REVIEW OF ARBITRATION AWARD (SECTION 99)

by

ARBITRATOR: Vincent L. Ready

IN THE MATTER OF AN ARBITRATION
(Warren Munroe Grievance – Arb. Ref. No. 211:06/07)

BETWEEN:

BRITISH COLUMBIA PUBLIC SERVICE AGENCY (the "Employer")

AND:

BRITISH COLUMBIA GOVERNMENT AND SERCIVES EMLOYEES' UNION (the "Union")

to the

BRITISH COLUMBIA LABOUR RELATIONS BOARD

Requested by

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Submitted

October 19, 2007

Opening statement

I would like to begin by thanking the Board for granting a three day extension, to October 19, 2007, to request of a review of an arbitration decision made on October 1, 2007, 100 days after the preliminary hearing on June 22, 2007 (without the necessary notification as required in Article 9.8 of the Master Agreement).

Nature of Application

I would like to request a review of an arbitration decision under Section 99 1 (a) a party to the arbitration has been or is likely to be denied a fair hearing, and (b) the decision or award of the arbitration board is inconsistent with the principles expressed or implied in this Code or another Act dealing with labour relations.

Remedies Sought

Decision to be set aside in order to pursue grievance.

Nature of Dispute

The arbitration board did not consider the real substance of the matters in dispute, failed to make a genuine effort to interpret the collective agreement, failed to provide a reasoned analysis of the issues, failed to properly exercise its discretion regarding the use of extrinsic evidence, and went beyond its power to imply terms in a collective agreement and, in effect, rewrote parts of the agreement, and the arbitration award is inconsistent with the principles of the Labour Relations Code or other labour relations legislation (see Analysis of Arbitrator's Decision).

Arbitrator's Decision

> "… all that is available to be decided in this matter is the question of whether the grievor did something that brings him within the scope of Article 8.10(b). Did Mr. Munroe endeavour to pursue the same grievance through another channel"? It is my finding that he did. "

The Arbitrator followed by stating …

> "The fact of the matter is that the grievor wrote no less than four times to the Deputy Minister, the subject of the correspondence being the same as his grievance. These actions leave little doubt that he was seeking to pursue the subject of this grievance through another channel, namely the intervention of the Deputy Minister."

The Arbitrator finishes by stating …

> This kind of correspondence and activity outside the grievance procedure is exactly what the parties have agreed renders the grievance abandoned. Indeed, in prior cases arbitrators have held as much."

Background

In July 2005, I requested information from the BCPSA *Innovations in the work place website*, (tab 14) about how to help create a positive work environment, one where people would be encouraged to be results oriented, to provide creative solutions, to be innovative and the foster team work. I was referred to Human Resources and the BCGEU, who required that letters of complaint be submitted in order to justify team effectiveness training courses. The manager's covert antagonism became overt hostility and I was removed from the remaining projects I was responsible for and these were given to co-workers. I was removed from the last project on December 1, 2005. The manager stated that my project was not part of my Employee Performance and Development Plan (EPDP). However, my EPDP did state that this project was part of the EPDP. This led to my harassment complaint, and the Article 32.15 grievance (December 2005), which is still unresolved. The mediation and/or Work Place Skills Courses, available through the BCPSA I requested were refused and I was accused of harassment for asking for mediation. I was told to leave my work place, to gather my belongings, and to return my pass (February 2006). I was under the impression that I was fired. I was later told I was suspended and that someone else would have to fire me. The suspension is also unresolved. Again mediation and courses were refused. I requested arbitration again in May 2006 (tabs 4-7), after I received a registered letter on April 28, 2006, dated April 11, 2006, informing me that I had been "dismissed for just cause" (tab 2). Therefore, I had until May 28, 2006 to submit my request for Arbitration to the Deputy Minister. I replied with a letter dated May 1, 2006 to the BCGEU (tab 3). After a week, with no word from the BCGEU, I feared that again they would not represent me fairly; therefore, I sent a copy of the May 1,2007 letter to the Deputy Minister in order to meet time lines (see Analysis of Arbitrator's Decision) (tab 4). The BCGEU argued that I did not get the grievance in on time (tab 8). Therefore, I submitted a Section 12 complaint to the Labour Relations Board (June 2006). I was told that I had to exhaust all appeals with the BCGEU first. In July, 2006, the BCGEU sent the grievance form stating that it would be considered to be submitted too late (tab 1). This was the first time a grievance form had been given to me, contrary to the statement made by the BCGEU representative, May 31, 2006 (tab 8). At each stage of the

constructive dismissal, my requests for Team Effectiveness training, Work Place Skills Courses, Project Planning Courses, and/or mediation were all refused.

After dozens of letters were exchanged, the BCGEU sent a representative to meet me regarding my request for Arbitration in January 2007. On June 22, 2007, a preliminary hearing into whether I had gotten my grievance in on time and whether I had abandoned the grievance procedure by informing the Deputy Minister about my grievance, was convened. Minutes before this hearing, the BCGEU representative told me that the substance of the dispute had changed and that the employer no longer consider timeliness to be an issue, but would only focus on the argument that by informing the Deputy Minister about my grievance, I had contravened Article 8.10 (b) in the 13th Master Agreement between the Government of the Province of British Columbia and the BCGEU (Master Agreement). Immediately after the unfair preliminary hearing, I requested to the BCGEU and the Labour Relations Board that the Arbitrators decision be stopped until important information be presented (tab 8). I was told to wait for the Arbitrator's decision, which took 100 days in contravention of the Master Agreement Article 9.8.

Between January 2007 and June 2007, the BCGEU repeatedly tried to close my appeal of the decision by the BCGEU to drop my Article 32.15 grievance. I advised the BCGEU that I had been told by the Labour Relations Board Information officer to pursue the dismissal first and that I was not dropping the appeal.

Professionalism

The quality of the work done by the Population Section that is at the heart of this issue. While I focused my attention on my job as the provincial expert on migration to the local level, and provided solutions to improve the reliability of the information, I was the subject to personal antagonism and a constructive dismissal. The position was re-posted, but without the statement regarding being the provincial "expert on migration".

For example, the use of the change in telephone land lines as an indicator of population change was implemented without proper statistical testing (cell phones makes this indicator suspect), as was the splitting of the municipalities into two groups. Also, the Provincial Electoral

District Population Estimates and Projections were created using non statistical methods. Databases were unorganized and incorrectly labeled. The Ministry of Finance changed the migration projection arbitrarily, lowering it 7,000 people below model projections. Since the migration numbers were low for the lower mainland, (7,000 people missing and cell phone use) I was ordered to take people out of Comox/Courtenay and other high growth areas (Kelowna) and told to put them into Richmond and Burnaby (telephone hookups had dropped) and I refused.

I requested mediation and team effectiveness training repeatedly, but these were denied, and instead an effort was made to make me appear to be at blame for the problems with the work being done and the lack of team work. On several occasions the manager called me into his office, told me to close the door and pulled out a long rule and slapped his hand with it while telling me to never ask my co-workers to ask me rather than tell me what to do. I contend that because the manager had been a shop steward for many years (decades?), before becoming the manager through a restrict posting where he was the only person to apply, he was supported by the BCGEU local office in his efforts to discredit me. The unfair representation by the BCGEU will be the subject of a Section 12 complaint.

I wrote easily implemented routines that fixed the problems and tested alternative indicators to telephone hookups but this was considered an affront by the long time employees. In fact, one portion of one of the many programs I initiated and championed has received accolades from users, expressions of interest from across Canada and won awards for innovation and for having made a substantial contribution to the provincial government, by reducing error and time and cost. I paid over $40,000 of my own money and time to complete this program with no return as yet, as I am having to deal with procedures that can be used against innovators.

Summary of Grounds for Review

The grounds for reconsideration are that the original decision is inconsistent with the principles of the Labour Relations Code or any other statute dealing with labour relations, and the panel which made the original decision acted contrary to principles of procedural fairness and natural justice.

I contend that my letters to the Deputy Minister followed procedures outlined in the 13th Master Agreement and cannot justifiably be consider another “channel”. Writing to the Deputy Minister is an integral part of the procedures aimed at settling disputes. An argument cannot be made that by following described procedures and steps outlined in the Master Agreement, a grievor is pursuing another “channel”. In fact, the Master Agreement does not refer to the dismissal grievance, nor writing to the Deputy Minister as a channel, but rather as a procedure.

The Employer and BCGEU could not raise both timeliness and writing to the Deputy Minister to the Arbitrator at the preliminary hearing. This would highlight the fact that a technicality was used by the Employer and the BCGEU as a way to ignore my grievance. I wrote to the Deputy Minister in an attempt to have a fair hearing before an Arbitrator.

The misuse of procedural issues by the Employer and the BCGEU is to make a technical argument (see Labour Relations Code, Section 156 below), in an attempt to deny the grievor a fair hearing (Section 99 (a)) and is untenable. Indeed, there many examples in the Master Agreement where writing to the Deputy Minister is necessary.

Content Analysis

In the Master Agreement there are more than thirty statements referring to the Deputy Minister. Not once is writing to the Deputy Minister described as a “channel” in the Master Agreement, but rather is referred to as an important part of procedures aimed at settling disputes. Not one single one of the “prior cases” the Arbitrator refers to in his decision includes a letter to the Deputy Minister. To inform the Deputy Minister of disputes in order to seek constructive solutions is the procedure and not another “channel”.

Not once is writing to the Attorney General or to an MLA mentioned in the Master Agreement; therefore it makes sense to considered these to be another “channel” as they are outside of what is covered in the Master Agreement. Writing to the Attorney General or to an MLA, along with picketing, and going to the media would legitimately be considered pursuing another “channel” as they are outside of what is covered in the Master Agreement. Another “channel” cannot be confused with the procedures described in the Master Agreement. The

Arbitrator was wrong to consider procedures outlined in the Master Agreement, as being any other “channel”.

Only once is the word “channel” found in the Master Agreement, under 8.10 (b) which was used by the Employer to deny me a fair hearing. Writing to Deputy Minister who is not interested in constructive solutions and does not acknowledge the grievance cannot be considered pursuing another channel. An effort should be made to define channel. May I suggest that another channel be defined as a route, or way outside of the Master Agreement. A procedure would be a route or way within the Master Agreement, and steps would be parts of a procedure. A decision from the Labour Relations Board would be appreciated.

Analysis of Arbitrator’s Decision

By writing to the Deputy Minister, I was following the steps outlined in the 13th Master Agreement Articles 32.15; 8.3 (b); 8.9 (a); 1.9(d). I sent copies of my letters to the BCGEU regarding my continuing dispute to the Deputy Minister to ensure timeliness would be met as I felt (justifiably) that the BCGEU might not get my grievance in on time (as was the case) given the history of unfair representation. The right to write to the Deputy Minister within 30 days (by May 28, 2006) is described in the Master Agreement Article 8.9 (a).

> Article 8.9 Dismissal or Suspension Grievances
>
> > (a) In the case of a dispute arising from an employee's dismissal, rejection on probation, suspension greater than 20 days or suspension for just cause pending investigation, the grievance may be filed directly at arbitration, with a copy to the BC Public Service Agency and the Deputy Minister of the appropriate Ministry, within 30 days of the date on which the dismissal, rejection on probation, or suspension occurred, or within 30 days of the employee receiving such notice.

The four times that I wrote to the Deputy Minister, that the Arbitrator refers to, included the May 2006 letters which were copies of the letters to the BCGEU. I cc’ed the Deputy Minister in order to ensure that I met the 30 day time limit to grieve the decision to dismiss me for “just cause”, as is also described in Article 8.3 (b) of the Agreement which states that I had 30 days from the time I “first became aware of the action or circumstances giving rise to the grievance” to submit a grievance. The fact that May 28, 2006 should be considered the time limit was made to the Arbitrator at the Preliminary Hearing but ignored (tab 9).

In fact, there were five letters to the Deputy Minister. I had written to the Deputy Minister when the BCGEU could not get the Article 32.15 grievance in on time. I delivered my statement as outlined under Article 32.15 to the Deputy Minister on January 30, 2006. The cover letter, but not the description of the actions etc., was presented to the Arbitrator (tab 14).

Article 32.15 Misuse of Managerial/Supervisory Authority

> (b) If the proposed resolution is not acceptable, the complainant may refer the matter through the Union in writing to the Deputy Minister or their designate within 30 days of receiving the supervisor's/manager's response or when the response was due. The written statement will provide full particulars of the allegation including:
>
> - the name(s) of individual(s) involved; and
> - the specific actions and dates of the alleged misuse of
> - managerial/supervisory authority; and
> - names of witnesses; and
> - an explanation as to why it should be considered misuse of authority; and
> - the remedy sought; and
> - an outline of the steps which have been taken to resolve the matter in (a) above.

This was considered acceptable and is no different than my informing the Deputy Minister in May 2006. Of course, the Arbitrator was correct in realizing "the subject of [my] correspondence" was " the same as [my] grievance". However, my correspondence was not pursuing another "channel" outside of the Master Agreement, it is the established procedure found in the Master Agreement.

The Employer and the BCGEU should have been prepared for Arbitration when I wrote to the BCGEU and sent a copy to the Deputy Minister in May 2006, well within time limits.

> 10.4 Dismissal and Suspension Grievance states: "All dismissals and suspensions will be subject to formal grievance procedure under Article 8—Grievances".

Instead, an effort was made to ignore the spirit of the Master Agreement "to share a desire to improve the quality of the Public Service of British Columbia" (Master Agreement Purpose) and my grievance was ignored and the position was reposted in August 2006.

Also included in the Union Book of Documents was the letter (May 25, 2006) I sent to the BCGEU and cc'ed to the Deputy Minister regarding the possibility of discrimination and a human rights violation (tab 6). Again writing to the Deputy is part of the procedure to seek constructive solutions, as described in Article 1.9.

Article 1.9 Discrimination and Sexual Harassment Complaint Procedures

> (d) If the proposed resolution is not acceptable, the employee may refer the matter through the

> Union in writing to the Deputy Minister or their designate within 30 days of receiving the manager's response or when the response was due.
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> A written complaint shall specify the details of the allegation(s) including:
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> • name, title and Ministry of the respondent;
> • a description of the action(s), conduct, events or circumstances involved in the complaint;
> • the specific remedy sought to satisfy the complaint;
> • date(s) of incidents;
> • name(s) of witnesses (if any);
> • prior attempts to resolve (if any).
>
> (e) The Deputy Minister or their designate will acknowledge, in writing, receipt of the Union's notice and will have the matter investigated and will take such steps as may be required to resolve the matter. The Union and the employees involved shall be advised in writing of the proposed resolution within 30 days of providing notice to the Deputy Minister or such later date as may be mutually agreed by the Ministry and the Union.

Having become aware of the possibility of a Human Rights violation, the Deputy Minister should have responded within 30 days as described in Article 1.9 (e) above, but did not.

I advocated values of being practical, pragmatic, applied and results oriented as well as providing creative solutions and being innovative. These qualities are promoted by the Government of BC, and the Ministry of Labour and Citizen's Services; however, while my projects were succeeding, (e.g. e-statsBC) I was subjected to personal attacks. It should also be noted that Article 1.7 Human Rights Code states

> The Government of British Columbia, in cooperation with the Union, will promote a work environment that is free from discrimination where all employees are treated with respect and dignity.

Article 33 states…

> (a) The government of British Columbia is committed to providing a work environment free of any form of adverse discrimination.

..and Article 33 (d) elaborates

> (d) The goals of employment equity are to create a workforce which, at all levels, is representative of the diverse population it serves; and to ensure that individuals are not denied employment, advancement or training opportunities within the public service for reasons unrelated to ability to do the job.

In my case a work environment that is free from discrimination where all employees are treated with respect and dignity was denied.

I contend that the decision by the Arbitrator was based, at least in part, on technical issues and that an effort should have been made to explore issues more fully. By referring to

writing to the Deputy Minister as another channel, the Arbitrator suggests that an error in procedure was made. The Labour Relations Code, Section 156 states that Technicalities not invalidate proceedings.

> "A proceeding under this Code or a collective agreement must not be considered invalid because of a defect in form, a technical irregularity or an error of procedure that does not result in a denial of natural justice, and the board, arbitration board, industrial inquiry commission, special officer, court or other tribunal may relieve against those defects, irregularities or errors of procedure on just and reasonable terms".

Article 8.12 Technical Objections to Grievances states…

> "It is the intent of both Parties to this Agreement that no grievance shall be defeated merely because of a technical error other than time limitations in processing the grievance through the grievance procedure. To this end an arbitration board shall have the power to allow all necessary amendments to the grievance and the power to waive formal procedural irregularities in the processing of a grievance in order to determine the real matter in dispute and to render a decision according to equitable principles and the justice of the case."

The Arbitrator avoided addressing the technical procedural issues that had been raised by the Employer and the BCGEU regarding the time lines and the fumbling of the grievance form. This information was presented to the Arbitrator in the Union Book of Documents (tab 9, 11). The fact that the grievance form was not sent to me until July 11, 2006, was not presented to the Arbitrator at the preliminary hearing. Immediately after the hearing I complained about this and other important information were not presented to the Arbitrator. Nonetheless, he could have and should have examined carefully what was going on with the handling of the paper work during the time period May to September 2006, before making a decision about which channel he thought I was in and might "deny a grievor of a fair hearing". The Arbitrator should also have explored issues around which procedures (channels?) were being pursued. Since I (the grievor) was led to believe that Arbitration would not be allowed by the Employer and the BCGEU my letters to the Deputy Minister cannot justifiably be considered a pursuit of another channel. Informing the Deputy Minister is the procedure described in the Master Agreement.

The Arbitrator should have taken into account relevant considerations and extenuating circumstances, such as the fact that I had requested mediation because of the yelling and hostility directed towards me when the projects I initiated proved to be successful.

Also, at the preliminary hearing, I was not asked questions nor did I have an opportunity

to speak which was contrary to what I was told I would have a chance to do. On October 1, 2007, the Arbitrator ruled that by writing to the Deputy Minister in May 2006, I was pursuing the "grievance through another channel" and therefore, I could not have my side heard by an Arbitrator. This is contrary to principles of procedural fairness and natural justice (Labour Relations Code).

Also, the Employer did not fulfill their side of the Master Agreement. I was phoned at home by the Director (March 2006), and the Deputy Minister wrote to me (September 2006), both in contravention of Article 8.3 (a). As well, the Employer did not respond to my request to dispute the dismissal in contravention of 1.9 (e).

Natural Justice

At the preliminary hearing, the Employer's representative stated that the manager accused me of poor work performance and also accused me of making two of my co-workers feel unsafe. My EPDP shows that I was successfully meeting and exceeding expectations and that I set high standards for my work. The two co-workers who had been yelling at me made these accusations after I requested team effectiveness training courses and mediation efforts. Since these excuses were used to justify my suspensions and dismissal, the Employer must provide proof, and mediation should have been considered.

Article 10.1 Burden of Proof

In all cases of discipline, the burden of proof of just cause shall rest with the Employer.

I would like to exercise my right under the law to face my accusers and to have a fair hearing where I can have my side heard.

Board Hearing

I would like the opportunity to have my side heard by an Arbitrator rather than pursue any other channel as soon as possible. Essentially, this decision is about how to create positive work environments and accept people who provide creative solutions, are innovative, and results oriented.