

BRITISH COLUMBIA LABOUR RELATIONS BOARD

VICKI BOOMER

(the “Applicant”)

-and-

HOSPITAL EMPLOYEES’ UNION

(the “Union”)

-and-

INTERIOR HEALTH AUTHORITY

(the “Employer”)

PANEL:	Jonathan Harvelt, Vice-Chair
APPEARANCES:	The Applicant, self-represented
CASE NO.:	2025-000532
DATE OF DECISION:	December 16, 2025

DECISION OF THE BOARD

I. **NATURE OF APPLICATION**

1 This application arises out of the Applicant’s termination as a result of her non-compliance with an order issued by the Provincial Health Officer (“PHO”) requiring that employees in the health sector be vaccinated against COVID-19 (the “PHO Order”). The Applicant grieved her termination (the “Grievance”), but the Union ultimately withdrew her Grievance pursuant to the terms of a negotiated letter of understanding (the “LOU”). The Applicant alleges various breaches of the *Labour Relations Code* (the “Code”) by both the Employer and the Union and has filed an application with the Board citing breaches of Sections 6, 10, 11, 12, and 13 of the Code.

II. **BACKGROUND**

2 The Applicant worked as a Senior Systems Analyst for the Employer. Her position was within a bargaining unit represented by the Union.

3 On September 13, 2021, the PHO announced that all employees in the health sector would be required to be fully vaccinated against COVID-19. It issued the PHO Order to give effect to this directive.

4 The Applicant provided the Employer with a medical certificate in support of her application for medical leave on October 5, 2021. She was ultimately granted leave and began to receive long term disability benefits in March 2022.

5 As of January 4, 2023, the Applicant had been cleared to return to work but had not confirmed with the Employer that she had received a first dose of a COVID-19 vaccine.

6 The Employer terminated the Applicant’s employment on January 4, 2023, which the Applicant grieved on February 8, 2023. While the Union and the Employer discussed potential solutions, such as having the Applicant work from home, they did not resolve the matter. The Union placed the matter in abeyance, pending the outcome of an arbitration dealing with a similar grievance.

7 On July 29, 2024, the Union signed the LOU with the Health Employers Association of British Columbia (“HEABC”), which negotiates on behalf of multiple entities including the Employer. The LOU provided pathways to return to employment for individuals whose employment was terminated for failing to establish that they had been vaccinated in accordance with the PHO Order; under the terms of the LOU, these individuals would retain their accrued certain benefits and seniority, with their time away from the workplace being treated as an unpaid leave. The Union and the HEABC agreed that such a pathway would open where a terminated employee became eligible to work as a result of the rescission of applicable PHO orders.

8 On October 4, 2024, the Union advised the Applicant that the PHO had lifted the PHO Order and that, as a result, the Applicant had until January 27, 2025, to apply for reemployment with the Employer. On October 29, 2024, the Union confirmed with the Applicant that it had withdrawn the Grievance because of the pathway opened by the LOU. The Applicant responded that same day, requesting information about how to appeal the decision to withdraw the Grievance.

9 On December 9, 2024, the Union advised the Applicant that she could not appeal the decision to withdraw the Grievance.

III. ANALYSIS AND DECISION

10 The Applicant alleges that both the Employer and the Union have breached various provisions in the Code. I find that the Applicant’s claim is only properly before me under the Union’s duty of fair representation in Section 12 of the Code. Therefore, I begin by explaining why certain provisions of the Code, cited in the application, do not apply on the facts of this case.

Section 6 – Unfair Labour Practices

11 The Applicant alleges that the Employer breached Sections 6(3)(d) and 6(3)(h) by terminating her employment in retaliation for “raising legitimate concerns about the COVID-19 vaccination policy”, and by acting arbitrarily and in bad faith by treating the PHO Order as a “legal or contractual duty to terminate unvaccinated workers” without evidence of that obligation.

12 Section 6(3) states, in part:

An employer or a person acting on behalf of an employer must not

(d) seek by intimidation, by dismissal, by threat of dismissal or by any other kind of threat, or by the imposition of a penalty, or by a promise, or by a wage increase, or by altering any other terms or conditions of employment, to compel or to induce an employee to refrain from becoming or continuing to be a member or officer or representative of a trade union

(emphasis added)

13 Section 6(3)(d) specifically prohibits an employer from taking the sorts of actions listed therein where the employer does so “to compel or to induce an employee to refrain from becoming or continuing to be a member or officer or representative of a trade union”. The Applicant does not allege that this was the Employer’s purpose for terminating her employment, nor that it was the effect. Rather, she specially states that the Employer terminated her employment “in direct retaliation for raising legitimate

concerns about the COVID-19 vaccination policy and its inconsistent and unjustified application”. This is not the sort of circumstance contemplated by Section 6(3)(d).

14 Accordingly, I find that the Applicant has not established a *prima facie* breach of
Section 6(3)(d) of the Code and I dismiss the application insofar as it alleges a breach
of that provision.

15 The Applicant also alleges that the Employer acted in breach of Section 6(3)(h).
Section 6(3) includes subsections (a) – (f); the Code does not contain a Section 6(3)(h),
and I am unable to determine what provision the Applicant may have been referring to.
Accordingly, I find that the Applicant has not established a *prima facie* breach of the
Code on the basis of her allegations with respect to Section 6(3)(h).

Section 10 – Internal Union Affairs

16 The Applicant alleges that the Employer and the Union both acted in breach of
Section 10 of the Code. She says that she “rel[ies] on Section 10 due to a failure by
both the employer and the union to provide meaningful and relevant information
concerning the implementation of the vaccination policy and the basis for termination”.

17 However, Section 10 does not apply in these circumstances; it relates to a
particular set of decisions made by trade unions of which this is not one. Generally, the
Board does not have jurisdiction over matters that are purely internal to a union. The
exception to this is found in Section 10, which states:

- (1) Every person has a right to the application of the principles of natural justice in respect of all disputes relating to
 - (a) matters in the constitution of the trade union,
 - (b) the person’s membership in a trade union, or
 - (c) discipline by a trade union.
- (2) A trade union must not expel, suspend or impose a penalty on a member or refuse membership in the trade union to a person, or impose any penalty or make any special levy on a person as a condition of admission to membership in the trade union or council of trade unions
 - (a) if in doing so the trade union acts in a discriminatory manner, or
 - (b) because that member or person has refused or failed to participate in activity prohibited by this Code.
- (3) If a trade union charges, levies or prescribes different initiation fees, dues or assessments in respect of a person according to whether the person applies or has applied for membership in the trade union before or after an application for certification by

the trade union to represent the person as bargaining agent, the fees, dues or assessments are deemed to be discriminatory for the purpose of subsection (2) (a).

18 As Section 10 does not apply to actions by employers, I dismiss the application insofar as it alleges the Employer acted in breach of this provision.

19 With respect to the allegations as they pertain to the Union, the Applicant does not allege facts that would bring this matter under the ambit of Section 10; she does not show that this is the sort of circumstance contemplated therein. She does not refer to any sort of Union disciplinary proceeding, nor does she say that the Union has imposed any sort of penalty on her. Referring specifically to Section 10(1), she does not allege that the Union has acted contrary to the principles of natural justice with respect to issues related to the Union’s constitution, her membership in the Union, or discipline by the Union. With respect to Sections 10(2) and (3), she does not say that the Union has expelled her, suspended her membership, imposed a penalty or made a special levy as a condition of admission, or that it has done so in a discriminatory manner or because she refused to participate in an activity prohibited by the Code.

20 Accordingly, I find that the Applicant has not established a *prima facie* breach of Section 10 of the Code and I dismiss the application insofar as it alleges a breach of that provision by the Union.

Section 11 – Requirement to Bargain in Good Faith

21 The Applicant further alleges that the Union breached Section 11 by, amongst other things, failing to consult its membership or meaningfully bargain with the Employer about the implementation a vaccination policy.

22 Section 11 codifies a duty to bargain in good faith. Subsection (1) of Section 11 states that “[a] trade union or employer must not fail or refuse to bargain collectively in good faith in British Columbia and to make every reasonable effort to conclude a collective agreement.”

23 The Board has interpreted this obligation to be primarily owed by a union or an employer to the other party at the bargaining table (*Construction Labour Relations Association of British Columbia*, BCLRB No. B219/2002 (“*Construction Labour Relations*”), para. 10; *Abubakary*, 2024 BCLRB 118). As explained by the Board on paragraph 10 of *Construction Labour Relations*, “[t]o the extent the duty to bargain in good faith is owed by the Council to its own constituent union members, that duty falls within the scope of the duty of fair representation under Section 12 of the Code.”

24 Accordingly, I find that Section 11 is inapplicable to this case and I dismiss the application insofar as it alleges a breach of that provision.

Section 13 – Procedure for Fair Representation Complaint

25 Finally, the Applicant alleges that the Employer discriminated against her in breach of Section 13 of the Code through the “selective termination of employees based on their personal medical decisions, without any legal requirement to do so, and without accommodating individual circumstances”.

26 Section 13 of the Code is not a substantive provision but, rather, is a procedural one related to the processing of applications under Section 12. It states:

(1) If a written complaint is made to the board that a trade union, council of trade unions or employers’ organization has contravened section 12, the following procedure must be followed:

(a) a panel of the board must determine whether or not it considers that the complaint discloses a case that the contravention has apparently occurred;

(b) if the panel considers that the complaint discloses sufficient evidence that the contravention has apparently occurred, it must

(i) serve a notice of the complaint on the trade union, council of trade unions or employers’ organization against which the complaint is made and invite a reply to the complaint from the trade union, council of trade unions or employers’ organization, and

(ii) dismiss the complaint or refer it to the board for a hearing.

(2) If the board is satisfied that the trade union, council of trade unions or employers’ organization contravened section 12, the board may make an order or direction referred to in section 14 (4) (a), (b) or (d).

27 While Section 13 of the Code does not relate to the Applicant’s allegations of discrimination, I note that Section 13 of the *Human Rights Code*, RSBC 1996, c. 210 (“*Human Rights Code*”), bears the subtitle “Discrimination in Employment”. To the extent that the Applicant seeks to rely on Section 13 of the *Human Rights Code*, I will address that in the next section of these reasons. However, at this juncture, I need only note that I dismiss the application insofar as it alleges a breach of Section 13 of the Code.

The Board’s Policy of Deferral to Arbitration

28 While I have found that the majority of the provisions the Applicant relies on are inapplicable to the facts of this case, I note that a key aspect of the application is to litigate the Employer’s decision to terminate the Applicant’s employment and the basis

on which it decided to do so. This is true, for example, of the Applicant's allegations under Section 6(3) of the Code and Section 13 of the *Human Rights Code*.

29 The Board's general policy is to defer to the grievance/arbitration process where matters fall under the jurisdiction of both a collective agreement and the Board (*Repap Carnaby Inc.*, BCLRB No. B31/94 ("*Repap Carnaby*"). In *Repap Carnaby*, and referring to its existing jurisprudence, the Board noted that it "would not finesse the grievance and arbitration procedure established under a collective agreement by enquiring indirectly into a contract dispute through the vehicle of an alleged statutory violation" (para. 24).

30 For this reason, and regardless of the provisions of the Code that the Applicant explicitly relies on, I would not take jurisdiction over any matters related to the Employer's interpretation and application of the PHO Order, including its decision to terminate the Applicant's employment and whether its actions constituted discrimination under the *Human Rights Code*. Those are matters for private arbitration and, in the latter case, the Human Rights Tribunal.

31 I acknowledge that the Applicant appropriately began by filing a grievance, which is the first step towards a potential arbitration. While she disagrees with the outcome of that process, the Union's decision to withdraw her Grievance does not entitle her to litigate these matters in a second forum. To permit this would be to undermine the grievance process and the settlement agreement reached by the Employer and the Union, and would lead to the inefficient duplication of processes. Rather, the correct analysis at this juncture is to consider whether the Union satisfied its duty of fair representation in its carriage of the Applicant's Grievance.

Section 12 – Duty of Fair Representation

32 Section 12 of the Code outlines a union's statutory duty of fair representation. Subsection (1) states:

(1) A trade union or council of trade unions must 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.

33 The Board set out what arbitrariness, discrimination, and bad faith mean, in the context of Section 12, in *Rayonier Canada (B.C.) Ltd.*, BCLRB No. B40/75:

... a union is prohibited from engaging in any one of the three distinct forms of misconduct in the representation of the employees. The union must not be actuated by bad faith in the

sense of personal hostility, political revenge, or dishonesty. There can be no discrimination, treatment of particular employees unequally whether on account of such factors as race and sex (which are illegal under the Human Rights Code) or simple, personal favouritism. Finally, a union cannot act arbitrarily, disregarding the interests of one of the employees in a perfunctory manner. Instead, it must take a reasonable view of the problem before it and arrive at a thoughtful judgment about what to do after considering the various relevant and conflicting considerations.

(p. 9)

34 Section 13 of the Code requires that the Board first determine if an application alleging a breach of Section 12 discloses an apparent breach of that provision. If the facts of the case, as set out in the application, do not disclose an apparent breach of Section 12, the application is dismissed pursuant to Section 13.

35 Section 12 provides “a narrow right and protection” (*James W.D. Judd*, BCLRB No. B63/2003 (“*Judd*”), para. 26). An application only succeeds where a union’s representation, as a whole, is found to be arbitrary, discriminatory or in bad faith; Section 12 is not an avenue to challenge an employer’s decision nor to appeal a union’s decision on the basis an applicant does not agree with it (*Judd*, paras. 44 and 46). The fact an applicant may disagree with a union’s decision to withdraw or settle a grievance does not establish a breach of Section 12 (*Judd*, para. 114).

36 Moreover, an applicant must adequately allege facts such that an adjudicator can assess whether the application discloses an apparent breach of Section 12.

When employees make a Section 12 complaint to the Board, they are asking the Board to adjudicate that complaint and to make a legal determination in their favour. The initial determination which the Board must make is whether the facts alleged establish a violation of Section 12. The Board cannot decide that a union violated Section 12 simply because the complainant says the union was “arbitrary” or “discriminatory”, “did nothing for me”, “disregarded my interests”, or “acted in bad faith”.

Rather, the complaint must show what happened, when it happened, how it happened, who said or did what and what aspects of the conduct are alleged to be arbitrary, discriminatory or in bad faith. If the facts set out in the complaint do not, by themselves, establish a violation of Section 12, the complaint should be dismissed: Section 13(1)(a).

(*Judd*, paras. 76 and 77)

37 In the context of COVID-19 vaccination policies, the panel in *Jason Baldwin*, 2023 BCLRB 197 (Leave for Reconsideration of 2023 BCLRB 123) (“Baldwin”) noted the following:

The Board has been asked on numerous occasions to consider unions' obligations with respect to the duty of fair representation in the face of employer policies requiring that employees be vaccinated against COVID-19. The Board has consistently held that a union does not breach its duty of fair representation simply because it declines to challenge the implementation of such a policy or take to arbitration a grievance over the termination of employees who refuse to comply with it: *Lindsey Card*, 2023 BCLRB 149 (“*Card*”); *Ruth Menekarios*, 2022 BCLRB 143 (Leave for Reconsideration of 2022 BCLRB 96) (“*Menekarios*”); *Jeffrey Harrison*, 2022 BCLR 136 (“*Harrison*”); *Kerry McMahon*, 2022 BCLRB 122 (“*McMahon*”); *Kerry Killoran*, 2022 BCLRB 81 (“*Killoran*”).

(para. 13).

38 The application cites seven examples of alleged arbitrary, discriminatory, and bad faith representation. In some cases, the Applicant does not provide the necessary particulars that would permit me to properly adjudicate her claims. For example, she says that the Union breached Section 12 because it “misrepresented [her] representational rights and failed to clearly explain the grievance process, ultimately misleading [her] and refusing to escalate the matter properly”. She does not explain what she means when she says the Union “misrepresented [her] representational rights”. Nor does she say how the Union mislead her or what it should have done to “escalate the matter properly”. I am unable to determine from this precisely what she is alleging and so I am unable to assess with certainty whether it might disclose an apparent breach of Section 12. To the extent that the Applicant asserts a right to have the matter set down for arbitration when she says the Union refused “to escalate the matter properly”, I find that allegation fails to disclose an apparent breach of the Code; as I explain below, withdrawing a grievance does not amount to an apparent breach of Section 12.

39 While some allegations lack particulars, I am able to sort them into general themes and will address those in turn.

40 First, the Applicant alleges that the Union failed to communicate adequately with her. She says that it: 1) failed to explain the grievance and appeal processes; and 2) failed to communicate when the Grievance would be adjudicated as it was being held in abeyance pending the outcome of an arbitration related to another grievance.

41 I do not find that these allegations, or the facts alleged in the application, disclose an apparent breach of Section 12 on the basis that the Union failed to adequately communicate with the Applicant. While the Union may not have always responded promptly to the Applicant, I do not find that any delay amounts to an apparent breach of

the Code. For example, the Applicant asked the Union for information about appealing the decision to withdraw the Grievance on October 29, 2024. Based on the record before me, I understand she did not receive a response until December 5, 2024, after she wrote again to follow up. I accept that the Applicant may have been frustrated by this, and may believe the delay was unreasonable, but I do not find that such allegations disclose an apparent breach of Section 12. The Applicant does not allege, and I do not find, that this one-month delay prejudiced her in any way with respect to either her ability to reapply for employment with the Employer or the Union's ultimate decision not to advance the Grievance to arbitration. Nor is there any allegation or evidence that the delay was motivated by an improper purpose that might constitute discrimination or bad faith.

42 Similarly, the Union's alleged failure to communicate an arbitration date for the Grievance, which was being held in abeyance, does not disclose an apparent breach of the Code. I note, firstly, that it would be rare for a grievance to be simultaneously set down for arbitration and for it to be held in abeyance; it would be a contradiction for parties to be moving towards the arbitration of a matter that they had effectively agreed to place into dormancy. As noted, and as discussed more below, a grievor does not have the right to see their matter set down for arbitration; in this case, it was the Union's right to decide how to proceed with the Grievance. As a result, I do not find that the application discloses an apparent breach of Section 12 on the basis of this allegation.

43 The second type of allegation in the application relates to the positions the Union adopted and the advocacy it engaged in, or did not engage in, with respect to the PHO Order and its effect on the Applicant. In addition to the above-noted assertion that the Union refused to "escalate the matter properly", these include: 1) accepting that the Applicant was not compliant with the PHO Order when, in her view, the PHO Order did not impose obligations on individual workers; 2) placing the Grievance in abeyance; 3) not challenging the continued enforcement of the PHO Order after March 2022; 4) not campaigning or advocating for the reinstatement of employees whose termination was justified by the PHO Order; and 5) signing the LOU, after the PHO Order had been lifted, which resulted in terminated employees having to reapply for employment as though they were external candidates.

44 It is trite that unions own the grievances that arise from their bargaining units and that the Board does not second-guess litigation strategies or other decisions, including the decisions to settle or withdraw grievances. A union's authority in this regard is limited only by the requirement that its representation, as a whole, not be arbitrary, discriminatory, or in bad faith (*Judd*, paras. 34 and 94). The same applies with respect to the decision to hold a grievance in abeyance; the Applicant has not established an apparent case that the Union breached Section 12 by placing the Grievance in abeyance pending the outcome of a similar one that was proceeding to arbitration.

45 The application also says that the Union breached Section 12 by interpreting the PHO Order as requiring employees to be vaccinated and therefore accepting that she was not compliant with it. However, as long as it did not rely on improper workplace considerations, the Union was entitled to take that position and to negotiate a settlement

from that understanding; a union does not breach Section 12 merely by taking a position that is consistent with an employer's, even where an employee disagrees with it (*Judd*, para. 51).

46 The Union was also entitled to settle the Grievance, which includes the decision to sign the LOU after the PHO Order had been lifted. As noted in paragraph 13 of *Baldwin*, the settlement of grievances related to COVID-19 vaccination policies does not constitute an apparent breach of Section 12 absent arbitrary, discriminatory, or bad faith representation. Thus, the Union was entitled to not escalate the Grievance to arbitration subject to those conditions and I find that the application does not disclose an apparent breach of Section 12 on the basis of the allegation that it failed to do so.

47 The application further argues that the Union failed to advocate for the reinstatement of employees whose employment was terminated pursuant to the PHO Order. Whether or not the Union had an obligation to advocate for reinstatement, and I am doubtful that it did given the wide latitude Section 12 affords unions generally, the Union did pursue a similar grievance to arbitration, while holding the Applicant's (and presumably others) in abeyance. The Applicant does not explain how this does not constitute advocating for reinstatement. The fact the Union did not obtain the result that the Applicant wanted is not evidence that it did not seek to have her reinstated or, more importantly for the purposes of this analysis, that it represented her in a manner that was arbitrary, discriminatory, or in bad faith. Moreover, the LOU is further evidence that the Union advocated generally for employees whose employment was terminated. The LOU provided a pathway for those employees to return to employment. Again, while this is not the outcome the Applicant sought, it is clear evidence of the Union advocating for employees whose employment was terminated. As a result, I find that the application has not established an apparent breach.

48 Finally, the application alleges that the Union failed to challenge the continued enforcement of the PHO Order after March 2022. The Applicant does not provide any evidentiary or factual basis to show that this constituted arbitrary, discriminatory, or bad faith representation. A bare assertion is insufficient to establish such representation. Moreover, she does not allege that she asked the Union to take such a position in March 2022.

49 The Applicant does not allege facts that disclose an apparent breach of Section 12 on any of the bases alleged in the application. The Applicant does not allege that the Union acted in bad faith or discriminatorily; she does not, for example, allege that she was treated differently than other employees in the same position as her. Nor does she allege facts that would permit me to find that the Union acted arbitrarily and failed to rely on proper considerations in discharging its representational obligations.

50 Having reviewed the submissions and filed materials, I find they do not disclose an apparent breach of Section 12 and so dismiss that aspect of the application pursuant to Section 13.

51 I conclude by noting that the application bears some hallmarks of a document that was created with the assistance of generative artificial intelligence (“A.I.”). To be clear, I do not know if the Applicant used any generative A.I. tools, nor would it impact how I have adjudicated the application if she had. I am also aware that the Applicant is self-represented and that she may be navigating a legal proceeding for the first time; this is not an easy task. I therefore want to be clear that I include these comments, not to be critical but, rather, for the benefit of future applicants to the Board.

52 As I have noted, the application cites “Section 6(3)(h)” - a provision of the Code that does not exist - and it appears to erroneously cite Section 13 of the *Human Rights Code* as being a provision of this Code. In addition, the Applicant cites a case she refers to as “the Teamsters case (BCLRB No. B135/2022)”. It may be that she was referring to a federal arbitration award involving the Teamsters. While that case does not impact my decision about the applicability of Section 10 here, I raise it now to note that it is not a decision of this Board and that there is no case bearing the citation included in the application. This is also the type of issue I understand one might expect to arise with the use of generative A.I.

53 Regardless of whether generative A.I. was used in producing this application, these sorts of errors and hallucinations are an inherent risk of such tools, as was recently discussed in *Zhang v. Chen*, 2024 BCSC 285. I remind the community that it is incumbent on applicants to ensure the authenticity and accuracy of the materials they file, which includes references to case law and Code provisions.

IV. CONCLUSION

54 For the foregoing reasons, the application is dismissed.

LABOUR RELATIONS BOARD

“JONATHAN HANVELT”

JONATHAN HANVELT
VICE-CHAIR