

**The Labour Relations Board
Saskatchewan**

**EARL HILL and JASON RATTRAY, Applicants v. SASKATCHEWAN GOVERNMENT
AND GENERAL EMPLOYEES' UNION, Respondent**

LRB File Nos. 002-03 and 011-03; August 28, 2003

Chairperson, Gwen Gray, Q.C.; Members: Don Bell and John McCormick

For the Applicants: Ronni Nordal
For the Respondent: Neil McLeod, Q.C.

Union – Constitution – Board is monitor of union membership disputes only to extent of determining whether processes used to discipline members meet basic requirements of natural justice – Board’s role is not to provide definitive interpretations of union’s constitution which is fluid political document subject to change at union’s annual convention.

Union – Constitution – Provisions of union constitution should not be interpreted with rigid formalism – Union must be able to deal with problems presented by members in expeditious fashion that allows union to protect interests of union membership as whole – Board concludes that interim suspension from elected office pending fair hearing was not abuse of union’s constitutional powers.

The Trade Union Act, s. 36.1.

REASONS FOR DECISION

Background:

[1] The Applicant, Earl Hill, is a corrections worker and has been a member and elected official of Saskatchewan Government and General Employees' Union (the "Union") since 1978. He has held various offices within the Union and, most recently, he chaired a committee of corrections workers who were authorized by the Union to negotiate an hours of work agreement with the Government of Saskatchewan. The negotiations were carried on mid-stream in the collective agreement term. Strikes during this period were clearly contrary to the no strike/no lock-out provisions contained in the collective agreement and contrary to s. 44(2) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "Act").

[2] Nevertheless, the hours of work committee decided to conduct a strike vote over various issues relating to correction workers. Most corrections workers voted in favour of strike activity. Mr. Hill decided to act on the strike vote by sending a strike notice to the Public Service Commission, the agency responsible for collective bargaining on behalf of the Government of Saskatchewan which he did using his purported authority as chairperson of the hours of work committee. Mr. Hill did not obtain approval from the bargaining council of the Union, nor did he notify the president of the Union or the chairperson of the bargaining council before he issued the strike notice.

[3] The Government of Saskatchewan reacted swiftly and put the Union on notice that it would seek recovery of all of the financial costs of responding to the emergency caused by the threatened illegal strike. The damages included the costs of paying overtime, RCMP replacements and the like. The potential damages were significant.

[4] The provincial council of the Union decided quickly to suspend Mr. Hill from elected office pending an investigation of his conduct. The Union felt that this interim suspension was necessary to protect the Union from further liability. It had no assurance from the Mr. Hill that he would not encourage corrections workers from engaging in strike activity. He had continued to insinuate in meetings with the Minister in charge of Corrections that a strike might occur.

[5] After the initial suspension, the Union formalized its complaints against Mr. Hill and conducted a disciplinary hearing in accordance with its constitution. The provincial council of the Union decided that Mr. Hill should be suspended from active membership in the Union for two years. It came to this decision following an investigation that was carried out by two out-of-province, independent and senior trade unionists.

Facts and Argument:

[6] Mr. Hill complains that the Union did not accord him a fair hearing. The only issue that arises on the facts is whether the provincial council of the Union had the constitutional authority to suspend Mr. Hill from his elected offices pending an

investigation of his conduct. All other aspects of the disciplinary process were carried out in accordance with the principles of natural justice as required by s. 36.1(1) of the *Act*.

[7] The Board is the monitor of union membership disputes within a unionized setting only to the extent of determining if the processes used to discipline union members meet the basic contextual requirements of natural justice. The Board's role is not to provide definitive interpretations of a union's constitution, which is a fluid, political document, subject to change at each annual convention of the union.

[8] In this case, the Union had to react to a very difficult and potentially damaging event – an apparently Union-authorized illegal strike. Mr. Hill may have thought that he had the support of certain members of the executive of the Union to conduct the illegal strike but they denied any such support and he was left in a very exposed position.

Analysis:

[9] Although the provisions of the Union's constitution may not have expressly provided for an interim suspension from elected office, these rules should not be interpreted with rigid formalism. Unions must be able to deal with problems of the sort presented by Mr. Hill in an expeditious fashion and in a manner that allows the union to protect the interests of the membership as a whole. The Union did not abuse its constitutional power by acting without legitimate reasons and it did take steps to ensure that Mr. Hill had a fair hearing before the provincial council of the Union prior to the imposition of final discipline. As a result, we do not find that the Union acted in a manner that did not accord with the principles of natural justice.

[10] Mr. Rattray is also a corrections worker. He attended a Union meeting where the president of the Union told all assembled that they were not to discuss issues relating to the threatened wildcat with the media. Mr. Rattray had prepared a letter to the editor prior to this meeting and submitted it for publication. After it was published, the provincial council of the Union suspended Mr. Rattray from elected office pending an investigation of his conduct. Two senior union officials from outside of Saskatchewan conducted the investigation and they found Mr. Rattray not to be in violation of the

Union's constitution. The provincial council decided to reinstate Mr. Rattray to his elected offices but the council did not initially deal with Mr. Rattray's lost opportunities to seek various elected positions. After some encouragement from the Board, the Union did restore all of Mr. Rattray's opportunities. As a result, the remedies sought by Mr. Rattray are moot. There is nothing left outstanding that requires a Board order.

Conclusion:

[11] The Board therefore dismisses both applications.

Dated at Regina, Saskatchewan this **28th** day of **August, 2003**.

LABOUR RELATIONS BOARD

Gwen Gray, Q.C.
Chairperson