Labour Relations Board
Saskatchewan

NADINE SCHREINER, Applicant v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 59 and CITY OF SASKATOON, Respondents

LRB File No. 175-04; November 4, 2005
Chairperson, James Seibel; Members: Bruce McDonald and Brenda Cuthbert

For the Applicant:	Dave Taylor
For the Respondent Union:	Peter Barnacle
For the Respondent Employer:	Patricia Warwick

Duty of fair representation — Scope of duty — Union canvassed membership with respect to bargaining priorities, ascertained that benefit coverage important issue and bargained changes to collective agreement and benefit plan accordingly — Union also took steps to address deficit in benefit plan — Union balanced interests of individual employees such as applicant with interests of membership as whole — Union did not violate s. 25.1 of *The Trade Union Act*

Union — Constitution — For Board to assume jurisdiction pursuant to s. 36.1 of *The Trade Union Act,* essential character of dispute must fall within subject matter of s. 36.1 of *The Trade Union Act*— Internal dispute between union and union member must encompass constitution of union and employee's membership therein or discipline thereunder — Applicant's complaint that union failed to consult with certain members before negotiating changes to benefit plan — Section 36.1 of *The Trade Union Act* has no effective bearing on essential character of dispute between applicant and union.

***The Trade Union Act,* ss. 25.1 and 36.1.**

REASONS FOR DECISION

[1] Canadian Union of Public Employees, Local 59 (the "Union") is designated as the certified bargaining agent for a unit of employees of the City of Saskatoon (the "City"). At all material times, Nadine Schreiner (the "Applicant"), was a member of the bargaining unit working in a part-time job sharing capacity. The Applicant filed an application with the Board on June 15, 2004, alleging that the Union had committed an unfair labour practice or practices in violation of ss. 25.1 and 36.1 of *The Trade Union Act,* R.S.S. 1978, c. T-17 (the *"Act').* The essence of the allegation is that,

while the amount being deducted from the pay of part-time and seasonal employees in the bargaining unit was increased to fund a shortage in the group medical and dental plan, there was no increase in the amount deducted from the pay of full-time employees. The Union refused to file a grievance on behalf of the former group respecting the increase.

[2] In its reply to the application, the Union submitted that all members of the bargaining unit receive full benefits, whether they are employed full-time, part-time or on a job sharing or seasonal basis. Until 2004, part-time and seasonal employees paid partial premium contributions for their full benefits; however, because of a funding shortfall in the benefit plan, contribution levels were increased for those employees paying less than the full amount. All members now pay the same amount.

Evidence:

[3] A great deal of testimony was heard from seven witnesses called to testify on behalf of the Applicant over the two days of hearing including, the Applicant herself; Darwin Forbes, Saskatchewan Blue Cross sales director; Ron Avant, the City's employee benefits administrator; Ron Quintal, former president of the Union and the Union's current general vice-president; Bob Berikoff, an analyst and software engineer with the City; Stacey Sokalofski, an accountant in the City treasurer's department; and, Matt Baraniecke, president of the Union.

[4] Following is a general summary of the situation as gleaned from the evidence. The Blue Cross MedicaVOptical and Dental Plan ("the plan") commenced in 1994 and covered all of the City's full-time unionized employees. The plan is "self-funded" in that benefits paid out under the plan are not from insurance, but from the actual contributions to the plan; Blue Cross acts as the plan administrator. As described by Mr. Forbes, the plan is an "administrative-services-only" contract, where Blue Cross administers the plan on behalf of the City and does not assume any financial liability or risk — the revenues into the plan pay for the claims and the Blue Cross administration fee. The contract stipulates that there must be at least 75 per cent employee participation in the plan. However, in keeping with the Union's wishes, no one is allowed to opt out of participation.

[5] To fund the plan at its inception, the City and the Union negotiated the City's contribution rate of two per cent of the full-time unionized employees' payroll.

[6] The plan ran a surplus and, in 1996, coverage under the plan was extended to include less-than-full-time employees (i.e., part-time, job-sharing (a form of part-time work) and seasonal employees). However, the less-than-full-time employees received reduced benefits on a pro-rated basis of actual hours worked as a percentage of equivalent full-time hours; they paid contributions to the plan on a similar pro-rated basis.

In 2003, the Union conducted a collective bargaining survey of its members seeking to determine the priority attached to certain proposed issues for bargaining with the City. As a result, the Union and the City agreed to changes to the plan to extend benefits coverage for all less-than-full-time employees to the level applicable to full-time employees. In April 2004, the Union sent out the following notice to its members working in part-time and job-share positions:

> *Important Notice For Permanent Part-time and Job share Employees*
> *C. U. P. E. Blue Cross MediceOptical and Dental Plan*
>
> *The four C.U.P.E. locals ... met recently with the City of Saskatoon to discuss changes to the above plans affecting seasonal and permanent part-time employees. As a result of these discussions, akll permanent part-time employees who are currently enrolled in the C.U.P.E. Blue Cross MediceOptical and Dental Plan for Part-time Employees will have their coverage upgraded to the same level as that of permanent full-time employees.*
>
> *In order to provide equivalent coverage fore part-time employees on this basis, all such employees will be required to contribute through payroll deduction an amount which when combined with the 2.0% of payroll contributed on their behalf would be equal to what full-time employees would have contributed. The following formula will be used to determine a permanent part-time/job share employee's pay period deduction:*
>
> *(Full-time equivalent Pay Period Hours) — (Actual Pay Period Hours Worked) x (Hourly rate) x 2%*

> *This change is effective May 1, 2004 and deductions for coverage will start on May1-15, 2004 pay period.*

[8] A separate similar notice was provided to seasonal employees.

[9] In the spring of 2004, the plan encountered a deficit. In reviewing the situation, the Union realized that some less-than-full-time employees — those working in job-share positions — had already been receiving benefits at the full-time level, but only contributing a pro-rated amount to the plan based on hours worked as a proportion of full-time equivalent.

[10] The Applicant has been working for the City since 1989. Originally full-time, in 2002 she moved first to a permanent part-time position and then to a job-share position in April 2002, which is now her "home position." At the time of the hearing the Applicant was working in a temporary full-time position. The Applicant was one of the persons in a job-share position who had been receiving plan benefits at the full-time level since she commenced in the job-share position.

[11] In late April and early May 2004, the Applicant started a dialogue by e-mail with Mr. Avant and Mr. Bodnarchuk, in the City's employee benefits office, and Mr. Berikoff and Mr. Baraniecke, then officers of the Union, expressing concern that she would now be required to pay an increased contribution for the same benefits she had been receiving for a pro-rated contribution. Mr. Avant and Mr. Bodnarchuk confirmed that indeed that was the case and that it was a Union decision. Mr. Berikoff replied to Ms. Schreiner by e-mail on May 4, 2004, as follows:

> *... Our insurance company notified that we had a funding shortfall in our benefits plan. The benefits committee consisting of all the Presidents of CUPE reviewed all the bylaws for irregularities. They found half time employees were paying half the fees and receiving full benefits. For example 2 half time positions pay the same amount in insurance fees as one full time person but our insurance company has to cover both employees. It would have been an administrative nightmare for our insurance company to tier the benefits. So in order to make it fair, our committee correctly decided to have half time employees pay the same amount as a full time in fees and receive the same benefits.*

[12] The Applicant responded by e-mail the following day, as follows:

> *You did not answer my question at all regarding the taxes that I will be forced to pay on this amount before it comes off my cheques. Once again, I ask for a meeting with the union and the jobshares/pt & casual. The union must explain this in full to people. The full-time staff are not seeing this come off their cheques as a deduction; yet, the job shares will see exactly that. This must be dealt with Ma more fair manner. It is an unfair labour practice — what you are doing. I will be filing papers early next week on this, if you refuse to call a proper meeting. It is not my job either to get the 50 signatures and "ask" for a meeting. The union(s) were not complete ion their information handed out to its membership. That is wrong. ...*

[13] Mr. Berikoff responded on May 6, 2004 that he was preparing a report on the issue and submitting it for discussion to the Union's executive meeting later in the month. No membership meeting was called to discuss the matter.

[14] Mr. Forbes of Saskatchewan Blue Cross sent Mr. Bodnarchuk a letter dated June 14, 2004, outlining the seriousness of the deficit situation. The letter provided, in part, as follows:

> *We are however concerned about this particular account, as it has evolved into a significant deficit. Our Company is not in a position to fund this deficit as it falls outside the scope of our normal business practice and represents a significant cost to our operations.*
>
> *We require the City of Saskatoon and the Benefit Committee of the CUPE plan to form an action plan to stop the growth of the deficit and to fund its repayment. We have attached a repayment/funding schedule which reflects Saskatchewan Blue Cross' willingness to partner with the City of Saskatoon and the Benefit Committee of CUPE over a five-year period to work through this funding issue.*
>
> *. . .*
>
> *As identified in the experience reports that are provided to the City of Saskatoon, the claims experience is not a result of a major increase in claims in any one particular area, but generally a high claiming pattern.*
>
> *. . .*
>
> *...The funding requirement for 2004 would be approximately 27% of payroll to pay current claims as well as to reduce the deficit, over a five-year period, to an acceptable level. The schedule provides some projections through 2008 with the cost increases based on recent trends. The percentage of payroll required will decline somewhat after the deficit has been recovered in year 5.*

[15] Shortly thereafter, the City and the Union addressed the plan deficit issue in collective bargaining. It was agreed that 0.5 per cent of the wage increase offered by the City in each of the three years of the collective agreement effective from January 1, 2004 to December 31, 2006, would be paid by the City into the plan to retire the deficit; that is, the City's contribution rate increased by an additional 0.5 percent of payroll in each year. In the agreement dated September 14, 2004, the parties also acknowledged that the Union made two reservations of rights as follow:

> 4. *...to investigate and determine the manner in which their payment for premiums will be made, either by direct payroll deduction or payment on behalf of all its members by the Employer.*
>
> *6. ...to make changes to the Plan and assume responsibility for any additional costs and/or benefits of any savings as the result of such changes.*

[16] Ostensibly, this would allow the Union the flexibility to address the issue by varying the terms of the plan benefits (i.e., by reduction if necessary) and the structure, amount and rate of contributions as it saw fit, while the Employer's obligations were now fixed. This was necessary because the Union cannot make unilateral changes to the plan — Blue Cross will recognize changes that come through the City only, as the City holds the contract. Mr. Avant testified that the City cooperated in implementing the changes sought by the Union.

[17] The Union decided that to properly fund the plan without reducing benefits it was necessary that the less-than-full-time-employees who had been receiving benefits at the full-time level, but paying only a pro-rated contribution based on hours worked as a proportion of full-time, should pay a "premium" to the plan to make the equivalent of a full-time employee's contribution for the equivalent of full-time benefits. The perception of the Union's benefits committee was that the persons in the job-share positions were making a partial contribution, but receiving full benefits, while potentially doubling the number of eligible claimants because two people are working a single full-time job.

[18] The Union held its annual general membership meeting on October 2, 2004. The plan deficit was an issue addressed in the acting president's annual report to the meeting. The Applicant did not ask any questions at the meeting.

[19] The Applicant received a letter from Mr. Avant in the City's employee benefits office dated October 8, 2004 advising her of the changes as follows:

> *Your membership in the CUPE Medical & Dental Plan ... has been at the full time benefit level since you have been in a job share position. In May of this year, the four unions in the CUPE plan decided, due to funding requirements, that all less than full-time employees would pay a premium in addition to the amount that the City of Saskatoon pays to Blue cross. At the same time, the CUPE group decided that all less than full time employees would move into the full-time benefit level. All less than full time employees received an increase to their coverage amounts except job shares, such as yourself. In your case, you started paying a premium for the same coverage that you had previously enjoyed.*

[20] That is, pursuant to the changes made by the Union and in bargaining, all less-than-full-time employees commenced receiving coverage under the plan at the full-time level, but were required to pay into the plan at the full-time level. But those working in job-share positions (including the Applicant) who had been receiving benefits coverage at the full-time level, but were only paying a pro-rated amount into the plan, were also required to pay an additional premium to make up their prior pro-rated contributions to the full-time contribution amount.

[21] The Applicant testified about the existence of a provincial government benefit plan to assist low income families in obtaining extended health benefits and indicated that qualified beneficiaries — which would include at least some of the less-than-full-time employees -- were eligible to claim for some things that are also covered by the plan. Her suggestion was that such less-than-full-time employees had no use for full benefits under the plan or, alternatively, were less burdensome to the plan than full-time employees because they could make claims under the provincial government benefit plan.

[22] The Applicant also suggested that the Union's benefits committee had acted in violation of the Union's bylaw 16.10(e)(ii) in that its function is only to "oversee" the plan.

[23] The Applicant stated in her testimony that she had wanted the Union to file a grievance against *the* City with respect to the changes to the plan but acknowledged in cross-examination that it appeared that the Union was the "driving force" behind the changes.

[24] In cross-examination, the Applicant acknowledged that, with the changes to the plan, the City contributes a percentage of the global payroll of the employees, plus she pays 2 per cent of her wages. The Applicant also acknowledged that, with two persons sharing one full-time job, there are likely more potential claimants (i.e., eligible dependents) for plan benefits than would be the case if a single full-time employee worked in the position. The Applicant estimated that the changes cost her approximately an additional $30 per month.

[25] The Applicant explained that her main concern is that taxes are first deducted from her gross pay and then the deduction is made for the plan contribution; that is, she pays taxes on the money contributed to the plan before it is deducted from her wages.

Statutory Provisions:

[26] Statutory provisions referred to in these Reasons for Decision include the following:

> *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.*
>
> *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.*

Arguments:

[27] Mr. Barnacle, counsel on behalf of the Union, argued that the Union did not act in violation of either s. 25.1 or s. 36.1 the *Act.*

[28] Counsel argued that, in the circumstances, s.36.1 did not apply at all. The facts of the situation are not among those that are covered by the provision.

[29] The Union determined to extend benefits to all less-than-full-time employees before it was discovered that the employees working in job-share positions were already receiving benefits as if working full-time, but were only paying pro-rated contributions. That situation was discovered as a result of the Union's benefit committee conducting a review in order to formulate a strategy to deal with the deficit in the plan.

[30] The fact that more people were eligible for coverage as if working full-time, as well as their dependents, necessitated that the Union address the entire situation. The Union decided that the employees working less-than-full-time, including the persons working in job-share positions, should contribute to the plan as if working full-time hours. It also decided that persons that had been receiving full-time benefits for a pro-rata contribution should pay an additional assessment. The Union also negotiated an increased contribution by the City to attempt to deal with the deficit problem. Counsel submitted that the Union did not act arbitrarily, in bad faith or in a discriminatory manner in acting as it did, insisting that all employees covered by the plan contribute the same amount for the same benefits.

[31] Counsel submitted that s. 25.1 of the *Act* does not apply with respect to failure or refusal to grieve because there was nothing to grieve to the employer: the City was making the deductions at the behest of the Union. With respect to the application of s. 25.1 to its bargaining of the plan changes with the City, the Union balanced the

interests of all the employees. The Union acted in good faith and in a manner it deemed to be fair and equitable.

[32] In support of the Union's arguments, counsel referred to the following decisions of the Board: *Dirk and Schmitz v. Canadian Union of Public Employees, Local 4162,* [2004] Sask. L.R.B.R. 64, LRB File Nos. 146-03 & 147-03; *Berry v. Saskatchewan Government Employees Union,* [1993] 4th Quarter Sask. Labour Rep. 65, LRB File No. 134-93; *Johnson v. Amalgamated Transit Union, Local 588,* [1997] Sask. L.R.B.R. 19, LRB File No. 091-96; *Griffiths v. Construction and General Workers Union, Local 890,* [2002] Sask. L.R.B.R. 98, LRB File No. 044-01; *Gibson v. Communications, Energy and Papetworkers Union of Canada, Local 650,* [2002] Sask. L.R.B.R. 574, LRB File No. 089-02; *Judd v. Communications, Energy and Paperworkers Union, Local 2000,* [2003] B.C.L.R.B.D. No. 63.

[33] Finally, counsel for the Union submitted that s. 36.1 of the *Act* was not applicable as the nature and substance of the Applicant's complaint did not come within the jurisdiction of the Board under that provision: see, *McNaim v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United states and Canada, Local 179* (2004), 240 D.L.R. (4th) 358 (Sask. C.A.).

[34] Mr. Taylor, representing the Applicant, argued that the Applicant had been entitled to benefits under the collective agreement, but those benefits were changed "with no process," and the Applicant was not accorded natural justice in the process that was used despite her e-mail entreaties to be advised of what was going on. Mr. Taylor said the Union did not afford the Applicant, or the other job-share employees, an opportunity to provide input into proposed changes. He asserted that the Union did not take proper and reasonable care before it changed the Applicant's entitlement to her rights under the plan.

[35] In support of his argument, Mr. Taylor referred to the decisions of the Board in *Dirk and Schmitz, supra,* and *Thompson and Poletz v. Saskatchewan Government and General Employees' Union,* [2002] Sask. L.R.B.R. 171, **LRB** File Nos. 199-00 & 210-00.

Analysis and Decision:

[36] The Applicant alleges that the Union acted in violation of each of s. 25.1 and s. 36.1 of the *Act. We* propose to deal first with the allegation relating to s. 36.1.

[37] In our opinion, s. 36.1 has no application to the instant case and it is not within the Board's jurisdiction to consider the situation pursuant to that provision. 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. In *McNaim, supra,* the Saskatchewan Court of Appeal held that for the Board to assume jurisdiction pursuant to either s. 36.1 or s. 25.1 of the *Act,* the "essential character of the dispute" must fall within the subject matter of the provision. The Court stated as follows, at 370:

> *Thus sub-section 36.1(1) imposes a duty upon a union (again correlative to the right thereby conferred upon an employee), to abide by the principles of natural justice in disputes between the union and the employee involving the constitution of the trade union and the employee's membership therein or discipline thereunder. As such, the subsection embraces what may be characterized as "internal disputes" between a union and an employee belonging to the union, but it does not embrace all manner of internal dispute. For the subsection to apply, the dispute must encompass the constitution of the union and the employee's membership therein or discipline thereunder.*

[38] In our opinion, s. 36.1 of the *Act* has no effective bearing on the essential character of the present dispute between the parties. The essence of the Applicant's complaint is that the Union did not consult with her and the other job-share employees before negotiating the changes to the plan with the City and in refusing to grieve on the Applicant's behalf. That is, if there is any case at all, it falls to be determined under s. 25.1 of the *Act.*

psi The Board's approach to applications alleging a violation of the duty of fair representation pursuant to s. 25.1 of the *Act* was summarized in *Berry v.*

Saskatchewan Government Employees' Union, [1993] 4th Quarter Sask. Labour Rep. 65, LRB File No. 134-93, 71-72, as follows:

> *This Board has discussed on a number of occasions the obligation which rests on a trade union to represent fairly those employees for whom it enjoys exclusive status as a bargaining representative. As a general description of the elements of the duty, the Board has indicated that it can do no better than to quote the principles outlined by the Supreme Court of Canada in the case of Canadian Merchant Services Guild v. Gagnon, [1984] 84 CLLC 12,181:*
>
> > *The following principles, concerning a union's duty of representation in respect of a grievance, emerge from the case law and academic opinion consulted.*
> >
> > *1. The exclusive power conferred on a union to act as a spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit*
> >
> > *2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.*
> >
> > *3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.*
> >
> > *4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.*
> >
> > *5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employees.*
> >
> > *The terms "arbitrary," "discriminatory," and "in bad faith," which are used in the legislative description of the kind of conduct on the part of a trade union which is to be prevented, have been held to address slightly different aspects of the duty. The Supreme Court in Gagnon used the following comments from the decision of the British Columbia Labour Relations Board in Rayonier Canada (B.C.) Ltd. (1975), 2 CLRBR 196, at 201, to convey the distinct attributes of the duty of fair representation:*

> *... The union must not be actuated by bad faith, in the sense of personal hostility, political revenge, or dishonesty. There can be no discrimination, treatment of particular employees unequally whether on account of such factors as race and sex (which are illegal under the Human Rights Code) or simple, personal favoritism. Finally, a union cannot act arbitrarily, disregarding the interests of one of the employees in a perfunctory manner. Instead, it must take a reasonable view of the problem before it and arrive at a thoughtful judgment about what to do after considering the various relevant and conflicting considerations.*

This Board has also commented on the distinctive meanings of these three concepts. In Glynna Ward v. Saskatchewan Union of Nurses, LRB File No. 031-88, they were described in these terms:

> *Section 25.1 of The Trade Union Act obligated the union to act "in a manner that is not arbitrary, discriminatory, or in bad faith". The union's obligation to refrain from acting in bad faith means that it must act honestly and free from personal animosity towards the employee it represents. The requirement that it refrain from acting in a manner that is discriminatory means that it must not discriminate for or against particular employees based on factors such as race, sex or personal favoritism. The requirement that it avoid acting arbitrarily means that it must not act in a capricious or cursory manner or without reasonable care. In other words, the union must take a reasonable view of the problem and make a thoughtful decision about what to do.*

[40] The Board has also held that the duty applies to representation in bargaining as well as in grievance and rights arbitration: see, *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.

[41] In our opinion the Union did not violate s. 25.1 of the *Act.* It canvassed its membership with respect to ascertaining its priorities in upcoming bargaining with the City. It ascertained that an important issue was full coverage under the plan for all

employees, full-time and part-time. It proceeded to bargain changes to the collective agreement and the terms of the plan. During this time, the plan administrator advised the Union of a mounting deficit in the plan. Upon reviewing the records, the Union ascertained that the employees working in job-share positions had for some time been receiving full benefits while only contributing a pro-rated amount based on hours worked as a proportion of full-time hours. To address the plan deficit while also carrying through on its mandate to extend benefits to all employees, the Union took steps to negotiate contribution changes with the Employer and to amend the terms of the plan.

[42] In *Hidlebaugh, supra,* the applicant had complained that, in collective bargaining, the Union had negotiated a "succession planning incentive plan" (essentially, a scheme allowing for early retirement) that was not based strictly on seniority thereby allowing persons less senior to the applicant to access the plan. The Board held that the union had not violated any duty pursuant to s. 25.1, describing the situation as follows, at 285-86:

> *49. 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 recognize 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. However, it is clear that a bargaining agent need not grieve or arbitrate every individual complaint even if it is legitimate. It may decline to do so where the interests of the collective membership are reasonably deemed to be more important than those of the individual. A common example is the decision by a union to represent one of its members in a selection grievance based on its interpretation of the collective agreement and the interests of the wider membership where the successful outcome of the grievance will mean that another member will not be successful in obtaining the position.*

[43] Although it was not argued in this case, there is some merit in considering whether, with respect to an employee benefit plan administered by a union, the union has an over-arching duty to ensure the fundamental and fiscal integrity and viability of the plan for the benefit of the collective membership, even to the detriment of some individual members or a smaller group of members, so long as it does not act arbitrarily, discriminatorily or in bad faith.

[44] In our opinion, in the present case, the Union acted responsibly to address the situation regarding the deficit in the plan. It had to balance the interests of individual employees, such as the Applicant, with the interests of the membership as a whole. It would not be reasonable to expect the Union to file a grievance of matters it had negotiated in bargaining. The Union did not act in violation of s. 25.1 of the *Act.* The application is dismissed.

DATED at Regina, Saskatchewan, this **4th** day of **November, 2005.**

LABOUR RELATIONS BOARD

James Seibel,
Chairperson