Labour Relations Board
Saskatchewan

GLENN PIDMEN, Applicant v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1975-01, Respondent

LRB File No. 170-03; October 7, 2005
Chairperson, James Seibel; Members: Donna Ottensen and Marshall Hamilton

For the Applicant: Roger LePage
For the Respondent: Peter Barnacle

Union – Constitution – Content of procedural fairness context dependent – Where union exercised substantial and sufficient compliance with constitutional trial procedure, penalty not patently unfair, member given reasonable notice of details of case and documentary evidence and full opportunity to lead evidence and cross-examine witnesses and proceedings conducted in good faith and without bias, Board finds that union did not breach s. 36.1 of *The Trade Union Act*.

***The Trade Union Act*, s. 36.1.**

REASONS FOR DECISION

Background:

[1] Canadian Union of Public Employees, Local 1975-01 (the "Union") is the designated bargaining agent for a unit of employees of the University of Regina (the "Employer"). At all material times, the Applicant, Glenn Pidmen, was a member of the bargaining unit. Mr. Pidmen filed the present application alleging that the Union violated s. 36.1 of *The Trade Union Act*, R.S.S. 1978, c. T-17 ("the *Act*") in the conduct of a trial process pursuant to its constitution as a result of which Mr. Pidmen was subjected to certain limitations otherwise afforded as an incident of membership, and fined. Section 36.1 provides as follows:

> *36.1(1) Every employee has a right to the application of the principles of natural justice in respect of all disputes between the employee and the trade union certified to represent his bargaining unit relating to matters in the constitution of the trade union and the employee's membership therein or discipline thereunder.*
>
> *(2) Every employee shall be given reasonable notice of union meetings at which he is entitled to attend.*

> *(3) No employee shall unreasonably be denied membership in a trade union.*

[2] The Union denied the allegation in its reply to the application, specifically stating that the trial procedure was fairly conducted in accordance with its constitution.

Evidence:

[3] Five witnesses testified at the hearing. In addition to Mr. Pidmen, a fellow employee, Mario Thomas was called to testify on Mr. Pidmen's behalf. Called to testify on behalf of the Union were fellow employee and chair of the Union's trial committee, Ron Lavoie; fellow employee and member of the Union's grievance committee, Don Puff; and national servicing representative of the Union, Don Moran. The testimony was lengthy and the documentary exhibits numerous. Following is a summary of the salient points.

[4] Mr. Pidmen joined the Union when he began work at the University of Regina as a caretaker in approximately 1995. Over the years he held positions in the Union including shop steward, executive member-at-large and grievance chair. He held the last position in 2000 and, by acclamation, again in 2002. As grievance chair, Mr. Pidmen was responsible for the administration of the grievance process on the part of the Union, including interviewing potential grievors, discussing the issues with the Employer's human resources personnel and filing the grievance if necessary. He reported the results of his investigations to the Union's grievance committee, which made the determination as to whether to recommend that a grievance be referred to arbitration.

[5] In August 2002, Mr. Pidmen filed two grievances of his own against in-scope supervisor, Norm Stewart. With respect to those grievances, Mr. Pidmen did not act in the capacity of grievance chair, but had fellow employee, Mr. Thomas, actually sign one of the grievances and represent him on it, and fellow employee, Rick Kerr, file and represent Mr. Pidmen on the other. Mr. Pidmen stated that the relationship between he and Mr. Stewart was "tense." During that time, Mr. Pidman also filed grievances on behalf of fellow caretakers, Ion Rosca and Kifle Habtegir

against Mr. Stewart.

[6] Mr. Pidmen resigned as Union grievance chair on September 3, 2002. He was replaced by Wilf Gayleard.

[7] In September, 2002, Mr. Pidmen received a copy of a letter dated September 18, 2002, from Mr. Stewart to the Union's recording secretary Marlys Upton, that provided as follows:

> *Please accept this letter as a request for a Member Trial under the CUPE Constitution Article B.6.1(a). I am charging that CUPE member Glen Pidmen is in violation of Articles B.10.4 and B.6.1(n).*

(The articles of the constitution referred to are set out later in these Reasons for Decision.)

[8] Mr. Stewart filed similar charges against Mr. Rosca and Mr. Habtegir. The essence of Mr. Stewart's charges against Mr. Pidmen was that Mr. Pidmen had engaged in harassment of Mr. Stewart, a fellow member of the Union.

[9] Mr. Pidmen testified that he did not then know the particulars of the allegations made by Mr. Stewart against him, but that he was later advised of them.

[10] Ms. Upton kept Mr. Pidmen informed regarding the selection process for the jury panel of the trial committee for the trial under the constitution. He was advised that, at the upcoming meeting of the Union on October 8, 2002, eleven persons would be nominated to the trial panel, of which five would be selected to form the trial committee. Mr. Pidmen said that he could not attend the meeting as he was on vacation that day, so the trial committee was chosen at the meeting the following week, on October 15, 2002. All five members were caretakers. The trial committee selected member Mr. Lavoie as its chair.

[11] Between their appointment and the date of the trial, the trial committee held several meetings regarding the scheduling and procedural conduct of the trial and certain pre-trial considerations. The committee met on October 25, 2002 to have a preliminary discussion about the Union's constitutional provisions and procedures involved regarding the charges and the trial

process. Mr. Lavoie had received a package of material, which he subsequently confirmed had come from the Union's then in-house counsel, Mr. Johnson, containing copies of the Union constitution and bylaws and some precedent case material. He had also received a bundle of documents from Mr. Stewart's representative for the trial, Mr. Gayleard. The committee drafted a list of questions to be answered by Mr. Johnson regarding such things as lists of witnesses and the need to disclose same and whether the accuser should be required to submit all of the documentary evidence he intended to rely upon to the committee in advance of the hearing. Mr. Lavoie spoke to Mr. Johnson about these matters.

[12] The committee met again on November 1, 2002 to set the date for the trial, determine whether to tape the proceedings (they did not), set dates for provision of witness lists by the parties to the committee, determine that the accuser should provide all of the documentary evidence intended to be relied upon to the committee ahead of the hearing so that it in turn could be provided by the committee to Mr. Pidmen and set the procedure for the conduct of the hearing. The committee did not provide the lists of witnesses to the opposing party due to concerns about the potential for intimidation. The format for the hearing, which was provided to the parties, provided for: opening statements on behalf of the accuser and the accused; the testimony of witnesses for the accuser, followed by cross-examination of each by the accused or his representative, followed by re-examination (which the trial committee called "rebuttal"); the testimony of the witnesses for the accused, followed by cross-examination and re-examination; and closing statements by the accuser and then the accused. This format was provided to each party in writing prior to the trial.

[13] The trial committee set the trial for November 25, 2002 (the constitution required a minimum notice to the accused of fourteen days). Ms. Upton advised Mr. Pidmen in writing of the date for the trial. The trials regarding Mr. Rosca and Mr. Habtegir were set for the same date. Mr. Pidmen advised Ms. Upton that he would be represented at the trial by fellow employee, Mr. Thomas.

[14] Approximately three weeks prior to the trial date, on November 6, 2002, the chair of the trial committee, Mr. Lavoie, hand delivered a package of documents running to more than a

hundred pages to Mr. Pidmen, stating that they were the documents intended to be relied upon by the accuser, Mr. Stewart, and that they contained the allegations against Mr. Pidmen. The documents included copies of materials from the files and notes of interviews kept by Mr. Pidmen as grievance chair regarding the grievances against Mr. Stewart by Mr. Pidmen, Mr. Rosca and Mr. Habtegir. Mr. Pidmen and Mr. Rosca met with the Union's national servicing representative, Mr. Moran, and asked him whether the documents could be used against them at the trial – they felt they could not, as they were confidential. Mr. Moran advised them that he could not be involved as the charges and trial were between two members of the Union. Mr. Pidmen testified that he was then still unclear as to the exact particulars of the charges against him. Mr. Pidmen subsequently provided the documents to Mr. Thomas, who represented not only Mr. Pidmen, but also Mr. Rosca and Mr. Habtegir. In his evidence, Mr. Pidmen confirmed that as of November 6, 2002 he had all of the facts that his accuser intended to rely upon to support the charges against him.

[15] The trials of all three gentlemen were conducted at the same proceeding. Mr. Habtegir did not personally attend the trial.

[16] The first day of the trial went from 8 a.m. to approximately 3 p.m. Mr. Gayleard called his first witness to testify and Mr. Thomas was allowed to cross-examine. However, by all accounts the proceedings did not go smoothly, at least in the early going. Mr. Thomas engaged the chair, Mr. Lavoie, in several arguments regarding evidence and admissibility and alleged violation of federal law. Mr. Thomas repeatedly made the same objections in an aggressive manner even after being told several times that he was out of order. Mr. Thomas also advised the committee that they were at risk of being sued for their conduct of the trial. This was capped off by Mr. Thomas voluntarily walking out of the hearing after about an hour and a half, never to return. Mr. Lavoie advised Mr. Pidmen that he could obtain another representative if he chose, but Mr. Pidmen declined. During a break in the proceedings, Mr. Pidmen telephoned the Union's in-house counsel, who advised him that he could not be involved.

[17] As the proceeding continued, Mr. Pidmen was granted the opportunity to cross-examine witnesses called by Mr. Gayleard, but he asked very few questions. On the second day

of the hearing, Mr. Pidmen was granted the opportunity to call witnesses and adduce evidence; he called a single witness. Then Mr. Gayleard presented his argument. Mr. Pidmen was granted the opportunity to present argument but chose not to do so.

[18] Following the trial, the jury committee sent its decision to Mr. Pidmen in the form of a letter dated November 29, 2002, which advised that the jury committee found Mr. Pidmen guilty of violating the constitution. The letter provided as follows:

> *We the Jury Committee in the matter of Norman Stewart versus Glenn Pidmen charged with violation of Articles B.10.4 and B.6.1(n) unanimously find Mr. Pidmen guilty of all charges.*
>
> *Due to overwhelming evidence and the severity of the evidence presented against Mr. Pidmen and considering his abuse of the constitution and his union position we highly recommend that a considerable suspension be given to him and that he never be allowed to hold any office or position in the CUPE Union again.*
>
> *We feel that Mr. Pidmen should be made responsible for a portion of the financial costs that these proceedings have been incurred in ten form of a fine. Due to the fact that similar behaviour has been brought to Mr. Pidmen's attention in the past and to his continuing pattern of abuse the full withdrawal of his union membership is something to be considered.*

[19] The decision and recommendations of the jury committee were forwarded to a meeting of the general membership, held on December 3, 2002, to determine the penalty, if any. Approximately 80 members attended, including Mr. Pidmen. The general meeting was chaired by the Union's president, Lara Quinton. Ms. Quinton read the jury committee's letter to the meeting. Mr. Pidmen was allowed to address the meeting, however, he testified that Ms. Quinton ruled him out of order and cut him off when he began expostulating his opinion as to how the trial was misconducted. Mr. Thomas also attended to raise the issue with the meeting, but was similarly ruled out of order and after some apparent disruption was escorted out of the meeting. A member put forth a motion for the penalty, which was carried.

[20] The penalty imposed was as follows:

(1) Mr. Pidmen was prohibited from attending or participating in meetings or functions of the Union for a period of three years from the date of the decision;

(2) Mr. Pidmen was prohibited from holding any position or office in the Union for a period of five years; and,

(3) Mr. Pidmen was fined the amount of $1,000.00 dollars.

[21] The fine was levied to cover the wage costs that the Union had to pay for the trial committee members to get the time off work to conduct the trial.

[22] In early January 2003, Mr. Pidmen filed an appeal of the decision and penalty with the Union's national office. The local Union forwarded all of the material presented at the trial and the records of the trial committee to the national Union. The national Union confirmed with Mr. Pidmen that it had all of the material as far as Mr. Pidmen was concerned and, after some back-and-forth discussion between the national Union, the local Union and Mr. Pidmen, Mr. Pidmen was satisfied. He was also invited to make further submissions, which he did. The national Union appeal panel sent Mr. Pidmen a copy of all the material it had in its possession on which to consider his appeal.

[23] On July 31, 2003, the national Union appeal panel upheld the decision of the trial committee and the penalty imposed by the local union membership, with the exception that the suspension from attended or participating in union meetings and activities was reduced from three years to two years.

Provisions of the Union's Constitution:

[24] Relevant provisions of the Union's constitution include the following:

B.6.1 Every member of a Local Union is guilty of an offence against the Constitution who:

(a) Violates any provision of this Constitution;

…

(n) Engages in behaviour which constitutes sexual, racial or ethnic, or personal harassment, or harassment on the basis of sexual orientation;

B.6.2 (a) If a member in good standing of the Canadian Union of Public Employees (hereinafter called the "accuser") alleges that a member or an officer of the Local Union (hereinafter called the "accused") has committed an offence against the Constitution, the accuser may commence a complaint by sending a written statement of the conduct or action complained about, within ninety (90) days of the accuser becoming aware of the alleged offence, to the Recording Secretary of the Local Union. The accuser shall refer to the provisions of Article B.6.1 which the accused is alleged to have violated.
(b) Within ten (10) days of the receipt of the complaint from the accuser, the Recording Secretary shall countersign the complaint and send a copy of the countersigned complaint to the accused by either delivering it personally to the accused or by sending it by registered mail to the accused.

B.6.3 (a) A Trial Panel and Trial Committee shall then be selected in the following manner. Following the expiration of at least ten (10) days from the date of the delivery or the mailing of the complaint to the accused, a Trial Panel of eleven (11) members in good standing in the Local Union shall be elected at a regularly scheduled or properly constituted meeting of the Local Union. The Recording Secretary shall notify the accused and the accuser of the meeting at which the Trial Panel and Trial Committee will be selected by either delivering the notice to the accused and the accuser or by sending it by registered mail to the accused and the accuser.

(b) The chairperson of the meeting shall conduct the election. To be eligible for election to the Trial Panel those members who are nominated for election to the Trial Panel must not be involved as a witness for either the accused or accuser and must permit their names to stand. The eleven (11) members who receive the most votes, out of those members nominated, shall be deemed to be elected to the Trial Panel.

(c) Once elected the names of the eleven (11) members of the Trial Panel shall be placed in a ballot box by the Recording Secretary and the Vice-President shall draw the names from the ballot box one at a time. As each name is drawn from the ballot box the Vice-President shall call out the name drawn and the accused will be asked to declare first and the accuser second, whether they have any objection to the member sitting on the Trial Committee. If either the accused or accuser have an objection to the member then the member shall stand down and the next name shall be drawn. If both the accused and accuser fail to object then the member shall become a member of the Trial Committee.

(d) The accused and accuser shall each be allowed to object to and remove, up to a maximum of three (3) members each, those members of the elected Trial Panel whom they do not wish to sit on the Trial Committee. If there is more than one (1) accused or accuser then the accused or accusers are entitled jointly to the removal of the maximum of three 93) members.

(e) The Trial Committee shall consist of the first five (5) members whose names have been drawn from the ballot box and who have not been prevented from sitting as described above. The chairperson of the Trial Committee shall be chosen by the members of the Trial Committee from among their number.

(f) If the complaint or complaints name two (2) or more accused and involve similar or related facts, issues or circumstances, one (1) Trial Committee may be elected to hear and decide whether the accused are guilty or innocent of the complaint or complaints submitted by the Recording Secretary.

B.6.4 (a) The Trial Committee shall proceed to hear the complaint or complaints against the accused, in private, within sixty (60) days of its election or appointment and shall give the accuser and the accused at least fourteen (14) days notice, by personal service or registered mail, of the place and date set for the hearing of the complaint by the Trial Committee.

(b) The Trial Committee shall determine its own practice and procedure and may accept such oral or written evidence as the Trial Committee, in its discretion, considers proper, subject to the requirement that every member of the Local Union shall be entitled to a fair and impartial hearing. The Trial Committee may, as a preliminary matter, decide on any objection to proceeding with the trial, including dismissing the complaint. The Trial Committee may proceed, if necessary, with a quorum of four (4) members.

(c) The accuser has the responsibility of establishing that the accused has committed a violation or violations of the Constitution.

(d) The accused and the accuser may be present and represented by a spokesperson of their own choosing, provided however, that the spokesperson is a member in good standing within the trade union movement, except where legislation requires otherwise, and each may call witnesses and cross-examine any witness called by the other.

. . .

(f) The Trial Committee shall determine whether the accused is guilty or not of the complaint or complaints by secret ballot and a finding of guilt may only be sustained when at least four (4) members of the Trial Committee cast their voites for a finding of guilt against the accused.

(g) If the accused is found guilty the Trial Committee shall recommend the appropriate penalty or punishment and it may determine what, if anything, the accused shall do or refrain from doing with respect to the complaint or complaints. This determination, without limiting the generality of the foregoing, may include a reprimand, fine, expulsion, suspension or prohibition from holding membership or office; an order directing the member or members to cease doing the act or acts complained of; and an order directing the members to rectify the act or acts complained of.

> *(h) The chairperson of the Committee shall report the Trial Committee's decision, along with its recommendations for penalty or punishment if the accused is found guilty, first to the accused and the accuser and then to the next regularly scheduled or properly constituted membership meeting of the Local Union.*
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> *(i) The finding of guilty or not guilty shall be recorded in the minutes of the meeting. If the decision is guilty then the recommendation for penalty or punishment shall be dealt with by the Local Union which may alter or confirm the penalty or punishment recommended by the Trial Committee. If the Local Union has thirteen (13) members or less the Trial Committee's recommendation for penalty or punishment shall be the final decision.*

B.6.5 (a) The accused may appeal the finding of guilt and any penalty or punishment imposed upon him/her under Article B.6.4 by appealing to the National President within thirty (30) days from the date when the decision of the Trial Committee was dealt with by the Local Union, or communicated to the accused…

B.10.4 New members shall be obliged to take the following obligation:

> *"I solemnly promise and declare that I will support and obey the Constitution of this Union; that I will strive to improve economic and social conditions for my fellow members and for working people generally; that I will defend and strive to extend the democratic rights and liberties of all working people; that I will not purposely or knowingly wrong, or assist others in wronging a member of the Union."*

Arguments:

[25] Mr. LePage, counsel on behalf of Mr. Pidmen, argued that the Union had violated s. 36.1 of the *Act*, in not applying the principles of natural justice to its suspension and discipline of Mr. Pidmen. He asserted that the Union was in violation of the provision on several grounds: (1) Mr. Pidmen had not been appropriately informed of the charges against him; (2) Mr. Pidmen was not provided with a list of the witnesses that would be called to testify by his accuser; (3) the proceedings were not conducted impartially – Mr. Pidmen was not at the meeting where the trial committee was selected and the trial committee appeared to pre-judge the case; and, (4) Mr. Pidmen was not allowed a right to fair representation – Mr. Pidmen was not advised that he could obtain and be represented by legal counsel and, when Mr. Thomas left the proceedings, Mr. Pidmen was not advised that he could ask for an adjournment to obtain another representative; (5) the trial committee acted as investigator and judge in the proceedings; (6) the proceeding was conducted as a closed proceeding; (7) the Union's local president at the time of the trial had a

personal relationship with Mr. Gayleard; (8) the trial committee improperly received into evidence the confidential information in the grievance files; (9) Mr. Pidmen was under stress and may not have been able to properly defend himself; (10) the rules of natural justice were not applied in the sentencing proceeding at the Union's general meeting.

[26] In support of his arguments, Mr. LePage referred to the decision of the British Columbia Labour Relations Board in *McDonald v. Canadian Union of Transportation Employees, Local 6 and B.C.Rail Ltd*., [2003] BCLRBD No. 354.

[27] Mr. LePage submitted that the remedy that the Board ought to grant in the circumstances is to declare that the trial, sentence and appeal are all null and void and to award Mr. Pidmen solicitor and client costs.

[28] Mr. Barnacle, counsel on behalf of the Union, argued that the Union had adhered to an appropriate standard of natural justice in the conduct of the proceedings. He submitted that Mr. Pidmen was arguing for a much too strict standard; he said there was no requirement for disclosure of witnesses or "will say" statements even in the civil courts. Counsel also submitted that there is no right to counsel in proceedings under a Union's constitution in Saskatchewan. Counsel referred to the decisions of the Board in *Schreiner v. Canadian Union of Public Employees, Local 59*, [2001] Sask. L.R.B.R. 444, LRB File No. 051-01 and *Hill and Rattray v. Saskatchewan Government and General Employees Union*, [2003] Sask. L.R.B.R. 371, LRB File Nos. 002-03 & 011-03, to support his contention that the Board monitors union membership disputes only to the extent of determining whether the procedure used to discipline members meets the basic requirements of natural justice.

[29] Mr. Barnacle submitted that Mr. Pidmen never challenged the proceedings on the basis of an alleged insufficiency of evidence, but on the basis of whether the evidence ought to have been admitted. Mr. Pidmen never requested to be represented by legal counsel. Mr. Barnacle asserted that the proceedings under the constitution and the proceedings in question are lay proceedings conducted by persons with no legal training. He further submitted that there could be no complaint about not being apprised of the other party's witnesses, when neither party

received disclosure of the other party's witness list.

Analysis and Decision:

[30] Relatively few cases have come before the Board regarding s. 36.1 of the *Act* since it was included in amendments to the *Act* in 1983.[1] As a result of the amendments, the Board was provided with the exclusive jurisdiction to determine certain matters with respect to the internal workings of trade unions: See, *Theriault v. Saskatchewan Government Employees' Union,* [1996] 7 W.W.R. 84 (Sask. Q.B.), at 92-93.

[31] In *Alcorn and Detwiller v. Grain Services Union*, [1995] 2nd Quarter Sask. Labour Rep. 141, LRB File No. 274-94, at 154, the Board interpreted its supervisory role regarding internal trade union matters as a fairly narrow one:

> *Our stance continues to be one of considerable deference to the internal decision-making of trade unions. We have concluded, nonetheless, that the specific limitations placed by the statute on their authority to make certain kinds of decisions must be taken seriously.*

[32] This fairly narrow approach was affirmed by the Board in *Stewart v. Saskatchewan Brewers' Bottle & Keg Workers, Local Union No. 340*, [1995] 2nd Quarter Sask. Labour Rep. 204, LRB File No. 029-95, at 213, as follows:

> *Employees and trade union members have traditionally been able to pursue some of these questions in the common law courts, although this is not a feasible avenue for many individual employees. The significance of Section 36.1, in our view, is that it gives employees recourse to the Board to express concerns about their status or treatment within the trade union which represents them. As we have indicated in the decisions quoted earlier, the Board has no intention of becoming a body of appeal or of routine review from every decision made pursuant to a trade union constitution or internal procedural rules. Where an allegation is made, however, that a violation of The Trade Union Act has occurred, the Board must be prepared to scrutinize the internal workings of the trade union to the extent necessary to determine whether the Act has been breached.*

[1] S.S. 1983, c. 81.

[33] The parties in this case raised no issue that the Board did not have jurisdiction to determine the matter as being within the restricted purview of the disputes between an employee and a union regarding matters of membership and internal discipline. The purpose of s. 36.1 as a whole is to codify the common law developments indicating a trend towards increased supervision of internal union decision-making respecting certain types of matters, specifically regarding membership and discipline. There are competing interests at stake between the rights of individual union members and the need for collective action and discipline among members to achieve collective bargaining goals.[2] As the Board observed in *Alcorn*, *supra*, at 151, ss. 25.1, 36 and 36.1 of the *Act* acknowledge the power held by unions over the employment conditions and economic future of the employees they represent and the trend has been towards closer scrutiny of unions' internal proceedings given the important public policy considerations involved. However, as the Board observed in *Schreiner v. Canadian Union of Public Employees, Local 59*, [2001] Sask. L.R.B.R. 444, LRB File No. 015-01, at 458, the maintenance of solidarity among a union's members is crucial to ensuring effective collective bargaining and collective agreement administration:

> *[44] In approaching the supervision of internal union matters, the Board should be mindful of the overall purpose of the Act which is to foster and encourage effective collective bargaining. This requires an appreciation of the need for trade unions to develop solidarity among their members to ensure effective collective bargaining and effective collective agreement administration. The discipline provisions contained in a union constitution are primarily aimed at maintaining and reinforcing the need for such solidarity. The provisions are not a substitute for civil action, nor are they intended as a means for addressing all wrongs or for solving all political debates among union members.*

[34] Section 36.1(1) of the *Act* confines the Board's supervision to disputes between union members and a union relating to matters in the union's constitution and the member's membership therein or discipline thereunder. The Board's supervision of those matters is further confined to determining whether the member has been afforded the right to the application of the principles of natural justice, as opposed to considering the merits or perceived correctness of the decision by the union.

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[2] See, Lynk., M., "Dennings Revenge: Judicial Formalism and the Application of Procedural Fairness to Internal Union Hearings" (1997), 23 Queen's L.J. 115.

[35] Labour relations boards are generally reluctant to interfere with the right of a trade union to demand solidarity and compliance from its members, as long as the union acts within the bounds of the its constitution and applies same in accordance with the rules of natural justice. The content of the principles of natural justice is not rigid. It is variable, depending upon the nature of the dispute and the rights alleged to have been violated: See, *Staniec*, *v. United Steelworkers of America, Local 5917 and Doepker Industries Ltd.,* [2001] Sask. L.R.B.R. 405, LRB File No. 205-00 and *Ward v. Saskatchewan Government Employees' Union*, [1994] 4th Quarter Sask. Labour Rep. 94, LRB File No. 173-94. Quite recently, the Saskatchewan Court of Appeal carefully and extensively reviewed the jurisprudence supporting this proposition in *Saskatoon District Health Board v. Rosen* (2001), 213 Sask. R. 61, 202 D.L.R (4th) 35. At paragraphs 59 and 60, Vancise, J.A., on behalf of the majority, stated:

> *59 Having found that there is a duty of procedural fairness both at common law and under the statute and the regulations, one must determine the scope or the extent of that duty in the present circumstances. The scope or content of the duty to act fairly is succinctly set out in Knight. Madam Justice L'Heureux-Dubé writing for the majority stated that like the principles of natural justice the contents of procedural fairness are extremely variable and its content is to be determined in the specific context of each case. The Supreme Court of Canada had previously adopted the famous passage of Lord Morris of Borth-Y-Gest in Furnell v. Whangarei High Schools Board that:*
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> > *Natural justice is but fairness writ large and juridically. It has been described as "fair play in action". Nor is it a leaven to be associated only with judicial or quasi-judicial occasions. But as was pointed out by Tucker L.J. in Russel v. Duke of Norfolk [1949] 1 All E.R. 109, 118, the requirements of natural justice must depend on the circumstances of each particular case and the subject matter under consideration.*
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> *60 The Supreme Court pointed out in Syndicat des employés de production du Québec et de l'Acadie v. Canada (Canadian Human Rights Commission that the rules of natural justice are variable standards and the content will depend on the circumstances of each case, the statutory provisions and the nature of the matter to be decided. There is no fixed content. The court will decide the approach to be adopted by reference to all the circumstances under which the tribunal operates*

[36] In *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653 (S.C.C.) (referred to in the passage above), a case involving termination of employment, L'Heureux-Dube, J., on behalf of the majority, described the common law duty of fairness as depending upon three factors, as follows, at paragraph 24:

> *The existence of a general duty to act fairly will depend on the consideration of three factors: (i) the nature of the decision to be made by the administrative body; (ii) the relationship existing between that body and the individual; and (iii) the effect of that decision on the individual's rights.*

[37] In *Schreiner*, *supra*, at 458, the Board advocated a restrained approach to the exercise of its jurisdiction under s. 36.1 of the *Act*, at least as concerns matters of internal discipline, as being necessary to further the interests of the union in maintaining solidarity in support of effectively achieving collective bargaining objectives.

[38] In *Hill and Rattray*, *supra*, at 372-373 (application for judicial review dismissed [2004] Sask. L.R.B.R. c-57 (Sask. Q.B.)), the Board commented that:

> *[7] The Board is the monitor of union membership disputes within a unionized setting only to the extent of determining if the processes used to discipline union members meet the basic contextual requirements of natural justice. The Board's role is not to provide definitive interpretations of a union's constitution, which is a fluid, political document, subject to change at each annual convention of the union.*

[39] In previous decisions regarding s. 36.1 (1) of the *Act*, the Board has not had much occasion to comment on or determine the content of the principles of natural justice applicable to various situations regarding union membership or internal discipline much beyond ensuring that there was reasonable notice of a hearing and a full and fair hearing according to the terms of the union constitution in the context of the particular matter in issue. Certainly, where one's right to earn a livelihood is at stake (for example, in the construction sector, where maintenance of union membership is required to have access to the union's work referral system) the variable content of the rules of natural justice, including procedural fairness, will

tend towards the more complete and formal end of the spectrum and will be more strictly interpreted and applied. For example, in *Meade, et al. v. International Brotherhood of Electrical Workers, Local 2330*, [1992] Nfld. L.R.B.D. No 15, at paragraph 74, in considering an application regarding alleged unfair expulsion from union membership, the Newfoundland Labour Relations Board observed that adherence to the union's trial procedure guidelines "becomes more of a duty in these cases which directly affected the livelihood of each of the accused."

[40] In *Coleman and Leaney v. Office and Technical Employees' Union, Local 378*, [1995] BCLRB No. 282/95, the British Columbia Labour Relations Board considered the content of the rules of natural justice with respect to the B.C. legislative provision analogous to s. 36.1 of the *Act*.

[41] After reviewing a number of judicial decisions and noting that the rules of natural justice are "context dependent," that internal union hearings are not usually conducted by persons with legal training and that such hearings are not bound by strict rules of evidence, the British Columbia Board delineated a number of procedural requirements for such hearings. At paragraph 118, the British Columbia Board stated:

> *From these cases we can draw the following requirements which the courts have implied into the constitution of trade unions, but which must now form a part of the legislative policy of this province with the enactment of Section 10 of the Code:*
>
> *(1) Individual members have the right to know the accusations or charges against them and to have particulars of those charges.*
> *(2) Individual members must be given reasonable notice of the charges prior to any hearing.*
> *(3) The charges must be specified in the constitution and there must be constitutional authority for the ability to discipline.*
> *(4) The entire trial procedure must be conducted in accordance with the requirements of the constitution; this does not involve a strict reading of the constitution but there must be substantial compliance with intent and purpose of the constitutional provisions.*
> *(5) There is a right to a hearing, the ability to call evidence and introduce documents, the right to cross-examine and to make*

> *submissions.*
>
> *(6) The trial procedures must be conducted in good faith and without actual bias; no person can be both witness and judge.*
>
> *(7) The union is not bound by the strict rules of evidence; however, any verdict reached must be based on the actual evidence adduced and not influenced by any matters outside the scope of the evidence.*
>
> *(8) In regard to serious matters, such as a suspension, expulsion or removal from office, there is a right to counsel.*

[42] With respect to the last requirement – the right to be represented by counsel in certain circumstances – the British Columbia Board noted that such a requirement had the imprimatur of the British Columbia Court of Appeal in *Boe v. Hamilton*, [1988] 33 B.C.L.R. (2d) 49 (B.C.C.A.) (leave to appeal to the Supreme Court of Canada refused [1989] 1 S.C.R. ix, 101 N.R. 252n), where the Court stated at 58:

> *. . . the winds of change have blown with some force in this area. The cases are numerous and by no means all consistent. There is much support to be found in them for the view acted upon by Huddart J. that the emphasis now is upon the seriousness of the consequences facing the individual subjected to disciplinary proceedings so that, where the potential consequences are serious enough, there is a right to counsel.*

[43] However, recognizing the danger that its enunciation of these requirements might be interpreted as countenancing more formalization of internal union proceedings, the British Columbia Board stated in *Coleman*, *supra*, at paragraph 120:

> *. . . The natural justice requirements which we have listed should not be seen as imputing an undue increase in the procedural and evidentiary requirements such as exists in civil litigation. Rather, in any hearing the procedural emphasis (which may vary) is on the underlying value of fairness. In regard to serious matters, however, close attention must be paid to the requirements set out above.*

[44] The British Columbia Board has since approved of the decision in *Coleman*, *supra*, in *Goy v. International Brotherhood of Electrical Workers, Local 213*, [2000] BCLRBD No. 3. We are in agreement with the requirements enunciated by the British Columbia Board in *Coleman* and *Goy*, but wish to emphasize further that the list of requirements set out above is

neither exhaustive nor will it necessarily apply in its entirety to every internal union hearing – the context dependent nature of the principles of natural justice will dictate its content in a given case.

[45] In the present case, while the consequences for Mr. Pidmen could be viewed as serious in the sense that he is deprived of taking an active part in the Union and from holding office for a period of time, it is not a case where he is deprived of the right to earn a livelihood as a consequence of the penalty imposed, and, indeed, he continues to be entitled to full representation by the Union the same as any other member.

[46] The issue to be determined is whether the appropriate principles of natural justice were applied in the proceedings by the Union against the applicant recognizing the context-dependent nature of the content of procedural fairness. In our opinion, in the present case, the Union did not breach s. 36.1 of the *Act*.

[47] With respect to the principles outlined in *Coleman*, *supra*, we find that the Union exercised substantial and sufficient compliance with its constitutional trial procedure and to those principles. It is not for us to second guess the resulting penalty imposed at a meeting of the general membership, except in cases where the penalty is patently unfair.

[48] Mr. Pidmen testified that, as of November 6, 2002, – some two and a half weeks before the trial – he was aware of the all the details of the case against him and had copies of all documentary materials intended to be relied upon. The notice was reasonable in the circumstances. There is no procedural fairness requirement that one must be apprised of the identity of the opposing party's witnesses before a hearing.

[49] At the hearing, neither Mr. Pidmen (nor Mr. Thomas on his behalf) took issue with the nature or relevance of the evidence presented on behalf of his accuser but, rather, with the admissibility of the documentary evidence, which they viewed as containing personal information and as violating federal privacy legislation. The trial committee – composed entirely of lay persons – ruled on admissibility, as it was entitled to do, and it was not bound by strict rules of evidence.

At the hearing there was full opportunity of cross-examination and to call witnesses to testify on Mr. Pidmen's own behalf and to introduce documents. There was no evidence that the proceedings were conducted in other than good faith and without actual bias. There is no proscription against closed hearings in the content of procedural fairness in these circumstances.

[50] Finally, we do not find the circumstances of this case to be so serious that they attracted an absolute right to counsel of which a party has a right to be specifically advised. While the constitution provides for representation by a union member in good standing, that is not the same as expressly excluding representation by legal counsel. Mr. Pidmen did not request to be represented by counsel; if he had, it may have been allowed, but no one can say at this point. In any event, he was not entitled to be advised that he had a right to be represented by counsel in these circumstances.

[51] The application is dismissed.

DATED at Regina, Saskatchewan, this **7th** day of **October, 2005.**

LABOUR RELATIONS BOARD

James Seibel,
Chairperson