

**BRITISH COLUMBIA
LABOUR RELATIONS BOARD**

MULTIPLE FAX TRANSMITTAL SHEET

Re: Health Sciences Association of British Columbia -and-
Vancouver Island Health Authority (Royal Jubilee Hospital) -
and- British Columbia Nurses' Union
(Sections 6, 7 and 9 - Case No. 67860/14)
(Section 133(5) - Case No. 67924/15)

DATE: October 6, 2015

SENDER: LABOUR RELATIONS BOARD

OPERATOR SENDING: Susan Noble, Senior Executive Assistant to Bruce R. Wilkins,
Associate Chair, Adjudication

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**To: HSA
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Attention: Bruce Laughton, Q.C.**

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NUMBER OF PAGES: 8 (Including this page)

SPECIAL INSTRUCTIONS:

Decision BCLRB No. B201/2015 dated October 6, 2015, is attached. Hard copies will follow by mail.

****NOTE: FACSIMILE OPERATOR, PLEASE CONTACT THE ABOVE INTENDED RECEIVER AS SOON AS POSSIBLE. THANK-YOU**

**BRITISH COLUMBIA
LABOUR RELATIONS BOARD**

October 6, 2015

To Interested Parties

Dear Sirs/Mesdames:

Re: Health Sciences Association of British Columbia -and- Vancouver
Island Health Authority (Royal Jubilee Hospital) -and- British
Columbia Nurses' Union
(Sections 6, 7 and 9 - Case No. 67860/14)
(Section 133(5) - Case No. 67925/14)

Enclosed is a copy of the Board's decision (BCLRB No. B201/2015) rendered in connection with the above-noted matter.

Yours truly,

LABOUR RELATIONS BOARD



Susan Noble, Senior Executive Assistant to
Bruce R. Wilkins, Associate Chair, Adjudication

Enclosure(s)

Interested Parties:

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BCLRB No. B201/2015

BRITISH COLUMBIA LABOUR RELATIONS BOARD

VANCOUVER ISLAND HEALTH AUTHORITY
(ROYAL JUBILEE HOSPITAL)

(the "Employer" or "VIHA")

-and-

HEALTH SCIENCES ASSOCIATION OF BRITISH
COLUMBIA

("HSA")

-and-

BRITISH COLUMBIA NURSES' UNION

("BCNU")

PANEL: Bruce R. Wilkins, Associate Chair,
Adjudication

APPEARANCES: Sari A. Wiens, for the Employer
Stephen Hutchison, for HSA
Bruce Laughton, Q.C., for BCNU

CASE NOS.: 67860 and 67925

DATES OF HEARING: August 17 and 24, 2015

DATE OF DECISION: October 6, 2015

DECISION OF THE BOARD

I. NATURE OF THE APPLICATION

1 HSA applies under Section 7 of the *Labour Relations Code* (the "Code") claiming BCNU was attempting to persuade HSA members working in the Psychiatric Emergency Services ("PES") at Royal Jubilee Hospital to join the BCNU while they were working. HSA also alleged the BCNU used intimidation and coercion prohibited under Section 9 of the Code.

II. FACTS

2 Entry to the PES is permitted for authorized swipe card holders or by "buzzing" people in through locked double doors. An intercom and a camera are used to determine who is seeking entry to the PES and why they wish to access the unit before they are allowed entry. Such people can include the police and family members of patients. The double doors into the unit open up next to two seclusion rooms where patients can be secluded. Patients have been known in the past to escape through the door from the seclusion rooms when people have entered the unit through the double doors.

3 Patients using the PES are typically experiencing acute mental health issues. Patients can be catatonic, violent, intoxicated or very depressed. Some patients are brought by the police because they are a danger to themselves or others. Patients can have both physical and emotional outbursts and can be hostile and violent. RPNs are not always in a position to know how patients will react.

4 At the centre of the PES is a semi-circular desk which is protected by a 5 foot tall clear barrier. This is referred to colloquially as the "Helm". Nurses at the Helm can observe their patients in the PES. Behind the Helm is a team room which is for employees only.

5 Micheal Sperka ("Sperka") is a Registered Psychiatric Nurse ("RPN") who works in the PES at Royal Jubilee Hospital. On November 8, 2014 he was working the day shift from 7:00 a.m. until 7:00 p.m. Sperka was working on a patient assessment in the Helm when he heard the locked doors open and became aware of a person entering the unit. There were patients in the PES that Sperka and his colleague, who was with him at the Helm at the time, were responsible for. When the person came into view he recognized her as Lynnda Smith ("Smith"), a person who had acted as a BCNU steward in the past. Sperka believes Smith used her swipe card to enter the unit. Smith engaged Sperka and his colleague in a conversation. Smith introduced herself as a BCNU nurse and asked the pair if they were both RPNs. They confirmed that they were. Smith said she wanted the two to join BCNU and that there was a short time offer and a limited opportunity to join. Smith said that this day was very important.

6 Sperka simply said "no" and the other RPN said she was retiring and had no plans to join BCNU. Smith then proceeded to tell the two some of the benefits of joining BCNU and tried to encourage them to join. Smith repeated that there was a limited time offer to join now. Sperka tried to excuse himself at this point to get back to work. Sperka was aware the PES was short staffed and the conversation was taking him away from his patients.

7 Smith continued to talk to the pair, reinforcing how important it was that the two needed to consider joining BCNU. Smith then left the pair and went to the team room. She left a water bottle on the table in the team room which had "Stronger Together" written on it accompanied by a BCNU logo. There were two BCNU business cards taped to the water bottle with the name Lynnda Smith on one and Louise Laroche on the other. A note was also appended to the water bottle which said "HSA members call Lynnda or Louise for more info". Smith left the PES after her visit to the team room. Sperka took photographs of the bottle which were entered into evidence in the hearing.

8 Cross-examination of Sperka established that the actual time of the entire transaction involving Smith was five minutes with the conversation being one or two minutes. Smith did not ask either RPN present to sign a BCNU membership card, nor did she leave any leaflets or literature. Sperka had dealings with Smith previously in her capacity as a shop steward acting for BCNU. Sperka had not seen Smith in the PES on a regular basis but was familiar with her. The PES is not the only part of the hospital where a person needs an authorized swipe card to enter; other locations of the hospital also require this.

9 Both Registered Nurses ("RNs") and RPNs work in the PES but on the day in question the RN working on the unit had called in sick.

III. POSITIONS OF THE PARTIES

I. HSA

10 HSA says the evidence demonstrates that a representative of BCNU entered the PES without notice or invitation and tried to persuade RPNs who were working at the time to join BCNU. It says there is no evidence to the contrary.

11 HSA says the persuasive activity during work time put patients and the RPNs at risk and distracted RPNs from their work. It says patients in the PES are at their most acute. It says the evidence establishes that Sperka was distracted while Smith attempted to persuade him. It says organizing during work time on psychiatric units is an aggravated set of facts: *Interior Health Authority (Royal Inland Hospital)*, BCLRB No. B68/2015 ("*Royal Inland Hospital*").

12 HSA asks for a declaration that Section 7 of the Code has been violated by BCNU and for a cease and desist order. HSA says the raiding period is coming again and there is no indication that persuasive activity contrary to the Code will stop. It says that persuasive activity is not limited to the raiding period alone. It says the remedy of a cease and desist order is therefore justified.

13 HSA had applied under Section 9 of the Code but did not call any evidence with respect to that allegation. HSA invited the Board to dismiss the application.

II. BCNU

14 BCNU says the critical element of persuasion is not established by the evidence in the case. It says not every discussion about unions in the workplace is of a persuasive nature. It relies on the case *Lansdowne City Dodge Ltd.*, BCLRB No. B165/97 which says as follows:

... There are numerous work environments where employees carry on casual conversations about topics unrelated to work without disruption to the work place. It would be naive to think that during an organizing drive the topic of unionization is not discussed in such casual conversation. Some people may argue that the topic of unionization can be discussed by employees during working hours without violating Section 7(1) because persuasion is not involved. There may be a fine line between casual conversation and persuasion. (para. 62)

15 BCNU says the conversation did not cross the line into persuasive activity prohibited by the Code. BCNU argues there was no evidence that work in the PES was interfered with and Sperka had the time to go back and take photos of the water bottle. It says there was no disruption, no one was asked to sign any cards, nor were any cards passed out.

16 BCNU further says the matter is moot and academic. It argues there is no longer an adversarial context because there was only one minimal conversation; nothing has happened before or since; and, the raiding period is long since over. It argues the matter should be determined to be moot because of a concern for conserving scarce judicial resources: *Sun-Rype Products Ltd.*, BCLRB No. B70/2008. It argues this matter is rather like one instance of illegal picketing which never occurred again.

17 BCNU says there are both RNs and RPNs working in the PES and that Smith is a steward with the responsibility for matters under the Nurses' collective agreement. It says Smith had a swipe card to enter the PES and was not blocked from access there. She had dealt with Sperka in the past and was not a stranger to him.

18 BCNU says there is no violation, but in the alternative, if a violation of Section 7
is found, the conduct was very minimal and nothing has happened before or since. It
says even if the Board makes a declaration, a cease and desist order is not called for.

19 III. The Employer

The Employer attended the hearing with counsel but made no submissions.

20 IV. ANALYSIS AND DECISION

Section 7 of the Code says the following:

7 (1) Except with the employer's consent, a trade union or person acting on its behalf must not attempt, at the employer's place of employment during working hours, to persuade an employee of the employer to join or not join a trade union.

21 Sperka was the only witness called in the hearing. BCNU did not call any witnesses of its own in the proceedings.

22 Sperka's evidence of Smith's actions and of what Smith said leads me to find it is more likely than not that Smith entered the PES with the intention of persuading the HSA RPNs to become members of BCNU. Smith approached Sperka and his colleague and asked if they were RPNs at the beginning of the conversation. When Smith confirmed the two were RPNs, she tried to impress upon them the benefits of joining BCNU and that there was a time limited opportunity to do so. When Smith referred to a "limited time opportunity" I find she was speaking with awareness that the Code limits Section 19 applications to the seventh and eight months of the collective agreement. The BCNU water bottle she left in the team room had a message to HSA members attached to it to contact her or another BCNU steward.

23 The evidence establishes that Smith was attempting to persuade the two PRNs to join BCNU while Sperka and his colleague were working and responsible for patients who were present in the unit at the time in question. There was no evidence that Smith was present in the PES for any other purpose. The business card Smith left in the team room on the bottle identified her as a representative of BCNU. There was no dispute that Smith was acting on behalf of BCNU, and all of the evidence leads me to the conclusion that she was, in fact, acting on behalf of BCNU. I find that Smith, acting on behalf of the BCNU, has breached Section 7 of the Code.

24 While the conversation in which Smith tried to persuade Sperka and his colleague to join BCNU was short, the context of the workplace is one I must take into consideration. The evidence established that patients in the PES are there because they are suffering from acute mental health issues. Some patients are brought to the PES by the police because they are a danger to themselves or others. Sperka's

evidence established that RPNs are not always able to predict how patients will act and that emotional and physical outbursts are part of what RPNs must be ready to deal with. I find that Smith's actions took Sperka away from his patients and distracted Sperka and his colleague from their work.

25 While the facts in this case are not as aggravated as those in the *Royal Inland Hospital* decision, the same concerns apply. RPNs work in an environment in which both they and the patients they serve are brought into unacceptable risk when they are distracted from their work by persuasive conduct which is prohibited by Section 7 of the Code.

26 The labour relations context before me is one of a province-wide collective agreement which covers nurses, including RPNs. BCNU has the right to attempt to supplant HSA to represent RPNs under Section 19 of the Code during the seventh and eighth months in each year of the Nurses' Bargaining Association's collective agreement. The Board has had before it numerous cases arising between BCNU and HSA in various health authorities across the province during the 2014 raid period. All of these cases involved efforts by BCNU to represent RPNs currently represented by HSA under Section 19 of the Code. In one of those cases, *Royal Inland Hospital*, BCNU was found to be engaged in conduct contrary to Section 7 of the Code. This case, like that of *Royal Inland Hospital*, involves BCNU violating Section 7 of the Code in their organizing efforts under Section 19 of the Code. I find the matter is not moot, but is of present and ongoing concern. Given the violation of Section 7 of the Code in this case, and given the previous violation by the same respondent in *Royal Inland Hospital*, I find that both a declaration and a cease and desist order are called for.

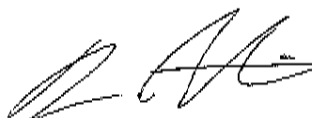
V. DECLARATION AND ORDER

27 I declare that Lynnda Smith, acting on behalf of the BCNU, has breached Section 7 of the Code.

28 I order Lynnda Smith and BCNU to cease and desist committing further breaches of Section 7 of the Code.

29 HSA's application under Section 9 of the Code is dismissed.

LABOUR RELATIONS BOARD



BRUCE R. WILKINS
ASSOCIATE CHAIR, ADJUDICATION