

**The Labour Relations Board  
Saskatchewan**

**EARL HILL, Applicant v. SASKATCHEWAN GOVERNMENT AND GENERAL  
EMPLOYEES' UNION, Respondent**

LRB File No. 002-03; January 14, 2003

Chairperson, Gwen Gray, Q.C.; Members: Leo Lancaster and Hugh Wagner

For the Applicant: Ronni Nordal

For the Respondent: Rod Rath

**Remedy – Interim order – Criteria – Balancing of labour relations harm – Applicant’s conduct in serving strike notice on employer contrary to provisions of s. 44(2) of *The Trade Union Act* exposes union to potential harm – Interim order reinstating applicant to elected office may permit conduct to continue – Balance of labour relations harm rests with respondent union – Board dismisses application for interim order.**

**Remedy – Interim order – Criteria – Board finds that applicant has arguable case on main application – Finding permits Board to consider question of relative labour relations harm in determining application for interim relief – Balance of labour relations harm rests with respondent union – Board notes that any harm to applicant can be remedied on final order if case is sound - Board dismisses application for interim order.**

***The Trade Union Act*, ss. 5.3 and 36.1(1).**

**REASONS FOR DECISION ON INTERIM APPLICATION**

**Background:**

[1] Mr. Earl Hill (the “Applicant”), filed an unfair labour practice application against the Saskatchewan Government and General Employees’ Union (the “Union”), alleging that it failed to comply with s. 36.1(1) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”) by suspending the Applicant from holding elected office in the Union. The Applicant also filed an application seeking interim relief from the Board either permitting him to run for elected office in the Union in a vote to be conducted on January 15, 2003 or suspending the vote until the unfair labour practice application has been determined.

[2] The Union filed affidavit materials in response to the application for interim relief.

[3] The Board heard arguments on the application for interim relief in Regina on January 10, 2003.

**Facts:**

[4] The material facts are set out in paragraph 1 of the Applicant's unfair labour practice application as follows:

*The Applicant is a Corrections Worker at the Saskatoon Correctional Centre in Saskatoon, Saskatchewan. The Applicant is a member of the Respondent Union, Local 1102 and held numerous elected positions with SGEU. On October 3, 2002, the Applicant provided the employer with notice of the Provincial Corrections Workers' intention to take job action. On October 17, 2002 the Provincial Council of SGEU suspended the Applicant from holding, or running for, any elected office of the Union, pending an investigation being completed by the Membership/Constitution and Legislation Committee and the said Committee having made recommendations to the Provincial Council.*

[5] The Applicant complains that the Union did not comply with the principles of natural justice in suspending him from holding and/or running for office on an interim basis pending a report from the membership/constitution and legislation committee to the provincial council of the Union. He seeks either interim relief to enable him to run for office in elections to be conducted on January 15, 2003 or an interim order suspending the calling of the election until the Board's final determination of his unfair labour practice.

[6] The Union's affidavit material indicates that the Applicant purported to serve strike notice on the Employer, the Government of Saskatchewan, without proper authorization from the bargaining council of the Union and in circumstances where the Union is not entitled under s. 44(2) of the *Act* to engage in strike activity. The Union asserts that the Applicant placed the Union at risk of serious financial loss, which action required the Union to act quickly.

[7] The Union asserts further that the membership/constitution and legislation committee has investigated the suspension of the Applicant's right to hold elected office. The Union denies that it breached the principles of natural justice in temporarily suspending the Applicant from elected office and further, describes the steps that it will take to complete the disciplinary hearing process before the Union's provincial council.

**Arguments:**

[8] Counsel for the Applicant puts forward the view that the Applicant has made an arguable case under s. 36.1(1) of the *Act*. His main application raises a concern related to the application of the principles of natural justice to the discipline imposed on him by the provincial council of the Union. He claims in his application that his removal from office was conducted in a manner that breached the rules of natural justice that are codified in s. 36.1(1) of the *Act*.

[9] On the second aspect of the Board's test for obtaining interim relief, counsel for Mr. Hill argues that the balance of labour relations harm favours the granting of an interim order. Mr. Hill's role as the chosen representative of correctional workers can be maintained during the period of review of the actions of the provincial council by either allowing the election to proceed with his name on the ballot or by postponing the election to permit the lawfulness of the suspension of Mr. Hill's elected status to be determined on the main unfair labour practice application. Mr. Hill complains that if he is not permitted to run for office, he will effectively be prevented from playing a meaningful role in collective bargaining for four years.

[10] The Union argues that the facts of this application are not in dispute. The Applicant acted in a manner that was clearly contrary to the interests of the Union by serving a strike notice on the Employer in circumstances that violated s. 44(2) of the *Act* and would render the strike illegal. The Union was exposed to a large damage claim as a result, and was required to act quickly to diffuse the strike potential and to deal with the Applicant's unauthorized actions. Counsel for the Union pointed to provisions in the Union's constitution that authorize the provincial council to suspend or terminate the office of any member holding elected office in the Union for cause or for neglect of duties or breaches of the constitution, regulation or rules of the Union. The action taken by the provincial council, while it may have varied from the normal practice, was not contrary to

the Union's constitution and was necessitated by the urgency of the situation caused by the actions of the Applicant in serving notice of strike.

**[11]** The Union also argues that action taken by provincial council was proportionate – it suspended the Applicant from elected office until such time as the membership/constitution and legislation committee conducts an investigation of the matter and files its report with the provincial council. A full hearing of the matter will then be conducted at which time the Applicant will be afforded an opportunity to make a full presentation to the provincial council. The Union denies that it has breached the rules of natural justice in relation to the decision to temporarily suspend the Applicant from holding office in the Union as it gave him notice of the meeting and permitted him to attend and speak to the issue.

**[12]** Counsel for the Union argues that the test for determining if an interim order should be granted should take into account the relative merits of the applicant's case and the respondent's case. In this situation, the discipline procedures are not yet complete and it is premature to say that they have been conducted in breach of the rules of natural justice. At this stage, the Applicant cannot be said to have an arguable case.

**[13]** In the alternative, the Union argues that the balance of labour relations harm favours not granting an interim order. The Union's exposure is substantial if the Board were to return the Applicant to his elected position until such time as the main application is heard and determined by the Board. The Applicant jeopardized the Union by exposing it to financial loss, by harming the relationship between the Union and its Employer, and by harming the reputation of the Union with its members and the community. Counsel noted that the Applicant did not explain his actions and no justification that has been presented to explain why he served strike notice on the Employer. In these circumstances, the Union argues that the risk to the Union of continued unauthorized actions is too great to consider issuing an interim order.

**Analysis:**

**[14]** The Board has considered the materials filed by both parties in this Application and the arguments of counsel and has concluded that it will not issue an interim order in the circumstances of this case.

[15] We agree with the Applicant that he has made an arguable case under s. 36.1(1) relating to his suspension from holding union office. Section 36.1(1) applies the principles of natural justice “in respect of all disputes between the employee and the trade union certified to represent his bargaining unit relating to matters in the constitution of the trade union and the employee’s membership therein or discipline thereunder.” The removal from office is generally viewed as comparable to removal from membership, although the consequences of the latter action are inherently more severe for a union member. Mr. Hill’s allegations fall within the general purview of s. 36.1(1) and are sufficient in substance to permit the Board to consider the question of relative labour relations harm arising from the granting or not granting of an interim order.

[16] In our view, the balance of labour relations harm rests clearly with the Union. The Applicant’s actions that gave rise to the discipline are undisputed and clearly exposed the Union to potential harm, both financially and in its collective bargaining relationship with the Employer and its members. If an interim order were to issue reinstating the Applicant to elected office pending final resolution of the application, there is no guarantee that such conduct will not continue. The potential labour relations harm to the Union is significant.

[17] The labour relations harm to the Applicant is harder to quantify. He will miss an opportunity to run for elected office, which is an important aspect of membership. However, if the Applicant’s case is found to be sound, the loss of opportunity is possible to remedy by ordering a new vote. See, for instance, a decision of the Alberta Labour Relations Board in *Noster and Construction Workers Union (CLAC), Local 63*, [1998] Alta. L.R.B.R. LD-034 where a member was declared to be ineligible for election to office contrary to the rules of natural justice.

[18] We do not agree that postponing the election of officers is a viable alternative interim order. The local members are entitled to exercise their democratic right to elect officers and to be represented in the Union by those officers. There are more members affected by the election than corrections workers. In addition, if the Applicant’s main case is sound, the matter can be remedied by requiring the Union to conduct a new vote.

[19] Overall, we find that although the Applicant has an arguable case, the harm done to the Applicant by not issuing an interim order can be remedied on a final order, and is outweighed by the potential labour relations harm to the Union that could result from issuing an interim Order. As a result, the application for interim relief is dismissed.

**DATED** at Regina, Saskatchewan this 14<sup>th</sup> day of **January, 2003**.

**LABOUR RELATIONS BOARD**

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Gwen Gray, Q.C.  
Chairperson