

**The Labour Relations Board  
Saskatchewan**

**JOHN BOBOWSKI, Applicant v. UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 248-P and MITCHELL'S GOURMET FOODS INC., Respondents**

LRB File Nos. 028-03 & 057-03; November 5, 2003

Vice-Chairperson, Wally Matkowski; Members: Gerry Caudle and Brenda Cuthbert

For the Applicant:	John Hardy
For the Respondent Union:	Gary Bainbridge
For the Respondent Employer:	Kevin Wilson

**Duty of fair representation – Practice and procedure – Delay – Board finds extreme unjustified delay by applicant in filing duty of fair representation applications – Board dismisses applications.**

***The Trade Union Act, s. 25.1.***

**REASONS FOR DECISION**

**Background:**

[1] John Bobowski (the “Applicant”) filed an unfair labour practice application dated March 4, 2003 alleging that United Food and Commercial Workers International Union, Local 248-P (the “Union”) violated s. 25.1 of *The Trade Union Act*, R.S.S.1978, c.T-17 (the “Act”) and failed to represent the Applicant fairly and reasonably by refusing to file a grievance against Mitchell’s Gourmet Foods Inc. (the “Employer”) regarding the Employer’s calculation of vacation pay, calculation of vacation credits, calculation and payment of union dues and calculation and payment of parking lot fees. The Applicant filed a second unfair labour practice application dated April 8, 2003 alleging that the Union violated s. 25.1 of the *Act* by failing to provide information to him relating to the operating rules of the Union.

[2] The Union and the Employer obtained an Order from the Executive Officer of the Board dated April 23, 2003 which required the Applicant to provide particulars of his applications. On June 13, 2003 the Applicant provided a reply to the Order for particulars and on July 3, 2003 the Applicant provided a further reply to the Order for particulars.

[3] The Union raised two preliminary objections before the Board. The first objection was that the Applicant's complaints fell outside the scope of the duty of fair representation. The second objection dealt with the lengthy delay, disclosed by the Applicant in his reply to the Order for particulars, that had occurred following the incidents at issue and prior to the filing of the Applicant's applications.

[4] The Employer also raised two preliminary objections. The first objection related to the Applicant's lengthy delay in bringing his applications before the Board. The second objection was that the applications brought forward amounted to an abuse of process and/or that the Applicant did not have a reasonable cause of action.

[5] Following argument, the Board agreed with counsel for the Union and the Employer that there had been a lengthy delay in having these matters come before the Board and that some of the complaints did not fall within the Board's jurisdiction. The Board therefore dismissed the applications, indicating that written reasons for its decision would follow.

**Facts:**

[6] The Union and the Employer relied on the Applicant's reply and further reply to the Order for particulars to support their delay and lack of jurisdiction arguments.

[7] Initially, the Applicant sought the repayment of parking lot fees from the Employer dating back to 1996 (\$84.26) and continuing up until 2000 (\$80.35). The Applicant raised this concern with the Union in the time period between July, 1999 and November, 2001 and was advised that the Union would not take the matter to arbitration. The Applicant was only claiming this amount against the Employer and, in fact, had sent the Employer a demand letter in September, 2002 regarding this alleged indebtedness.

[8] The Applicant complained that excessive union dues were deducted from his pay, dating back from 1994 (\$71.02) and ending in 2001 (\$20.66), contrary to the Union's bylaws. These concerns were raised with the Employer on April 30, 2002 and also with the Union on June 3, 2002.

[9] The Applicant complained that his vacation pay was miscalculated for the years 1996 and 1997. He informed the Union of this complaint in approximately April, 2000 and received word by letter dated November 19, 2001 that the Union would do nothing further.

[10] The Applicant complained that he did not receive proper vacation credits following a grievance settlement in 1997 (3 weeks short). He raised his concern with the Union in November, 2001 and was advised by letter from the Union dated November 19, 2001 that the Union would not be taking any action with regard to this issue.

[11] The Applicant complained that he did not receive information from the Union setting out the Union's operating rules and the methodology used to calculate union dues.

**Relevant statutory provision:**

[12] Section 25.1 of the *Act* states:

*25.1 Every employee has the right to be fairly represented in grievance or rights arbitration proceedings under a collective bargaining agreement by the trade union certified to represent his bargaining unit in a manner that is not arbitrary, discriminatory or in bad faith.*

**Analysis:**

[13] The Board has attempted to ensure that, when bringing an application under normal circumstances, delay is measured in months rather than years. The Board has recognized that extreme delay should not be encouraged and that extreme delay, by itself, should result in the Board dismissing an application. Extreme delay, without some legitimate reason, results in justice not being done. (See: *Taylor v. Regina Police Association Inc. et al.*, [2003] Sask. L.R.B.R. 307, LRB File No. 016-03 and *Kinaschuk v. Saskatchewan Insurance Office and Professional Employees' Union, Local 397 et al.*, [1998] Sask. L.R.B.R. 528, LRB File No. 366-97).

[14] In the case at hand, we have extreme delay and no legitimate reason as to why the Applicant has waited for many years prior to bringing his complaints forward. The Applicant complains that he paid excess union dues dating back to 1994 and complains that he paid excess parking lot fees dating back to 1996. The Applicant also complains that he was underpaid in his vacation pay entitlement for the years 1996 and 1997 and that he did not

receive vacation credits following a settlement agreement in 1997. All of these complaints deal with incidents that occurred approximately six years prior to the Applicant filing these applications and these issues were not brought to the Union's attention until years after the incidents allegedly occurred.

**[15]** To further compound the Applicant's problems, he was aware that the Union was not taking any action with regard to these issues for a considerable period of time prior to filing these applications. The Applicant should have proceeded expeditiously once he was aware that the Union would not be taking these matters to arbitration if he had any hope of convincing the Board to ignore the lengthy delay that had already occurred.

**[16]** With respect to the Applicant's complaint that the Union failed to provide him with information to calculate and deduct union dues, this is not a matter that falls within the Board's jurisdiction, pursuant to s. 25.1 of the *Act*. Rather, this is an internal Union matter which should be dealt with by the Union and its members.

**DATED** at Saskatoon, Saskatchewan, this 5th day of November, 2003.

**LABOUR RELATIONS BOARD**

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Wally Matkowski,  
Vice-Chairperson