**Labour Relations Board**
**Saskatchewan**

**EDWARD DATCHKO, Applicant v. DEER PARK EMPLOYEES' ASSOCIATION and BOARD OF EDUCATION OF THE DEER PARK SCHOOL DIVISION No. 26, Respondents**

**EDWARD DATCHKO, Applicant v. BOARD OF EDUCATION OF THE DEER PARK SCHOOL DIVISION No. 26, Respondent**

LRB File Nos. 262-03 & 263-03; September 19, 2006
Chairperson, James Seibel; Members: Gloria Cymbalisty and Leo Lancaster

For the Applicant: Grant Schmidt
For the Union: Rick Engel
For the Employer: Jim McLellan

**Duty of fair representation – Contract administration – Union president fairly investigated grievance, discussed with employer and, in consultation with union executive, arrived at decision not to advance grievance – Not illegitimate for small independent union with limited means to consider cost of arbitration and continued good relationship with employer as factors in making decision not to pursue questionable grievance – Union did not violate s. 25.1 of *The Trade Union Act*.**

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

## REASONS FOR DECISION

**Background:**

**[1]** Deer Park Employees' Association (the "Union") is designated as the bargaining agent for a unit of employees of the Board of Education of the Deer Park School Division No. 26 (the "Employer"). The Union is a certified trade union within the meaning of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*"), but is restricted solely to the members of that bargaining unit and is not affiliated with any national union. The Union and the Employer have a collective bargaining agreement (the "collective agreement").

**[2]** At all material times, the Applicant, Edward Datchko, was employed by the Employer as a school bus driver and was a member of the bargaining unit until he purportedly resigned from his employment on August 23, 2003. The Union filed a

grievance of what the Applicant maintained was an unlawful termination of his employment, but refused to progress it past the first step.

**[3]** The Applicant filed two applications with the Board. The first application, LRB File No. 262-03, alleged that the Union violated its duty to fairly represent the Applicant contrary to s. 25.1 of the *Act*, by failing to file or pursue a grievance of his termination. Section 25.1 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.*

**[4]** The second application, LRB File No. 263-03, alleged that the Employer committed an unfair labour practice or practices in violation of s. 5(d) of the *Act*, but did not specify any particular violation under s. 11 or s. 12 of the *Act*. The Applicant stated that the facts that formed the basis for the application were that the Employer refused to set up a grievance committee in accordance with the collective agreement between the Employer and the Union and terminated the Applicant's employment. The Applicant requested that the Employer comply with the grievance procedure in the collective agreement or reinstate him as a spare school bus driver. Section 5(d) of the *Act* provides as follows:

> *5. The board may make orders:*
>
> *(d) determining whether an unfair labour practice or a violation of this Act is being or has been engaged in;*

**[5]** Both applications were heard in the same proceeding in order to avoid a duplication of evidence.

**Preliminary Issue on LRB File No. 263-03:**

**[6]** Mr. Engel, counsel on behalf of the Union, raised the preliminary argument that the Applicant, as an individual employee represented by a bargaining agent, was without standing to make the application in LRB File No. 263-03 asking that

the Employer be found guilty of an unfair labour practice without the consent of the Union, which it had not given. While the *Act* protects the rights of employees pursuant to s. 3, the protection is of the right to decide whether to be represented by a bargaining agent of their choosing. The bargaining agent so chosen has the exclusive right to represent the members of the bargaining unit even though some members may not agree with everything, or with anything, the union does.

**[7]** Mr. McLellan, counsel on behalf of the Employer, asserted that the unfair labour practice application, in which the primary remedy sought is an order that the Employer accept a grievance of and proceed to arbitration on the Applicant's complaint, is subsumed in the duty of fair representation application in which the primary remedy sought is an order that the Union file a grievance, the Employer accept it and the parties proceed to arbitration of the Applicant's complaint. Counsel submitted that the grievance procedure is between the Employer and the Union as the employees' bargaining agent pursuant to the collective agreement and is not constituted as a procedure that members of the bargaining unit can seek to access on their own initiative, but only through their bargaining agent. He asserted that the Union owns any grievance under the collective agreement and has exclusive control over whether it should be filed or advanced.

**[8]** In support of a motion that the unfair labour practice application be struck, counsel referred to the decision of the Board in *Metz v. Saskatchewan Government and General Employees' Union and Government of Saskatchewan*, [2003] Sask. L.R.B.R. 28, LRB File No. 164-00, in which the Board exercised its discretion to decline to hear an unfair labour practice application brought by an employee and deferred to proceedings then pending before the Saskatchewan Human Rights Commission.

**[9]** Mr. Schmidt, counsel on behalf of the Applicant, responded that an employee has the right to make such an application and that the Board does not have jurisdiction to deny same. Counsel also submitted that *Metz*, *supra*, was not applicable because it was a case respecting jurisdiction between the Board and the Saskatchewan Human Rights Commission.

**Evidence:**

**[10]** The Applicant testified that he started as a “spare” (i.e., substitute) bus driver for the Employer in 1979. In 1983, he obtained a “regular” (i.e., full time) permanent route which he shared with his wife, who had also become a spare driver for the Employer. He said that, when the Union was certified in 1998, he and his wife could not share the regular route so his wife took it over fully and he once again became a spare driver. The Applicant obtained a regular permanent route, which he held until 2003, after a grievance had been filed by the Union.

**[11]** In March 2003, the Applicant obtained an employment opportunity with a different employer. He wrote to the Employer on March 26, 2003 about obtaining a leave of absence from March 31, 2003 to May 16, 2003, which was granted. The Applicant requested an extension of his leave to the end of the 2002-03 school year but expressed an interest in driving the route part time during that period and using someone else to drive the rest of the time. He received a telephone call from the Employer’s transportation supervisor, Dave Chevaldayoff, who advised him that if he was not going to return to driving his route on a full time basis, he would not be allowed to work it only part time. By letter to the Employer dated May 17, 2003, the Applicant formally requested an extension to his leave of absence and acknowledged that, if he was not to be allowed to drive his regular route part time during the period to the end of the school year, he wanted to work as a spare driver in the afternoon and for after school trips. The extension of his leave was granted. He did indeed drive as a substitute driver on a few occasions at the Employer’s request. The Applicant made all these arrangements on his own and did not consult with or go through the Union.

**[12]** By letter dated June 11, 2003, the Employer asked the Applicant to advise of his intentions with respect to driving the permanent route in the fall, or the Employer would post the position.

**[13]** By letter dated June 18, 2003, the Applicant advised the Employer that he would be returning to his route beginning in the new school year. By letter dated June 20, 2003, the Employer acknowledged that the Applicant would be returning to his driving position in the fall.

**[14]** Sometime after this, the Applicant said that he heard from another employee, Mr. Hamilton, that the Applicant's route had been changed and that Mr. Hamilton had received a piece of it. The Applicant admitted that it was not unusual for the Employer to change routes from year to year (as student demographics changed), but said that the changes were usually done in June. The Applicant testified in cross-examination that he was angry because less mileage meant less money and he felt that, if that was the way the Employer was going to treat long service employees, "…so be it, and it helped me decide to resign." However, in cross-examination, the Applicant admitted that he did not know then whether the mileage of the reconstituted route was less than it had been.

**[15]** A couple of days later, the Applicant wrote the Employer a letter dated August 23, 2003 advising that he would not be returning to his regular route as a bus driver and further stating that, "I'll leave my name stand as spare." His regular bus driving duties were to begin on August 25, 2003 and he only faxed the letter to the Employer at approximately midnight the evening before. The Applicant admitted that, even though he was a member of the Union's executive, he did this on his own and without consulting with the Union as to how to proceed with what he wanted to do.

**[16]** By letter dated September 9, 2003, the Employer advised the Applicant that it accepted his resignation from his regular route but denied his request to leave his name on the spare drivers' list. The Applicant, who at this time was on the Union's executive, said that he then told the Union's president, Kelly Leik, that he wanted to file a grievance. He told Mr. Leik that he would be consulting legal counsel. Mr. Leik told him that there were no grounds to grieve because he had resigned; however, the Union would, reluctantly, file a grievance on his behalf. The Union filed a grievance dated September 15, 2003, with the Employer on September 18, 2003. The grievance, drafted by the Applicant, stated, in part, that he "resigned [his] position as permanent bus driver and reverted back to [his] casual position."

**[17]** The first step grievance meeting as set out in the collective agreement was held on September 19, 2003. Present at the meeting were the Employer's secretary-treasurer, Wilfred Hotsko, an executive member of the Union, Dave Tuba, and the Applicant. After the meeting, the Employer denied the grievance at Step 1. The

Employer's response to the grievance was set out in a letter to the Union dated September 22, 2003 (which was copied to the Applicant), which reads, in part, as follows:

> *First of all, the following key facts should be noted:*
>
> *1. Grievance Form*
>
> *The grievance form filed by Mr. Datchko and the [Union] does not reference any article or section of the Deer Park Employees' Association Agreement that has been breached.*
>
> *2. Mr. Datchko's Resignation*
>
> *Mr. Datchko submitted his resignation to the Board and it was accepted by the Board at its regular meeting held on September 8, 2003. Article 7.2(ii) states clearly that an employee loses his seniority and service related rights when he resigns from his employment with the Board.*
>
> *3. Request to be Placed on the Spare Drivers' List*
>
> *Mr. Datchko's request to be placed on the Board's Spare Drivers' List was presented to the Board at its meeting held on September 8, 2003. The Board's Policy E-7 (Substitute Drivers' List) requires all applications to be approved by the Board. In Mr. Datchko's case, his application was denied by the Board.*
>
> *Therefore, after taking into account the above mentioned facts, Mr. Datchko's grievance has no merit. The Board of Education followed the terms of the Deer Park Employees' Association Agreement and its own Policy as it pertains to Mr. Datchko. The Board of Education reserves the right to determine whom it wishes to hire on its Spare Drivers' List and exercised this right pursuant to its Policy.*

**[18]** That day, or the following day, the Applicant advised Mr. Leik and the Union's vice-president, Ed Kuntz, that he wanted the grievance to be progressed to the next step of the grievance procedure.

**[19]** The Employer's Substitute Bus Drivers' List Policy E-7, the terms of which the Applicant admitted he was aware, provides, in part, as follows:

> *Date: November 9, 1992 Substitute Bus Drivers List*

> *The Secretary-Treasurer shall maintain a list of all persons who are authorized to act in the capacity of Substitute Bus Drivers. No person is authorized to act as a Sub-Driver unless his/her name is on the list.*
>
> *Any person wanting to be added to the list must apply to the Board of Education and must meet the qualifications as stated in Policy Code E-6.*

**[20]** By letter dated September 24, 2003, Mr. Leik advised the Applicant that, at a meeting of the Union's executive on September 23, 2003, a motion was passed that the Applicant's grievance not be carried to Step 2 of the grievance procedure. The Applicant was also advised that a motion was passed to remove him from the Union's executive. The minutes of the meeting state that, "it was felt the Board of Education did not breach any policy or contract articles following Mr. Datchko's letter of resignation…." The Applicant was unsure whether he had received notice of the meeting and he did not attend. He did, however, contact Mr. Tuba, that evening to find out what happened at the meeting.

**[21]** By letter dated September 30, 2003, in apparent response to a letter from the Applicant dated September 25, 2003, the Employer wrote to the Applicant advising him that he was not entitled to file a grievance on his own behalf. The letter provides, in part, as follows:

> *Further to your correspondence dated September 25, 2003, as we have previously advised, you are not entitled to bring a grievance under the collective bargaining agreement.*
> *. . . .*
> *Article 4.7 of the agreement clearly states:*
>
> > *4.7 Loss of Seniority*
> > *Seniority and service related rights shall be lost in the event the employee:*
> > *(ii) Resigns from his employment with the Board.*
>
> *You resigned from your position with the Board. You were not on the Spare drivers' list prior to your resignation. The Board treated the second sentence of your resignation letter as an application to be put on the Spare Drivers' list. The Board considered the matter and declined to place you on the Spare Drivers' list, which the Board has a right to do.*

> *You are no longer an employee of the Board because you resigned. Under the agreement you are not entitled to bring a grievance on this issue and we will not be establishing a grievance committee.*

**[22]** By letter dated October 1, 2003, the Applicant wrote to the Union, in part, as follows:

> *Step 2 of the contract requires the union to appoint 3 members to the grievance committee.*
>
> *If it is difficult to locate three people I will locate the 3 people for the Union to appoint.*
> *. . . .*
>
> *Please let me know if I should look for appointees.*

**[23]** The Applicant then telephoned Mr. Leik and said that he wanted the grievance to be progressed. By letter dated October 6, 2003, Mr. Leik, on behalf of the Union, advised the Applicant that Mr. Leik had talked to the Employer and that the Union would not take the grievance any further. The letter reads in part as follows:

> *I have talked to the School Board and there will be <u>NO STEP 2 GRIEVANCE</u>, and we as a Union <u>will not</u> represent you on this matter.*
>
> *As of August 23/03, you resigned your position, so therefore you are no longer a member of the union as you are not employed by Deer Park School Unit any longer.*
>
> *(Emphasis original)*

**[24]** The Applicant wrote to the Employer by letter dated October 31, 2003, in which he alleges the Employer refused to set up a grievance committee in accordance with the collective agreement and says that, if this was not done, he would apply to the Board. The letter reads, in part, as follows:

> *My Employer has refused to set up a grievance committee in accordance with the Collective Agreement.*

> *Please advise if you will proceed with the grievance. If you will not proceed with the grievance, I will apply to the Labour Relations Board… .*

**[25]** The Applicant also wrote to the Union by letter dated October 31, 2003, alleging that the Union's failure to progress his grievance was a violation of s. 25.1 of the *Act* and advising the Union that if it did not do so he would apply to the Board.

**[26]** The Applicant attended the Union's annual general meeting in November 2003, at which time he was allowed to address the meeting and present his position to the membership as a whole. He said that he referred to the Union's duty under s. 25.1 of the *Act*, and that the Union's executive responded that there was nothing they could do because he had resigned his employment. The membership determined not to proceed further with the grievance.

**[27]** In the course of his testimony in chief, the Applicant agreed that he "gave up" his position as a permanent regular driver and that he was not asking that the Board reinstate him as such. Rather, he said, his complaint was that he should retain his seniority on the spare drivers' list and remain as a casual employee.

**[28]** In cross-examination by Mr. Engel, the Applicant admitted that the collective agreement did not expressly state that a permanent driver could revert to spare driver status. He also admitted that, after the fact, the Union advised him that, if his permanent position had been abolished or he had been laid off, he could have been placed on the spare drivers' list, but could not do so when he had resigned his employment; his position was that he had resigned as a permanent driver but not completely from employment with the Employer and because he had been accepted as a spare driver in the past he could revert to that status at will.

**[29]** Charlotte Datchko, the Applicant's spouse, testified on his behalf, but had little to add of any significance. She did testify that she spoke with Mr. Leik in August or September 2003 and that he told her that there were no good grounds on which to grieve the Applicant's complaint and that the Union would not upset its good relationship with the Employer.

**[30]** Mr. Leik, the Union's president, testified that there are approximately 35 members in the bargaining unit. He was involved in negotiating the collective agreement. Mr. Leik confirmed that the Applicant made all of his arrangements for leave of absence in the spring of 2003 without seeking advice or assistance from the Union.

**[31]** Mr. Leik also confirmed that the Applicant wrote his letter of August 23, 2003 to the Employer without seeking advice from or the assistance of the Union. Mr. Leik said that the Union could have tried to convince the Employer to place the Applicant on the spare drivers' list at that time.

**[32]** When the Applicant complained to Mr. Leik about the Employer's response, Mr. Leik told the Applicant to write out a grievance and the Union would file it on his behalf. Mr. Leik testified that at that time the Applicant advised him that he only expected the Union to take the grievance to Step 1 of the grievance procedure and then the Applicant would handle it on his own.

**[33]** After a meeting with the Employer about the grievance, the Employer denied the grievance. Mr. Leik testified that the Applicant, who was on the Union's executive, was given notice of the executive meeting on August 23, 2003. Mr. Leik said that, once the Union learned that the Applicant had resigned his position, there was no point in pursuing the grievance; there is no provision in the collective agreement providing for reversion from permanent employee status to casual status and an employee that resigns loses seniority. Mr. Leik said that one of the considerations taken into account by the executive was that, as a small independent union, the Union must be careful with how its limited funds are spent. Mr. Leik said that personal feelings about the Applicant did not enter into the Union's decision.

**[34]** Mr. Leik said that the Applicant was not the only permanent driver who faced this situation. In the previous year, four other permanent drivers resigned and requested to be put on the spare drivers' list, but the Employer only granted the request of two of them. Mr. Leik said the Union has no say in who is hired as a spare driver. When a spare driver obtains a permanent position, he or she is removed from the spare drivers' list. Mr. Leik said that it is the Union's position that one cannot resign from a

permanent position and retain seniority on the spare list. The Union agreed with the Employer that there was no basis for a grievance.

**Arguments:**

**[35]** Mr. Schmidt, counsel on behalf of the Applicant, argued that the Union had acted arbitrarily or in bad faith in accepting the Employer's decision not to place the Applicant on the spare drivers' list without investigating the Employer's reasons for the decision. Counsel suggested that the Union's relationship with the Employer was too cosy and, therefore, arbitrary.

**[36]** Counsel submitted that an arbitrator ought to have been asked to determine whether, under the collective agreement, an employee loses seniority when he or she steps down from a permanent position. Counsel said that the Union is a very small union and that, perhaps with some direction from the Applicant and himself, it could have come to the right conclusion on the matter. Counsel said that the Union seemed to believe that the Employer could just deprive employees of their seniority.

**[37]** Counsel for the Applicant asked that the Board either order that the grievance go to arbitration or simply reinstate the grievor.

**[38]** Mr. Engel, counsel on behalf of the Union, suggested that the issue that the Union had to consider was whether a permanent employee was entitled to revert to casual status on the spare drivers' list or whether the Employer was entitled to exercise its discretion as to who was placed on the list.

**[39]** Counsel pointed out that, in deciding not to progress the grievance past the first step, the Union considered the probability of success, the not small expense of arbitration and the detrimental effect that doing so might have on the good will and relationship it had developed with the Employer. He said these are not illegitimate considerations for a union to take into account when making such a decision. Counsel also pointed out that some unions are more adversarial than others, but it does not mean that the less aggressive unions are not serving their members. Counsel submitted that it is not within the Board's mandate to dictate how a union approaches its relationship with an employer in dealing with such matters.

**[40]** Counsel for the Union suggested that the Applicant was the author of his own misfortune: he proceeded to deal with the Employer and resign from his permanent position on his own and without consulting with the Union. The Union might have been better able to protect the Applicant's interests had he consulted with it before taking such a drastic step. The Union might have successfully negotiated the matter with the Employer. However, once the Applicant had resigned, the Union agreed with the Employer that there were no grounds for a grievance. Nonetheless, Mr. Leik tried to convince the Employer to put the Applicant on the spare drivers' list. The fact that he was not successful does not mean that the Union did not fairly represent the Applicant or his interests.

**Analysis and Decision:**

**LRB File No. 263-03**

**[41]** Because of the view we have taken of this matter, it is not necessary to consider the issue raised in preliminary argument that the Applicant cannot file an unfair labour practice against the Employer.

**[42]** The application does not specify any specific unfair labour practice alleged to have been committed by the Employer under s. 11 of the *Act*. At the hearing, the Board asked the Applicant's counsel to specify which unfair labour practice or practices were alleged to have been committed by the Employer. Counsel either neglected or declined to do so. The application document merely states that it was an unfair labour practice for the Employer to refuse to appoint nominees to a grievance panel or to refuse to place the Applicant on the spare drivers' list in accordance with his seniority. While either of these might be a breach of the collective agreement, they do not constitute unfair labour practices within the meaning of the *Act* in the context of the facts of this case.

**[43]** The application in LRB File No. 263-03 is dismissed and an order will issue accordingly.

**LRB File No. 262-03**

**[44]** The Board's general approach to applications alleging a violation of s. 25.1 of the *Act* was summarized in *Laurence Berry v. Saskatchewan Government Employees' Union*, [1993] 4th Quarter Sask. Labour Rep. 65, LRB File No. 134-93, at 71-72. It has been followed in numerous decisions of the Board since. In *Berry*, the Board stated 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 favouritism. 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 favouritism. 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.*

**[45]** On the facts of the present case viewed in the light of the principles set out above, we are of the opinion that the Union did not act in a manner that was arbitrary, discriminatory or in bad faith in determining not to advance the grievance of the Applicant's complaint past the first step of the grievance procedure.

**[46]** It is not for us to determine whether the Union was correct in deciding that the grievance would not be successful but rather to determine whether the Union arrived at that decision in a fair and reasonable manner, without gross negligence, taking into account all reasonably available information and relevant considerations. Mr. Leik, the Union's president, fairly investigated the matter, discussed it with the Employer's representative and, in consultation with his colleagues on the Union's executive, fairly arrived at the decision not to advance the grievance. As has been stated in numerous decisions of the Board, for example, in *Hidlebaugh v. Saskatchewan Government and General Employees' Union and Saskatchewan Institute of Applied Science and Technology*, [2003] Sask. L.R.B.R. 272, LRB File No. 097-02, it is not for the Board to minutely assess and second guess the actions of the Union in its conduct of the grievance procedure so long as it does not do so in violation of s. 25.1 of the *Act*.

**[47]** It is not illegitimate for a union to consider the cost of arbitration as one of the factors involved in making such a decision – a union is not obliged to represent one of its members at any expense – so long as it is not the only factor. This is certainly the case when a union has decided in good faith that the grievance is not likely to succeed. It is an even more important consideration for a small independent union with limited means. The Union also has a duty to its entire membership to use its resources wisely and to the best advantage of the bargaining unit as a whole. In *Hidlebaugh*, *supra*, the Board stated as follows at 285 and 286:

> *The Union's duty of 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 the 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.*

**[48]** In *Radke v. Canadian Paperworkers Union, Local 1120*, [1993] 2nd Quarter Sask. Labour Rep. 57, LRB File No. 262-92, the Board commented on what may reasonably be expected by an employee of a union at 64 and 65:

> *What is expected of trade union officials in their representation of employees is that they will act honestly, conscientiously and without prejudgment or favouritism. Within the scope of these criteria, they may be guilty of honest errors or even some laxity in the pursuit of the interest of those they represent. In making decisions about how or whether to pursue certain issues on behalf of employees, they should certainly be alert to the significance for those employees of the interests which may be at stake. Given the importance of the employee interests the union has the responsibility to pursue, they should also carry out their duties seriously and carefully. The ultimate decision made or strategy adopted, however, may take into account other factors than the personal preferences or views of an individual employee.*

**[49]** In *Banga v. Saskatchewan Government Employees' Union*, [1993] 4th Quarter Sask. Labour Rep. 88, LRB File No. 173-93, the Board stated at 98:

> *It is clear from the jurisprudence which has accumulated concerning the duty of fair representation that it is not the task of a labour relations board to second guess a trade union in the performance of its responsibilities, or to view the dealing of that union with a single employee without considering a context in which numerous other employees and the union itself may have distinct or competing interests at stake.*

**[50]** It is not illegitimate for a union to consider its relationship with an employer in its labour relations as one of the factors involved in deciding whether to proceed with what it has determined in good faith is a questionable grievance. A union may not wish to damage its credibility or good will with the employer by advancing questionable grievances particularly if a new round of bargaining is on the horizon. The Applicant must accept responsibility for being in the position that he finds himself in: he neglected to obtain the advice or assistance of the Union in dealing with his employment status issues and resigned from his permanent full time position. It is recognized that the Applicant obviously did not understand the Union's view of the workings of the collective agreement and the Employer's policy on the issue, but the Union cannot be blamed for that – quite simply, the Applicant acted recklessly. Despite that, the Union did what it could within the limits that it set with respect to the resources it was willing to commit to advance what it perceived as a highly questionable complaint. The issue is not whether the Union was correct in arriving at its assessment but whether it did so

without arbitrariness, bad faith, discrimination or gross negligence. We find that the Union did not violate s. 25.1 of the *Act*.

**[51]** For the reasons set forth above the application is dismissed. An order will issue accordingly.

**DATED** at Regina, Saskatchewan, this **19th** day of **September, 2006.**

**LABOUR RELATIONS BOARD**

James Seibel,
Chairperson