Labour Relations Board
Saskatchewan

INTERNATIONAL UNION OF OPERATING ENGINEERS, HOISTING & PORTABLE & STATIONARY, LOCAL 870, Applicant v. RURAL MUNICIPALITY OF BLUCHER NO. 343, Respondent

LRB File Nos. 039-06, 040-06, 041-06, 042-06, 043-06 & 044-06; February 11, 2008
Chairperson, James Seibel; Members: Maurice Werezak and Clare Gitzel

For the Applicant: Trent Garneau
For the Respondent: Kevin Wilson

Practice and procedure – Summary dismissal – With respect to s. 18(p) of *The Trade Union Act*, not Board's function to assess strength or weakness of case but to determine whether application and written submission disclose facts that would form basis of unfair labour practice or violation of *The Trade Union Act.*

Practice and procedure – Summary dismissal – Union made no reply to inquiries of Board Registrar or counsel for employer disclosing any interest in or intention to proceed with applications – Union did not express any interest in or respond to summary dismissal application – Board draws inference that employer would be at unfair disadvantage by reason of undue and unexplained delay by union – Board summarily dismisses union's applications.

Practice and procedure - Summary dismissal – Board considers whether appropriate case to summarily dismiss applications without oral hearing – Audi alteram partem rule does not require oral hearing in every case - Board summarily dismisses applications without oral hearing.

***The Trade Union Act*, ss. 18(p) and 18(q).**

REASONS FOR DECISION

Background:

[1] International Union of Operating Engineers Hoisting & Portable & Stationary, Local 870 (the "Union"), was designated as the bargaining agent for a group of employees of the Rural Municipality of Blucher No. 343 (the "Employer") by a certification Order dated March 9, 2005 (LRB File No. 034-05). In the spring of 2007, the Board considered an application for rescission of the certification Order and ordered a

representation vote. The vote was held and the Union's objection to the vote was dismissed by the Board in *Hill v. International Union of Operating Engineers Hoisting, Portable and Stationary, Local 870 and Rural Municipality of Blucher No. 343*, [2007] Sask. L.R.B.R. 144, LRB File No. 012-06. The certification Order was rescinded by Order of the Board dated May 7, 2007.

[2] Subsequent to the filing of the application for rescission, the Union filed the within applications with the Board on March 28, 2006 alleging that the Employer had committed unfair labour practices in violation of ss. 11(1) (a), (e), (f) and (m) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*"), by reason of the alleged unlawful discharges of two members of the bargaining unit, and seeking reinstatement and compensation for monetary loss. In the spring of 2007, the Employer applied for summary dismissal of these applications on the basis, *inter alia*, of undue delay. The summary dismissal application was heard at the same time that the Board considered the Union's objection to the conduct of the representation vote in the rescission application. The application for summary dismissal was not allowed in *International Union of Operating Engineers, Hoisting & Portable & Stationary, Local 870 v. Rural Municipality of Blucher No. 343*, [2007] Sask. L.R.B.R. 144, LRB File Nos. 039-06, 040-06, 041-06, 042-06, 043-06 & 044-06.

[3] Shortly afterwards, by letter of April 27, 2007, the Board Registrar wrote the Union asking if it wished to have these applications set for a hearing. No response was ever received. Since that time, Mr. Wilson, counsel on behalf of the Employer has inquired of the Union about proceeding with the applications and has received no response. By letter dated December 11, 2007 from Mr. Wilson to the Board and copied to an officer of the Union, Trent Garneau, the Employer again applied for summary dismissal of the applications. By letter to the Union from the Board Registrar dated December 12, 2007, the Union was advised that the Employer's application for summary dismissal pursuant to ss. 18(p) and (q) of the *Act* would be placed before a panel of the Board to consider whether summary dismissal without an oral hearing was an option.

[4] A panel of the Board sitting *in camera* (differently constituted than the present panel) considered the matter and determined that summary dismissal without an oral hearing was an option. By letter from the Board Registrar dated December 17,

2007, the Union was advised of the decision and advised further that it was required to provide any written submissions regarding the matter to the Board within 14 days of the date of the Board Registrar's letter. No response was received from the Union.

[5] On January 3, 2008, the present panel of the Board, sitting *in camera*, considered the application for summary dismissal without an oral hearing, allowed the application and dismissed the Union's applications alleging unfair labour practices and seeking reinstatement and monetary loss. An Order was issued to this effect on January 8, 2008 with reasons to follow.

[6] Following are the Board's reasons for decision.

[7] In its applications to the Board the Union stated simply that Bryan Buck and Robin Wilson had not been recalled to work the following spring after being laid off at the end of the summer work season in 2004. The Employer sent each of the two men letters in the fall of 2005 advising them that their employment was terminated because they had been laid off for a period in excess of twelve months. The Union alleged that each of them was exercising rights under the *Act* at the time of initial lay-off.

[8] In its reply to the applications the Employer denied the allegations and provided details of the periods of time worked by each man as a seasonal employee for the years 2002, 2003 and 2004. The Employer's policy that employment terminated following twelve months' lay-off without recall was known to the Union. The Union did not object to the failure to recall either man at the start of or during the 2005 work season but only at the end of that season when they were advised that they were terminated.

Relevant Statutory Provisions:

[9] Sections 18(p) and (q) of the *Act* provide as follows:

> *The board has, for any matter before it, the power:*
>
> *. . .*
>
> *(p) to summarily dismiss a matter if there is a lack of evidence or no arguable case;*

(q) to decide any matter before it without holding an oral hearing;

Analysis and Decision:

[10] The Board's approach to applications for summary dismissal without a *viva voce* hearing pursuant to ss. 18(p) and (q) of the *Act* was outlined in detail in the Board's decision in *Soles v. Canadian Union of Public Employees, Local 4777*, [2006] Sask. L.R.B.R. 413, LRB File No. 085-06. We have endeavoured to follow the same general approach in the present situation.

[11] The following issues are before the Board: (1) Whether the Union has established an arguable case that the Employer committed an unfair labour practice or practices; and (2) if not, whether this is an appropriate case to summarily dismiss the Union's application without an oral hearing.

[12] The Board's approach to the phrase "arguable case" as used in s. 18(p) of the *Act* was outlined in *Soles*, *supra*, and we do not intend to repeat it here, except to say that we are in agreement. That said, with respect to s. 18(p) of the *Act*, it is not our function to assess the strength or weakness of the Union's case, but to determine whether the application and written submission (if there is one) disclose facts that would form the basis of an unfair labour practice or violation of the *Act*. We must examine whether the application discloses an arguable case such that it should not be dismissed without an oral hearing.

[13] We have examined the facts and allegations contained in the application and reply. The Union did not file a written submission with respect to the application for summary dismissal.

[14] In its Reasons for Decision regarding the previous application for summary dismissal, the Board stated that while the Union's allegations were general it could not be said that they do not disclose a basis for the allegations of unfair labour practices.

[15] However, since that time, the Union has remained incommunicative and has not made any reply to the inquiries of either the Board Registrar or counsel on behalf of the Employer disclosing any interest in or intention to proceed with the applications. It did not express any interest in the present application, choosing to remain mute.

[16] In our opinion, in all of the circumstances this is a case where it is appropriate to consider dismissing the Union's applications on the basis of undue and unexplained delay. These circumstances lead us to conclude that the Union has no interest in proceeding and has not proffered any alternative explanation. Accordingly, we have chosen to exercise our discretion to dismiss the applications without an oral hearing

[17] In determining whether it is appropriate case to dismiss the applications without an oral hearing, the Board in *Soles*, *supra*, held that while the *audi alteram partem* rule requires the Board to hear both sides of a matter, it does not require that an oral hearing be held in every case. As stated by the Canada Industrial Relations Board in *McRaeJackson et al. v. CAW – Canada and Air Canada Jazz*, [2004] CIRB No. 290, at 18,

> *The reviewing courts have clearly stated that the Board is only required to grant to the parties an opportunity to present their case, whether by written submissions, documents produced and its own inquiries (see Commission des Relations de Travail du Quebec v, Canadian Ingersoll-Rand Company Limited, et al., [1968] S.C.R. 695; Anne Marie St. Jean, supra, Boulos v. Canada (Labour Relations Board), [1994] F.C.J. No. 1854 (QL); and Nav Canada, supra, with respect to the discretion of this Board).*

[18] In *Kelly v. Amalgamated Transit Union, Local 1415 and Greyhound Canada Transportation Corp*., [2002] CIRB No. 202, the Canada Industrial Relations Board outlined the rationale for exercising its discretion to decide a matter without holding an oral hearing, as follows at 10:

> *[23]. . . to provide a broader discretion to the Board and to allow it to reduce the time required and the expense of deciding any matter, where this is appropriate . . . .*

> *[24] Under section 16.1 of the Code, the Board is required to carefully consider the facts and circumstances before it, and if the Board determines it is appropriate to decide a matter on the basis of the written submissions before it, it may do so (see Ghislaine Gagne, [1999] CIRB no. 18; Raynald Pinel, [1999] CIRB no. 19; Anne Marie St. Jean, [1999] CIRB no. 33; Greater Moncton Airport Authority Inc., [1999] CIRB no. 20; and Royal Aviation Inc., [2000] CIRB no. 69). In many cases, therefore, after considering the matters in issue, the available evidence and other relevant factors, the Board will decide the matters before it based on written submissions only.*

[19] The onus is on the Union to provide an explanation for its silence. It has been given ample opportunity to do so. It has chosen not to do so. We have drawn the inference that the Employer would be at an unfair disadvantage and hardship by reason of the undue and unexplained delay to this point.

[20] For the foregoing reasons, the Board issued an Order on January 8, 2008 dismissing the Union's applications.

DATED at Regina, Saskatchewan, this **11th** day of **February, 2008.**

LABOUR RELATIONS BOARD

James Seibel,
Chairperson