

January 24,

1994

To Interested Parties:

Re: Terry Norris (the "Complainant") -and- IWA-Canada, CLC, Local
Union Number 1-424 (the "Union") {Canadian
Forest Products Ltd. Chetwynd Sawmill Division}
(Section 12 - Case No. 16560)

(i) Nature of Application

The Complainant applies under Section 12 of the *Labour Relations Code* seeking a determination that the Union was in breach of its duty of fair representation towards him.

In considering a complaint under Section 12 of the Code I must first decide under Section 13(1)(a) whether the Complainant has made out a *prima facie* case. This requires that I be satisfied that a violation of the Code is established if all the Complainant's allegations are true and un rebutted: *Winrich A. (Al) Riede*, BCLRB No. B77/93.

After reviewing the application and the allegations contained in it, I have decided a *prima facie* case has not been made out. My reasons follow.

(ii) Background

The Complainant was a journeyman electrician employed by Canadian Forest Products Ltd. (the "Company") in Chetwynd. He was hired in 1984 and worked until July 1992 when he took a severance settlement. The Complainant states that he accepted the severance package because the Company said that it intended to operate with only three journeyman electricians and an apprentice. The Complainant confirmed this information with three management representatives. This meant there would no longer be any work for him. Further, the Complainant had been advised by the Union's legal counsel not to pursue a grievance against the Company. The Complainant had grieved the Company's use of an apprentice instead of a journeyman because the Complainant had more seniority than the apprentice.

The Complainant submits that seven months later (approximately December 1992 or

January 1993) he became aware that the Company hired a fourth full-time electrician very shortly after the Complainant severed his employment. It is unclear how the Complainant learned of this fact. After receiving legal advice, the Complainant approached the Union in June 1993 to file a grievance; after a few months, the Union advised him that it would not take any action on his behalf.

The gist of the Complainant's allegations is that the Union let the Company "lie to me" and "railroad me out because of my involvement with the union" in July 1992 when he accepted the severance settlement. He believes the Union acted in bad faith because it was aware that the Company hired a fourth electrician. The Complainant knew this fourth electrician was working but thought he was only working part-time (it is also unclear how he obtained this information).

The Complainant was invited by the Board to provide further particulars of his allegations, specifically how the Union violated its duty under Section 12. He was additionally asked to address the issue of timeliness, as this complaint was received more than a year after he had left his job. The Complainant also discussed his complaint twice with the Board Information Officer. As a result of these communications, the Complainant made two further submissions which provided very little additional information on timeliness and the merits of the complaint.

(iii) Analysis and Decision

On the merits of the complaint, the Complainant is merely trying to hold the Union responsible for actions of the Company. The Complainant has no specific details about how the Union acted in an arbitrary, discriminatory, or bad faith manner as those terms are defined: *Rayonier Canada (B.C.) Ltd.*, BCLRB No. 40/75, [1975] 2 Can LRBR 196.

The Complainant severed his employment and signed an agreement to that effect. It was not conditional on the Company not hiring more electricians. There is no information to indicate that the Union was aware of the reasons the Complainant decided to quit. If the Complainant knew that a fourth electrician was working part-time, with due diligence, he could have investigated the matter and raised the issue with the Union (and the Board) in a more timely manner. The Complainant admits to learning that the fourth electrician was working full-time in late 1992 or early 1993. He acknowledges that he did not contact the Union until June 1993, some six months later. The complaint was filed with the Board in September 1993.

Apart from a bald assertion that the Union was aware a fourth electrician had been hired full-time, the Complainant makes no allegations of fact which would establish that knowledge. There is information provided by the Complainant that the Union, despite his delay in contacting it, considered his problem and decided not to pursue a grievance. Under the circumstances, I can

only conclude that the Union has not violated its duty under Section 12.

(iv) Conclusion

The Complainant has failed to make out a *prima facie* case. The complaint is dismissed.

LABOUR RELATIONS BOARD

MARGARET ARTHUR
VICE-CHAIR AND REGISTRAR

Interested Parties:

Terry Norris
1008 Moray Street
Kamloops, BC V2B 5Y8

Canadian Forest Products Ltd.
Chetwynd Sawmill Division
P.O. Box 180
Chetwynd, BC V0C 1J0

IWA-Canada, CLC, Local Union Number 1-424
#100 - 1777 3rd Avenue
Prince George, BC V2L 3G7