

**The Labour Relations Board
Saskatchewan**

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

LRB File Nos. 030-03 & 031-03; September 25, 2003

Vice-Chairperson, Wally Matkowski; Members: Gerry Caudle and Clare Gitzel

For the Applicant:	Richard Gabruch
For the Respondent Union:	Gary Bainbridge
For the Respondent Employer:	Kevin Wilson

**Duty of fair representation – Practice and procedure – Delay –
Fundamental question for determination is whether justice can still
be done despite delay – Board reviews applicant's reasons for delay
and nature of application and concludes that justice can still be done
– Board declines to dismiss application on basis of delay.**

The Trade Union Act, s. 25.1.

REASONS FOR DECISION

Background:

[1] Wynne Leedahl (the "Applicant") filed an application under s. 25.1 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*") alleging that United Food and Commercial Workers International Union, Local 248-P (the "Union") failed to fairly represent her in a grievance proceeding (LRB File No. 030-03). The Board dealt with two preliminary objections raised by the Union on September 10, 2003.

[2] The first preliminary objection dealt with the Applicant's application for monetary loss (LRB File No. 031-03). This preliminary objection fell to the wayside as counsel for the Applicant advised the Board that he was instructed to withdraw LRB File No. 031-03 and that he would be seeking damages on behalf of his client as against the Union pursuant to the duty of fair representation application. Counsel advised that his client had obtained new employment and would not be seeking any relief, either directly or indirectly, from the Employer and that, as such, the Employer did not have to participate in the hearing.

[3] The second preliminary objection dealt with the issue of the Applicant's delay prior to filing an application with the Board. In that regard, the Applicant filed the duty of fair representation application with the Board on March 11, 2003. The claim arises as a result of a grievance filed by the Union in December, 2000. The grievance claimed that the Employer failed to accommodate the Applicant following some periods of either partial or total disability. In December, 2001 the Union and the Employer arrived at a settlement of the grievance.

[4] The Applicant was not satisfied with the settlement, would not sign the settlement agreement and ultimately retained legal counsel. Counsel for the Applicant exchanged correspondence with counsel for the Union in March and April, 2002, in the hope of resolving the disagreement between his client and the Union, to no avail. Counsel then filed the duty of fair representation application in March, 2003.

[5] Counsel for the Applicant advised the Board that a number of urgent and unexpected occurrences delayed his proceeding more expeditiously on the file. These events included a number of lengthy matrimonial trials. Counsel for the Applicant accepted some blame for the delay and, in effect, urged the Board not to penalize his client and take away her only possible avenue of legal recourse against the Union.

[6] In the circumstances of this case, the Union's preliminary objection relating to delay is dismissed. The Board, in arriving at this decision, accepts that the fundamental question to be determined is whether justice can still be done despite the delay. While delay is never to be encouraged, counsel for the Applicant initially tried to see if the dispute could be resolved without the necessity of legal proceedings. Counsel for the Applicant attempted to do this by way of correspondence in March and April, 2002. Thereafter, counsel accepted some of the blame for the delay which, from that point forward, is less than one year. In these circumstances, the Board will not dismiss the Applicant's application on the basis of delay. Justice can still be done in spite of the delay, especially given the Applicant's position that she is only seeking damages as against the Union and is not seeking any relief, either directly or indirectly, as against the Employer.

[7] If this matter is to proceed, the Board will remain seized. The Board strongly urges the parties to agree on as many facts as possible, utilizing the facts set out in either the

Union's or the Employer's briefs of law which, for the most part, counsel for the Applicant accepted.

DATED at Regina, Saskatchewan, this **25th** day of **September, 2003**.

LABOUR RELATIONS BOARD

Wally Matkowski,
Vice-Chairperson