

**The Labour Relations Board
Saskatchewan**

JACQUELINE DIRK, Applicant v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 4162, Respondent

COLLEEN SCHMITZ, Applicant v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 4162, Respondent

LRB File Nos.146-03 & 147-03; April 23, 2004

Vice-Chairperson, Wally Matkowski; Members: Bruce McDonald and Joan White

The Applicants: Jacqueline Dirk and Colleen Schmitz
For the Respondent: Lois Lamon

Duty of fair representation – Contract negotiation – Union owes duty of diligent and competent representation to bargaining unit as whole in contract negotiation – Where collective agreement ratified providing different wage increases for two classifications and no evidence that union did not negotiate diligently and in good faith with employer on behalf of whole bargaining unit, Board finds no breach of duty of fair representation and dismisses applications.

The Trade Union Act, s. 25.1.

REASONS FOR DECISION

Background:

[1] Jacqueline Dirk and Colleen Schmitz (the “Applicants”) each filed an unfair labour practice application dated August 12, 2003 alleging that Canadian Union of Public Employees, Local 4162 (the “Union”) violated s. 25.1 of *The Trade Union Act*, R.S.S.1978, c. T-17 (the “Act”) by failing to represent the Applicants fairly and reasonably during recent contract negotiations.

[2] There was no dispute between the parties as to the basic facts of the case. The Applicants are both secretaries at Fox Valley School. Their primary complaint is that the secretaries at Fox Valley School and Richmond School were not represented properly during the last round of bargaining by the Union as additional duties, which they perform, were not taken into consideration when their job classification was determined. Secretaries at schools located in Maple Creek received a wage increase which was greater than that received by secretaries at Fox Valley School and Richmond School. The Applicants argued that, if their

additional duties had been taken into consideration, they too would have received the greater wage increase.

[3] To assist it during bargaining, the Union set up different committee groups made up of classifications such as teacher assistants and secretaries so as to have a common position from each group to take to the bargaining table. Following difficult negotiations with the employer, the Union's negotiating committee, which included one secretary, agreed to an employer proposal that created the new job classification of Secretary II. This new classification was created to recognize higher workloads experienced by school secretaries who worked at schools which had an enrolment of over 200 students. At the time of negotiations, Richmond School had an enrolment of 84 students, Fox Valley School had an enrolment of 159 students, Sidney Street School had an enrolment of 386 students and Maple Creek Composite High School had an enrolment of 269 students.

[4] Employees in the new classification of Secretary II received \$1 per hour more than the 2002 rates for the Secretary classification, while employees in the Secretary classification received a \$.50 per hour wage increase over their 2002 rates.

[5] The Applicants also complained that members were not given adequate time in which to consider the contract proposals prior to ratification and that there was uncertainty that the ratification vote meeting was actually supposed to be a ratification vote meeting.

[6] At the conclusion of the hearing, the Union offered to set up a meeting to deal with the Applicants' concerns. Following this meeting, the Applicants provided correspondence to the Board asking that the Board render its decision.

Relevant statutory provision:

[7] 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:

[8] The applications brought forward by the Applicants do not fall within the scope of s. 25.1 of the *Act*. This is not a case where the Union did not bring forward a grievance on behalf of an employee. Rather, the Applicants complain that another segment of the bargaining unit obtained a wage increase when they did not.

[9] Section 25.1 of the *Act* does not replace the common law duty of fair representation that falls upon a union. The common law duty of fair representation is looked at in the context of union membership, collective bargaining and the grievance procedure. (See: *Banga v. Saskatchewan Government Employees Union*, [1993] 4th Quarter Sask. Labour Rep. 88, LRB File No. 173-99).

[10] 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, the Board describes a union's responsibilities, at 285, as follows:

The Union's duty of fair representation is a dual responsibility. It owes a duty of diligent and competent representation to the bargaining unit as a whole, as in collective agreement negotiation, and a duty to fairly represent individual members in grievance and arbitration proceedings. The cases are legion that the two arms of the duty are often in conflict and that it is necessary for a union to engage in a balancing of collective and individual interests.

[11] In *Hidlebaugh, supra*, the Board, at 286, describes collective bargaining as:

. . . a complex and dynamic process that involves conflict, compromise, confrontation, horse-trading, puffery, mutual education, psychological pressure, nimble maneuvering and totally frank discussion, in varying proportions.

[12] The Board in *Hidlebaugh, supra*, concludes, at 287:

. . . in the absence of any specific evidence of deficiency in collective bargaining representations by the Union, or evidence that it did not fairly assess the interests of its collective membership and the interests of individual members likely to be affected, we are not prepared to find any culpable failure on its part to fulfill this arm of the duty of fair representation.

[13] As in *Hidlebaugh, supra*, in this case, there was no evidence before the Board that the Union, through its representatives or through the negotiating committee, acted in an inappropriate manner during collective bargaining. There was no evidence that the Union acted in an arbitrary, discriminatory or bad faith manner toward the Applicants or, for that matter, any group of individuals. There was no evidence that the Union, through its representatives or through its negotiating committee, did not negotiate diligently and in good faith with the employer on behalf of its members as a whole when arriving at the terms of a tentative collective agreement, which was subsequently ratified by the Union's membership.

[14] It is true that the secretaries at Fox Valley School and Richmond School received a lower wage increase than secretaries in schools located in Maple Creek, but that was due to the creation of the Secretary II classification, based on school enrolment. The employer raised the new classification concept and, following normal bargaining and compromise, the parties agreed that employees in the Secretary classification - located at schools with an enrolment below 200 students - would receive half the wage increase provided to employees in the Secretary II classification.

[15] It is the normal role of the parties to determine wage rates through the collective bargaining process. Without some evidence of improper conduct, the Board will not delve into how a union's negotiating committee arrives at an agreement with an employer on issues such as which segment of the bargaining unit will get a wage increase through a newly created job classification.

[16] With respect to the ratification vote, notice was sent to every member, stapled to the ballot on a seniority issue, that the ratification vote would be held on June 4, 2003. Notice of the ratification vote meeting was also posted in various schools. Following normal discussion relating to the proposed contract, 47 union members voted on the proposed contract, with a majority of the members voting to accept the contract. Thus, there was no evidence presented that the Union did not act appropriately with regard to the ratification vote.

[17] For the foregoing reasons, the applications are dismissed.

DATED at Regina, Saskatchewan, this **23rd** day of **April, 2004**.

LABOUR RELATIONS BOARD

Wally Matkowski,
Vice-Chairperson