**Labour Relations Board**
**Saskatchewan**

**JASON RATTRAY, Applicant v. SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Respondent**

LRB File No. 011-03; December 1, 2003
Chairperson, James Seibel; Members: Gloria Cymbalisty and Don Bell

The Applicant: Jason Rattray
For the Respondent: Neil McLeod, Q.C.

**Reconsideration – Criteria – Board discusses and applies criteria for reconsideration – Initial hearing lasted six days and comprised copious evidence some of which related to issue upon which applicant contends Board denied natural justice – Board concludes that no solid grounds to support reconsideration on basis of denial of natural justice or on basis that Board ignored or otherwise neglected to consider whole of evidence adduced.**

**Reconsideration – Criteria – Costs – In initial decision, Board made no express allusion to applicant's request for costs – Requests for costs made so often and awards of costs made so infrequently that Board not persuaded that Board ignored or otherwise neglected to consider request in this case – Board has serious doubt that such would constitute denial of natural justice, in any event.**

***The Trade Union Act*, s. 13.**

## REASONS FOR DECISION

**Background:**

**[1]** This is an application by the Applicant, Jason Rattray, filed with the Board on September 19, 2003, for reconsideration of a decision of the Board dated August 28, 2003 (not yet reported). Mr. Rattray's original application alleged that the Union violated s. 36.1 of *The Trade Union Act*, R.S.S. 1978, c. T-17, as amended (the "*Act*"). The application was heard by a panel of the Board chaired by then Chairperson, Gwen Gray, Q.C., in the same proceeding as an application by a fellow employee, Earl Hill, in LRB File No. 002-03, over six days in March, May and July, 2003. Both applications were dismissed in joint Reasons for Decision referred to above.

**[2]** Mr. Rattray's original application alleged, *inter alia*, that Saskatchewan Government and General Employees' Union (the "Union") suspended him from elected offices, but subsequently reinstated him and determined that any lost opportunity for election to offices should be reviewed with a view to finding solutions regarding the lost opportunities.

**[3]** In its decision to dismiss the application, the Board stated, in part, as follows:

> *[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.*

**Arguments:**

**[4]** Mr. Rattray raised two issues with respect to the application for reconsideration. First, he asserted the Board's decision does not address evidence that had been presented with respect to the Union's provincial council election and that no redress had in fact been made by the Union with respect to that opportunity.

**[5]** Second, Mr. Rattray pointed out that the Board did not address the issue of costs of the application although he had requested that costs be assessed against the Union. He said that the capitulation by the Union with respect to his suspension would not have occurred without the pressure brought to bear by his having brought the application, so he should be entitled to costs.

**[6]** Counsel for the Union, Mr. McLeod, argued that neither of the grounds put forth by Mr. Rattray was a viable ground for reconsideration. Counsel asserted that there was evidence upon which the Board could conclude that Mr. Rattray was provided with opportunities to run for all elected offices or redress for loss of opportunity, including the matter complained of. There was evidence that the Union had proposed to Mr. Rattray a procedure to determine whether he was eligible to run for provincial council of the Union, but Mr. Rattray rejected the proposal (see, Transcript of Evidence, pp. 117-119). Mr. McLeod argued that, accordingly, there was evidence upon which the Board could conclude that Mr. Rattray had been afforded redress for all lost opportunities.

**[7]** In support of his argument, Mr. McLeod referred to the decision of the Board in *Remai Investment Corporation o/a Imperial 400 Motel v. Ruff and Saskatchewan Joint Board, Retail, Wholesale and Department Store Union*, [1993] 3rd Quarter Sask. Labour Rep. 103, LRB File No. 132-93. Counsel also sought to distinguish the decisions of the Board in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Saskatchewan Gaming Corporation – Casino Moose Jaw*, [2002] Sask. L.R.B.R. 601, LRB File No. 187-02 and *City of North Battleford v. Canadian Union of Public Employees, Local 287*, [2003] Sask. L.R.B.R. 288, LRB File No. 054-01: the former decision on the basis that the Board acknowledged that it misstated important evidence in its original decision which amounted to a breach of natural justice; and, the latter decision on the basis that the Board determined that its original decision had an unintended result and that the respondent union on the application for reconsideration by the employer agreed that the Board's decision was based upon an unintentional misapprehension of a fundamental fact.

**[8]** With respect to the issue of the lack of an award for costs, counsel asserted that the Board rarely awards costs in any event and that such an award would even more rarely be made to the unsuccessful party to an application. In the circumstances one could not say that the Board did not consider and dismiss the request.

**Analysis and Decision:**

**[9]** In exercising the discretion to reconsider its decisions granted by ss. 5(i) and 13 of the *Act*, the Board has consistently applied the criteria enunciated in *Remai Investment Corporation*, *supra*, at 108, which the Board gleaned from decisions of the labour relations boards in the Ontario, British Columbia and federal jurisdictions. The six criteria are as follows:

> *1. If there was no hearing in the first instance and a party subsequently finds that the decision turns on a finding of fact which is in controversy and on which the party wishes to adduce evidence;*
>
> *2. If a hearing was held, but certain crucial evidence was not adduced for good and sufficient reasons;*
>
> *3. If the order made by the Board in the first instance has operated in an unanticipated way, that is, has had an unintended effect on its particular application;*
>
> *4. If the original decision turned on a conclusion of law or general policy under the legislation which law or policy was not properly interpreted by the original panel;*
>
> *5. If the original decision is tainted by a breach of natural justice; or,*
>
> *6. If the original decision is precedential and amounts to a significant policy adjudication which the Council may wish to refine, expand upon, or otherwise change.*

**[10]** The Board has also adopted the two-step procedure used in those jurisdictions regarding such applications. The applicant is required to establish grounds for reconsideration, before a decision is made whether a rehearing or some other disposition of the matter is appropriate, by persuading the Board that there are "solid grounds for embarking upon that course": see, *Remai*, *supra*, at 107. However, in appropriate circumstances, the Board may determine that both steps will be dealt with in a single proceeding: see, *City of North Battleford*, *supra*.

**[11]** In the present case, Mr. Rattray has essentially relied upon the fifth ground, that is, that there has been a denial of natural justice regarding either or both of two matters: (1) the alleged misapprehension of the evidence by the Board with respect

to the redress afforded for the lost opportunity referred to above; (2) the failure of the Board to expressly articulate a decision on the request for costs.

**[12]** In our opinion, the Applicant has not adduced solid grounds to persuade us to exercise our discretion to embark upon reconsideration of the original decision of the Board with respect to either of the matters. The hearing of the original application (albeit concurrently with another related matter) lasted some six days during which the Board heard copious evidence. Counsel for the Union referred to the fact that there was at least some evidence relating to the matter of Mr. Rattray's complaint regarding the then upcoming provincial council election of the Union. We cannot say that there are solid grounds to support reconsideration of the matter on the basis of a denial of natural justice, nor that the Board ignored or otherwise neglected to consider the whole of the evidence adduced.

**[13]** With respect to the fact that there was no express allusion to the matter of costs, it would indeed be unusual for the Board to award costs to the unsuccessful party, but, in any event, requests for costs are made so often and awards for costs are made so infrequently by the Board that we are not persuaded that there are solid grounds to say that the Board ignored or otherwise neglected to consider the request in this case. And, in any event, even if it had, we have serious doubt that such would constitute a denial of natural justice.

**[14]** For these reasons, the application for reconsideration is dismissed.

**DATED** at Regina, Saskatchewan this **1st** day of **December, 2003**.

**LABOUR RELATIONS BOARD**

James Seibel,
Chairperson