The Labour Relations Board
Saskatchewan

DF, Applicant v. SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION and SASKATCHEWAN WORKERS' COMPENSATION BOARD, Respondents

LRB File No. 195-03; June 28, 2004
Vice-Chairperson, Wally Matkowski; Members: Bruce McDonald and Brenda Cuthbert

The Applicant: DF
For the Respondent Union: Rick Engel
For the Respondent Employer: Ken Hutchinson

Comment [SL1]: keep together with "and"

Comment [SL2]: refer to "Applicant" and not "Union" where applicable

Duty of fair representation – Scope of duty – Union generally not required to seek out potential grievor and/or convince potential grievor to request filing of grievance – Likewise, if union member makes decision, union not generally required to convince member that decision wrong – Where union met needs of applicant as presented to union and no medical evidence that applicant lacked capacity to enter into or understand settlement agreement, Board finds no breach of duty of fair representation.

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

REASONS FOR DECISION

Background:

[1] DF (the "Applicant") filed an unfair labour practice application dated September 26, 2003 alleging that Saskatchewan Government and General Employees' Union, (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 facilitating an illegal layoff of the Applicant in February, 2002 and by not offering the Applicant any options or advice so that the Applicant could maintain his employment in February, 2002.

[2] At the hearing, the Applicant asked that the Union be made to pay him approximately one year of salary. The Board heard this matter in Saskatoon on June 9, 2004. A representative of the Saskatchewan Workers' Compensation Board (the "Employer"), Ken Hutchinson, was present during the hearing but did not participate.

Facts:

[3] The relevant facts in this case are not in dispute. DF testified on his own behalf and Susan Jeannotte, an agreement administration advisor with the Union (also called a "staff representative") testified for the Union.

[4] The Applicant commenced employment with the Employer in 1999. He had recently obtained a Bachelor of Human Justice degree. In July, 2000 the Applicant accepted a term position with the Employer in Saskatoon and in October, 2001 the Applicant accepted a permanent position as a long term case manager in the Employer's Saskatoon office. While in the latter position, the Applicant was responsible for more complex, serious, longer-term work injury claims. During his tenure with the Employer, the Applicant was a member of the Union and had held the position of shop steward.

[5] The Applicant believed that the workload in the newly created long term case manager position was excessive and the evidence indicated that the responsibilities attached to the position continued to grow. The evidence indicated further that the Applicant was a hard working individual who was described as a perfectionist. On January 15, 2002 the Applicant did not attend work and filed a Workers' Compensation Board ("WCB") claim on his own behalf, alleging stress related symptoms.

[6] While the Applicant was waiting for a determination of his WCB claim, the Employer discontinued his payroll. The Applicant testified that he was in financial difficulty because of the Employer's decision to no longer pay him and that he was suffering from symptoms that arose from work related stress.

[7] In a letter sent to the Employer dated February 22, 2002, the Applicant asked for a severance package from the Employer. The Applicant proposed that he be paid his salary up to and including February 28, 2002, that he receive six (6) months' severance, that he receive any retroactive payments, vacation pay, holiday pay, and that he be provided with an "official layoff notice." In return, DF would sever his employment, not file a formal grievance and abandon his WCB claim. The Applicant asked for a quick response to his severance request.

[8] In his February 22, 2002 letter, the Applicant referred to the extreme stress he felt while performing his new job duties and the financial stress that he was under given the Employer's decision to discontinue his payroll.

[9] On approximately February 22, 2002 Ms. Jeannotte, the staff representative servicing the Union's bargaining unit in the Employer's workplace, received a phone call from Rory Griffith, director of human resources for the Employer. Mr. Griffith informed Ms. Jeannotte of the Applicant's request to sever his employment with the Employer and provided her with a summary of what the Applicant had requested in his February 22, 2002 letter. Mr. Griffith advised Ms. Jeannotte that the Employer would be willing to consider a three (3) month severance package for the Applicant and provided Ms. Jeannotte with the Applicant's phone number so that she could contact the Applicant to discuss his severance request.

[10] On February 26, 2002 Ms. Jeannotte had a telephone conversation with the Applicant. She had met the Applicant previously, presumably when the Applicant was a shop steward. The Applicant had not contacted Ms. Jeannotte about his workplace problems (ie. excessive workload), his financial difficulties (the Employer had discontinued his payroll), or his WCB claim. The Applicant did not provide Ms. Jeannotte with a copy of his February 22, 2002 letter to the Employer.

[11] During the telephone conversation, the Applicant advised Ms. Jeannotte that he was interested in severing his relationship with the Employer and that he was not interested in working for the Employer any longer. Ms. Jeannotte did not go into any details about the Applicant's WCB claim or his injury, but did advise him that he could not settle or close his WCB claim as part of a severance package. She advised him that, even if he resigned from his employment, by law his WCB claim would continue. As the staff representative responsible for servicing the Union's bargaining unit in the Employer's workplace, she is not made aware of who files a WCB claim unless the actual individual member who files the claim advises her of this fact.

[12] Ms. Jeannotte informed the Applicant that the Employer was prepared to sever the employment relationship but would only agree to a three (3) month severance package, together with the payout of sick leave, retroactive payments, etc. Ms. Jeannotte and the Applicant discussed a letter of reference and, ultimately, the Applicant agreed to a three (3)

month severance package, in addition to the payment of his salary up to and including February 28, 2002.

[13] Ms. Jeannotte drafted up a settlement agreement whereby the Applicant would receive three (3) months' pay, with no union dues deducted, payment of his wages and benefits up to February 28, 2002, a letter of reference - the terms of which had to be agreed upon by the Applicant, and a separation slip which read "a probationary employee - not suitable for the position." In return, the Applicant and the Union provided the Employer with a release.

[14] The Applicant and Ms. Jeannotte met at the Union's Saskatoon offices on February 28, 2002. Ms. Jeannotte had never had an employee sever his employment relationship with an Employer before so she asked the Applicant a number of questions during the meeting. From her observations, she testified that the Applicant presented as a coherent individual who answered her questions in an appropriate manner. Ms. Jeannotte had no doubt that the Applicant understood what he was signing and was aware that he was severing his employment relationship with the Employer.

[15] During his testimony, the Applicant acknowledged that he was aware of what the terms of the settlement agreement were and that he was severing his employment relationship. He read over the settlement agreement, signed it and then had Ms. Jeannotte sign it. Once the Employer signed the settlement agreement, Ms. Jeannotte mailed an original copy to the Applicant.

[16] Ms. Jeannotte followed up with the Applicant on a number of matters subsequent to the Applicant signing the settlement agreement. For example, the Applicant was unhappy with the wording contained in the original reference letter provided by the Employer. Following some discussion, the issue of the wording of the reference letter was resolved to the Applicant's satisfaction. Ms. Jeannotte assisted the Applicant with his retroactive pay, his WCB claim, and with his employment insurance appeal.

[17] On July 3, 2003 the Applicant sent a letter to the Employer in response to an advertisement in the paper wherein the Employer was seeking to hire case managers in Saskatoon. The Applicant sought "re-employment " with the Employer. The Union assisted the Applicant in his attempt to gain re -employment but to no avail.

[18] The Applicant has never provided any medical evidence or documentation to either the Union or the Employer to substantiate a claim that he did not have the legal capacity to enter into the settlement agreement or that he did not understand the terms of the settlement agreement.

[19] The Workers' Compensation Board Appeals Committee accepted the Applicant's WCB claim in February, 2003. As a result, the Applicant received workers' compensation benefits from January 16, 2002 to June 11, 2002.

[20] The Applicant filed this application on September 26, 2003, alleging that the Union did not adequately represent him in February, 2002 when he severed his employment with the Employer.

Relevant statutory provision:

[21] Section 25.1 of the *Act* provides as follows:

> *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.*

Applicant's Arguments:

[22] The Applicant argued that the Union should have been more diligent when it became aware of his request to sever his employment relationship in February, 2002 and that the Union should have provided him with more options so that he did not sever his employment relationship.

Union's Arguments:

[23] Counsel for the Union argued that there was absolutely no evidence of improper conduct by the Union falling within the parameters of s. 25.1 of the *Act*. Counsel argued that the Applicant is the author of his own misfortune in that he sought out the severance package and did not advise the Union that he was under stress. The Applicant did not seek assistance from the Union to deal with the excessive workload issue, or the stress that allegedly arose therefrom.

Counsel argued that, even if the Union made a mistake by taking the Applicant at his word that he wanted to sever his employment relationship, there was no evidence to substantiate a claim of gross negligence.

Analysis:

[24] The application is dismissed. There has been no breach of s. 25.1 of the *Act*. The case law, as it presently exists in Saskatchewan, is that a union is not generally required to seek out potential grievors and attempt to convince them that they ought to request that a grievance be filed (See: *Hargrave et al. v. Canadian Union of Public Employees, Local 3833 and Prince Albert Health District,* [2003] Sask. L.R.B.R. 511, LRB File No. 223-02 at 526 and 527).

[25] Likewise, if a union member arrives at a decision, for example the decision to resign from his employment, the union is not generally required to attempt to convince the employee that he is making the wrong decision.

[26] Given the case law, the Union was not required to seek out the Applicant and attempt to convince him to file a grievance relating to the workload that the Employer was assigning to the Applicant or the Employer's decision to discontinue his payroll. Neither was the Union required to attempt to convince the Applicant that he should not resign.

[27] Ms. Jeanotte attempted to meet the needs of the Applicant as they were presented to her. The Applicant did not send a copy of his February 22, 2002 letter to the Union and he did not advise Ms. Jeanotte that his WCB claim had to do with stress that he was encountering at the workplace. The Applicant has never provided the Union with any medical evidence to substantiate a claim that he somehow had no legal capacity to enter into the February 28, 2002 settlement agreement or that he did not understand the terms of the settlement agreement. The Applicant acknowledged that he was aware of the terms of the settlement agreement and the effect of those terms on him.

[28] While the Board had some sympathy for the plight of the Applicant, as did counsel for the Union, to place the blame on the Union for the Applicant's predicament would be both inconsistent with the evidence and unjust. To place a duty of care on the Union to investigate the mental health of a member when that member makes the decision to resign would be a huge step to take and one that could only be considered if, on the evidence, the Union had some

knowledge of its member's impaired mental health. As stated, the Union had no knowledge and still has no knowledge that the Applicant's mental health was impaired to the extent that he did not have the legal capacity to enter into the settlement agreement or that he did not understand the terms of the settlement agreement.

[29] For all the foregoing reasons, the application is dismissed.

DATED at Saskatoon, Saskatchewan this **28th** day of June**, 2004.**

LABOUR RELATIONS BOARD

Wally Matkowski,
Vice-Chairperson