Labour Relations Board
Saskatchewan

BARBARA METZ, Applicant v. SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Respondent

LRB File No. 164-00; December 18, 2003
Chairperson, James Seibel; Members: Donna Ottensen and Leo Lancaster

The Applicant, Barbara Metz
For the Union: Rick Engel

Reconsideration – Criteria – Board discusses and applies criteria for reconsideration – Initial hearing lasted several days and involved copious evidence - 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 – Original panel simply concluded that much of evidence not helpful – Board dismisses application for reconsideration.

***The Trade Union Act*, ss. 5(i) and 13.**

REASONS FOR DECISION

Background:

[1] The Applicant, Barbara Metz, filed an application with the Board on August 5, 2003, for reconsideration of a decision of the Board dated July 17, 2003 (not yet reported). Ms. Metz's original application alleged that the Saskatchewan Government and General Employees' Union (the "Union") was in breach of its duty of fair representation under s. 25.1 of *The Trade Union Act*, R.S.S. 1978, c. T-17, as amended (the "*Act*"), and further alleged that her employer, the Government of Saskatchewan (the "Employer"), committed an unfair labour practice in violation of s. 11(1)(c) of the *Act* in failing to bargain collectively.

[2] In an initial decision in the matter, dated February 6, 2003, reported at [2003] Sask. L.R.B.R. 28, LRB File No. 164-00, the panel of the Board, chaired by then Chairperson, Gwen Gray, Q.C., dismissed the unfair labour practice complaint against the Employer on the basis of lack of standing to bring such complaint and would have deferred jurisdiction over certain elements of the duty of fair representation complaint to

the Saskatchewan Human Rights Commission (if the complaint against the Employer had not been dismissed), explaining as follows at 45:

> *[68] If we did not dismiss the unfair labour practice application against the Employer, we would have deferred jurisdiction over the complaint to the Human Rights Commission as the complaint is in its essence a human rights dispute related to the obligations on the Employer to accommodate the Applicant's disability.*

[3] Also in that decision, the Board retained jurisdiction with respect to other elements of the duty of fair representation complaint as follows, at 45:

> *[69] 2. . . .to determine whether any of the processes allegedly used by the Union to arrive at the accommodation settlement, the financial settlement or the grievance settlements were influenced by or taken in bad faith, with discrimination or in an arbitrary fashion contrary to s. 25.1 of the Act. The Board will hear evidence and argument with respect to these limited matters at a time to be set by the Board Registrar.*

[4] The Board heard evidence respecting the remaining matters over three days in May and July, 2003. In its decision of July 17, 2003 – the subject of this application – the Board dismissed the application in its entirety.

[5] Although in her present application Ms. Metz requested reconsideration only of the Board's July 17, 2003 decision, at the hearing before this panel on October 7, 2003 she sought to expand her request to include the February 6, 2003 decision as well. Mr. Engel, counsel for the Union, did not vigorously object to the expansion of the application and the Board heard and considered all of the Applicant's submissions on the matter.

Arguments:

[6] Ms. Metz argued that she ought to be allowed to present additional evidence, including the testimony of further witnesses regarding the Union's processes with respect to its representation of her, asserting that the Board's decision of February 6, 2003, *supra*, amounted to a significant change in policy and amounted to a denial of natural justice in that the Board did not properly interpret the evidence, law and policy,

particularly as concerns the Board's deferral of certain matters to the Human Rights Commission.

[7] Ms. Metz wrote three letters to the Board after the application for reconsideration was filed. We have considered the appropriate portions of those letters as further argument on her behalf in this matter.

[8] In a letter dated August 7, 2003, Ms. Metz took issue with the fact that, in its decision of July 17, 2003, the Board stated that,

> *[2] . . .Much of the evidence presented at the hearing did not assist the Board in understanding Ms. Metz's complaints. As a result, much of the evidence is not summarized in these Reasons.*

[9] Ms. Metz posited in her letter that the fact that a portion of the transcript of evidence of the hearing on July 4, 2003 was not available due to a malfunction of the recording equipment might have contributed to the Board's misunderstanding or misinterpreting some of her evidence and for that reason she ought to be allowed a further opportunity to clarify same.

[10] In a further letter to the Board dated August 14, 2003, Ms. Metz argued that, with respect to the July 17, 2003 decision of the Board, the Board "possibly misunderstood or misinterpreted [the evidence] due to lack of (and/or) presentation of evidence," and asserted that as a ground to be allowed to adduce further evidence in this matter. The bulk of the balance of the eighteen-page letter is essentially composed of allegations of fact and argument regarding the matters raised in the original application.

[11] In a further letter to the Board dated August 25, 2003, Ms. Metz made the following assertions:

> *A hearing was held, but certain crucial evidence was not adduced for good and sufficient reason because not all evidence was compiled or completed. The process(s) that the union was responsible for had not been finished and may currently be unfinished as I have not been in the office, where I work, to confirm additional information. Also, there is crucial evidence that*

was not produced in the original hearing regarding union leave, seniority, the union's ongoing interference regarding my human rights complaint settlement with the employer through the Sask. Human Rights Commission and other evidence and arguments.

The order made by the Board in their July 17, 2003 decision operated in an unanticipated way. I expected the Board to refer to their February 6, 2003 decision and rule on the processes of representation and the breach of natural justice used by the union. It appears to me the July 17, 2003 ruling was not based on this. I filed a complaint at the Sask. Human Rights Commission against the union on the "duty to accommodate", they wrote back to me referring to the Board's July 17, 2003 ruling regarding the processes used by the union and refused my application for complaint against the union.

Also, the February 6, 2003 decision turned on a conclusion of law or general policy under the code which law or policy was not interpreted in the Board's July 17, 2003 decision. It appears to me the union misled the Board and it was apparent when the union included in their evidence at the January 2003 hearing, the Cadillac Fairview Supreme Court's ruling. The union misled and misrepresented me because they knew, or it was their job to know, they had no legal right to represent on the "duty to accommodate" issue after the Cadillac Fairview decision of April 15, 1999. After the Sask. Court of Appeal decision of April 15, 1999 (Cadillac Fairview) the union, SGEU, should not have threatened me with removal of representation, should not have entered into negotiations or represented me on the duty to accommodate because there was already a ruling that disallowed their behavior(s). The union did not need to tell me about the ruling. The union should have acted in a proper fashion and refused to represent because of the legalities and their duty to represent under the Trade Union Act only. The "duty to accommodate" under the Human Rights Commission deals with union's obligation to me, a person with disabilities as per the Workers' Compensation January 2003 letter awarding me a 90% disability. The "duty to accommodate" the Board deferred, to the Human Rights Commission, did not include the processes or the breach of natural justice used by the union, SGEU, in this case.

The Board's February 6, 2003 decision is tainted by a breach of natural justice in that the union colluded with the employer in getting the employer off the hook, the "duty to accommodate" deferred to the Human Rights Commission and tried to get the union off the hook. Why did the union not file at the Sask. Labour Relations Board against the employer, on behalf of me? Instead the union assisted the employer in getting off the hook.

Why did Susan Saunders write the March 27, 2003 letter to me, asking me to accept and ratify the November 2001 Agreement

> *between the employer and the union? I disagreed with her position (Tab 2(2) – 15 Metz Documents Binder) and indicated I was currently in the process of completing a final agreement through the Human Rights Commission, which Donna Scott signed on July 14, 2003. That settlement was finalized and I received the package with cheques July 16, 2003. Further, the one cheque for 5,000.00 was dated June 20, 2003 and the other two cheques were dated July 3, 2003. The Board had already deferred the "duty to accommodate" to the Human Rights Commission. In addition, why did the agreement take so long? According to the January 2003 hearing there was an offer and acceptance on the table. Why was there such a delay to sign the agreement, difference between the dates of the cheques and receipt of the final package?*
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> *Also, why did Susan Saunders read an email (Tab 2(2)-18 Metz Documents Binder), sent to her January 10, 2001 regarding packing files and problems I was having on the job, on May 15, 2003, over 2 years later and the day before the May 16, 2003 hearing?*
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> *In addition , why would the union sign and give the employer a release of claim, with conditions, two days before the May 16, 2003 hearing? It appears to me the union had no legal position and was interfering;* ***or*** *the employer was assisting the union in settling or negotiating my human rights complaint.*
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> *It appears to me the original decision, February 6, 2003, is precedential and amounts to a significant policy adjunction which the union's Provincial Council may wish to refine, expand upon, or otherwise change. The policy change I am referring to is the job descriptions, consistency with appeal hearings, education regarding the staff, representatives and members of SGEU, specific dates on dealing with grievances so they aren't so lax and other issues. I am asking the Board to please allow me to present the additional critical evidence, that wasn't produced in the original hearing.*

[12] Because of the view that we take regarding the present application, it is not necessary to set out in detail the arguments of counsel for the Union, Mr. Engel. Counsel asserted the discretion of the Board to defer to the human rights tribunal in appropriate circumstances of concurrent jurisdiction, citing in support of his argument the recent decision of the Supreme Court of Canada in *Parry Sound (District) Social Services Administration Board v. Ontario Public Service Employees Union, Local 324* (2003), 230 D.L.R. (4th) 257 (S.C.C.).

Analysis and Decision:

[13] 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 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, 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.

[14] 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 v. Canadian Union of Public Employees, Local 287*, [2003] Sask. L.R.B.R. 288, LRB File No. 054-01.

[15] In the present case, Ms. Metz has essentially relied upon the second, fifth and sixth grounds, that is, (1) that she ought to be allowed to adduce further evidence; (2) that there has been a denial of natural justice in that the Board misinterpreted or misunderstood the evidence and/or the failure of the recording equipment resulted in a portion of the transcript of proceedings being unavailable; and (3) that the decision represents a significant policy adjudication which the Board may wish to change.

[16] 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 any of the grounds raised. The hearing of the original application lasted several days and involved the Board hearing copious evidence. We cannot say that it has been demonstrated that there are solid grounds that 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. The Board simply found that much of the evidence was not helpful. The Applicant has not asserted good and sufficient reasons for being allowed to adduce further evidence. In our opinion, the Board's two decisions in the matter are well reasoned and sound, and we are not persuaded to embark upon consideration as to whether they should be changed in any way.

[17] For these reasons the application is dismissed.

DATED at Regina, Saskatchewan, this **18th** day of **December, 2003.**

LABOUR RELATIONS BOARD

James Seibel,
Chairperson