

BY EMAIL
February 28, 2025

BC LABOUR RELATIONS BOARD

Suite 600 – Oceanic Plaza
1066 West Hastings Street
Vancouver, BC V6E 3X1

Attn: Stephanie Drake, Registrar

Re: Jessie Bains -and- Hospital Employees' Union – Provincial Health Services Authority
Applications Pursuant to Sections 10 and 12 of the Labour Relations Code
(Case Nos. 2024-001334, 1437, 1478, 1491, and 1576)

I. INTRODUCTION

Please regard this as my response to the Union's submission regarding all five Section 12 applications. My response will include additional details specific to each application to ensure clarity and reason.

I, Jessie Bains (the "Applicant"), filed these five applications between October 22, 2024, and December 18, 2024, against the Hospital Employees' Union ("HEU" or "the Union"). Each application was submitted independently, addressing distinct concerns regarding fair representation. Given the unique nature of each application, **I request that they be assessed on their individual merits.**

The Union has referenced matters that are unrelated to the applications at hand, including its engagement with the RCMP on January 23, 2025. The timing and inclusion of this matter in its submissions raise concerns about whether the focus remains on a fair assessment of my claims. The key issue remains whether the Union met its obligations under the Labour Relations Code.

II. MOTION TO STRIKE PARAGRAPHS 75, 76, 77, 98, 99, 158, AND 159

Union Sends Cease and Desist Letter, Then Contacts RCMP

I request that these paragraphs be struck from the Union's response as they introduce information that is irrelevant to the applications. Specifically:

- These events occurred after the Union closed my grievances without my consent and ended my union membership.
- They took place after my applications were already filed.
- They were initiated by the Union itself.

Rather than addressing the substantive concerns raised in my applications, the Union's response shifts focus to unrelated matters. The inclusion of these paragraphs does not contribute to the fair determination of whether the Union met its duty of representation.

III. MOTION TO STRIKE PARAGRAPHS 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 41, 42, 43, 45, 47, 48, 49, 50, 51, 52, 53, 59, AND 60

These paragraphs must be struck from the Union's response as they introduce matters that are not relevant to the specific claims raised in my applications. Instead of responding to the core issues, the Union has included:

1. **Emails Requesting New Representation or External Legal Counsel**
 - o My request for new representation was made after I lost trust in Chrystal Latham, who did not investigate my harassment grievance.
 - o The Union's handling of this request raises concerns regarding its duty of fair representation.
 2. **Emails to Elected Officials Regarding Representation Concerns**
 - o These emails were an effort to document my concerns about how my case was being handled.
 - o Their inclusion in the Union's response appears intended to divert attention from its obligations.
 3. **Emails Characterized as "Disrespectful" by Chris Dorais**
 - o No formal complaint was ever filed against me regarding my emails.
 - o When I sought clarification on what was considered inappropriate, the Union ceased communication rather than providing a response.
 4. **Union's Reliance on My Emails Rather Than Addressing Its Actions**
 - o The Union selectively included emails it responded to while omitting those it ignored.
 - o A full review would show a pattern of unanswered inquiries.
 5. **Failure to Address Allegations Against Lynn Bueckert**
 - o My Section 12 application outlines that Bueckert failed to respond to 16 emails.
 - o Rather than addressing this, the Union instead included unrelated correspondence.
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IV. RELEVANCE OF UNION ACTIONS TO MY APPLICATIONS

The Union's response does not directly address whether it met its obligations under the Labour Relations Code. Instead, it introduces external matters that are unrelated to the issues raised in my applications. The key points remain:

- My applications focus on concerns regarding fair representation, not on the underlying termination grievance.
- The Union asserted control over my grievance but has not demonstrated that it acted in my best interest.
- The Union's response does not provide a substantive defense of its actions and instead focuses

on unrelated issues.

- The Union has not provided evidence showing how or when it fulfilled its obligations under the Code.

Given this, I request that the Board strike paragraphs 18, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 41, 42, 43, 45, 47, 48, 49, 50, 51, 52, 53, 59, and 60 as they do not contribute to a fair evaluation of my applications.

V. CONCLUSION AND REMEDY

Chris Dorais, Coordinator of Public Sector Servicing, and his wife, Ruby, played a significant role in my representation. Given my long-standing history with both of them since 2010, this should have been acknowledged as a potential conflict of interest. I believe this relationship had an impact on key decisions affecting my case, particularly given the lack of direct communication from Chris and the failure to arrange any meetings to address my concerns.

I request the Board to deny the Union's motion to dismiss my applications. The Union's submissions lack evidence of conducting independent fact-finding, failed to seek legal assessments, breached the collective agreement, and engaged in acts of retaliation—clear violations of Sections 10 and 12 of the Labour Relations Code.

To address these concerns, I respectfully request the following remedies:

1. That my complaints proceed to a full hearing.
2. That the Board directs the Union to fulfill its duty of fair representation by advocating for my reinstatement.
3. That the Board impose necessary remedial measures to ensure the Union acts in good faith in similar cases moving forward.

Respectfully submitted,
Jessie Bains

BY EMAIL
February 28, 2025

BC LABOUR RELATIONS BOARD

Suite 600 – Oceanic Plaza
1066 West Hastings Street
Vancouver, BC V6E 3X1

**Re: Jessie Bains -and- Hospital Employees' Union – Provincial Health Services Authority
Applications pursuant to Section 12 of the Labour Relations Code (Case Nos. 2024-
00133M)**

I. RESPONSE SPECIFIC TO CASE NOS. 2024-00133M

I, Jessie Bains (the “Applicant”), filed this application on October 22, 2024, against the Hospital Employees' Union (“HEU” or “the Union”). This submission opposes the Union’s motion to dismiss and specifically addresses paragraphs 8–161 of the Union’s response.

The Union’s submission contains significant omissions and misrepresentations, a failure to conduct independent fact-finding or seek legal consultation, and a breach of its duty of fair representation under Section 12 of the BC Labour Relations Code.

The primary issue before the Board is whether the Union acted arbitrarily, discriminatorily, or in bad faith by denying me access to the HEU Convention without just cause. The Union’s reliance on material misrepresentations and omissions undermines its credibility and requires Board intervention. This application seeks to hold the Union accountable for its failure to uphold democratic participation rights for its members.

II. ARGUMENTS ON SPECIFIC PARAGRAPHS

Paragraphs 8–68 – Motion to Strike

I move to strike Paragraphs 8–68 as they are irrelevant and do not establish any valid basis for this application.

Paragraph 69 – Misrepresentation of Membership Status

I remained a member of HEU until November 7, 2024, as confirmed by my employer’s final deduction of union dues for the pay period ending on that date (see Exhibit A - final pay stub). This contradicts the Union’s assertion that my membership ended earlier. My final deduction of

Union Dues was on November 7, 2024, while Chris asserted that my membership ended on October 21, 2024. Why were Union dues being deducted from my final paycheck?

Additionally, the expedited closure of my Article 19 charges before my official membership termination suggests coordination between elected union officials and staff representatives. This raises concerns regarding procedural fairness and due process (see Exhibit B – email dated October 31, 2024).

Paragraph 70 – No Claim to Delegate Status

At no point did I claim delegate status. The Union has not provided any evidence to substantiate its allegation. Notably, my email dated September 21, 2024 (Exhibit “P” of the Unions response) explicitly states: “I will be attending the convention without delegate status.” This directly refutes the Union’s claim.

Paragraph 71 – Unwarranted Registered Letter

Lynn Bueckert, without justification, singled me out among HEU’s 60,000 members by sending a registered letter to my home, incorrectly stating that I lacked delegate status—an assertion I never made.

The letter also claims that HEU would not issue me credentials or grant me access to the convention lacks a legal basis. The HEU Constitution does not require prior approval for a member to observe union proceedings. This action appears to have been an unwarranted attempt to deter my participation arbitrarily.

Paragraph 72 – HEU Convention Dates

The HEU Convention was held from October 20–25, 2024.

Paragraph 73 – Inaccurate Representation of Events

Chris Dorais instructed me to leave the convention center, claiming that I was no longer a member. I immediately documented the incident and sent a contemporaneous email at 5:58 PM that same day to HEU leadership (see Exhibit C - email dated October 21, 2024 to HEU leadership on unjust removal from convention), detailing my account of the events. No one on that email chain disputed my version of events until the Union's response on February 7, 2025. To date, the Union has not provided any supporting evidence to justify its revised account.

Paragraph 74 – Mischaracterization of My Actions

The Union’s assertion that I attempted to re-enter the convention is unfounded. I remained outside solely to document events accurately. Conversations with other delegates during this time further refute any suggestion of misconduct. No evidence has been provided to support the claim that I attempted to access multiple floors of the convention centre.

Paragraphs 75–93 – Motion to Strike

I move to strike Paragraphs 75–93, as they contain irrelevant statements that do not substantiate the Union’s motion.

Paragraphs 94–97 – Arbitrary Exclusion from the Convention

The Union contends that it has unilateral authority to bar a member in good standing from observing a convention. However, neither the HEU Constitution nor the BC Labour Relations Code provides for such authority. Union governance must be conducted in a fair, transparent, and democratic manner. The Union has not cited any governing provision that justifies my exclusion, further underscoring the arbitrary nature of its decision.

III. ANALYSIS OF THE UNION’S RESPONSE

No Constitutional Basis for Observer Restrictions

In Paragraph 153, the Union concedes that the HEU Constitution and Bylaws are silent on observer status. This confirms that my exclusion lacked a constitutional basis.

Unsubstantiated Justification for Exclusion

The Union’s justification, as stated in Paragraph 156, relies on unverified claims that my presence caused discomfort among staff members. These claims are entirely subjective and lack supporting evidence; if its claims were true, then the Union and its staff are tacitly acknowledging that it held an arbitrary view of me. Additionally, the Union alleges some form of harassment; however, established procedures exist at the convention to address such issues, yet none were initiated. This strongly suggests that these allegations were fabricated well after the fact.

Notably, the individuals making these allegations—Chris Dorais and Ruby Dorais—have had prior contentious interactions with me dating back to 2010. The decision to exclude me appears to have been influenced by personal bias rather than legitimate procedural considerations.

Failure to Cite a Relevant Labour Code Provision

While the Union references *Anjum, 2023 BCLRB 147* and *Coates, 2021 BCLRB 127*, these cases pertain to internal union discipline, not the exclusion of an observer from a democratic event. The Union has failed to cite any provision of the BC Labour Relations Code that authorizes my exclusion.

IV. LEGAL ARGUMENTS

A. Misapplication of Legal Precedents

The *Anjum* and *Coates* decisions address restrictions related to disciplinary actions, not the arbitrary exclusion of a member from a union convention. The present case involves a fundamental question of democratic participation. In contrast, *Philip Bitz et al*, *BCLRBD No B73/2005* and *Pereira*, [1999] *BCLRBD No 324* establish that unions must ensure even-handed treatment and procedural fairness in governance decisions. My exclusion contradicts these precedents.

B. Violation of Natural Justice (Section 10(1))

Under Section 10(1) of the BC Labour Relations Code, unions must uphold principles of procedural fairness. As established in *Marilyn Coleman*, *BCLRBD No B282/95*, the principles of natural justice vary by context but must be upheld in procedural decisions. Denying a member access to a union convention without due process constitutes a breach of these principles.

C. Arbitrary and Unjustified Exclusion

The Union has not demonstrated a legal or constitutional requirement for a member to obtain prior approval to observe union proceedings. The exclusion was based on subjective allegations rather than on legitimate procedural grounds. The Board's decision in *Indian River Transport Ltd*, [2025] *BCLRBD 17* confirms that unions must not arbitrarily restrict participation in governance processes. The Union has failed to provide a legal or constitutional basis for my exclusion.

D. Breach of the Duty of Fair Representation (Section 12)

By failing to provide due process before excluding me, the Union has violated its duty of fair representation under Section 12 of the BC Labour Relations Code. Under *James W.D. Judd*, [2003] *BCLRBD No 63*, unions must act in a non-arbitrary manner. My exclusion lacked transparency and due process, violating Section 12 of the BC Labour Relations Code.

V. RELIEF SOUGHT

1. A ruling that HEU violated Sections 10 and 12 of the BC Labour Relations Code by unjustifiably denying me access to the convention.
2. A declaration that HEU's actions were arbitrary and a breach of its duty of fair representation.
3. An order requiring HEU to implement policies ensuring fair access to members who wish to observe union conventions.

4. A retraction of HEU's allegations and a written acknowledgment that no formal complaint or due process was followed.
5. Compensation for any financial or reputational harm resulting from the exclusion.
6. Any additional relief deemed appropriate by the Board to ensure accountability and prevent future similar actions.

The Board's intervention is essential to uphold democratic participation rights within HEU.

Respectfully Submitted,
Jessie Bains

[illegible]



October 31, 2024

VIA EMAIL: bainsj@gmail.com

Jessie Bains
5961 129th Street
Surrey, BC
V3X 0B9

Subject: Article 2 and Article 19

Greetings Jessie,

This letter is provided in response to your email of October 26, 2024. You forwarded an email to Gary Caroline and I that you had addressed to Ritu Mahil, in which you posed the following question:

If my grievances are resolved without my consent and my HEU membership is revoked, what will happen to all the Article 19 charges I filed several months ago against the President and certain Provincial Executive members?

I confirm you are no longer an HEU member.

Your grievance was settled in accordance with the recommendation of Arbitrator Sullivan. You filed an appeal, it was heard by Chris Dorais, and subsequently denied.

Your HEU membership was not revoked, but rather the Constitution and By-laws are definitive in respect of members whose employment has been terminated: Article 2, Section H (2), provides that HEU members who have suspended or terminated maintain their membership “...until they have exhausted all avenues of recourse”. In that you have exhausted all avenues of recourse, you are no longer a member of HEU.

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 Gary Caroline, will no longer proceed.

I trust this answers your questions. Please accept my best personal regards.

Yours in solidarity,

A handwritten signature in black ink, appearing to read 'Bill Pegler', written in a cursive style.

Bill Pegler

Coordinator of Private Sector & Special Projects

cc Barb Nederpel, President;
 Betty Valenzuela, Financial Secretary;
 Lynn Bueckert, Secretary-Business Manager;
 Chris Dorais, Coordinator of Public Sector Servicing;
 Ritu Mahil;
 Gary Caroline



Jessie Bains <bainsj@gmail.com>

Unjust Removal from Convention: A Blatant Denial of Union Rights - SHAME

1 message

Jessie Bains <bainsj@gmail.com>

Mon, Oct 21, 2024 at 5:58 PM

To: Barb Nederpel <bnederpel@heu.org>, Lynn Bueckert <LBueckert@heu.org>
 Cc: Bonnie Hammermeister <BHammermeister@heu.org>, Mary-Ann Johnson <MJohnson@heu.org>, Bill McMullan <BMcMullan@heu.org>, Betty Valenzuela <BValenzuela@heu.org>, Chris Batting <CBatting@heu.org>, Olivia Burgon <OBurgon@heu.org>, Monica Thiessen <MThiessen@heu.org>, Baldeesh Sandhu <BSandhu@heu.org>, Barb Shukin <BShukin@heu.org>, Ian Smith <ISmith@heu.org>, Phil Henderson <PHenderson@heu.org>, Lisa Crema <LCrema@heu.org>, Lisa Kreut <LKreut@heu.org>, Lynn Serhan <LSerhan@heu.org>, Diane Tomei <DTomei@heu.org>, Donovan Adlam <DAdlam@heu.org>, Darlene Bown <DBown@heu.org>, Christine Edgecombe <CEdgecombe@heu.org>, Scott McKay <SMcKay@heu.org>, Cora Mojica <CMojica@heu.org>, Maria Lugs <MLugs@heu.org>, Louella Vincent <LVincent@heu.org>, Charlotte Millington <CMillington@heu.org>, Robbin Bennett <rbennett@heu.org>, Brenda Van Der Meer <bvandermeer@heu.org>, Chrystal Latham <CLatham@heu.org>, Curtis Anshelm <canshelm@heu.org>, Constancio Castaneda <constancio_32@yahoo.com>, Isaac Daniel <isaacisrock76@gmail.com>, bcfed@bcfed.ca, information@lrb.bc.ca, president-office@clccct.ca, Preety Chaudhry <preety84@hotmail.com>, Amanpreet <Amanpreet32k@gmail.com>, convention@heu.org

Hi Barb and Lynn,

This morning, I arrived at the convention, signed in, and received a guest pass to observe from the public area. Approximately 30 minutes later, Chris Dorais approached me and informed me that I had to leave the convention center because I was no longer a member. I told him that, to the best of my knowledge, my grievance remains unresolved. I have not received any payment or communication from the Provincial Office indicating I am no longer a member, nor have I heard from the employer about the status of my grievance.

Chris then escorted me out, physically closing the distance between us and attempting to provoke me with comments like, "You make a lot of threats, so why don't you do something about them?" He also claimed, "the staff do not feel safe around you." I responded by stating that I have never threatened anyone and, to my knowledge, no complaints have ever been filed against me. I also reminded him that there is a formal process for addressing threats, discrimination, or behavior that makes any member—or person—uncomfortable, a process that all staff representatives are well aware of.

This incident perfectly illustrates the concerns I've been raising since my termination: Chris Dorais and Chrystal Latham are allowing their personal feelings to override their professional responsibilities. It's absurd that they would suggest I, at 5'7" and 145 pounds, could be considered a physical threat—especially since I have never been involved in any kind of physical altercation in my life.

The irony here is glaring. I've spent over four decades as a union activist, fighting for the rights of others because I know firsthand what it feels like to be targeted. As an immigrant living below the poverty line, I endured extreme bullying and racism—things no human being, especially a teenager, should ever face. And now, here I am, being labeled a threat simply because certain individuals can't separate their personal bias from their professional duty. This baseless accusation is not just insulting—it flies in the face of everything I've stood for my entire life.

My concerns about bad faith representation in the handling of my termination grievance have been confirmed. It's clear that my representatives rushed to close my grievance to strip me of my membership and block me from attending the convention.

On October 2nd, Brenda VanDerMeer accepted the non-binding recommendations of the ITS troubleshooter without even attempting to negotiate with the employer. This blatant disregard for my interests as a union member was grossly negligent. Unlike every other representative I've encountered, Brenda made no effort to secure a better

outcome for me—whether through partial or full damages, improvements to the settlement terms, addressing the handling of my personnel file, or considering a non-disclosure agreement to protect my future interests.

Then, on October 8th, Chris Dorais rejected my appeal and urged the employer to process my payment as quickly as possible. Ironically, that payment hasn't even been processed yet, and I'm not sure the employer has agreed to it. It's worth noting that I have two other external investigations pending that could restore my employment if successful.

I can't help but wonder if the charges I've filed against the HEU leadership are connected to this blatant disregard for my union rights, especially my right to attend the convention. Here are the charges I've filed, which highlight serious breaches of conduct that may explain why my rights are being violated:

1. May 10, 2024 – Article 19 charge against Barb Nederpel and Bonnie Hammermeister

Allegation: I was denied the opportunity to be on the ballot for the position of Trustee at the SSF local after self-nominating past the deadline set by the local executive.

2. June 14, 2024 – Article 19 charge against Barb Nederpel

Allegation: During a Zoom meeting on May 20, 2024, Barb Nederpel, HEU President, threatened me to drop the May 10, 2024 charge against her and Bonnie Hammermeister or face a potential charge of racism. This was based on a partial screenshot of a text I sent during the local election, which encouraged diversity but was taken out of context.

3. June 21, 2024 – Article 19 charge against Bill McMullan

Allegation: Bill McMullan failed to respond to or progress the investigation into my complaint, enabling discriminatory actions to continue, and violating his constitutional duties.

4. June 29, 2024 – Article 19 charge against Barb Nederpel

Allegation: Barb failed to recuse herself from the complaint process regarding charges filed against her, creating a conflict of interest.

5. July 18, 2024 – Article 19 charge against Bonnie Hammermeister and John Catigay

Allegation: Bonnie and John ignored my communications regarding my self-nomination as a delegate to the convention. Their inaction denied me the right to be a delegate, violating the Constitution and Bylaws, which guarantee fair and democratic processes.

6. September 29, 2024 – Article 19 charge against Talitha Dekker

Allegation: Talitha violated the spirit of union solidarity by attempting to publicly humiliate me in a group email and refusing to engage in union-related communications, breaching her Oath of Office.

Oddly enough, I was escorted out of the convention shortly after singing "Solidarity Forever"—a great anthem, of course, until you start asking questions the union can't answer. Then, apparently, you become a "threat" to the self-interest of the very organization that's supposed to represent you. How convenient.

Rest assured, I will be taking this matter up with the Labour Board. This is one of the most blatant denials of union rights I have ever seen—rights I've spent decades fighting to protect. I will not let anyone strip them away.

The irony here is almost poetic. The same tactics my union is using to silence me are the very ones employers have historically used to suppress workers and deny them their rights. What a twist.

In solidarity,
Jessie

Phone: (604)365-3400

BY EMAIL
February 28, 2025

BC LABOUR RELATIONS BOARD

Suite 600 – Oceanic Plaza
1066 West Hastings Street
Vancouver, BC V6E 3X1

**Re: Jessie Bains -and- Hospital Employees' Union – Provincial Health Services Authority
Applications pursuant to Section 12 of the Labour Relations Code (Case No. 2024-
001437E)**

I. RESPONSE SPECIFIC TO CASE NOS. 2024-001437E

I, Jessie Bains (the “Applicant”), filed this application on November 13, 2024, against the Hospital Employees' Union (“HEU” or the “Union”).

I am responding to the Union’s arguments regarding my Article 19 charges. The Union seeks to dismiss my charges by misinterpreting its own Constitution and applying Sections 10 and 12 of the BC Labour Relations Code inappropriately.

I submit this response opposing the Union’s motion to dismiss, specifically addressing paragraphs 8-161 of the Union’s response. The Union’s response contains:

- Notable omissions and potential misinterpretations
- A failure to conduct independent fact-finding, consult legal experts, or uphold the collective agreement
- A potential breach of its duty of fair representation under Section 12 of the BC Labour Relations Code

In paragraph 63 of its response, the Union states that between May 10 and October 25, 2024, I filed 13 charges against various HEU executive members and staff. However, the Union does not specify against whom these charges were directed or the reasons behind them.

My charges targeted senior and influential figures within the Union:

- **Barb Nederpel (President):**
 - Denied eligibility for the local ballot.
 - Threatened me with a racism investigation unless I dropped my challenge.
 - Failed to recuse herself despite a conflict of interest.
- **Lynn Bueckert (Secretary/Business Manager):**
 - Failure to represent.
- **Bill McMullan (First Vice President):**
 - Did not act on the Article 19 charge against Barb Nederpel.

- **Talitha Dekker (Senior Trustee):**
 - Violation of the oath of office.
- **Chris Dorais (Coordinator of Public Sector Servicing):**
 - Denied access to the Convention.

These individuals play a critical role in determining how I am represented and influence many aspects of the HEU. The HEU Constitution does not state that Article 19 charges become void if a member's status changes.

The Union's actions raise concerns about procedural fairness and accountability, as they failed to investigate my charges in a timely manner and misused my termination and grievance process to evade scrutiny.

Key Points for the Board's Consideration:

- The HEU Constitution does not explicitly void Article 19 charges due to a change in membership status.
- The Union's delay in investigating my charges raises questions about procedural fairness and accountability.
- Labour law jurisprudence suggests that procedural requirements should not be interpreted in a manner that undermines accountability.

II. THE UNION'S FAILURE TO INVESTIGATE MY ARTICLE 19 CHARGES

A. Misinterpretation of Membership Status

The Union argues that my termination and subsequent settlement rendered me ineligible to pursue my Article 19 charges. This interpretation appears arbitrary and inconsistent with the HEU Constitution.

- Article 19, Section A clearly states that any member in good standing may file a charge against another member.
- The Constitution does not stipulate that charges become invalid if a member's status changes after filing.
- The purpose of Article 19 is to ensure accountability and should not be dismissed on procedural grounds.

B. Unjustified Delay in Investigation

- The Union failed to assign an investigator until July 30, 2024, despite Article 19, Section D requiring an appointment "as soon as reasonably practicable."
- A delay of nearly three months is excessive and unjustified.
- This delay prevented a timely resolution while I was still an active member.

The Labour Relations Code prohibits unions from acting in bad faith, arbitrarily, or discriminatorily in handling member complaints (Section 12). Deliberate procedural delays can constitute bad faith representation (*Retail Wholesale Union, Local 580 v. Dolphin Delivery Ltd.*, [1986] 2 SCR 573).

III. CONCERNS REGARDING REPRESENTATION

The Union's handling of my grievance process further raises concerns:

- The Union did not pursue my reinstatement, effectively terminating my membership before my complaints could be fully addressed.
- My requests for external legal representation were ignored, leaving my grievance process controlled by HEU representatives aligned with leadership.

These actions contravene Section 12 of the Labour Relations Code.

IV. QUESTIONS FOR THE BOARD TO CONSIDER

Before rendering a decision, I urge the Board to consider:

- Did any HEU leadership or elected Provincial Executive members take action to address my concerns?
- Did any HEU Staff Representatives discuss my termination grievance with me from March 4, 2024, through my ITS hearing?
- Did Chrystal Latham take any steps to allow me access to my Local meetings?
- Does the HEU Constitution explicitly state that Article 19 charges become void if a member's status changes?

Further, the Board must assess whether the Union acted in good faith by prioritizing its interests over mine:

- Did the Union insist on a financial settlement instead of pursuing my reinstatement?
- Did this preference for a financial settlement serve to avoid internal scrutiny?
- Was the decision to forgo reinstatement made without due consideration of my best interests?

The Union's actions raise concerns regarding procedural fairness, transparency, and accountability, particularly:

- **Failure to Communicate:** The Union did not meaningfully engage or address my concerns.
- **Arbitrary Decision-Making:** The decision to pursue a financial settlement was made without transparency or consultation.
- **Lack of Advocacy:** The Union failed to advocate for reinstatement, which would have been the most appropriate remedy.

These actions potentially violate Section 12 of the BC Labour Relations Code, undermining the trust that union members should have in their representatives.

V. CONCLUSION AND REQUESTED REMEDIES

The Board should reject the Union's attempt to dismiss my application as moot. I respectfully request the following remedies:

1. Allow my Section 10 and 12 applications to proceed, ensuring my grievances receive full consideration.
2. Permit my Article 19 charges to proceed, as there is no constitutional basis for dismissal due to a change in membership status.
3. Commission an independent investigation into the Union's failure to fairly represent me and its obstruction of my reinstatement.
4. Ensure that the Union is held to the standards of fair representation, including proper communication and adherence to its obligations.
5. Authorize financial compensation for damages incurred due to the Union's inequitable treatment.
6. Implement additional remedies, including providing external legal representation for future grievance proceedings.

The principles of fair representation, due process, and democratic rights must be upheld. I request that the Board ensure my concerns are addressed fairly.

Respectfully Submitted,
Jessie Bains

BY EMAIL
February 28, 2025

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**Re: Jessie Bains -and- Hospital Employees' Union – Provincial Health Services Authority
Applications pursuant to Section 12 of the Labour Relations Code (Case Nos. 2024-
001478M)**

I. RESPONSE SPECIFIC TO CASE NOS. 2024-001478M

I, Jessie Bains (the “Applicant”), filed this application on November 20, 2024, against the Hospital Employees' Union (“HEU” or “the Union”). This submission opposes the Union’s motion to dismiss and specifically addresses paragraphs 8–161 of its response. The Union’s submission contains:

- **Significant omissions and misrepresentations**
- **A failure to conduct independent fact-finding, consult legal experts, or uphold the collective agreement**
- **A breach of its duty of fair representation under Section 12 of the Labour Relations Code**

Given these concerns, I respectfully submit that a full hearing is warranted. Canadian administrative law and established case precedent impose strict obligations on unions to act in good faith and make decisions based on relevant, evidence-based findings. The Union’s approach in this case does not align with these legal and ethical principles.

II. MOTION TO STRIKE PARAGRAPHS 8–46, 50–100, 104–107, AND 111–161

I move to strike Paragraphs 8–46, 50–100, 104–107, and 111–161 from the Union’s response as they are irrelevant and do not form a valid basis for this application.

The Union has intentionally combined all five of my applications into one, distorting the issues and avoiding accountability for its specific failures in each case. Instead of addressing the merits of my claims, the Union’s response attempts to:

- **Deflect Blame:** By misrepresenting events, it shifts focus away from its own breaches of duty.
- **Introduce Irrelevant Evidence:** The selective use of emails and documents not pertinent to my applications creates a misleading narrative.
- **Rely on Hearsay:** Unsupported allegations replace the need for actual legal precedents and factual evidence.
- **Ignore Statutory Obligations:** By making personal attacks and fabricating misconduct allegations, the Union fails to fulfill its duty of fair representation.

IRRELEVANCE OF THE UNION’S RESPONSE IN THESE PARAGRAPHS

- **Unsubstantiated Allegations:** The Union has submitted emails and referenced individuals who have not filed any complaints against me. Canadian legal standards require that evidence be both relevant and probative. Since no formal internal complaint was initiated, these allegations lack the necessary evidentiary basis and are irrelevant to the issues before the Board.
- **Failure to Respond to Emails:** The Union’s claim that my frequent emails justified their non-response is unfounded. Had the Union engaged promptly—as is required by its statutory duty under the Labour Relations Code—there would have been no need for repeated follow-ups. This deliberate inaction is contrary to the principles of procedural fairness and good faith representation mandated by Canadian law.
- **Misrepresentation of My Complaint:** The Union’s assertion that “poor communication” is not a Section 12 violation mischaracterises my claim. My complaint is rooted in a complete refusal to communicate, constituting bad faith and arbitrary conduct as identified in *James W.D. Judd, [2003] B.C.L.R.B.D. No. 63 (QL)*. Such an omission is legally significant and undermines the Union’s argument.
- **Misapplication of Legal Principles:** Although unions possess some discretion in handling grievances *Fraser Health Authority (Re), [2021] BCLRBD No 65*, that discretion must be exercised with reasoned justification, documentation, and communication. The Union’s failure in these respects is a clear violation of the principles established in *Roth (1998)*, which require decision-making processes to be transparent and evidence-based.
- **Lack of Evidence:** The Union asks the Board to rule based on allegations unsupported by evidence. Canadian evidentiary standards demand that any adverse determination be backed by reliable, objective evidence rather than unsubstantiated claims.

Given these deficiencies, I respectfully request that these paragraphs be struck from the record and that the Board direct the Union to respond solely to the specific allegations in my applications with concrete evidence, rather than through generalisations and character attacks.

III. FAILURE OF REPRESENTATION: PARAGRAPHS 47–49

Emails Sent on August 2, 2024, and August 17, 2024, to Lynn Bueckert Requesting External Representation

The Union has chosen to submit these emails as evidence while selectively taking portions out of context. These emails are already part of the exhibits in my application and I provided detailed factual accounts rather than random accusations.

I copied the entire HEU leadership in my correspondence because I had multiple internal Article 19 charges pending against senior leadership, including three against the President. In the absence of a substantive defence, the Union now shifts focus by scrutinising my emails—seeking for the Board to assess my character, behaviour, and tone instead of addressing the core allegations.

The appropriate time to discuss these communications was when they were sent. Lynn Bueckert's failure to respond or acknowledge these emails—three specifically cited here and a total of thirteen others—strongly indicates that she was aware that I was not being represented in good faith. Her silence, in light of the evidence, is particularly significant under Section 12 of the BC Labour Relations Code, which requires unions to ensure effective and timely communication with their members.

IV. CONCLUSION: LYNN BUECKERT'S COMPLETE FAILURE TO FULFIL HER DUTIES

The Union's response fails to address the central issue in my application: **Why did Lynn Bueckert not respond to or acknowledge any of my 16 emails (attached to my application) sent between June and October 2024?** This total lack of communication is not only a failure of her duties but also raises serious questions about the Union's commitment to fair representation.

Before rendering a decision on this application, I urge the Board to consider the following fundamental questions:

- Did Lynn Bueckert, in 2024, place a single phone call to the Applicant?
- Did Lynn Bueckert, in 2024, respond to or acknowledge any emails the Applicant sent to her?
- Did Lynn Bueckert, in 2024, schedule or hold a Zoom or in-person meeting with the Applicant?
- Did Lynn Bueckert, in 2024, have any form of conversation or communication with the Applicant?

How can the Union claim to have provided representation when they failed to communicate with me in any form at all and completely ignored me as a member?

V. REMEDY SOUGHT

I respectfully request that the Labour Relations Board:

- **Order a Full Investigation**
- **Mandate Financial Compensation**
- **Implement Additional Remedies**

These remedies are essential to hold the HEU leadership accountable and uphold the principles of fairness, accountability, and transparency in Canadian labour law.

Respectfully Submitted,
Jessie Bains

BY EMAIL
February 28, 2025

BC Labour Relations Board
Suite 600 – Oceanic Plaza
1066 West Hastings Street
Vancouver, BC V6E 3X1

Re: Jessie Bains -and- Hospital Employees' Union – Provincial Health Services Authority – Applications pursuant to Section 12 of the Labour Relations Code (Case No. 2024-001491T)

I. RESPONSE SPECIFIC TO CASE NOS. 2024-001491T

I, Jessie Bains (the “Applicant”), filed this application on November 28, 2024, against the Hospital Employees' Union (“HEU” or “the Union”). This submission opposes the Union’s motion to dismiss and specifically addresses paragraphs 8–161 of its response.

The Union’s response is procedurally and substantively deficient because it fails to address key procedural failures in their representation of me.

These failures include:

1. Failure to advocate for reinstatement by omitting critical legal arguments regarding post-termination conduct.
2. Failure to negotiate a better settlement by accepting employer-favorable terms without consultation or attempting to improve the outcome.
3. Failure to engage in meaningful communication by shutting down discussions instead of responding to my concerns.

These procedural failures constitute a breach of the HEU’s duty of fair representation under Section 12 of the BC Labour Relations Code. I respectfully request that the Labour Relations Board reject the Union's motion to dismiss and allow this matter to proceed to a full hearing.

II. Motion to Strike Paragraphs 17-100, 111-133, and 140-161

I request that the Board strike paragraphs 17-100, 111-133, and 140-161 from the Union’s response, as they contain irrelevant, misleading, and prejudicial information that does not address the core issues of this application.

These sections:

- Introduce selective and misleading excerpts of my communications while omitting the Union’s

failure to respond meaningfully.

- Attempt to shift focus onto my post-termination frustration rather than addressing the Union's procedural failures before my termination.
- Rely on hearsay and speculation rather than providing factual, legally sound justifications for their actions.

Under labour law principles, the Board must focus on whether the Union met its duty of fair representation. These sections serve no legitimate purpose other than to distract from the central legal issues and should be struck.

III. Union's Procedural Failures in Representation

1. Failure to Advocate for Reinstatement

Arbitrator Sullivan determined that there was no just cause for my termination but noted concerns about post-termination conduct as a barrier to reinstatement. The Union's failure to challenge this issue in any meaningful way was an unreasonable omission and constitutes arbitrary representation.

Key Failures:

- The Union did not submit case law or legal precedents that could have supported my reinstatement.
- The Union failed to challenge the employer's reliance on post-termination conduct as a decisive factor.
- The Union ignored legal arguments that could have demonstrated that post-termination concerns should not outweigh the lack of just cause for termination.

This was not a strategic decision—it was a failure of due diligence. A union does not need to win every argument, but it must at least attempt to advocate for the member's interests. The Union's failure to engage in any legal argument on my behalf falls well below the standard of fair representation under Section 12.

2. Failure to Negotiate a Better Settlement

The Union accepted the non-binding recommendations of the Industry Troubleshooter within two business days of receiving them, without making any effort to negotiate improvements that could have mitigated the financial and reputational harm I suffered. A reasonable union would have, at the very least, attempted to negotiate:

- **Non-Disclosure Agreement (NDA):** To protect my reputation from future employment barriers.
- **Tax Treatment of Payments:** To classify some or all of the settlement as non-taxable damages, following precedents like *R v. Tsiaprailis*, 2005 SCC 8.
- **Sealing of Records:** To prevent negative employment consequences tied to my personnel file.

Key Procedural Failure:

The Union had a duty to at least attempt to negotiate these terms. Other unions routinely do so in similar cases. The Union's failure to even try shows they did not act in my best interests.

By accepting the non-binding recommendations of Chris Sullivan without consultation or negotiation, the Union acted arbitrarily and failed to fulfill their duty under Section 12 of the BC Labour Relations Code.

3. Failure to Engage in Meaningful Communication

A union's duty of fair representation includes engaging with its members and responding to their concerns. The Union shut down communication instead of addressing my legitimate concerns.

- The facts demonstrate that the Union failed to initiate or participate in **any meaningful meetings or phone calls** to discuss the merits of my grievance.
- The Union unilaterally stopped responding to my emails, effectively cutting off meaningful dialogue.
- The Union failed to follow any internal process before restricting communication, acting arbitrarily rather than applying clear policies.

This conduct demonstrates a reckless disregard for my rights and a failure to represent me fairly. The Board has previously ruled that ignoring a member's concerns without a reasonable explanation is a violation of fair representation (*Fraser Health Authority (Re)*, 2021 BCLRBD 65).

IV. Legal Precedents Supporting My Case

- *Judd v. BCLRB* (2003): Unions must make informed decisions and cannot rely solely on the employer's findings.
- *Machtinger v. HOJ Industries Ltd.* (1992): Unions must conduct independent investigations rather than deferring entirely to the employer.
- *Joe Frank* (1999): Unions cannot deny representation based on pretextual reasons.

V. Remedy Sought

I respectfully request that the Labour Relations Board:

1. Find that the Union breached its duty of fair representation under Section 12 by:
 - o Failing to advocate for my reinstatement.
 - o Failing to negotiate a better settlement.
 - o Failing to engage in meaningful communication.

2. Order the Union to compensate me for the financial and reputational harm caused by their procedural failures, including:
 - o Full back pay from the date of termination.
 - o Restoration of seniority and benefits.
 - o Damages for emotional distress caused by unfair representation.
 3. Require the Union to review its representation policies to prevent similar procedural failures in the future.
-

VI. Conclusion

The Union's failure to conduct an independent investigation, challenge employer misconduct, or advocate on my behalf directly contributed to my termination. These procedural failures constitute a clear breach of the Union's duty of fair representation under Section 12. The Board must intervene to correct these failures and prevent future abuses.

Respectfully Submitted,
Jessie Bains

BY EMAIL

February 28, 2025

BC LABOUR RELATIONS BOARD

Suite 600 – Oceanic Plaza
1066 West Hastings Street
Vancouver, BC V6E 3X1

Re: Jessie Bains -and- Hospital Employees' Union – Provincial Health Services Authority Applications pursuant to Section 12 of the Labour Relations Code (Case Nos. 2024-001576T)

I. RESPONSE SPECIFIC T CASE NOS. 2024-001576T

I, Jessie Bains (the "Applicant"), filed this application on December 18, 2024, against the Hospital Employees' Union ("HEU" or "the Union"). This submission responds to the Union's motion to dismiss, specifically addressing paragraphs 8-161 of the Union's response.

The Union's response is legally deficient as it:

- Misrepresents key facts and omits critical details relevant to the case.
- Fails to conduct an independent investigation or uphold its duty of fair representation under Section 12 of the Labour Relations Code.
- Attempts to deflect responsibility by attacking my credibility instead of addressing substantive failures.

These deficiencies warrant a full hearing before the Board. A dismissal without such a review would allow the Union's procedural failures to go unchallenged and deny a worker's right to fair representation under the Labour Relations Code.

II. Motion to Strike Paragraphs 17-100, 111-133, and 140-161

I move to strike paragraphs 17-133 and 140-161 from the Union's response as they contain irrelevant, misleading, and prejudicial information that does not address the core issues of this application.

The Union's response:

- Misrepresents my communications with Union representatives by selectively quoting emails while omitting their failure to respond adequately.
- Attempts to use my post-termination frustration against me rather than addressing their own inaction and neglect prior to my termination.

- Relies on hearsay and speculative assertions instead of providing factual, legally sound justifications for their conduct.

By including irrelevant and prejudicial content, the Union is attempting to shift focus away from its failure to fairly represent me. Striking these sections ensures that the Board's review remains focused on the Union's duty of fair representation under Section 12 of the Labour Relations Code.

III. Union's Failure to Investigate and Represent the Applicant Fairly

The Union's response downplays its failure to conduct an independent investigation, challenge employer misconduct, or ensure fair representation. These failures directly impacted my termination and denied me access to a fair grievance process.

1. Retaliatory Comment by Employer (Paragraph 8 of Union's Response)

- The Union failed to investigate or demand an explanation for the PHSA manager's comment that I "should not have been hired."
- This statement demonstrated employer bias and discrimination, yet the Union deferred entirely to PHSA's internal process.
- **Causal Impact:** By failing to challenge this comment, the Union allowed a hostile work environment to escalate, ultimately contributing to my termination.

2. Unjustified Access to My Private Emails (Paragraph 9 of Union's Response)

- My private emails were accessed and used against me by PHSA without justification.
- The Union failed to:
 - Demand an explanation from PHSA on how these emails were obtained.
 - Challenge the employer's violation of my privacy rights.
 - File a grievance contesting this employer misconduct.
- **Causal Impact:** The Union's failure to protect my privacy rights directly enabled PHSA to misuse my personal emails against me, leading to my wrongful dismissal.

3. Failure to Challenge the Employer's Retaliatory Discipline (Paragraph 10 of Union's Response)

- The Union allowed PHSA to issue an unjustified Letter of Expectation against me following the email incident.
- Instead of demanding its withdrawal, the Union passively accepted PHSA's decision to amend the letter.
- **Causal Impact:** This failure enabled the employer to create a disciplinary record, which was later used to justify my termination.

4. **Biased Investigation Controlled by PHSA (Paragraph 11 of Union's Response)**

- The Union permitted PHSA to appoint its own investigator rather than insisting on a third party without an existing financial or fiduciary relationship with PHSA.
- The investigator found my harassment allegations “unfounded” based on criteria dictated by PHSA, undermining the integrity of the grievance process.
- **Causal Impact:** By failing to challenge this process, the Union allowed PHSA to dictate the outcome, ensuring my grievance had no chance of success.

5. **Failure to Preserve Original Harassment Grievance (Paragraphs 12-16 of Union's Response)**

- The Union misrepresented the nature of my harassment grievance, using the Employer's language rather than my original complaint.
 - The Union:
 - Failed to retain my original grievance statement (Exhibit A -2024-001576-Harassment Grievance).
 - Allowed PHSA to frame the grievance as a racial discrimination claim, rather than a systemic bias investigation request.
 - Dismissed my concerns without conducting an independent legal analysis.
 - **Causal Impact:** These failures undermined my grievance from the outset, ensuring it would not be properly adjudicated.
 - **Legal Precedent:** *Machtiger v. HOJ Industries Ltd.* (1992) confirmed that unions must fully represent employees by conducting independent investigations.
-

IV. Response to HEU's Timeliness Argument (Paragraphs 134-136)

The Union's claim that my application is untimely is legally incorrect. My harassment grievance remained active until October 8, 2024, when Chris Dorais formally denied my appeal (Exhibit B -2024-001576 - Coordinator Letter of Appeal 2024.10.08).

Legal Precedent: *Joe Frank* (1999) states that an applicant must exhaust all internal union processes before filing a complaint. Since my grievance was still active as of October 2024, my application is within the legal timeframe.

V. Response to HEU's Legal Arguments (Paragraphs 101-110 & 137-139)

1. **Union's Duty to Make a Reasoned Decision (Paragraphs 101-102)**

- The Union argues that its decision was not arbitrary, discriminatory, or in bad faith.

- However, the **Judd** decision requires that unions:
 1. Ensure they are aware of all relevant information.
 2. Make a reasoned decision.
 3. Avoid reckless disregard for the member's interests.
 - The Union failed on all three counts by:
 1. Relying solely on PHSA's findings without conducting an independent investigation.
 2. Accepting PHSA's conclusions without challenge or legal analysis.
 3. Ignoring my privacy concerns and failing to challenge retaliatory discipline.
-

VI. Remedy Sought

I respectfully request that the Labour Relations Board:

1. Order the Union to fulfill its duty of fair representation by advocating for my reinstatement.
 2. Mandate financial compensation, including:
 - Full back pay from the date of termination.
 - Restoration of seniority and benefits.
 - Damages for emotional distress caused by unfair representation.
 3. Require the Union to engage external legal counsel in cases where a conflict of interest may exist, to ensure fair representation of members.
-

VII. Conclusion

The Union's failure to conduct an independent investigation, challenge employer misconduct, and advocate on my behalf directly contributed to my termination. Notably, the Union provided no evidence of having conducted any investigation before forwarding the matter to the employer. Furthermore, the Union failed to engage in basic communication with me, such as holding a phone call or meeting to discuss the merits of the grievance. These omissions and failures constitute a clear breach of the Union's duty of fair representation, necessitating intervention by the Labour Relations Board.

Respectfully Submitted,
Jessie Bains



GRIEVANCE

Hospital Employees' Union

To be completed by provincial/regional office

MEMBERSHIP # _____
GRIEVANCE # 2123-LFC
KEYWORD 1 _____
KEYWORD 2 _____

BETWEEN: Hospital Employees' Union (FHASSF) LOCAL _____

AND: PITSA LFC
EMPLOYER SITE

Name of Grievor: Jessie Bains

Mailing Address: 5864 123A St.

Home Tel: 604-365-3400 Work Tel: _____ Email: BAINS@gmail.ca

Job Title/Desc: warehouse attendant Wage Rate/Grid: \$23.08

Employee Status Full-Time ☐ Part-Time ☐ Casual ☒ Seniority Date: _____

Work Area: Warehouse Department: Operations

NATURE OF GRIEVANCE:

Harassment impeding progression of grievors career

Article Violated (and any other article relevant to the grievance)

4.03

Remedy Sought: award IT Position
make whole

Grievor Signature: [Signature] Date: _____

I CONFIRM I HAVE PERMISSION TO SIGN ON BEHALF OF THE GRIEVOR: ☐

HEU OFFICER/SHOP STEWARD SIGNATURE: _____

DATE GRIEVANCE FILED: _____ LOCAL GRIEVANCE # _____

RECEIVED BY SUPERVISOR/MANAGER (signature) Lance Brown DATE: Sept 18/23

MANAGEMENT RESPONSE:

No violation of Article 4.03, no violation of the collective agreement, grievance denied

DATE MANAGEMENT RESPONSE: Oct 3, 2023 SIGNATURE: Lance Brown

NOTE: Management Representative must give copy of written reply to shop steward within seven days

* Important: Do not digitally sign until you have filled out all fields as you will not be able to edit after signing.



October 8, 2024

By e-mail: bainsj@gmail.com

Jessie Bains
5864 123a Street
Surrey, BC V3X 1Y3

Dear Jessie Bains:

Re: Internal Appeal – Grievances #136965 – Termination and Grievance #136993 – Harassment/Discrimination

This letter is in response to your appeal to me of the Union's decision to accept the Industry Troubleshooter Report and Recommendations from Arbitrator Chris Sullivan dated September 27, 2024.

The letter does not address some of the other issues you've raised by e-mail as they have no bearing on the Union's consideration of the merits of your grievances and whether they will be pursued further. I will however respond to some of the points you have raised separately by e-mail.

The Industry Troubleshooter Hearing was held on July 4, 2024 in person and mediation took place for a good portion of the day. The parties exchanged proposals back and forth and the nature of the proposals involved a lump sum payment in exchange for a resignation. Unfortunately, the parties were unable to reach a resolve, and I understand the employers last offer was rejected as you requested.

It should be noted prior to this dispute, the Union has advocated for you in other matters including filing job selection grievances. Additionally, the Union secured lost pay for missed shifts in the amount of approximately \$3000.00 and had a letter that was disciplinary in nature reduced to a simple letter of expectation.

Subsequent to the mediation, the parties agree to conclude the hearing through written submissions with the employer submitting on July 19, 2024 and the Union submitting on August 2, 2024. Despite the Union strongly cautioning you against doing so, you were insistent the Union include a written submission from you and attach it to the Union's submission to Arbitrator Sullivan. The Union prepared a comprehensive submission and attached your submission reluctantly.

I have reviewed the information related to your grievances and the report from Arbitrator Sullivan. After careful consideration of all of the information available to the Union, I have concluded your appeal is not successful. Of particular note in reaching this conclusion are the following observations and findings from Arbitrator Sullivan's report:

1. ...“the Grievor’s casual employment was terminated on March 4, 2024. The letter of discharge referred to the finding that the Grievor had made a bad faith retaliatory complaint, and that the Employer’s decision at its core had to do with the Grievor having “eroded the trust required to maintain an employment relationship to a point of beyond repair.”
2. “The Employer takes the position this post-discharge behaviour buttresses the decision to terminate as the Grievor was bound by confidentiality. The Union argues any confidentiality ceased after the Grievor was discharged.”
3. “Objectively, this case is about a casual warehouse employee with about two and one-half years of casual employment, who no longer trusts the Employer’s human resources department, and who has given cause for it to no longer trust him. Nothing has happened since the Grievor’s discharge to lend optimism to a renewed relationship. The chasm is too great and there is no magic wand to create a workable fix going forward. If the divide between the parties was not sufficiently great to bridge before the Grievor’s termination, it certainly was after he sent his response to the investigator and broadly distributed it, together with the investigation report, including to the media. The Grievor’s email highlighted his significant and ongoing trust of the Employer’s Human Resources department, and this underscores the practical inability of reinstatement, given the role of that department throughout all aspects of operations”...
4. “The Grievor’s broad disclosure of his email to Mr. Barager may or may not have been in conflict with confidentiality commitments; however, they add to the distrust that make reinstatement not viable.”
5. “Whether the Grievor’s complaint was aimed at individuals, or the department generally, is of little consequence as neither situation provides for room for reconciliation of the employment relationship.”
6. “The Grievor has taken the extra step of not only seeking to establish his selection case through arbitration, but also going after those (or by extension the department and those in it) who took a position against him.”
7. ...”the Grievor has taken a similar approach in disputing the conclusions of harassment investigator by copying an audience, comprised of various politicians,

union leaders, and a prominent media personality, with his letter outlining his dissatisfaction and the investigation report, which was arguably confidential.”

8. “the Grievor has gone outside the agreed upon dispute resolution process and has engaged the attention of a number of prominent individuals to air his complaints.”
9. “While the Grievor’s letter to Mr. Barager occurred after he was discharged and may or may not therefore be captured by any confidentiality provision, it is relevant insofar as it goes to the heart of the trust relationship between the parties, and it shows the Grievor is prepared to publicly go after individuals who he feels are treating him unfairly, whether or not he is in fact being treated unfairly. To be clear, this manner of responding to individuals one does not agree with – i.e. sending an email to them and copying politicians, union officials and a media personality– appears to be a tactic by the Grievor, perhaps to deter people from making decisions against his interest or comments he does not agree with. In any event, this was not the first time he took this approach and will likely not be the last. While the use of such tactic in any given case may or may not be inappropriate, in the present case the tactic has inflamed matters, and has highlighted fundamental and irreconcilable trust issues between the Grievor and the Employer’s Human Resources department.”
10. “Having made these observations, this is one of those unique cases where reinstatement is not an appropriate remedial outcome, particularly given the Grievor’s status as a short-term casual employee, with little investment in or established trust with this Employer to draw from. Given the nature of the Grievor’s continuing complaints against the Human Resources department, there is no practical basis upon which the employment relationship can be resurrected.”
11. “I cannot help but point out that the Grievor is, to a great degree, author of his own misfortune in the way he has chosen to dispute actions or outcomes that he does agree with or believes is not fair from his standpoint. Instead of letting his selection grievances run their course, which may have resulted in him obtaining the IT position he sought, he appears to have been unable to help himself from attacking those who he thought was behind the decisions against his interests. His harassment grievance can be viewed as an example of such, and it appears he has taken this same general approach with Mr. Barager and the Employer by disseminating the investigation report and his email of complaint to an external audience that included high ranking politicians and union officials, the law firm Mr. Barager works at, and to a local media personality.”

It should be noted, in reviewing your written communications, the fact the information has been shared broadly as outlined above by Arbitrator Sullivan has not been disputed.

Arbitrator Sullivan relied on two key cases in making the recommendations:

The first case was *Wm. Scott & Company Ltd. and Canadian Food and Allied Workers Union, Local P- 162*, [1977] 1 C.L.R.B.R.. In your appeal, you stated, “my representatives only referenced the William Scott case, which was irrelevant to my situation, further underscoring the union’s lack of interest in pursuing my reinstatement.”

This case is the foundational case for all grievances involving discipline and is completely relevant to your grievance and termination.

Arbitrator Sullivan rightly cited the case and turned to the three-question inquiry the BC Labour Relations Board has set out guiding arbitrators hearing discharge grievances for almost 50 years.

Arbitrator Sullivan turned their mind to the three questions noted in the arbitration. The first question is whether the Grievor’s conduct gave rise to just cause for the imposition of some form of disciplinary sanction. If the answer to this question is affirmative then, having regard to all of the circumstances surrounding the grievance, was discharge excessive? If excessive, what should be substituted as just and equitable?” In considering the questions, it was concluded that there was just cause for some form of discipline, but that discharge may have been excessive.

However, in considering the evidence, Arbitrator Sullivan also turned their mind to and quoted this case in support of damages in lieu of reinstatement:

“In *De Havilland v. CAW-Canada, Local 112*, a list of “exceptional circumstances” was compiled by the arbitrator following a thorough review of cases where damages in lieu of reinstatement were appropriate. The arbitrator noted several indicators that an employment relationship may be “totally destroyed”:

1. The refusal of co-workers to work with the grievor.
2. Lack of trust between the grievor and the employer.
3. The inability or refusal of the grievor to accept responsibility for any wrongdoing.
4. The demeanor and attitude of the grievor at the hearing.
5. Animosity on the part of the grievor towards management or co-workers; and
6. The risk of a “poisoned” atmosphere in the workplace.”

Arbitrator Sullivan went on to say:

“It has long been recognized that the presumptive remedy for a discharge that has been found to be an excessive disciplinary sanction is reinstatement; however, the law also recognizes that, in exceptional circumstances where the employment relationship has been destroyed, an award of damages in lieu of reinstatement may be appropriate. It bears noting that, given the vast number of differences in the

parties' respective positions, an arbitration of the disputed matters would likely take many days to determine the truth. And after all of that litigation, even if the Grievor was successful and his discharge was found to be excessive, reinstatement would not at all be an appropriate remedial outcome. Given all that has taken place between the parties, the divide in the relationship is too great to be reconciled, and at best the Grievor would be entitled to a remedial award of damages in lieu or reinstatement. The foundation upon which the necessary trust relationship is built has been clearly and unequivocally damaged irreparably.

Taking into consideration your length of service of just under 2 ½ years with the employer and all of the foregoing points, the Union has determined it is unlikely there would be a different outcome if we were to proceed to arbitration and, in this case, the arbitrator has recommended an amount greater than would likely be the result in an arbitration.

The Union will be advising the employer we agree with the recommendations and will now be closing your grievance files. This is the conclusion of the Union's appeal process.

Yours truly,



Chris Dorais

Coordinator of Public Sector Servicing

Cc: HEU Representative, Chrystal Latham
Director, Robbin Bennett
Director, Curtis Anshelm
Coordinator, Brenda Van Der Meer