor's case: see Karnail Singh Lally, BCLRB Decision No. 29/81 and David Gibbs, BCLRB Decision No. L38/81.
>
> Therefore, it is not unusual for the Board to find itself concerned, at least to a small degree, with the prima facie merits of the Complainant's case.
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> (at 48)

However, the fact that the Board reviews the merits of the grievance does not mean it will second-guess the union's decision not to pursue the grievance. As long as it can be concluded that the union investigated the grievance, puts its mind to its merits, and made a reasoned judgment as to its disposition, that decision, if taken conscientiously, will be upheld by the Board, even if deep down the Board were to conclude that had it been in the bargaining agent's shoes, it might have come to a different conclusion (See Canada Board decision, Andre Cloutier (1981) 40 di 222, [1981] 2 Can LRBR 335 at 340).

In addition, the union member need not be involved at any or all stages of that decision-making process; as long as the union has obtained the full details of the case including the union member's side of the story, a Section 7 violation does not occur by virtue of the fact that the member is not present at a membership or executive meeting when it is decided not to pursue the grievance further (See Pat G. Kinney, BCLRB No. L46/79; Albert E. Tyrrell, BCLRB No. L105/79; Rod Lew, supra; Laslo Karasz, supra; Barbara Evans, supra).

Furthermore, once a union decides to pursue a particular grievance on a member's behalf, the member may become disenchanted with the manner in which his grievance is being pursued. However, a Section 7 complaint cannot be substantiated solely on the basis that a union could have done a better job in representing a member's interests; as stated in Barry Clarke, supra, "...the duty placed on trade unions by Section 7 does not make it mandatory that they will always be models of efficiency and good judgment in handling grievances and complaints of their members" (at 4).

Similarly, a complaint cannot be substantiated solely because the union member was not allowed to be present at the grievance meeting with the employer (See Rod Lew, supra; Pat G. Kinney, supra; Balbir S. Gandam, BCLRB No. L113/81; Arthur Harrington, BCLRB No. L165/82). The union member's dissatisfaction with either the handling or the disposition of his grievance is not, by itself, valid grounds for a Section 7 application. As stated in Steve Ocsko, BCLRB No. L330/82:

> There have been, and no doubt will continue to be, many cases where an individual is less than satisfied with the performance of his or her trade union in dealing with grievances. To some extent, it can be said that less than perfect handling of employee grievances is a price which will sometimes be paid for the parties being able to have access to a grievance procedure where matters can be dealt with expeditiously and with some degree of finality. This Board has rejected the proposition that simple negligence on the part of a trade union should be the basis for a remedy under Section 7 (see Charles Morgan, supra). The Board has also declined to find a breach of the duty under Section 7 in a case where the aggrieved employee was not allowed to be present at a grievance meeting with the employer, after which the union decided not to pursue the grievance (Cowichan District Hospital and Barbara Evans, BCLRB No. 56/76). The mere fact that a grievor is likely to be unhappy with the results of a grievance which the union has settled, or with the process by which that settlement was reached will not of itself give rise to a remedy under Section 7. In each case, the Board will determine whether or not on the facts of the case the union's conduct ran afoul of the "arbitrary, discriminatory, or in bad faith" test provided for in Section 7.
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> (at 11-12, emphasis added)

Often, a union member's dissatisfaction stems from the fact that the union refuses to pursue his particular grievance to third-party arbitration. However, that fact alone is not supportive of a Section 7 violation. The Board emphasized in A.L. Pook, BCLRB No. L23/83:

> It is not unusual for an individual to have strong views on the question of whether his grievance should be pursued to arbitration, including the nature of the evidence and representations at any hearing of the dispute. Further, it is quite natural that a grievor stands to personally gain from a successful arbitration. However, as this Board has indicated on numerous occasions, it is the union and not the grievor who maintains the ultimate decision to determine whether or not a grievance will proceed to arbitration or be abandoned. In certain circumstances, individual employee interest may be subjugated to the broader-based interests of the bargaining unit as a whole.
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> (at 7)

V

In this case, Local 31 took up Trotter's grievance because it felt that his layoff was contrary to the provisions of the collective agreement and contrary to the parties' understanding that seniority was not company-wide but rather was restricted in application to either the Office Agreement or the Master & Freight Agreement. Once Trotter's grievance had succeeded, Local 31 then refused to take up Davies' grievance since it was at variance not only with Local 31's understanding of the seniority provisions but also with the Industry Committee's final and binding decision.

As the Ontario Board stated in W. Prenesdomu, [1975] 2 Can LRBR 310:

> There are many times when the trade union must take a stance against employees who have been unfairly rewarded by management at the expense of other employees. In such circumstances trade unions cannot refuse to act.
>
> (at 320)

Similarly, in Reginald Walker, [1981] 1 Can LRBR 261, the Ontario Board emphasized:

> The fact that union executive officers or the general membership may come down on the side of an issue that adversely affects the interests of certain of its members does not violate Section 7(1) of the Labour Code provided that they do so in a way that is not arbitrary, discriminatory or in bad faith.
>
> (at 264)

Obviously, Local 31's decisions first to proceed with Trotter's grievance and subsequently to refuse to take up Davies' grievance were reasoned judgments based on Local 31's view of the applicable seniority provisions.

As was the case in Barry Clarke, supra, and Peter J. Haas, BCLRB No. L133/82, the union was faced with competing claims from two individuals it represented and, in such disputes, the union will obviously disappoint one of the claimants. In deciding which one of the members warrants the union's support, the union must not act in a manner which is discriminatory, arbitrary or in bad faith. The union must also pay particular attention to the merits of the specific claims from the individuals involved; however, in deciding its most appropriate course of action, the union may also balance the interests of a complainant against the interests of the totality of the employees in the bargaining unit.

We have concluded that, in deciding to pursue Trotter's grievance and then not to take up that of Davies, Local 31 gave careful consideration to the merits of the two conflicting points of view on the seniority question and came to a reasoned decision to support the principle of collective agreement seniority versus company-wide seniority. In doing so, Local 31 not only balanced the interests of Trotter and Davies but also Davies' interests against the interests of the totality of employees in the bargaining unit. It is obvious that Local 31's decision was not reached lightly but rather after due regard for all the relevant and conflicting considerations.

It is regrettable that Local 31's business agent Price gave advice to Western in April, 1982, that seniority was company-wide. That advice was later stated by Local 31 to have been erroneous and was repudiated by Walcott. While it can be argued that Local 31's handling of this matter might be described as clumsy (see Barry Clarke, supra, at 5), nevertheless, a union is entitled to make honest mistakes without running afoul of Section 7 (see Karnail Singh Lally, BCLRB No. 29/81 at 5-6).

Similarly, it is regrettable that the TLR staff

and its then General Manager took a position which was at variance with the Industry Committee's decision. Nevertheless, we must be mindful that the Industry Committee is comprised of negotiators to the collective agreement and the TLR and Local 31 members of the Industry Committee unanimously took the view that seniority was limited in application to each of the two collective agreements. Local 31's decision not to pursue Davies' grievance was directly related to the Industry Committee's final and binding decision.

Although it could be argued that Local 31 should have made more of an effort to explain to Davies the reasons for the decision not to proceed with his grievance, nevertheless it was not a decision made arbitrarily, in bad faith or in a discriminatory manner.

Furthermore, the decision not to proceed with Davies' grievance was subject to review by Local 31's Executive Committee; before the Executive Committee reached a decision to confirm the earlier rejection of his grievance, Davies was given a full opportunity to present arguments on his behalf.

On the whole of the circumstances, we cannot find that the judgments made by Local 31 in this case were ill-considered, capricious or motivated by any ill will or discriminatory consideration in the sense intended by the language of Section 7 of the Code.

Mr. Davies' complaint is hereby dismissed.

LABOUR RELATIONS BOARD
OF BRITISH COLUMBIA

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Vice-Chairman

Jack Gerow,
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Doug Quinn,
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