

**BRITISH COLUMBIA LABOUR RELATIONS BOARD**

ISLAND SAVINGS CREDIT UNION  
(the "Employer" or the "Credit Union")

-and-

OFFICE AND TECHNICAL EMPLOYEES' UNION, LOCAL NO. 15  
(the "Union")

PANEL: Hans Brown, Vice-Chair

COUNSEL: Paul Pearlman, for the Employer  
Leah Terai, for the Union

CASE NO: 14361

DATES OF HEARING: February 22 and 23, 1994

DATE OF DECISION: March 17, 1994

## **DECISION OF THE BOARD**

### **I. NATURE OF APPLICATION**

The Union applies under Section 139 of the *Labour Relations Code* for the inclusion of four individuals -- Donna Fraser, Brenda Bond, Cindy Esau, and Darlene Inghram -- into the unit for which it is certified. Fraser is an assistant manager, deposit services. Bond and Esau are investment officers. Inghram is a confidential secretary/receptionist. All are employed in the Duncan Branch of the Credit Union.

### **II. BACKGROUND**

Island Savings Credit Union operates four branches and a head office. The branches are located in Duncan, Ganges, Victoria and Mill Bay, British Columbia. The head office is located in a separate building adjacent to the Duncan Branch. The Duncan and Mill Bay Branches were certified in a single bargaining unit in 1965.

The Duncan Branch has 47 employees: 36 in the bargaining unit and 11 excluded. The branch is headed by a branch manager, to whom the assistant manager, deposit services (Fraser) and the confidential secretary (Inghram) report. It is organized into three departments: administration, side counter, and loans. Fraser, Bond and Esau work in the side counter department which deals with the investment and other financial services provided to the credit union's members. Fraser heads the department. Two investment officers (Bond and Esau), a senior membership services clerk, and four membership services clerks report to her.

The Union applied in March 1993 to include the four individuals in the bargaining unit. The application followed changes of personnel in the branch and in the side counter department. A new branch manager, to whom Inghram reports, was appointed in the fall of 1992. Bond was promoted to investment officer in November 1992. Fraser became assistant manager, deposit services in February 1993. Esau was subsequently promoted to a newly created second investment officer position in May 1993.

### III. POSITIONS OF THE PARTIES

#### (i) Position of the Union

The Union says Fraser, Bond and Esau are first line supervisors who fail to meet the test for managerial exclusions set out in *Vancouver General Hospital*, BCLRB No. B81/93 (Reconsideration of IRC No. C179/91). They do not have the authority to discipline or discharge of employees. Nor do they have a labour relations role in determining collective bargaining policy or in administering the collective agreement.

The Union says there are no examples of any of the three ever having disciplined an employee. It agrees that Fraser may give verbal reprimands to employees and accepts that she may meet with union shop stewards at step 1 of the grievance procedure. Beyond this, however, the Union says the Employer's head office is responsible for discipline and grievances. It says Bond and Esau have no involvement in the grievance procedure.

The Union argues that the administrative functions performed by all three first line supervisors, and their attendance at management meetings, cannot be used to dilute the management concept or to expand the management team concept. It cites *Vancouver General Hospital, supra*, for the proposition that the management team concept will only be applied on rare occasions to persons who fail the management exclusion test. It says this is not such an occasion. No real or potential conflict of interest with the bargaining unit would arise from their inclusion in the unit.

The Union says the confidential secretary (Inghram) does not meet the test for exclusion from the bargaining unit on the grounds of performing confidential labour relations or personnel work. It says the confidential component of Inghram's duties is neither a regular nor substantial part of her job. Nor is she required to take action or make judgments on the labour relations and personnel documents she processes.

(ii) Position of the Employer

The Employer says Fraser is a department head who exercises a full range of supervisory functions in addition to exercising managerial authority with respect to discipline, discharge and labour relations. Although she consults and seeks input from others in making her decisions, she is responsible for discipline, hiring, and performance evaluations in her department. While she has been questioned by head office, she has never been vetoed. She satisfies the test for managerial exclusion set out in *VGH, supra*.

The Employer says the investment officers are properly excluded from the bargaining unit on managerial grounds. The Employer operates its business six days a week and requires coverage by management throughout the week, plus coverage for vacations and sickness. Investment officers are included in the scheduling of this managerial coverage; they exercise full managerial authority when providing it -- including on Saturdays when an investment officer is the senior person on the banking floor.

In the alternative, the Employer says the investment officers should be excluded from the bargaining unit because they are members of its management team. They regularly attend management meetings, management retreats, and investment officer meetings; have access to confidential financial information; and have regular input into hirings, promotions and employee evaluations. Their community of interest is so closely aligned with management that there would be a real conflict of interest if they were included in the unit.

The Employer says Inghram was appointed confidential secretary/receptionist in 1986 and was excluded from the bargaining unit by agreement with the Union at that time. She is a confidante of management, a member of the Employer's management team, and the only typist at the branch who is available to perform labour relations, personnel and other confidential typing and clerical duties for the branch manager and the assistant managers. There is no practical alternative to Inghram doing this work.

The Employer notes that all four employees wish to remain excluded from the bargaining unit.

#### IV. ANALYSIS AND DECISION

The Board's approach to the issue of management exclusions is set out in *Vancouver General Hospital, supra*. In that decision the Board affirmed the test developed in *B.C. Ferry Corporation*, BCLRB No 65/78, [1979] 1 Can LRBR 116, in which the factors to be weighed in determining whether a person is a manager are: supervising work, discipline and discharge, hiring and promotion, independence of operation, supervising subordinate supervisors, labour relations input, evaluating employee performance, authorizing overtime and leave, and policy setting.

The focus of the Board's analysis in *VGH* is the requirement of an arms length relationship between an employer and a union in the collective bargaining regime provided by the *Labour Relations Code*. Two factors are critical to this arm's length relationship between the employer and union: discipline and discharge, and labour relations input. The involvement of employees in either of these functions will result in their exclusion from the bargaining unit on the basis of a potential conflict of interest with employees in the unit. When these two factors are absent, the remaining factors will not be given significant weight in the exclusion of employees: *VGH*, p. 65.

(i) Donna Fraser

I accept the testimony of Ron Morrison, Chief Operating Officer of the credit union, that the assistant manager, deposit services exercises full managerial authority. While discipline is rare in this work setting, I accept that Fraser has the authority to impose discipline if required. My conclusion is reinforced by evidence that one of her predecessors in this position sent home an employee for insubordination. I have no reason to conclude that Fraser has any less authority to impose discipline. The Employer's requirement that managers consult head office on disciplinary matters does not diminish her direct involvement in the disciplinary process: *Finning Ltd.*, BCLRB No. B307/93, at p. 67 (upheld on reconsideration in BCLRB No. B26/94).

Further, I find that Fraser has labour relations input which also requires her to operate at

arms length from the bargaining unit. I accept Morrison's testimony that she has the authority to represent the Employer at step 1 of the grievance procedure and, in consultation with head office, to resolve grievances at that step. She is also part of the decision-making loop on hiring and promotion decisions. With respect to promotions, this requires her to interpret the promotion clause of the collective agreement and to make judgments about the factors of qualifications, ability and seniority, "in that order". While she consults with head office on hirings and promotions, I find her authority is no less real. In one instance, for example, she selected a junior person for a promotion and was questioned by head office. Her decision was accepted.

I am satisfied Fraser is a manager and is properly excluded, along with all other assistant managers, from the bargaining unit.

(ii) Brenda Bond and Cindy Esau

The parties agreed that the evidence on Brenda Bond's duties would apply to both investment officers.

I am satisfied that Bond and Esau, in their capacity as investment officers providing personal banking services, do not meet the test for exclusion on managerial grounds. I do not conclude from Bond's testimony that her input into hirings, promotions and evaluations is materially different from that of senior OTEU staff who may also be requested by assistant managers to offer their personal observations. I can not characterize this input as representing managerial authority.

Setting aside her regular investment officer duties, I do not find that Bond's relief of the assistant manager or her work on Saturdays, when she is the senior employee on the banking floor (two assistant managers are present on the mezzanine floor on Saturdays), provide the basis for her exclusion from the bargaining unit. I am satisfied that her responsibilities on these occasions are significant -- but they are banking, not labour relations, responsibilities. Likewise, the decisions she is required to make are banking, not labour relations, decisions. I heard no evidence that she, or any of her predecessors, have ever disciplined an employee or have ever represented the Employer in the grievance procedure.

I conclude that the "light discipline" Bond testified to providing on Saturdays is properly characterized as work direction and is consistent with the responsibilities of a first line supervisor. There was no evidence that she is responsible for the ongoing counselling and "corrective action" required to deal with employee performance problems. I accept Fraser's testimony that this disciplinary responsibility is hers.

In the absence of any material involvement in discipline, discharge or labour relations, I cannot give significant weight to other factors such as attendance at management meetings, management retreats, and investment officer meetings; access to confidential financial information; and input into staffing levels on the side counter: *VGH, supra*, p. 65. I conclude Bond and Esau do not meet the test for exclusion from the bargaining unit on managerial grounds.

Nor can they be excluded from the bargaining unit on the basis of being part of the "management team". *VGH, supra*, makes it crystal clear that while the management team concept continues to exist, it will not be used to exclude first level supervisors who perform administrative or supervisory duties: *VGH*, at p. 65. Its application will be severely curtailed and will be a "relatively rare" ground for exclusion:

Individuals who do not meet the test of managers but indeed may amount to "near managers" do not become excluded under the management team concept ... If an individual is found not to be a manager, she remains in the bargaining unit in accordance with the scheme of the Act ... It must be remembered that these individuals are employees, and, therefore entitled to collective bargaining. (pp. 59 - 62)

I have no basis for concluding that this is one of the "rare" occasions when the management team concept should override the narrower test for exclusion set out in *VGH, supra*. Bond had been out of the bargaining unit only four months (and Esau was still in the bargaining unit) when the Union applied to have her included in the unit in her new position. I have no reason to conclude that her community of interest with the Employer so hardened in this period that her inclusion in the bargaining unit would now represent an insurmountable conflict of interest.

Bond and Esau are properly included in the unit for which the Union is certified.

I recognize that this decision will require an occasional ammendment of meeting agendas to avoid placing investment officers in occasional conflicts of interest with respect to labour relations matters. The Employer has an obligation to organize its affairs so as to minimize the exposure of bargaining unit employees to confidential labour relations information: *Corporation of the District of Burnaby*, BCLRB No. 1/74, [1974] 1 Can LRBR 1, at p. 12 However, I do not agree that information concerning the financial plans and business strategies of the credit union need be withheld from these senior bargaining unit employees. The comments of the Board in the *Corporation of the District of Burnaby, supra*, are apposite on this point:

An employer has an interest in keeping all its confidential information from reaching the outside world but there is no reason to expect that being represented by a trade union makes any employee less trustworthy than one excluded from such representation. It is only where knowledge of that information is of special interest to the union and the employer has a special need to keep it from the union -i.e., where it relates to labour relations that the potential conflict of interest becomes compelling enough to require the exclusion from the Code. (p. 11)

(iii) Darlene Inghram

I find that Darlene Inghram is an employee and is excluded from the bargaining unit because there is no practical way of divesting the confidential secretarial support she provides to the management staff at the Duncan Branch.

I do not agree that Inghram spends 60% of her time on confidential labour relations and personnel work. I agree with the Union that much of the confidential information she deals with relates generally to the business of the credit union and not specifically to labour relations and personnel. However, while I recognize that the Employer has an obligation to minimize the exposure of bargaining unit employees to confidential labour relations information, I find that, with a staff of 47 persons, the branch generates and receives sufficient confidential labour

relations and personnel documentation to require a staff person dedicated to its proper processing.

This was the position taken by the Employer in 1986 when Inghram was appointed confidential secretary/receptionist -- a position that combined new confidential secretarial duties with existing receptionist duties. The Union agreed to the new job, and to Inghram's exclusion from the bargaining unit, for a 90 day trial period. In return, the Employer agreed to create a new bargaining unit position to replace the one being lost due to Inghram's exclusion. It also agreed that bargaining unit members will be eligible to apply for the confidential secretary position whenever Inghram leaves the job.

As set out in *Automatic Electric Ltd.*, BCLRB No. 26/76, [1976] 2 Can LRBR 97, at p. 99, the Board will respect agreements between the parties on inclusions and exclusions when they "fit reasonably" within the Board's policies. I am satisfied the agreement made by the parties in 1986 to exclude Inghram meets this test. There is no evidence that the Union had any second thoughts during the 90 day trial period. There is no evidence the matter has ever been raised in subsequent rounds of collective bargaining. There is no evidence of any significant change to Inghram's duties over the intervening eight years that leads me to conclude the Board should now set this agreement aside.

In addition, I do not agree with the Union that it would be practical for the confidential aspects of Inghram's duties to be transferred to an assistant manager, as is done in the much smaller Mill Bay Branch. Not do I agree that after eight years it is again practical to return this work to the head office. I am satisfied there are no excluded staff who could assume the confidential labour relations and personnel aspects of Inghram's job. I therefore find her properly excluded from the bargaining unit.

In making this finding, I adopt the line of reasoning in *Canada Cement LaFarge Ltd.*, BCLRB LD September 12, 1986; *Parkwood Lodge*, BCLRB LD November 6, 1986; and *Yuculta Lodge Society*, IRC No. C152/88. Each of these cases excluded a single clerical employee on the basis of their providing the only clerical support available to the management staff. In each case, the Board concluded there was no practical alternative way of handling confidential labour relations and personnel material at arm's length from the bargaining unit.

These cases are in contrast to *The Corporation of the Village of Hazelton*, BCLRB No. B358/93. In that case the Village employed five people. The Union applied for a unit of four and the Village sought to exclude one of the four on the grounds that she dealt with confidential labour relations and personnel documents. The Board dismissed the application on the basis that, given the small size of the Village staff, it was practical for the already excluded employee to continue handling any labour relations material that might place others in a position of potential conflict of interest. The same practical alternative does not exist in this much larger setting.

#### V. SUMMARY

In summary, Donna Fraser is a manager and is excluded from the bargaining unit. Brenda Bond and Cindy Esau are employees and are properly included in the unit for which the union is certified. Darlene Inghram is an employee in a confidential capacity in matters relating to labour relations and personnel. She is excluded from the unit.

LABOUR RELATIONS BOARD

HANS BROWN  
VICE-CHAIR