BCLRB No. B85/93

BRITISH COLUMBIA LABOUR RELATIONS BOARD

MERVIN KLAUDT

("Klaudt")

-and-

B.C. GOVERNMENT EMPLOYEES' UNION

(the "BCGEU")

-and-

THE GOVERNMENT OF THE PROVINCE OF BRITISH COLUMBIA

(the "Provincial Government")

PANEL: Brian Foley, Vice-Chair

COUNSEL: Mervin Klaudt for Himself
Cliff Andstein for the BCGEU
Ron Myers for the Provincial Government

CASE NO(S).: 13284

DATE OF DECISION: March 31, 1993

DECISION OF THE BOARD

1. NATURE OF APPLICATION

On November 23, 1992, Mervin Klaudt filed an application pursuant to Section 8 of the Industrial Relations Act alleging that the B.C. Government Employees' Union had committed acts prohibited by Section 7 of the Act. Specifically, Klaudt took issue with the last collective agreement negotiated by the BCGEU with the Provincial Government and the fact that the retroactive lump sum payment included in that collective agreement did not apply to employees who were in receipt of long-term disability benefits.

In reply to Klaudt's application, the BCGEU points out that, although the retroactive lump sum payment was not negotiated for long-term disability recipients, there were negotiated improvements to the benefits applicable to those employees on long-term disability. Furthermore, the BCGEU argues that the lump sum approach was unique because of the delay in concluding a collective agreement; they do not expect that a similar circumstance will arise in the future. Finally, the BCGEU argues that the decision not to provide the long-term disability recipients with the lump sum payment was one of a number of decisions made by the BCGEU in good faith during the dynamics of the collective bargaining process.

This application was commenced on November 23, 1992, before the Industrial Relations Council pursuant to Section 8 of the *Industrial Relations Act* alleging the BCGEU has committed acts prohibited by Section 7 of the Act.

The *Labour Relations Code*, S.B.C. 1992, c.82, (Bill 84) came into force on January 18, 1993, pursuant to Section 176 of the Code and B.C. Regulation 6/93. Section 115(1) of the Code continues the Industrial Relations Council as the Labour Relations Board; Section 115(2) provides that all business pending before the Council shall be continued before the Board. Section 161 of the Code further provides that:

> 161. All applications, proceedings, actions and inquiries commenced under the *Industrial Relations Act* shall be continued to their conclusion and treated

> for all purposes under and in conformity with this Code so far as it may be done consistently with this Code.

As the provisions at issue in this application are to all intents and purposes the same in both statutes, the Panel is satisfied that this matter may be determined without further argument from the parties on this legislative change. See *Speed-Erect Foundations and Framing Systems Ltd.*, BCLRB No. B1/93.

II. APPLICABLE LAW

Section 12 of the Labour Relations Code reads as follows:

> 12. (1) A trade union or council of trade unions shall not act in a manner that is arbitrary, discriminatory or in bad faith
> (a)in representing any of the employees in an appropriate bargaining unit, or
> (b)in the referral of persons to employment
> whether or not the employees or persons are members of the trade union or a constituent union of the council of trade unions.
> (2) It is not a violation of subsection (1) for a trade union to enter into an agreement under which
> (a)an employer is permitted to hire by name certain trade union members,
> (b)a hiring preference is provided to trade union members resident in a particular geographic area, or
> (c)an employer is permitted to hire by name persons to be engaged to perform supervisory duties.
> (3) An employers' organization shall not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employers in the group appropriate for collective bargaining.

In considering the duty of fair representation in the context of collective bargaining, Labour Boards generally have given trade unions a wide latitude with respect to the manner in which negotiations are conducted and with respect to the provisions that may or may not be included in collective agreements. The United States Supreme Court expressed its view in *Ford Motor Company* v. *Huffman et al* (1952), 23 L.C. 67,505 as follows:

> Any authority to negotiate derives its principle strength from a delegation to the negotiators of a discretion to make such concessions and accept such advantages as, in the light of all relevant considerations, they believe will best serve the interests of the parties represented. A major responsibility of negotiators is to weigh the relative advantages and disadvantages of differing proposals….Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such difference does not make them invalid. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. (pp. 148-149, emphasis added)

In *Group of Seagrams Employees*, BCLRB No. 85/77, [1978] 1 Can LRBR 375, then B.C. Board Chair Weiler stated:

> In the bargaining context, there is no contract in existence, with objective reference points establishing the rights of the employees. Indeed, the whole point of the negotiating exercise is to wrest such an agreement from the employer. That is a delicate, often quite a difficult, endeavour for a trade-union. Having arrived at such a settlement, should the Union be exposed to later attacks from specific groups of employees who may not like particular terms: who claim that wage adjustments afforded to one group are an unfair preference, or who assert that their own special interests have been arbitrarily ignored by the Union?…
>
> The simple fact of the matter is that not all of the interests of these employees can be entirely satisfied in any one set of negotiations. The union chosen by the employees to be their exclusive bargaining agent must have the authority under the Labour Code to make the critical choices about what contract items will be negotiated with the employer: e.g. whether to pursue healthy trade adjustments in lieu of a slightly higher across-the-board wage increase; or whether to emphasize pension benefits instead of longer, paid vacations. As these examples indicate, the union's decisions will favour some employees and others may not like then. But it would be quite inconsistent with a system of free collective bargaining if the Labour Board, later on, were entitled to make a

> judgment that such choices were unreasonable, unfair, and thus illegal….
>
> Even more pertinent, having sorted out the priorities in its own bargaining agenda, the union must then try to secure a more or less acceptable package from the employer, often in a crisis laden atmosphere with a major strike or lockout hanging in the balance. It would inhibit that process, it would detract from the possibility of peaceful settlement of bargaining disputes in this Province, if a trade-union were always looking over its shoulder at this prospect: that dissident employees could come to the Board and readily attack the reasonableness and fairness of any contract terms which did not favour them; or could make the Union justify on the merits why it did not pursue a particular benefit in which these employees were particularly interested. (pp. 379-380, emphasis added)

In *Teamsters Local Union 213 and Wayne Johnson*, BCLRB No. 84/79, the Board emphasized:

> …[A] trade-union's negotiating conduct is not immune from the statutory obligation to fairly represent all of the employees in the bargaining unit. Nevertheless, any scrutiny of trade-union negotiation conduct must not lose sight of the fact that it is inherently impossible for a trade-union to fully satisfy all of the employees that it represents. (p. 6)

The Board recognizes that in an effort to obtain the maximum benefits for its membership, a trade union may be forced to make critical choices and trade-offs that may affect its membership unequally and that a trade union may be required to go so far as to abandon in some respects the interests of certain individual members. Trade-offs between trade unions and employers form the essence of collective bargaining. Trade unions are frequently required to balance the interests of various groups within the bargaining unit and this is particularly the case with unions with broad-based bargaining units. For these reasons, the Board allows trade unions a wide latitude respecting its conduct during collective bargaining. The Board will only intervene when the trade union's conduct is blatantly arbitrary or discriminatory or when it can be concluded that the employees affected have not been treated in good faith.

III CONCLUSION

Considering these principles in the context of the facts in the present case, the BCGEU negotiated with the Provincial Government a lump sum retroactive payment; in doing so, employees on long-term disability were determined not to receive the payment. The BCGEU's agreement on this matter was reached by BCGEU representatives in the democratic forum of a bargaining committee comprising various segments of its membership. The bargaining committee weighed the various and divergent interests of its broad-based membership and made a number of difficult decisions with respect to bargaining priorities. Regrettably for those employees on long-term disability, the decision was made not to pursue obtaining for them the lump sum retroactive payment.

There is no evidence that in making that decision, the BCGEU acted other than in good faith and with honesty of purpose. Klaudt's application is hereby dismissed.

LABOUR RELATIONS BOARD

BRIAN FOLEY
VICE-CHAIR