

**Labour Relations Board  
Saskatchewan**

**RAYMOND KIMMIE, Applicant v. COMMUNICATIONS, ENERGY AND  
PAPERWORKERS UNION OF CANADA, LOCAL 609, and AKZO NOBEL  
CHEMICALS LTD., Respondents**

LRB File No. 247-02; December 2, 2003

Chairperson, James Seibel; Members: Marshall Hamilton and Maurice Werezak

The Applicant: Raymond Kimmie  
For the Respondent Union: Gary Bainbridge  
For the Respondent Employer: Kevin Wilson

**Duty of fair representation – Practice and procedure – Delay – Time period referred to in application covers grievances spanning more than fifteen years with most recent complaint concerning grievance regarding applicant’s termination, the settlement of which was negotiated with applicant’s ostensible consent over two years before hearing of application – Onus on applicant to explain delay – Applicant has not explained delay – Board dismisses application.**

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

**REASONS FOR DECISION**

**Background:**

[1] Communications, Energy and Paperworkers Union of Canada, Local 609 (the “Union”), is designated as the bargaining agent for a group of employees of Akzo Chemicals Ltd. (now Akzo Nobel Chemicals Ltd.) (the “Employer”). The Applicant, Raymond Kimmie, was at all material times a member of the bargaining unit. The Applicant filed an application with the Board alleging that the Union had violated s. 25.1 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”) by failing to fairly represent him with respect to grievance or rights arbitration proceedings arising out of his termination of employment on February 25, 2000. The application also alleges that the Employer committed an unfair labour practice in violation of s 12 of the *Act* by taking part in or aiding or abetting the alleged unfair labour practice by the Union.

[2] Sections 25.1 and 12 of the *Act* provide as follows:

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.*

...

12 *No person shall take part in, aid, abet, counsel or procure any unfair labour practice or any violation of this Act.*

**[3]** The Union filed a grievance of Mr. Kimmie's termination of employment. The grievance progressed to arbitration. At the arbitration hearing, with the consent of the parties including Mr. Kimmie, the arbitrator, Ken Stevenson, Q.C., assumed the role of mediator. With Mr. Stevenson's assistance, a settlement was reached in June 2000, to which Mr. Kimmie consented in writing. The confidential terms of the settlement resulted in Mr. Kimmie not returning to employment with the Employer.

**[4]** In his lengthy application to the Board, filed on December 5, 2002, Mr. Kimmie alleges, *inter alia*, that the Employer and the Union unlawfully conspired to harass him for many years and that the settlement of his termination grievance was a part of the conspiracy. That is, he now takes issue with the settlement of the grievance.

**[5]** The Union and the Employer raised two preliminary objections to the application which were heard by the Board and upon which the Board reserved its decision. The first objection was to the jurisdiction of the Board to hear Mr. Kimmie's application. The second objection was that the application should be dismissed in any event because of undue delay.

### **Arguments:**

#### The Union

**[6]** Counsel for the Union, Mr. Bainbridge, filed a written submission on behalf of his client that we have reviewed. With respect to the preliminary objection as to jurisdiction, the argument is, essentially, that a major portion of the application makes allegations of harassment or generally poor treatment against the Applicant by many individuals, organizations, agencies and entities that are outside of the labour relations

issues raised by the application and outside of the purview of the *Act*. Counsel asserted that the Board has no jurisdiction to hear complaints about such matters or regarding such third parties and those portions of the application should be struck or disregarded.

[7] With respect to the objection on the basis of delay, Mr. Bainbridge noted that the application contains references to complaints about actions of the Union that date back from more than two years ago, regarding the settlement of the termination grievance, to nearly fifteen years ago, with references to the refusal to file grievances on the Applicant's behalf in 1988 and 1993 and the withdrawal of a grievance in 1995. In support of his argument, Mr. Bainbridge referred to the decision of the Board in *Neskar v. Canadian Union of Public Employees, Local 21 and City of Regina*, [1995] 4th Quarter Sask. Labour Rep. 70, LRB File No. 122-95 and *Kinaschuk v. Saskatchewan Insurance Office and Professional Employees' Union, Local 397 and Saskatchewan Government Insurance*, [1998] Sask. L.R.B.R. 528, LRB File No. 366-97.

#### The Employer

[8] Counsel for the Employer, Mr. Wilson, filed a written submission on behalf of his client that we have reviewed. With respect to the objection as to jurisdiction, counsel's argument echoed that of counsel for the Union, that is, that the Board has no jurisdiction to hear complaints against third parties that are unrelated to the *Act*, some of which post-date events connected to the termination of Mr. Kimmie's employment and the subsequent settlement of the grievance.

[9] However, Mr. Wilson also raised additional jurisdictional and other objections. First, counsel argued that, because a certified union is the exclusive bargaining agent for employees, an employee cannot bring an application against his or her employer under s. 12 of the *Act* in his or her own name in respect of an alleged violation by the certified union of s. 25.1, given that the employer has no statutory obligation to the employee pursuant to s. 25.1. In support of this contention, counsel cited the recent decision of the Board in *Metz v. Saskatchewan Government and General Employees' Union and Government of Saskatchewan*, [2003] Sask. L.R.B.R. 28, LRB File No. 164-00. Second, counsel argued that the application is an abuse of the Board's process in that the application is an attempt to re-litigate issues relating to the Applicant's dismissal settled some years ago. Finally, counsel argued that the

application discloses no cause of action, as it does not raise even a *prima facie* case of breach of s. 25.1 of the *Act*. In any event, the Employer ought to be able to rely upon the Union's settlement of the grievance without being forever in fear that the matter may be raised again against the Employer in s. 25.1 proceedings.

**[10]** With respect to the matter of delay, Mr. Wilson joined with counsel for the Union, and referred as well to decisions of the Board in *Saskatchewan Union of Nurses v. South Central District Health Board*, [1995] 2nd Quarter Sask. Rep. 281, LRB File No. 016-95 and *Nistor v. United Steelworkers of America*, [2003] Sask. L.R.B.R. 15, LRB File No. 112-02.

### The Applicant

**[11]** The Applicant reiterated his belief that the Union, Employer and other agencies and individuals have unlawfully conspired against him with respect to his loss of employment, arguing that the Board should examine the whole time of his employment with the Employer. He decried the fact that he had no independent representation at the arbitration/mediation process where his termination grievance was settled.

### **Analysis and Decision:**

**[12]** While we accept as a general proposition the submission of the Union and the Employer that we have no jurisdiction to consider an application alleging violation of s. 25.1 of the *Act* insofar as it relates to the conduct of third parties to the employment relationship, it is not necessary for us to decide the issue in relation to this case for the reasons that follow.

**[13]** We are of the opinion that the application must be dismissed by reason of inordinate and unexplained delay. The time period referred to in the application covers grievances spanning more than fifteen years. The most recent complaint in the application concerns the grievance regarding Mr. Kimmie's termination from employment, the settlement of which was negotiated with Mr. Kimmie's ostensible consent over two years before the hearing of this application.

**[14]** As has been stated in numerous decisions of the Board, indeed very recently in *Hidlebaugh v. Saskatchewan Government and General Employees' Union and Saskatchewan Institute of Applied Science and Technology*, [2003] Sask. L.R.B.R. 272, LRB File No. 097-02, it is not for the Board to minutely assess and second guess the actions of the Union in its conduct of the grievance on behalf of Mr. Kimmie. The effluxion of time may, in and of itself, make it probable that justice cannot be appropriately done in respect of the reliability of the evidence of the situation at the time. The onus is on the Applicant to explain his delay in bringing the application. This he has not done.

**[15]** Having regard to the authorities cited by counsel for the Union and Employer regarding the issue of inordinate delay, we have determined that the application shall be dismissed.

**DATED** at Regina, Saskatchewan, this **2<sup>nd</sup>** day of **December, 2003**.

**LABOUR RELATIONS BOARD**

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James Seibel,  
Chairperson