

Summary of *Hubner et al. v. United Food and Commercial Workers, Local 247*

Trade unions are required to make available annual audited financial statements to each of their members pursuant to Section 151 of the British Columbia *Labour Relations Code*. This requirement is based in part on principles of accountability and transparency. In theory this should contribute to the democratic functioning of a union.

The language of the legislation is clear:

- 151** (1) A trade union and an employers' organization must make available without charge to each of its members, before June 1 in each year, a copy of the audited financial statement of its affairs to the end of the last fiscal year, signed by its president and treasurer or corresponding principal officers.
- (2) The financial statement must contain information in sufficient detail to disclose accurately the financial condition and operation of the trade union or employers' organization for its preceding fiscal year.
- (3) The board, on the complaint of a member that the trade union or employers' organization has failed to comply with subsection (1), may order the trade union or employers' organization to file with the board, in the time set out in the order, a statement in a form and with particulars the board determines.
- (4) The board may order a trade union or employers' organization to furnish a copy of a statement filed under subsection (3) to the members of the trade union or employers' organization that the board in its discretion directs, and the trade union or employers' organization must comply with the order.

However, some unions do not abide by this statutory requirement to provide information. As demonstrated below, some unions repeatedly obstruct the rights of their members and outright refuse to provide this basic financial information.

In 2007, members of the United Food and Commercial Workers Union, Local 247, requested that their union produce copies of its financial statements for the years 2001 to 2006. The employees had become concerned about the manner in which the UFCW was handling its finances. When the UFCW declined, the bargaining unit members applied to the BC Labour Relations Board for an order compelling the Union to do so (see [BCLRB Decision No. B231/2007](#)).

The UFCW claimed it was only required to provide financial statements for the previous fiscal year. It submitted that it is only obligated to provide its members with historical documentation where its members provide good reasons. The Board disagreed, noting “the purpose of Section

151 is to provide union members a degree of transparency with respect to their union's finances", and that "... a union should be prepared to make available to its members its audited financial statements."

In addition, the UFCW objected to providing the financial statements to some of its members on account that it believed that they "... have been involved in several recent attempts to disrupt [UFCW] meetings or to interfere with the functioning of [UFCW] representatives and the [UFCW] generally." The UFCW also claimed that it was "... concerned the named Complainants may be interested in utilizing or disclosing the [UFCW's] financial information so as to compromise the [UFCW's] interests." Again, the Board disagreed with the UFCW and upheld the right of bargaining unit members to access their union's financial statements, stating the *Code* "does not restrict the purposes for which a member may request the Union's Financial Statements."

Consequently, the Board ordered production of the UFCW's historical financial statements.

Unsatisfied with this result the UFCW unsuccessfully applied to the Board for leave and reconsideration of the original panel's decision (see [BCLRB Decision No. B249/2007](#)). Amongst other things, the UFCW claimed that its members did not provide sufficient reason requiring it to produce its historical financial statements. Once more, the Board asserted that unions have an obligation to make available annual financial statements to their members. The Board was clear that the purpose of the disclosure requirement is built on the simple principal that "members that fund a union have the right to know how funds are used."

Despite this second confirmation that it was required to disclose its financial statements, the UFCW refused to do so without conditions. As a result, members of the UFCW brought an action in the British Columbia Supreme Court seeking an order that the Union be found in contempt for wilfully disobeying an order of the Board (see [2008 BCSC 951](#)). In an effort to protect its interests, the UFCW claimed it would only provide the financial statements if those who viewed them signed a confidentiality agreement. Although the Board's order for production did not contain any conditions regarding the release of the documents, the Court was not prepared to find the UFCW in contempt without first referring the matter back to the Board to clarify whether the order precluded the conditional release of the documents.

Upon return, the Board reiterated that its order did not include any conditions. The Board declared that the UFCW ought to be aware that it is required to provide its financial statements to its members and cannot refuse to do so because the members refuse to sign a confidentiality agreement (see [BCLRB Decision No. B158/2008](#)). Although at this point the UFCW – after much legal wrangling, years of delay and multiple applications before the Board and Supreme Court – begrudgingly provided its members with the financial statements to which they were legally entitled.

One of the more frustrating outcomes of this entire exercise, from the perspective of a union member, was that the UFCW later admitted that the audited financial statements for 2002-2007 did not even exist until late 2007 and early 2008 (see [2009 BCSC 1380](#)).

BRITISH COLUMBIA LABOUR RELATIONS BOARD

CERTAIN EMPLOYEES

(the "Employees")

-and-

UNITED FOOD AND COMMERCIAL WORKERS UNION,
LOCAL 247

(the "Union")

PANEL: Beverley J. Burns, Vice-Chair

APPEARANCES: Roger Hubner and Francis Donovan, for
Certain Employees
Anthony Glavin, for the Union

CASE NO.: 56683

DATE OF DECISION: October 5, 2007

DECISION OF THE BOARD

I. INTRODUCTION

1 The Employees, represented by Roger Hubner ("Hubner") and Francis Donovan ("Donovan"), apply under Section 151 of the *Labour Relations Code* (the "Code") for the Union's audited financial statements (the "Financial Statements") for the years 2001 to 2006 and for the Financial Statements to be filed with the Board.

2 The Employees and the Union each filed written submissions with respect to this matter. I find that the facts material to my decision are not in dispute and therefore I am able to adjudicate this matter without the need for an oral hearing.

II. BACKGROUND

3 This Union local resulted from a merger of the United Food and Commercial Workers Union Local Nos. 2000 and 777, agreed to September 1, 2001, but effective January 1, 2002.

4 By way of a form letter dated July 5, 2007, a number of the Employees have requested the Board order the Union to produce copies of its Financial Statements for the years 2001 to 2006. In addition, the Employees seek an order compelling the Union to file such Financial Statements with the Board.

5 The Union is prepared to provide the Financial Statements for 2006 to its members, but is not prepared to provide Financial Statements for prior years. Nor does it wish to file the Financial Statements with the Board.

III. POSITIONS OF THE PARTIES

6 The Employees allege that the Union has failed to provide copies of the Financial Statements for this period to its members, as required by Section 151 of the Code. They state that this failure, as well as certain comments made by Union officials, has caused the members to be concerned about the manner in which the Union is handling its finances.

7 As a result, the Employees wish to examine the Financial Statements. They argue they are entitled, pursuant to Section 151(1) of the Code, to the Financial Statements for 2006 and submit that the historical Financial Statements are also required to "...make sense of the current one."

8 In an effort to understand the documents, the Employees plan to have a financial expert review them and provide an analysis of the Financial Statements.

9 The Union submits that it is only required to provide Financial Statements for the previous fiscal year, 2006, which it is willing to do. It also submits that these documents contain confidential and sensitive financial information and when it produces the documents, it will seek an agreement of confidentiality from the various members who receive them.

10 The Union submits it is not required by Section 151 to disclose anything further than the statements for 2006. It acknowledges that the Board has the discretion to order production of historical Financial Statements. However, the Union claims that the Employees have provided no reason for the Board to exercise its discretion and order the production of historical Financial Statements.

11 The Union also objects to providing the Financial Statements to certain Employees. In particular, the Union does not wish to provide the information to Hubner and Donovan as it alleges they "...have been involved in several recent attempts to disrupt Union meetings or to interfere with the functioning of Union representatives and the Union generally." The Union also states that it is "...concerned the named Complainants may be interested in utilizing or disclosing the Union's financial information so as to compromise the Union's interests."

12 In addition, the Union argues the Board cannot order it to provide any information to Employees for the years in which they were not Union members.

13 IV. ANALYSIS AND DECISION

Section 151 of the Code states:

- 151 (1) A trade union and an employers' organization must make available without charge to each of its members, before June 1 in each year, a copy of the audited financial statement of its affairs to the end of the last fiscal year, signed by its president and treasurer or corresponding principal officers.
- (2) The financial statement must contain information in sufficient detail to disclose accurately the financial condition and operation of the trade union or employers' organization for its preceding fiscal year.
- (3) The board, on the complaint of a member that the trade union or employers' organization has failed to comply with subsection (1), may order the trade union or employers' organization to file with the board, in the time set out in the order, a statement in a form and with particulars the board determines.

- (4) The board may order a trade union or employers' organization to furnish a copy of a statement filed under subsection (3) to the members of the trade union or employers' organization that the board in its discretion directs, and the trade union or employers' organization must comply with the order.

14 In *Bob Winder*, BCLRB No. B456/97, the Board considered the issue of its jurisdiction to order production of historical financial information. It stated at paragraph 8:

The practice of the Board has been to require unions to forward historical financial information to members upon request. A review of various recent cases reveals the Board has ordered disclosure of audited statements for more than the previous fiscal year: *Paul Klassen*, BCLRB No. B227/97; *Michael Bryck*, BCLRB No. B170/96; and *Deanne Henry et al*, BCLRB No. B48/95.

15 Further, at paragraph 11, the Board stated:

A plain reading of these two subsections of the provision [151(1) and (2)] indicates that the information which must be provided is that pertaining to the *last fiscal year*. This information must be provided in *each year*. As noted in *Deanne Henry*, Section 151(1) of the Code appears to clothe the Board with jurisdiction to require certain past financial statements. (emphasis in original)

16 Clearly, the Board has determined it has the jurisdiction to require production of past financial information pursuant to Section 151 of the Code. Even if that were not the case, the Board's broad remedial powers in Section 133 of the Code would also allow it to order the production of documents, if there has been a breach of a provision of the Code that required them to be provided.

17 The Union argues that the Employees have given no reasons in their initial request for the production of historical Financial Statements. However, in their reply submission, the Employees state that they are concerned about the Union's finances, due to comments made by Union officials and the Union's reluctance to disclose historical Financial Statements. Furthermore, the Employees state that they wish to have the past information to give some context to the current Financial Statements, to which the parties agree the Employees are entitled.

18 The Union responded to the Employees' reply submission and stated that no reasons had been given for a broader disclosure and later that the reason given by the Employees was an empty statement. The Union finally submitted "...there are simply no reasons given by the Complainants why the Union should provide them with these documents."

19 In this case, the parties have provided information in a slightly unusual manner. However, I find it is appropriate to consider the information in all the submissions provided and I have done so.

20 The purpose of Section 151 is to provide union members a degree of transparency with respect to their union's finances. In the normal course, a union should be prepared to make available to its members its audited financial statements. In certain cases, the Board may not wish to exercise its discretion to order production of historical financial statements. For example, if a union member were seeking decades worth of historical documents, it would be open to the union to argue that the request was overly broad and too onerous for the union.

21 In this case, based on the facts and arguments before me, I find that the reasons submitted by the Employees are sufficient to exercise my discretion and order that the historical Financial Statements be produced. I do not find it appropriate to order the disclosure of a Financial Statement from 2001, as the Union's local was not in existence until January 1, 2002. I therefore, order the Union make available to Employees, upon request, Financial Statements for the years 2002 to 2006, subject to the conditions below.

22 The Union argues that it should not be required to give its Financial Statements to Employees for years they were not members of the Union. Section 151(1) of the Code entitles a union "member" to the previous year's audited financial statements. The Union cites the case of *Michael Bryck*, BCLRB No. B170/96 ("*Bryck*") where the Board stated: "The person is not entitled to financial information for periods of time in which they are not a member."

23 Given the wording of Section 151(1) and the statement in *Bryck*, I am restricting my above order to the extent that an Employee must have been a Union member by June 1 to receive the previous fiscal year's Financial Statement.

24 The Union also argues that some Employees seek to use the confidential Financial Statements to "...compromise the Union's interests." The Code does not restrict the purposes for which a member may request the Union's Financial Statements. I therefore, dismiss the Union's argument in this respect.

25 With respect to the Employees' request for an order that the Financial Statements be filed with the Board, the Union argues that the Employees "...have not provided any reason why the Board should exercise its discretion..." on this issue. I find that the Employees have not advanced an argument with respect to why I should exercise my discretion and order the filing of the Financial Statements. I decline to do so.

V. CONCLUSION

26

The Employees' application is granted in part. The Union is ordered to make its Financial Statements for the years 2002 to 2006 available to the individual Employees, upon the request of any Employee who was a member of the Union at the appropriate time.

LABOUR RELATIONS BOARD

"BEVERLEY J. BURNS"

BEVERLEY J. BURNS
VICE-CHAIR

BRITISH COLUMBIA LABOUR RELATIONS BOARD

ROGER HUBNER AND FRANCIS DONOVAN ET AL.

(the "Certain Employees")

-and-

UNITED FOOD AND COMMERCIAL WORKERS UNION,
LOCAL 247

(the "Union")

PANEL: Michael Fleming, Associate Chair
APPEARANCES: Anthony Glavin, for the Union
CASE NO.: 57124
DATE OF DECISION: November 9, 2007

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 The Union applies under Section 141 of the *Labour Relations Code* (the “Code”) for leave and reconsideration of BCLRB No. B231/2007 (the “Original Decision”), which partially granted the Certain Employees’ application under Section 151 of the Code for an order that the Union provide its audited financial statements (“Financial Statements”) for the years 2001 to 2006 to the Certain Employees.

2 In this application, the Union submits the original panel denied it a fair hearing, acted inconsistently with Code principles, and misinterpreted Section 151 in requiring that it make available its Financial Statements 2002-2006.

3 The Union seeks a stay of the Original Decision pending the issuance of a decision on its Section 141 application. As the application for leave and reconsideration is being addressed expeditiously, it is unnecessary to address the application for a stay.

II. THE ORIGINAL DECISION

4 The Original Decision notes that the Certain Employees requested an order that the Union produce copies of its Financial Statements for the years 2001 to 2006 (para. 4). The Union was prepared to provide Financial Statements for 2006 to its members, but was not prepared to provide Financial Statements for prior years (para. 5).

5 In particular, the Union submitted the Certain Employees had “provided no reason for the Board to exercise its discretion and order the production of historical financial statements” (para. 10). It objected to providing the Financial Statements to the Certain Employees because it alleged they had “been involved in several recent attempts to disrupt Union meetings or to interfere with the functioning of Union representatives and the Union generally” and because the Union is “concerned the named Complainants may be interested in utilizing or disclosing the Union’s financial information so as to compromise the Union’s interests” (para. 11).

6 In addition, the Union argued the Board cannot order it to provide any information to the Certain Employees for years in which they were not Union members (para. 12).

7 The Original Decision begins its analysis by citing passages from *Bob Winder*, BCLRB No. B456/97 (“*Winder*”) to the effect that the Board has a discretion to order disclosure of previous years’ Financial Statements (paras. 14-15). With respect to the Union’s argument that the Certain Employees had provided no reason for the Board to exercise this discretion, the Original Decision notes that, “in their reply submission, the Employees state that they are concerned about the Union’s finances, due to comments

made by Union officials and the Union's reluctance to disclose historical Financial Statements" (para. 17). The Certain Employees also stated that they wished to have the past information to give some context to the current (2006) Financial Statements.

8 The Original Decision notes that the Union filed a response to the Certain Employees' reply in which the Union continued to submit that the Certain Employees had not given reason for the Board to exercise its discretion to order production of historical Financial Statements (para. 18). However, the original panel found that the reasons submitted by the Certain Employees were sufficient to order the historical Financial Statements for 2002 to 2005 be produced (para. 21).

9 In light of the Union's argument that Union members are only entitled to financial information for periods of time in which they are a member of the Union, the original panel decided that "an Employee must have been a Union member by June 1 to receive the previous fiscal year's Financial Statement" (para. 23). The Original Decision ordered production of the Union's Financial Statements for 2002-2006.

III. RECONSIDERATION APPLICATION

10 The Union submits the Original Decision is inconsistent with Code principles because it ordered the Union to disclose the historical Financial Statements in the absence of any evidentiary foundation for exercising that discretion. It submits that the reasons for seeking disclosure given by the Certain Employees in their final reply submission do not provide an adequate basis for ordering disclosure, noting, for example, that the Certain Employees gave no particulars of the comments made by Union officials which gave them concern.

11 In addition, the Union objects to the original panel relying on reasons given in the Certain Employees' final reply, noting that, although the Union submitted an unsolicited further response to that reply, that submission by the Union was expressly made to reserve the Union's right to respond fully to the many disputed statements that were made by the Complainants in reply. The Union submits it was denied a fair hearing when the original panel relied on the reasons given in the Certain Employees' final reply without giving the Union a further opportunity to respond fully to that submission.

12 The Union also submits the original panel erred in finding that a member could be entitled to receive Financial Statements for a given year merely by establishing that he or she was a member by June 1 of the following year. The Union submits that an individual is only entitled to Financial Statements for years when he or she was a member of the Union.

IV. ANALYSIS AND DECISION

13 An application under Section 141 must meet the Board's established test before
leave and reconsideration will be granted. An applicant must demonstrate "a good
arguable case of sufficient merit that it may succeed on one of the established grounds
for reconsideration": *Brinco Coal Mining Corporation*, BCLRB No. B74/93 (Leave for
Reconsideration of BCLRB No. B6/93). A *prima facie* case will not suffice; an applicant
must raise a serious question as to the correctness of the original decision.

14 For reasons which follow, I find the Union's application does not raise a serious
question as to whether the Original Decision to order disclosure is consistent with Code
principles. With respect to the Union's arguments of a denial of a fair hearing, and a
misinterpretation of Section 151 with respect to when an individual must be a union
member in order to be entitled to receive a union's Financial Statements, leave is
granted on those issues, which are dealt with below.

A. Challenge to the Exercise of Discretion

15 The Union does not challenge the original panel's finding that the Board has the
discretion to order disclosure of historical financial statements. The Board has held it
may order such disclosure in appropriate circumstances: see the passages from
Winder, quoted at paragraphs 14-15 of the Original Decision.

16 The Board further stated in *Winder* that Section 151 "is not to be applied in an
overly narrow legalistic manner, but the interests of the parties are to be balanced in
deciding when the Board will exercise its discretion in ordering greater disclosure than
the minimum requirements" (para. 12). In *Winder*, the panel declined to order previous
years' financial statements because *Winder* did not advance any argument regarding
why the Board should exercise its discretion to do so (para. 15).

17 In this case, the Original Decision notes the Certain Employees argued that they
needed the previous years' Financial Statements in order to "make sense of the current
one" (para. 7). They also argued that the Union's failure to file previous years'
statements with the Board as required by Section 151, as well as certain comments
made by Union officials, caused the members to be concerned about the manner in
which the Union is dealing with its finances (para. 6).

18 The Original Decision notes that the Union argued that it was concerned that the
Certain Employees might be interested in utilizing or disclosing the Union's financial
information so as to compromise the Union's interests, and the Union claimed that the
Certain Employees had attempted to disrupt Union meetings and to interfere with the
functioning of the Union (para. 11). The Original Decision also notes that the Union
submitted that there were "no reasons" given by the Certain Employees why the Union
should provide them with the previous years' Financial Statements (para. 18).

19 The original panel concluded that, based on the facts and arguments before it, “the reasons submitted by the Certain Employees are sufficient to exercise my discretion and order that the historical Financial Statements be produced” (para. 21). It ordered the Union to make available to the Certain Employees, upon request, Financial Statements for the years 2002 to 2006, declining to order production of the 2001 Financial Statements as the Union’s local was not in existence until January 1, 2002.

20 On reconsideration, the Union takes issue with the original panel’s finding that the reasons given by the Certain Employees were sufficient for it to exercise its discretion to order disclosure. The Union submits that the argument that the past Financial Statements were needed to provide context or make sense of the 2006 Financial Statements was simply a vague assertion. It further submits that the mere facts that the Union was reluctant to disclose its past Financial Statements or that the Certain Employees had “concerns” about the Union’s finances should not have been sufficient. The Union notes the Certain Employees provided no particulars with respect to the comments by Union officials that were said to have given rise to the Certain Employees’ concerns.

21 The Union submits that on reconsideration, the Board should find the original panel erred and that there was no evidentiary (or logical) basis on which to exercise its discretion to order provision of the Financial Statements. In the alternative, the Union submits that the Certain Employees should be directed to fully particularize the facts underlying their assertion and that the Union be provided an opportunity to reply to those particularized assertions.

22 I find there is nothing inconsistent with Section 151 or Code principles in the original panel’s exercise of discretion in this case for the following reasons.

23 In *Michael Bryck*, BCLRB No. B170/96 (“*Bryck*”), the Board articulated the purpose of Section 151 in the following manner:

The purpose of Section 151 is to ensure that members of trade unions (or employers’ organizations) receive financial information so that the members are aware of the “financial condition and operation” of the entity. This freedom of information is not a surprising requirement, as the organization is funded by its constituents who have a right to know how funds are utilized. (para. 17)

24 In *Stephen Tohill*, BCLRB No. B142/2000 (“*Tohill*”), the Board further stated:

The mandatory obligation imposed on unions under Section 151 shows the importance accorded to the financial accountability of unions. Section 151 reflects a legislative policy of ensuring that a union remains responsible to the membership for the collection and expenditure of union funds: *Harbour Electric Ltd.*, BCLRB No. B421/99. Members that fund an organization have the right to

know how funds are used. The goal of regulation of financial statements is the encouragement of Certain Employees to take part in trade union affairs; without that information, the goal of participatory democracy cannot be met. (para. 34)

In my view, Section 151 is also based in part on principles of accountability and transparency, both of which contribute to the democratic functioning of a union.

25 As noted earlier, the Board has in previous decisions said that Section 151 should not be applied in an overly narrow legalistic manner. Rather the interests of the parties will be balanced in deciding when the Board should exercise its discretion to order greater disclosure than the minimum requirements under Section 151 (*Winder*, para. 12). This approach is consistent with, and informed by, the principles underlying Section 2(a) of the Code, which provides that the Board is to exercise its powers and perform its duties under the Code in a manner that “recognizes the rights and obligations of Certain Employees, employers and trade unions under this Code”.

26 Under Section 151, unions have an obligation to make available annual financial statements to their members. The purpose for this statutory requirement is so that members, who pay dues to the union, can know how the union is utilizing those funds. Members that fund a union have the right to know how funds are used: *Tohill, supra*. Given this legislative purpose and scheme, unions generally can be expected to respond to reasonable requests for financial statements.

27 A request for previous years’ financial statements may be unreasonable where it requires the union to incur undue or unreasonable time and expense to fulfill. For example, in *Wayne Sikora*, BCLRB No. B477/2000 (“*Sikora*”), the applicant sought audited financial statements from the respondent union for the fiscal years 1988 through 1996. The union was prepared to provide statements for the years 1995 to 1999, but not for earlier years, as it did not have audited statements for those years. It submitted that it had obtained statements audited by a chartered accountant “for all those years in which it is reasonable to do so” (para. 20).

28 The panel in *Sikora* declined to order the union to prepare and produce audited financial statements for 1987 to 1994, noting that the union had provided the applicant with some internal financial statements for that period, and that the production of audited statements for those years would be costly to the union and would not provide the information the applicant was seeking (para. 24).

29 In the present case, the Union does not argue expense as a reason for its reluctance to provide its members with Financial Statements for the years 2002 to 2005. Nor has the Union suggested the request would be onerous to fulfill. Rather, it argues that it is simply concerned about the use its members might make of that information.

30 As noted in *Tohill, supra*, the goal of regulation of financial statements under Section 151 “is the encouragement of Certain Employees to take part in trade union affairs; without that information, the goal of participatory democracy cannot be met.”

31 I am satisfied that the Original Decision did not err in balancing the Union's
stated concerns against the Certain Employees and, in that exercise, determining to
order the disclosure of the four previous years of Financial Statements.

B. Denial of Fair Hearing

32 With respect to the Union's argument that the original panel denied it a fair
hearing because it relied on reasons given for the first time in the Certain Employees'
reply, I find there has been no unfairness to the Union in the circumstances. The Union
filed an unsolicited response to the reply, thereby negating the need for the original
panel to solicit such a response from the Union in order to be able to consider the new
information contained in the Certain Employees' reply submission.

33 The Union responded to the new information by arguing that it did not constitute
reasons for ordering disclosure. While the Union purported to reserve a "full
opportunity" to reply to the Certain Employees' submissions, I find that it had an
opportunity to make its submissions and was not entitled unilaterally to insist on a right
to make further submissions.

34 The Union argues that the Board should either reject the Certain Employees'
reasons for seeking disclosure because of their lack of particularization, or order that
the Certain Employees' concerns be particularized, give the Union an opportunity to
reply to those particulars, and be prepared to hold a hearing in the event of a dispute
over the particulars. I find this approach is not consistent with principles expressed or
implied in the Code.

35 Members who seek such information from their unions should not be required to
present detailed reasons for concern about their union's finances in order to justify such
a request. The issue is not whether the members have an objective basis for concern,
but rather whether the request for information is reasonable in its scope and would not
cause undue hardship for the union to fulfill. If it would not cause undue hardship for a
union to fulfill a member's request for past years' financial statements then the
information should be provided.

36 Section 151 sets out a statutory minimum in terms of financial information a
union is required to make available to its members. That is, it sets a floor, not a ceiling,
as to the level of disclosure union members can reasonably expect their unions to
provide them in terms of audited financial statements. The Original Decision is
consistent with this interpretation of Section 151 and therefore, I find, consistent with
Code principles.

C. Timing of Membership and Entitlement

37 The Union argues that the original panel erred in finding that an employee is
entitled to a given year's Financial Statement as long as they were a member of the

union by June 1 of the following year, when the statement becomes “due” under Section 151. The Union argues that the Board has held that individuals are only entitled to financial statements for years in which they were members of the union, relying on *Bryck, supra*.

38 In *Bryck*, the respondent union argued that the applicant was not entitled to receive financial statements from the union under Section 151 because at the time of his application he was no longer a member of the union. In rejecting this argument, the panel noted that “...if the Board were to apply a strict test as suggested by the Union, an individual could be denied financial information based on a technical argument over the individual’s status” (para. 18).

39 The panel further held that, given the purpose of Section 151, the approach advocated by the respondent union was “unreasonable” and “too restrictive” (para. 19). The panel held that it was reasonable that an individual “be entitled to the financial information under the requirements of Section 151 for the period of time that the person was a member of the organization, regardless of the person’s status at the time of the request”. (para. 19).

40 The panel in *Bryck* added:

The only exception would be if the request is untimely to the extent that the organization would suffer undue hardship or prejudice in the production of the necessary documents. The person is not entitled to financial information for periods of time in which they are not a member. (para. 19)

41 In the present case, the request was not untimely and the Union does not argue that it would suffer undue hardship or prejudice in the production of the 2002 to 2005 Financial Statements. It does argue that not all the Certain Employees were members of the Union during all of those years. It therefore submits that the Board has no jurisdiction to give certain of the statements to certain of the Certain Employees.

42 We find that the statement in *Bryck*, to the effect that a person is not entitled to financial information for periods of time in which they are not member, is a statement of policy, not jurisdiction. As a statement of policy, it is generally to be applied, but it may be departed from in appropriate circumstances.

43 Here, the Union does not say that there was any year in the 2002 to 2005 period for which none of the Certain Employees were members. The Certain Employees applied as a group, and were free to give each other financial statements that any one among them was entitled to receive.

44 Accordingly, even if generally an entitlement to receive financial statements arises from membership in the union during a given fiscal year (rather than membership by June 1 of the year following), in this case the Certain Employees as a group would nonetheless be entitled to the disclosure ordered by the original panel. At least one

member of the group was a member during each of the years for which disclosure was ordered.

45 Alternatively, even if disclosure is considered on an individual basis, I find it is not inconsistent with Code principles in the circumstances of this case that an individual may receive disclosure for a year in which he or she may not have happened to have been a member of the union. As I have endeavoured to indicate in this decision, recent historical financial statements is information which generally unions should be willing to share with their members, unless the request for disclosure is unreasonable in terms of its scope and therefore the expense that the union would incur in fulfilling it is undue.

V. CONCLUSION

46 For all of the above reasons, the application is denied.

LABOUR RELATIONS BOARD

“MICHAEL FLEMING”

MICHAEL FLEMING
ASSOCIATE CHAIR

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Hubner v. United Food and Commercial
Workers Union, Local 247,***
2008 BCSC 951

Date: 20080718
Docket: L080065
Registry: Vancouver

Between:

**Roger Hubner and Francis Donovan on their behalf,
and on behalf of Certain Employees**

Applicants

And

United Food and Commercial Workers Union, Local 247

Respondent

Before: The Honourable Madam Justice Humphries

Reasons for Judgment

Counsel for the applicants

M. Hunter, Q.C.

Counsel for the respondent

A. Glavin,
C. Whittome

Date and Place of Trial/Hearing:

July 11, 2008
Vancouver, B.C.

[1] The applicants, who are members of the respondent United Food and Commercial Workers Union, Local 237 (“the Union”) have registered an order from the Labour Relations Board (“the Board”) in this court pursuant to s. 135 of the **Labour Relations Code**. They seek an order pursuant to Rule 56 of the Supreme Court **Rules of Court** that the respondent Union be found in contempt for wilfully disobeying the order.

[2] The applicants’ position is simple. The Board ordered the Union to produce its financial statements to the applicants in its decision of October 5, 2007 and the Union has not done so. The order is clear; intent to disobey it is obvious from the fact that it has not been obeyed; the Union is in contempt. The applicants ask that the Union be given a short period to purge its contempt, after which remedy and costs should be spoken to.

[3] The Union’s position is more complex, and it is necessary to set out some of the history of the dispute in order to understand it. Basically, the Union says it has complied and is complying with the order, despite the fact that the applicants have not yet received the financial statements.

[4] The parties agree on the basic elements of contempt. An applicant for a finding of contempt must satisfy the court that:

- (a) the alleged contemnor has had proper notice of the court order – that is not in issue here;
- (b) the terms of the court order are clear;
- (c) the terms of the court order have been breached by the contemnor and;

(d) the appropriate *mens rea* or intent was present.

[5] Both parties agree that the validity of the order of the Board is not is issue on this hearing. However, they disagree on the meaning of the order, whether it has been breached, and if so, whether any breach was wilful.

[6] Because the parties dispute all of the elements except notice, it is necessary to go into the background of this dispute in some detail.

Background

[7] The Union held its quarterly membership meeting on May 14, 2007. Mr. Hubner, one of the applicants, asked whether there would be a financial statement available. Ms. Hodge, the Secretary Treasurer of Local 247, told him that the executive had passed a motion to table the financial report to the next meeting because she had been given the wrong information package just prior to the meeting and had not noticed it previously, as she had just returned from holidays. Ms. Hodge deposes that no motion regarding the production of financial documents was tabled or passed at that meeting, and no request for any other financial documents was made, including the annual audited financial statements. The minutes of the meeting support her statement.

[8] On July 16, 2007, the applicants applied to the Labour Relations Board under s. 151 to obtain the Union's annual audited financial statements for 2001-2006. According to Ms. Hodge, no other requests for financial statements were made in the interim.

[9] In their submissions to the Board, the applicants' submission was brief:

A motion was made for financial reports and minutes in our last union meeting in May. We the membership would like the financial reports from the year 2001 forward as of section 151 of the Labour Relations Code. We the membership would like the union office to provide copies of the statements for the last fiscal year and prior years to its members.

Section 151 of the **Labour Relations Code** provides:

- (1) A trade union and an employers' organization must make available without charge to each of its members, before June 1 in each year, a copy of the audited financial statement of its affairs to the end of the last fiscal year...
- (2) The financial statement must contain information in sufficient detail to disclose accurately the financial condition and operation of the trade union or employers' organization for its preceding fiscal year.
- (3) The board, on the complaint of a member that the trade union...has failed to comply with subsection (1), may order the trade union...to file with the board...a statement in a form and with particulars the board determines.
- (4) The board may order a trade union...to furnish a copy of a statement filed under subsection (3) to the members...

[10] The next quarterly meeting was held on August 13, 2007. The minutes of the May meeting were adopted. The financial statement that should have been available in May was read; the financial statement for the next quarter was also read. Members were invited to review them at the end of the meeting.

[11] On August 17, 2007, the Union provided their written submission to the Board in response to the applicant's motion. The Union stated that:

The Union provides its quarterly financial reports to its members at the membership meetings held during the course of the year. As well, the Union's 2006 audited financial statements will be made available to the complainants in compliance with Section 151 of the Code.

...

[the Union] will identify for its members the Union's interest in maintaining the confidentiality of this sensitive financial information and will ask the

complainants to adhere to the principle of confidentiality and to no photocopy or distribute the financial statement.

...

The Union is prepared to make available to the complainants a copy of its audited financial statement for 2006. In light of the fact that this material is viewed by the Union as confidential and sensitive information, the Union will make available to the complainants a copy on the condition that the statement not be photocopied and that the information contained therein be maintained as confidential between and among members of the Union.

[12] The Union also made submissions in respect of the request for historical financial statements, taking the position that several of the complainants were not Union members in the years for which production was sought, and that no reason for seeking the additional reports had been given in the Complaint. The Union also stated that they were concerned that several of the complainants may be interested in utilizing or disclosing the Union's financial information, which was confidential and sensitive, so as to compromise the Union's interest.

[13] The applicants replied on August 21, 2007. They restated their position that a motion had been made, seconded and passed unanimously at the May 2007 membership meeting "regarding the financial statements and other matters." Mr. Hubner said there had been no minutes taken or provided and no financial reports made at the meetings he had attended.

[14] In this submission, Mr. Hubner made further reference to the need for the past records, saying he believed they needed them in order to understand the present one. He also asked the Board not to make the information confidential "between and among members of the Union," and said he found it difficult to understand why the material was viewed as confidential and sensitive. He said the applicants would like to have the

opportunity “at least to have experts provide us with their analysis of the financial records.”

[15] The Union responded on August 24, 2007. Counsel for the Union repeated his position that the Union would make available the 2006 financial statement, but that there was no reason given that would justify the Board in exercising its discretion to provide further disclosure. Counsel also emphasized that there had been no previous motion for the statements, as stated by Mr. Hubner, and that the Union indeed makes regular quarterly financial reports to its members.

[16] The submission then states:

...contrary to the assertion contained in the reply, the Union is not asking the board to order disclosure of the 2006 financial statement conditional on the complainants keeping this information confidential. That is not for the board to do. That is something for the Union to apply in accordance with its constitution and bylaws if it so chooses in order to secure and maintain the interests of the Union.

[17] The Board issued its decision on October 5, 2007. The decision began with a background statement in which the Board said:

The Union is prepared to provide the financial statements for 2006 to its members but is not prepared to provide financial statements for prior years. Nor does it wish to file financial statements with the board.

[18] The Board then set out the positions of the parties: the employees allege that the Union has failed to provide copies of the financial statement “for this period” to its members as required by s. 151 of the **Code**; that they need the historical documents to understand the current one, and that they plan to have a financial expert review them.

The Union submits that it is only required to provide Financial Statements for the previous fiscal year, 2006, which it is willing to do. It also submits that these documents contain confidential and sensitive financial information and when it produced the documents, it will seek an agreement of confidentiality from the various members who receive them.

[19] The Board member then set out the Union position on the historical documents, and said the Union had stated that it was concerned that certain complainants may be interested in disclosing information which would compromise the Union's interests.

[20] The Board decided sufficient reasons had been given to order disclosure of Financial Statements back to 2002, that is, the employees had stated they were concerned about the Union's finances and its reluctance to disclose historical statements, and they wanted to put the current financial statement into context. She said:

I therefore order the Union make available to employees, upon request, Financial Statements for the years 2002 to 2006, subject to the conditions below.

[21] She then restricted the order to employees who had been Union members by June 1 of the year following each Financial Statement. She referred to the Union's argument that some employees might wish to compromise the Union's interests, and stated:

The Code does not restrict the purposes for which a member may request the Union's Financial Statements. I therefore dismiss the union's argument in this respect.

[22] She declined to order the Financial Statements to be filed with the Board.

[23] The Conclusion reads:

The employees' application is granted in part. The Union is ordered to make its Financial Statements for the years 2002- 2006 available to the individual employees, upon the request of any employee who was a member of the union at the appropriate time.

[24] At some point following the decision, Mr. Hubner posted a general letter to the membership making critical comments about the president of the Union, Mr. Whitlock.

[25] On October 21, 2007, Mr. Hubner wrote to Mr. Whitlock, president of the Union, requesting that the audited financial statement for 2002-2006 be mailed to a certain address. On October 24, 2007, Mr. Whitlock advised him the Union was considering an appeal and was considering its position.

[26] On October 29, 2007, the Union sought leave to reconsider the aspect of the order respecting the historical documents on the basis that the Board's discretion had been exercised without sufficient basis for doing so, and that the cut-off for entitlement to receive the records based on Union membership as of June 1 of the year following each Financial Statement was not appropriate. The Union also raised an issue of procedural fairness.

[27] The reconsideration decision was issued November 9, 2007. The Board went through the considerations that apply to requests for historical Financial Statements, notably unreasonable time and expense, but said the Union was not relying on those factors. "Rather it argues that it is simply concerned about the use its members might make of that information."

[28] The Board noted that the goal of s. 151 was to encourage employees to take part in Union affairs in the interests of participatory democracy, and held that it would not

interfere with the original decision. The Board also dismissed the argument on procedural fairness, and, with respect to the date of membership issue, said:

The Certain Employees applied as a group, and were free to give each other financial statements that anyone among them was entitled to receive. The date was therefore not of significance.

...recent historical financial statements is information which generally unions should be willing to share with their members unless the request for disclosure is unreasonable in terms of its scope and therefore the expense that the union would incur in fulfilling it is undue.

[29] On November 26, 2007, the president of the Union, Mr. Whitlock, wrote to Mr. Hubner asking him to arrange for an appointment to come and pick up the documents.

[30] On December 6, 2007, Mr. Hubner replied, saying he did not see the need to come to the Union office. He preferred to have the statements mailed to him, or dropped off at his workplace.

[31] On December 14, 2007, Mr. Whitlock wrote to Mr. Hubner advising him that the statements would not be mailed or dropped off; he should make an appointment.

[32] On December 29, 2007, Mr. Hubner wrote to Mr. Whitlock, saying he had concerns about picking up the statement under the terms laid down. He repeated his request that they be mailed.

[33] On January 7, 2008, Mr. Whitlock wrote to Mr. Hubner, referring to his previous letters and stating that the instructions had not changed.

[34] On January 13, 2008, Mr. Hubner wrote to Mr. Whitlock, suggesting the financial statements be brought to the next Union meeting. Failing that, he would come by the Union office to pick them up and gave available dates.

[35] On January 21, 2008, Mr. Whitlock replied, stating the suggested dates were not available, and Mr. Hubner had to set up an appointment by phone. On January 24, 2008, apparently following a visit by Mr. Hubner to the office, Mr. Whitlock wrote again to say the statements would not be distributed at the meeting, and Mr. Hubner must set up an appointment by phone.

[36] On January 28, 2008, one of the complainants, Mr. Little, set up an appointment by phone pursuant to the same letter of instruction sent to Mr. Hubner on November 26, 2007. Ms. Hodge wrote to Mr. Little telling him there was a confidentiality requirement which would be explained to him at the appointment. According to Ms. Hodge's affidavit, Mr. Little picked up the confidentiality agreement at the appointed time, took it away, and did not subsequently attend to sign it and receive the documents.

[37] On January 30, 2008, Mr. Hubner wrote a letter of complaint to the Board, asking for assistance in obtaining compliance with their order. This letter makes no reference to the confidentiality agreement. There is no evidence before the court of a response from the Board to this letter.

[38] On February 11, 2008, Mr. Hubner requested that the Board file their order with the court. This was done on February 13, 2008. The applicants retained their present counsel, Mr. Hunter, who wrote to Mr. Glavin on February 29, 2008, demanding the financial statements "forthwith and without conditions."

[39] On March 18, 2008, Mr. Hunter, who had obtained a copy of a document entitled “UFCS Local 247 Audited Financial Disclosure Statements: Members’ Responsibilities & Disclosure Protocol,” wrote to Mr. Glavin to say that he required compliance with the Board’s order by March 28, 2008, and that there would be no conditions attached, including the signing of the protocol. He mentioned enforcement proceedings.

[40] It is not necessary to set out the entire protocol, which is somewhat lengthy. It begins by setting out why the Union considers the information in the financial statements to be sensitive; that the members have responsibilities to the Union, and that by disclosing the documents, they would be open to discipline.

[41] It states further that the employee may not distribute or disclose the information to anyone who has not signed the protocol without exposing him or herself to discipline.

[42] The protocol then contains a paragraph in which the employee would insert his or her name, stating that s/he has read the above statement, acknowledging the requirement of confidence, and promising not to share the documents with anyone without the express written authorization from the Union. The person is asked to acknowledge that they are subject to disciplinary measures if they allow or permit the information to come into the hands of an unauthorized third party.

[43] Mr. Glavin replied on March 28, 2008, taking the position that the Board had not addressed any argument that the statements be provided with conditions:

Consequently the Board’s decision, now a court order, does not provide the court with any avenue by which it can order the Union to produce the statements without attaching the very reasonable conditions the Union requires. The Union is in full compliance with the Board’s decision in that

it is prepared to provide the statements to Mssrs. Hubner or Mr. Donovan, for example, for the years in which they were a member of the Union.

...in the end, the LRB's decision does not address the matter of the Union's ability to ensure that it takes the necessary safeguards it is permitted to do under its constitution and bylaws to protect the use of this sensitive financial data. As mentioned to you in our telephone discussion, the Union is on the eve of bargaining with two of its largest employers. It is not prepared to provide this information without some assurances that it will not find its way into the wrong hands.

...these safeguarding measures taken by the Union are applicable to all of its members, not merely [the applicants] and are in the interests of all the members of the Union.

[44] Mr. Glavin suggested that the applicants execute the disclosure protocol in Mr. Hunter's presence rather before a Union official, and the documents would be provided through Mr. Hunter's office, upon Mr. Hunter's undertaking that he would not review them and would ensure that his employer clients not receive them.

[45] The motion presently before the court to find the Union in contempt of the order was filed on May 9, 2008. Counsel continued to set out their positions in a series of letters which are attached to Ms. Hodge's affidavit. Mr. Glavin contended the Board had deliberately refrained from ordering the Union not to place confidentiality conditions on the disclosure, therefore the Union was not precluded from doing so in the interests of protecting its members and enforcing its constitution, and reiterated his offer to send the documents to Mr. Hunter's office, saying Mr. Hunter's clients would be entitled to challenge the conditions under the Union's constitution and bylaws as they saw fit. Mr. Hunter disagreed and restated his position that his clients would not sign the protocol.

[46] At this point, I will mention Article 2 of the Constitution, upon which the Union relies, which states that the object of the Union is, *inter alia*:

to advance and safeguard the full employment, economic security, and social welfare of its members;...to take all steps and action, which are reasonable and proper, to promote the welfare and interests of its members, of workers within its jurisdiction, and of workers generally and to afford mutual protection to members against unwarranted rules, unlawful discharge, or other forms of injustice or oppression.”

[47] It also provides that no member shall institute an action outside the Union against the local “without first exhausting all remedies provided by the Local Union bylaws and rules and the Constitution and laws of the International Union.”

[48] In early June, Mr. Glavin suggested that the applicants follow the procedure required by the Union in order to receive the documents and stated that the Union would not impose penalties for a breach of the protocol, once signed, until the issue of the conditional release was resolved in the proper forum. In the alternative, he suggested that the parties refer the matter back to the Board to clarify whether the order precluded the conditional release of the documents. Mr. Hunter again replied that his clients would not sign the protocol and there was no need to refer the matter back to the Board. He declined to give an undertaking that he would not review the documents, saying that his client is entitled to show them to him.

[49] The result of all of the above is the hearing before this court, which took place on July 11, 2008, for an order that the Union be held in contempt for wilfully failing to obey the order of the Labour Relations Board, now filed in this court.

Issues

[50] It is important to note the narrowness of the issue before me: have the applicants established that the respondent is in contempt of the order of the Labour Relations Board?

Discussion

[51] The Supreme Court of Canada in **United Nurses of Alberta v. Alberta (Attorney General)** [1992] 1 S.C.R. 901, discusses the difference between civil and criminal contempt. The present application clearly concerns a civil matter. It is essentially a private dispute. The employees want the financial records. The Union wants them kept confidential. This dispute does not involve a deliberate and public flouting of the rule of law or the authority of the court; the behaviour of the Union is not marked by public defiance.

[52] The Supreme Court of Canada recognized in **United Nurses** that Board orders are not court orders, but they are no less enforceable. That case also clearly states that a judge on an application such as this is not to enquire into the validity of the order. However, the Court recognized that a directive from an inferior tribunal is not insulated from review despite the ability to register the order as an order of the Court. If a challenge is launched against the order itself, the judge hearing a contempt order can decline to deal with the matter until the review of the order is completed. Here, no such challenge is made, but the effect, extent, and interpretation of the order is in issue, given the context in which it is sought to be enforced. Those matters depend on issues that can be considered only by the Board itself.

[53] The parties disagree on whether there has been any contravention of the order. The applicants say it is clear on its face. The Union says it must be looked at in context, and what it does not say is as important as what it does. Obviously, it would follow that, even if the court were able to find that the applicant has established that the order has been breached, the Union would dispute that, given all the circumstances set out above, it has had the wilful intent to contravene the order. However, that discussion is somewhat circular because within the issue of intent is the question of the legitimacy of the Union's position on the meaning of the order itself.

[54] The expressed intent of the Union is to obey the court order. But it is also to protect the Union. Can those intents legitimately co-exist without leading to a breach of the order? If I accept the approach urged by the applicants and find that failure to have produced the documents to date is a breach of the order on its face, without regard to its context, then I must still consider whether the intent of the Union in having breached the order is to wilfully flout a court order or whether it justifiably believes it is embarked on a course of conduct designed to comply with the order while lawfully protecting the Union's constitution and its members by a legitimate exercise of their powers under the Union constitution.

[55] The order on its face contains no conditions, as the applicants point out. However, it is certainly arguable that the order, taken in the context of the submissions to the Board and also taking into account the whole of the Board's reasons, contemplates the imposition of reasonable terms for confidentiality. The Board knew the Union intended to seek a confidentiality agreement; the issue of whether the Board should allow it was put before the Board by the applicants themselves. The Board did

not address the issue, other than to note that the Union, in consenting to produce the most recent statements, would be seeking an agreement of confidentiality.

[56] The interpretation of the Union constitution and whether it allows conditional release of financial documents, *in the absence of an order*, is not before me. In fact, counsel for the applicants does not, apparently, take serious issue with the ability of the Union to protect its interests through confidentiality agreements. However, he says this particular protocol and its wide-reaching conditions are not appropriate. Nevertheless, the validity or reasonableness of the conditions sought to be enforced by the Union prior to providing copies of the documents is not a matter for this court.

[57] The ability to impose those conditions *in the context of this order* is a matter for the Board to address.

[58] It must be obvious from this discussion that the court would have difficulty in finding the requisite intent for contempt of court on the state of the information presently before it. However, that determination would follow only upon a finding that there had been a breach of the order. Prior to determining whether the Union has breached the order, a clarification is required of the meaning of the Board's order in the context of its reasons. Until this information is available, any court action would be uninformed and premature. Even if the Board clarifies its order in a way that is contrary to the Union's present position, the Union's reliance on its constitution in placing the confidentiality requirement on its members would, if reasonable, be relevant to the issue of intent up to the time when such clarification is received.

[59] To simply dismiss the present application on the basis that intent to flout an order of the court has not been proven at this time simply begs the question and leaves the parties in an unhappy and uncertain state of tension and disagreement. The issue of whether the Union conduct is inconsistent with the sense and import of the Board's order has to be determined after the Board has clarified the extent and meaning of its order in the context of its reasons. I will therefore hear submissions from counsel on how to proceed, given the difficulty that these matters pose for the court at this juncture.

“M.A. Humphries J.”
The Honourable Madam Justice M.A. Humphries

BRITISH COLUMBIA LABOUR RELATIONS BOARD

CERTAIN EMPLOYEES

(the "Employees")

-and-

UNITED FOOD AND COMMERCIAL WORKERS UNION,
LOCAL 247

(the "Union")

PANEL: Beverley J. Burns, Vice-Chair

APPEARANCES: M.W. Hunter, Q.C., for Certain Employees
Anthony Glavin, for the Union

CASE NO.: 58400

DATE OF DECISION: October 9, 2008

1 This concerns a question referred to me by the B.C. Supreme Court, in the
context of contempt proceedings for non-compliance with an order of the Board filed in
Court.

2 Section 151(1) of the *Labour Relations Code* (the "Code") provides:

Financial statements

151. (1) A trade union and an employers' organization must make available without charge to each of its members, before June 1 in each year, a copy of the audited financial statement of its affairs to the end of the last fiscal year, signed by its president and treasurer or corresponding principal officers.
- (2) The financial statement must contain information in sufficient detail to disclose accurately the financial condition and operation of the trade union or employers' organization for its preceding fiscal year.
- (3) The board, on the complaint of a member that the trade union or employers' organization has failed to comply with subsection (1), may order the trade union or employers' organization to file with the board, in the time set out in the order, a statement in a form and with particulars the board determines.
- (4) The board may order a trade union or employers' organization to furnish a copy of a statement filed under subsection (3) to the members of the trade union or employers' organization that the board in its discretion directs, and the trade union or employers' organization must comply with the order.

3 Section 135 provides in relevant part:

Filing order in Supreme Court

135. (1) The board must on request by any party or may on its own motion file in a Supreme Court registry at any time a copy of a decision or order made by the board under this Code, a collective agreement or the regulations.
- (2) The decision or order must be filed as if it were an order of the court, and on being filed it is deemed for all purposes except appeal from it to be an order of the Supreme Court and enforceable as such.

4 In *Certain Employees*, BCLRB No. B231/2007 (Application for Reconsideration
Dismissed, BCLRB No. B249/2007), certain members of the Union applied pursuant to
Section 151 for an order that the Union disclose to them its financial statements for
various years.

5 The matter proceeded entirely by way of written submissions. In its initial
submission, the Union said it would make available its 2006 financial statement, but
would ask the members to keep it confidential among Union members, and the Union
would make it available on that condition. That did not resolve the matter. The
applicant members requested that the Board not make the information confidential
among Union members, said it was difficult to understand why it was viewed as
confidential by the Union, and said they would at least like to have the opportunity to
have it reviewed by experts to advise them on it.

6 In a further submission, the Union then stated:

...[C]ontrary to the assertion contained in the reply, the Union is not
asking the board to order disclosure of the 2006 financial statement
conditional on the complainants keeping this information
confidential. That is not for the board to do. That is something for
the Union to apply in accordance with its constitution and bylaws if
it so chooses in order to secure and maintain the interests of the
Union. (para. 16)

7 I ordered the Union to disclose its financial statements to the applicant members
(*Certain Employees*, BCLRB No. B231/2007, para. 21). My order did not include any
provision allowing the Union to impose conditions on the disclosure.

8 As set out in *Hubner v. United Food and Commercial Workers Union, Local 247*,
2008 BCSC 951, the Union did not disclose the financial statements to the members. It
insisted the members first sign a disclosure protocol (which required their agreement to
a number of conditions, summarized at paras. 40-42 of the Court's reasons). The
members refused to do this. They had the Board's order filed in Court, and brought
contempt proceedings.

9 The Union took the position that, although it had not disclosed the financial
statements, it was not in violation of the Board's order. The Union's counsel
communicated its position to the members' counsel that:

...the Board had deliberately refrained from ordering the Union not
to place confidentiality conditions on the disclosure, therefore the
Union was not precluded from doing so in the interests of protecting
its members and enforcing its constitution... . (para. 45)

10 Before the Court, the members relied on the fact that the Board had ordered the
Union to provide the financial statements to the members, and the Union had not done
so (para. 2). The Union's position was "more complex" (para. 3), and relied on the
context of the dispute, including the submissions before me described above.

11 The Court's reasons record:

The parties disagree on whether there has been any contravention of the order. The applicants say it is clear on its face. The Union says it must be looked at in context, and what it does not say is as important as what it does. (para. 53)

12 Ultimately, in supplemental reasons (2008 BCSC 964), the Court referred the following question to the Board, to answer after consideration of the Court's reasons:

In the context of its order [in BCLRB No. B231/2007], did the Board or did the Board not rule on the ability of the Union to place confidentiality conditions on the release of the financial statements referred to in its order?

13 By letter dated September 10, 2008, the parties provided the Court's decision to me and jointly requested a conference call for the purpose of establishing a written submissions process. I wrote to the parties inquiring what issue they wished to make submissions on, and they replied that it was the question referred to me by the Court, reproduced above.

14 That question is, of course, not about something I am *going to* decide, but about what I *decided*. It would be unusual, in my view, to have submissions from the parties on that question. It would also risk broadening the issues between the parties (at a stage at which they ought to be narrowing), and complicating matters before the Court.

15 The procedure followed by the Court in this case is helpful in fulfilling the objectives of the Code. It helps reconcile the Code's requirement of expeditious dispute resolution (and thus quick, short decisions that do not necessarily address every argument made: *Health Employers Association v. Nurses' Bargaining Association et al.*, 2004 BCSC 911, para. 48) with the cautious approach of the Courts in matters of contempt, which is how the Board's orders — in the very few cases that require it — are ultimately enforced. It would potentially frustrate this approach if the Board were to risk complicating matters before the Court at this late stage in the proceeding. For example, the parties' letter indicates that counsel for the members wishes to "remind" me that his clients were unrepresented at the time I made my original decision. It seems to me this cannot affect the decision I *made*. For me to rely on such a submission now, where the members seek to have the Union held in contempt of my earlier decision, seems just one example of how allowing submissions from the parties on a decision I have already made could potentially introduce complications into the proceeding before the Court.

16 I turn to answer the question referred to me by the Court, reproduced above at para. 12. That question asks whether I ruled on the Union's ability to place confidentiality conditions on its disclosure of the financial statements to the members.

17 For the reasons given below, the answer to that question is "No". I ordered that the Union disclose the financial information to its members. The legality of what the

Union subsequently did — refuse to disclose that information, unless the members agreed to its disclosure protocol — was not in issue before me.

18 The only issue before me to decide was the members' application under Section 151, which concerns the Union's disclosure to its members. If the Union had disclosed the financial statements to its members, then applied existing requirements in its constitution and bylaws concerning the subsequent disclosure of the information, that would not have raised any issue concerning the matter before me in that application (i.e., disclosure by the Union to the members as required by Section 151).

19 The Union did not indicate in its submissions to me that it contemplated, subsequent to my order to disclose the financial statements, *refusing* to disclose them, unless the members agreed to a disclosure protocol — or to any other further obligation that the members did not already hold at the time. Accordingly, the fact that I made no order concerning such a situation did not imply a ruling on it. Therefore, the answer to the question posed by the Court is "No".

LABOUR RELATIONS BOARD

"BEVERLEY J. BURNS"

BEVERLEY J. BURNS
VICE-CHAIR

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hubner v. United Food and Commercial
Workers Union, Local 247,*
2009 BCSC 1380

Date: 20091008
Docket: L080065
Registry: Vancouver

Between:

**Roger Hubner and Francis Donovan on their behalf,
and on behalf of Certain Employees**

Applicants

And

United Food and Commercial Workers Union, Local 247

Respondent

Before: The Honourable Madam Justice Humphries

Reasons for Judgment

Counsel for the Applicants:

M. Hunter, Q.C.

Counsel for the Respondent:

A. Glavin
C. Whittome

Place and Date of Hearing:

Vancouver, B.C.
September 28, 2009

Place and Date of Judgment:

Vancouver, B.C.
October 8, 2009

[1] The applicants apply to have the respondents found in contempt of an order of the Labour Relations Board (“the Board”) of October 5, 2007, registered as an order of this court on February 11, 2008.

[2] The history of this matter is set out fully in previous reasons (2008 BCSC 951). The applicants are members of the respondent United Food and Commercial Workers Union, Local 247 (“the Union”). On October 5, 2007, they obtained an order from the Board for production of the Union’s financial statements. The order of the Board required the Union to “make its Financial Statements for the years 2002-2006 available to the individual employees, upon the request of any employee who was a member of the Union at the appropriate time.”

[3] The Union took the position that they were allowed to impose confidentiality requirements on the members who requested copies of the Financial Statements prior to providing the copies. The applicants refused to sign the “Disclosure Protocol” produced by the Union as a precondition to receiving the documents.

[4] The applicants applied before me in July of 2008 to have the Union found in contempt of the order filed with this court for refusing to comply with the order to produce the documents. The issue of the imposition of confidentiality requirements had been raised with the Board at the time the initial order was granted. As the imposition of confidentiality requirements seemed to be a labour relations matter, I thought it would be helpful to obtain further clarification from the Board as to the meaning of its order. I directed the matter back to the Board to answer the following question:

In the context of its order, did the board or did the board not rule on the ability of the Union to place confidentiality conditions on the release of the financial statements referred to in its order?

[5] The Board answered that it did not rule on the issue by implication or directly. The matter came back before me in December of 2008, and again in January of 2009. At that time, counsel for the applicants advised the court that his clients had reapplied for the 2002-2006 Financial Statements and had applied as well for the

2007 Financial Statements of the Union. This time, they had put the issue of confidentiality requirements squarely before the Board.

[6] Counsel for the Union asked that the motion for contempt be dismissed, as the matter would now be dealt with by the Board and the issue resolved. The applicants resisted dismissal and I adjourned the matter, saying:

The possibility remains that the Board will accept the Union's argument that the 2002-2006 documents are covered by issue estoppel and moreover may accept that it should not take jurisdiction over the issue of the Union's ability to impose conditions on the 2007 documents either. Although the Union would take this to mean that they therefore have free rein to impose conditions, the applicants dispute that position and have made no indication before me that they would agree that the Union's position would be strengthened by such a ruling from the Board. As I understand their position, they would not take the absence of a ruling on the issue to be permission to impose conditions before producing documents that have been ordered to be produced by the Board. Therefore, the issue of whether the Union is in contempt for insisting on conditions before production would be back before the court.

[7] I indicated that I hoped the Board's ruling would resolve the matter and told the parties that they need not return to court if the issue was resolved and if they agreed it was unnecessary to do so. Despite the court's own separate interest in matters of contempt, the order in question, which was filed with this court on February 11, 2008, is one of the Board's, not the court's at first instance, and the issue is one of labour relations.

[8] On February 3, 2009, the Board made a clear ruling in respect of the 2007 Financial Statements:

It is not open to the Union to withhold the documents on the basis that the Employees have refused to sign its Disclosure Protocol.

...

The Board does have jurisdiction to order the Union to provide its financial statements to its members. That is what Section 151 requires, and therefore that is what my order requires. The Union is not entitled to refuse to provide them on the grounds that the Employees have refused to sign the Disclosure Protocol.

[9] In respect of the Employees' request for orders and declarations in respect of the 2002 - 2006 statements, the Board noted that the Union objected on the grounds of issue estoppel and jurisdiction, but that the parties thought it would be helpful for the Board to give its views on the Disclosure Protocol. The Board said:

As those views are set out above, I do not find it necessary or desirable to address the Employees' request for declarations and orders. The Union ought to be aware that Section 151 of the Code requires it to provide its financial statements to its members, and does not allow it to refuse to provide them because the members have not agreed to a Disclosure Protocol. Further declarations and orders would risk adding further complexity and litigation to the process.

[10] On February 4, 2009, counsel for the applicant wrote to counsel for the Union requesting the statements. The Union sent the statements by registered mail on February 5, 2009. There is an issue as to whether the letters from the auditor accompanied the statements, but in any event, a copy of those letters was sent immediately upon the Union being told that they had not been received by the applicants. In my view nothing turns on this.

[11] Unfortunately, the ruling and the subsequent compliance by the Union did not result in a conclusion of the dispute between the parties, who seem locked in a tense and resentful relationship.

[12] The applicants now contend that, despite the Union's assertion that their position on the release of the documents was one of principle based on responsibility to the Union constitution and the membership generally, the Union was were really trying to hide the fact that audited statements had not been done for the relevant years. The applicants argue that this is clear evidence of intent to show contempt for the order. This is especially so in the face of the clear indications from the Board throughout the proceedings that there is a distinction between production of documents to the members, and subsequent disclosure of that information by the members to other persons. The applicants contend that the Union should have known that it is only the latter disclosure that could be regulated by the constitution.

[13] The applicants also maintain that the statements are unsatisfactory and lacking in detail. As well, when copied, watermarks on the paper saying “unauthorized copy” appear. While apparently upsetting to the applicants, these issues are not matters of concern for the court on this application.

[14] The Union admits it did not have audited statements done until late 2007 and early 2008, although statements for all of the requested years were completed before any of the applicants made an appointment to come in and pick up copies following the first order of the Board. According to the affidavit of Suzanne Hodge, the Secretary Treasurer of Local 247, this was because this particular local exists as the result of the merging of two other locals in 2002. The merger was complicated and required significant organization on the part of their auditors. However, the financial statements were always up-to-date on a quarterly basis, were reviewed and approved by the Executive, and were available to the members at their meetings.

[15] She further deposed that no one ever requested audited statements from the local; the applicants went straight to the Board in October of 2007 to obtain an order under s. 151 of the *Labour Code*. Upon learning of the application, the president of the local contacted the accountants to expedite the ongoing audits.

[16] The Union repeats its position that it was always willing and able to produce the documents to its members, but legitimately and in good faith, imposed a confidentiality precondition upon receipt to prevent unauthorized and damaging disclosure to other parties. The Board clearly ruled against them on that issue, and the Union immediately produced all the documents. According to the Union, in these circumstances, the applicants have not shown and cannot show a wilful and intentional breach of the order.

[17] In my view, that is correct. This application, conducted on affidavits, does not allow the court the ability to make findings on credibility on contested matters. Counsel for the applicants suggested that an affidavit from the auditors explaining the delay in production of audited statements would have been preferable, but Ms. Hodge’s explanation for the manner and timing of the production of the quarterly

statements and the audited statements is consistent with the history of this matter. The applicants never asked for audited statements prior to obtaining an order from the Board. The statements were all ready by the time of the first appointment to pick them up. They have now all been produced.

[18] I am unable to find that Ms. Hodge lied in her affidavit and therefore cannot conclude that the Union was wilfully concealing the real reason for failing to produce the financial statements by hiding behind the Disclosure Protocol to stall production of non-existent documents.

[19] Having thoroughly reviewed the Union position prior to and during the various hearings in my earlier reasons, I will not do so now. I accept that the Union's position was taken with the full benefit of legal advice, and that the belief that the Disclosure Protocol was not foreclosed by the Board's order and was necessary in the interests of protecting the Union and its members was genuinely held. While the Union's position has not been accepted by the Board in its latest ruling, I find that the applicants have not proven that the Union's intent in requiring the Disclosure Protocol to be signed before the financial statements would be produced was to flout an order of the court.

[20] The application to have the Union declared in contempt of the order of the Board issued October 5, 2007 and filed in this court on February 11, 2008, is dismissed.

[21] Counsel asked leave to address costs, depending on the outcome of this application. The Union has successfully resisted being held in contempt of the order, but their reason for resisting it in the first place has now been summarily dismissed by the Board. Unless there are reasons to deal with the matter further that are not apparent on the record, this is, in my view, a case in which the parties should bear their own costs.

"M.A. Humphries J."

The Honourable Madam Justice M.A. Humphries