

March 22, 1994

To Interested Parties:

Re: Magnus E. Seime (the "Complainant") -and- Okanagan District of the United Brotherhood of Carpenters and Joiners of America, Local Nos. 1346, 1370, 1540, 1696, 2511, and 3214 (the "Union") {Sonax Acoustics Ltd.}
(Section 12 - Case No. 17503/93C)

(i) Nature of the Application

The Complainant has applied under Section 12 of the *Labour Relations Code* for a determination that the Union breached its duty of fair representation when it failed to follow through on a number of issues relating to safety in the workplace.

Section 13(1)(a) of the Code requires I first determine whether the complaint discloses a *prima facie* case that a breach has occurred. After reviewing the complaint and the allegations contained in it, I have determined that a *prima facie* case cannot be found.

(ii) Background

The Complainant, Magnus E. Seime, has been employed as a production worker by Sonax Acoustics Ltd. ("Sonax") from September 1989 until the present. From February 1992 through to January 6, 1993, he worked in the paint booth as a painter. His last working day was January 22, 1993. He is currently receiving long term disability benefits.

During his employment Seime complained about the safety of the paint booth. He called the Workers' Compensation Board and was assured that the safety equipment in the paint booth met the minimum required standards.

From September 1992 through to January 6, 1993, Seime began to experience eye problems. He filed a WCB claim in December 1992. It proceeded through the appeal process to the Boards of Review in February 1994.

Seime asked the Union business representative, Art Larocque, to assist him in gathering information for his WCB appeal. Larocque wrote Sonax on three occasions for information.

Seime submitted a grievance to Paul Johnston of the Union in December 1993. The basis of the grievance was a complaint about safety at Sonax. Johnston's response was that the grievance was a WCB matter. However, Johnston did offer to assist and/or represent Seime with his appeal to the WCB Boards of Review. Seime refused the offer.

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(iii) Complainant's Position

The Complainant believes the Union has not taken adequate steps to ensure there are safe working conditions at Sonax. He claims the Union did not examine his complaints about workplace safety. He says he raised these complaints at different times. He requested the Union arrange for WCB safety inspections. He also raised the matter when employees were voting on the new collective agreement in March 1993.

(iv) Analysis and Decision

Before deciding to request submissions in response to this complaint, I must determine if Seime has established a *prima facie* case. This means I must be satisfied that if I accept all of his allegations as being true and un rebutted, there is a breach of the Code.

Section 12 requires that a union not act in a manner which is arbitrary, discriminatory or in bad faith in matters relating to representation of employees vis-à-vis their employer. The Board does not have jurisdiction to supervise a union's conduct over issues which do not affect an individual's capacity as an employee. Specifically, the Board does not have jurisdiction to enquire into the representation by a union of an employee under the *Workers' Compensation Act: Gustav Gonske*, BCLRB No. B249/93.

For this reason, I conclude this is not an appropriate matter to be considered under Section 12 of the Code. The complaint is dismissed.

LABOUR RELATIONS BOARD

BARBARA J. JUNKER
VICE-CHAIR

Interested Parties Listed Overleaf:

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Interested Parties

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