Labour Relations Board
Saskatchewan

GERRY PACHOLIK and WES WILSON, Applicants v. CONSTRUCTION AND GENERAL LABOURERS' UNION, LOCAL 180 and SHAW PIPE PROTECTION LTD., Respondents

LRB File No. 073-06; September 16, 2008, 2008
Vice-Chairperson, Angela Zborosky; Members: Gloria Cymbalisty and Ken Ahl

For the Applicant:	Sue Barber
For the Respondent Union:	Neil McLeod, Q.C.
For the Respondent Employer:	No one appearing

Union – Constitution – Natural justice – Board's supervisory power under s. 36.1 of *The Trade Union Act* does not extend to interpreting and making determination on union's constitution and bylaws – Board concludes that it lacks jurisdiction to consider case where applicants ask Board to interpret rights and obligations under constitution imputing certain principles of natural justice into constitution – Board dismisses application.

Union – Constitution – Reasonable notice of meeting – Section 36.1 of *The Trade Union Act* requires reasonable notice to members for all meetings at which members entitled to attend – Board examines clear provisions of constitution, union's past practices, concept of reasonable notice generally and nature of matter under consideration – Union met requirements of reasonable notice under circumstances of case – Board dismisses application.

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

REASONS FOR DECISION

Background:

[1] Pursuant to *The Construction Industry Labour Relations Act*, 1992, S.S. 1992, c. C-29.11 (the "*CILRA*"), the Construction and General Labourers' Union, Local 180 (the "Union") is the designated bargaining agent for employees of unionized employers in the construction industry working as general labourers. The Applicants, Gerry Pacholik and Wes Wilson, are members of the Union and employed by a unionized employer, Shaw Pipe Protection Ltd. ("Shaw Pipe" or the "Employer"). The Applicants filed an application with the Board on May 24, 2006, alleging that the Union violated ss. 11(2)(a) and 36.1 of *The Trade Union Act*, R.S.S. 1978, c. T-17, as amended (the "*Act*"), by increasing the Union's working dues at a meeting to which they

did not receive proper notice and through a method of voting that was improper and included the votes of ineligible members.

[2] The Union filed a reply to the application on June 26, 2006 denying a violation of the *Act* on the bases that it gave notice of the meeting in accordance with its regular practice and not in violation of the Union's constitution and that s. 36.1 does not give the Board jurisdiction to review the manner in which votes are taken, including the method of voting taken and the eligibility of members to vote. The Union denies any impropriety or constitutional breach with regard to the manner of voting and states that it is not prepared to reinstate the previous dues structure. The Union also states that there are no facts pled which could substantiate a violation of s. 11(2)(a) of the *Act*.

[3] The Employer did not file a reply to the application nor did it participate in the hearing.

[4] The application was heard on October 26 and 27, 2006. At the commencement of the hearing, counsel for the Applicants advised that they were withdrawing their allegation under s. 11(2)(a) of the *Act* and that they were no longer challenging the eligibility of any of the members who voted on the resolution to increase the dues.

Facts and Evidence:

[5] At the hearing, each of the Applicants testified. The Applicants also called the evidence of Bob Lyons, a former business manager for the Union. In response, the Union led the evidence of Lori Sali, current business manager for the Union. There was a significant amount of evidence led over the two-day hearing and there were a number of facts in dispute and therefore it is necessary to give a full account of the evidence critical to our decision.

[6] Both Applicants are employees of the Employer and members of the Union. Mr. Pacholik is currently a lead hand and has been employed by the Employer since 1983, although he has been a member of the Union since 1979. Mr. Wilson works for the Employer as a cleaning machine operator and had been employed for approximately 18 years as of the date of the hearing. He has been a member of the

Union for 19 years and at one point was an auditor with the Union. Both Applicants testified that they are required to maintain membership in the Union as a condition of their employment. As such, they are required to pay union dues – both regular monthly dues (at a rate of $23.00/month for regular employees and $25.00/month for lead hands) and, prior to the change in dues structure which is the subject of this hearing, working dues of $.30/hour worked, including overtime hours worked. Working dues are only paid if the member actually works that month and therefore the amounts of working dues vary month to month depending on the amount of work performed.

[7] On July 23, 2005, the Union held its regular monthly general membership meeting at which time a motion was made to change the method of calculation of working dues required to be paid by members. At that time, working dues were calculated at $.30/hour worked. The motion made proposed a change to the method of calculation of those working dues to 2.5% of gross salary. No change was proposed in relation to the regular dues. The motion was passed by way of a vote by show of hands by those members present at that meeting. The change to working dues was to become effective September 1, 2005.

[8] Neither of the Applicants was present at the July 23, 2005 meeting and both became aware of the change to the calculation of working dues in September 2005 through the plant superintendent of the Employer. They were not notified of the change by the Union. Both were upset that such a change had been made at a general membership meeting without the Union having provided specific notice of its intention to change the dues calculation. The Applicants complain that the calculation of the working dues is now more broadly based, applying to gross salary inclusive of overtime pay, meal and boot allowances, statutory holiday pay, and shift differential. They also complain that there is no cap on these working dues.

[9] At the hearing, both Applicants provided an example of the effect of such a change on the dues each was required to pay. Mr. Pacholik testified that prior to the change in dues structure, his working dues, at $.30/hour, amounted to approximately $45.00/month. He provided copies of pay stubs and stated that in October 2006, he paid $142.58 in working dues (2.5% of gross salary for the pay period of $5703.30),

compared to $23.25 that he paid in a pay period in August 2005.[1] Mr. Wilson testified that he believes he pays about double the amount in working dues since the change and gave as an example that working 120 hours in a month, he would have paid $36.00 under the old system whereas he would pay just under $100.00 under the new method of calculation.[2] One of his concerns is that he now pays a greater amount of dues on the overtime hours he works, as overtime is paid at 1.5 or 2 x his salary.

[10] Mr. Pacholik initially took the position that the Union failed to have the president or executive board call a "special meeting" for the purposes of discussing an increase to union dues (which he argued was required by article 7, section 2 of the constitution) and to give proper notice of that meeting, including the issue to be discussed. In cross-examination, Mr. Pacholik stated that a special meeting may not have been necessary, but specific notice of the issue to be discussed was required by the Union's constitution and the *Act*. While acknowledging that that there was a notice on the bulletin board that a union meeting was to be held on the date in question, Mr. Pacholik complained that the notice was not specific that a dues increase would be discussed. He stated that, if notice of a meeting is given, it must indicate what issues will be discussed at that meeting.

[11] Mr. Pacholik stated that he did not attend the meeting in question as he believed it was a meeting at which regular issues were to be discussed but, had he known the issue of increasing dues was to be discussed, he would have attended. In cross-examination, Mr. Pacholik stated that he believes the Union should give special notice of meetings where issues will be discussed that affect his "take-home pay" such as dues and special assessments (although he did not attend the last ratification meeting) that involve large expenditures on organizing drives or special projects or that involve political donations. While acknowledging that the Union has not given special notice in the past when these types of issues were to be discussed, Mr. Pacholik stated that he has not gone to a union meeting to raise the issue of a lack of notice. Mr.

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[1] It should be noted that for the pay period referred to in August 2005 referred to he worked only 77.5 hours, whereas in the two-week pay period in October 2006, he appeared to work 80 regular hours and 63.5 overtime hours. For comparison purposes, the amount of dues he would have paid in August 2005 at 2.5% on 80 hours of work over two weeks is approximately $ 44.54.

[2] If one calculates the actual amount of dues at 2.5% on 120 regular hours of work in a month, with one statutory holiday and vacation pay for the period, the dues actually amount to $ 75.11, not "just under $100.00," at Mr. Pacholik's rate of pay in August 2005.

Pacholik testified that he would attend general membership meetings if he thought there was something important to discuss although, in cross-examination, he stated that he no longer attends meetings because he feels he has nothing to gain as the Union does "things the way they want" and because he could earn double-time working overtime hours on a Saturday.

[12] Mr. Wilson initially took the same position that Mr. Pacholik had – that a special meeting should have been held with specific notice given in order that all members could participate and have a proper debate. He believed this was required by the union's constitution. In cross-examination, Mr. Wilson took the position that a change to dues could have been done at a general membership meeting and, later yet, it could have been done at "a special regular meeting."

[13] While acknowledging that union membership meetings are held on a regular basis (which he thought was every 3rd Saturday of the month) and that he has attended some of those meetings, Mr. Wilson stated that he did not know about the July 2005 meeting in question. He stated that, had he known the dues structure was being discussed at this meeting, he would have attended the meeting. In cross-examination, Mr. Wilson was questioned about his views on what issues could be dealt with at a regular general union meeting versus a "special meeting." Mr. Wilson responded that only simple matters should be dealt with at regular meetings but that if "money comes out of wages," special meetings should be held. In his view, where the Union intends to spend a significant amount of money (i.e. on an organizing drive) or perhaps is considering a political donation, depending on how much, the Union should hold a special meeting. In cross-examination, Mr. Wilson acknowledged that he has never raised with the Union that there should be policies governing what type of meetings should be held or notice given for certain issues such as these.

[14] Mr. Wilson is opposed to the increase in union dues stating that he feels he does not "really get anything" for his dues, yet he acknowledged in cross-examination that he was on the union's bargaining committee during the last round of negotiations at which time the Union was able to get a wage increase for employees of the Employer of some $4.40 per hour over the duration of the agreement.

[15] Mr. Pacholik stated that in the past, if there were important matters to be discussed at a union meeting, such as a change to union dues, the Union would post a notice indicating the items to be discussed. Mr. Pacholik testified that, in relation to changes to union dues, it was the regular practice of the Union to provide specific notice that such a topic was to be discussed at a meeting and in this regard, he specifically referred to a meeting held approximately six years ago by then business agent, Mr. Lyons. Both Mr. Wilson and Mr. Pacholik testified that Mr. Lyons had called a special meeting and provided notice, specifying the issues to be discussed, by mail to the members and by posting notices in the workplace. While Mr. Pacholik stated that the meeting was held at a larger facility and approximately 200 members attended, Mr. Wilson estimated that 300 members had attended. At the meeting, a motion to change dues from $ .30 per hour to 2.5 % of wages was defeated. In cross-examination, Mr. Pacholik acknowledged that, at this meeting, the Union's members discussed a number of policy issues.

[16] Mr. Pacholik testified that the last change made to the dues structure was made at a meeting in 1991, where a motion was made to increase working dues from $.20 (or $.25) to $.30 per hour. When questioned in cross-examination about that membership meeting, which was held on May 13, 1991, Mr. Pacholik had only a vague recollection of the meeting, acknowledging he may not have attended (his name was not on the sign-in sheet), but stated that he recalls having had advance notice of the issue. Mr. Wilson was also asked about this May 1991 regular membership meeting. Mr. Wilson did not recall if he received specific notice that a dues increase would be discussed at this meeting.

[17] The Union cross-examined Mr. Pacholik in relation to the minutes of meetings held over the years at which the issue of a dues increase was discussed (meetings on June 11 and November 12, 1986). Mr. Pacholik acknowledged that he was not present at those meetings.

[18] Mr. Wilson recalls receiving special notice of a meeting to ratify the collective agreement, a meeting which he did attend.

[19] Mr. Pacholik heard that only 10 members attended the July 23, 2005 meeting and stated that attendance is generally small at membership meetings with 10 to 15 members attending. Mr. Wilson stated that he does go to some of the meetings and while at one point he suggested only five or six members attend the meetings, he later stated that there are usually about 25 members in attendance. Mr. Pacholik acknowledged that, by not attending the meetings, he runs the risk of not having any input into the issues discussed.

[20] The Applicants take the position that, in order to be effective, a vote on a motion to increase dues must be done by secret ballot. Mr. Pacholik remembered there being a secret ballot vote on another occasion and, although he stated that he could not recall the issue on which the vote was held, he also stated that he believed it was in relation to a dues change. In cross-examination, Mr. Pacholik acknowledged that he did not attend many union meetings and that, because he did not attend the meetings at which union dues were discussed, he did not know whether there was a secret ballot vote conducted at those meetings. With reference to the meetings held in 1982, 1986 and 1991, he did not know if a secret ballot vote was conducted and he acknowledged that the Union's minutes do not reflect that a secret ballot vote was conducted.

[21] Mr. Pacholik testified that he was aware that secret ballot votes are used for the ratification of a proposed collective agreement; however, in relation to such a vote on dues increases, he could only point to the meeting with Mr. Lyons in July 2005. He stated that, at this meeting, Mr. Lyons offered the opportunity to vote by secret ballot but the members decided they did not need to vote in that manner. Mr. Wilson also testified to this effect and stated that he believes the constitution was still complied with because Mr. Lyons had asked the members if they minded not having a vote by secret ballot. Mr. Wilson also stated that he remembered a secret ballot vote being held on one occasion in relation to an issue other than the ratification of a collective agreement, although he could not recall the matter at issue.

[22] In cross-examination, Mr. Pacholik acknowledged that the members could have decided, at the meeting in question, to hold a secret ballot vote and made a request or motion for a vote to be held in that manner.

[23] Mr. Pacholik and Mr. Wilson also testified about the steps they took internally to attempt to resolve their concerns over the Union's actions in increasing the dues. Mr. Pacholik testified that he sent a letter to the Union's business agent, Ms. Sali, on October 15, 2005 attaching a list of signatures of some forty of the members working for the Employer expressing their disappointment over what had occurred and indicating they wished to appeal the Union's decision. In that appeal, which Mr. Pacholik stated he brought on behalf of these other members, he stated that the members did not agree on the result of the increase or on the process used to pass the motion for the increase. Specifically, he relied on article VII, section 2 of the constitution, reproduced below, to say that the Union violated the constitution by failing to notify the members specifically that it intended to discuss the raising of working dues and that the "motion was made, voted and passed during the regular monthly meeting yet there was no mention of this motion in the meeting notice that was mailed to the members." Mr. Pacholik also relied on article VII, section 6 (reproduced below) and stated that certain members improperly voted on the motion as they were not actively working. Reliance was also placed on article VIII, section 2 of the constitution to suggest that, for dues to be changed, the Union must hold a secret ballot vote and the "full membership must have the opportunity to vote on the motion." Lastly, reliance is placed on article VIII, section 8 of the constitution to argue that the dues are an "assessment" and that the members should have been notified by mail of the Union's intent to raise a motion to increase the dues. In the letter, Mr. Pacholik stated that the membership wished the Union to revert to the previous method of calculating dues, return the increased dues paid by the members and that, if the Union wished to change the dues, it should do so in accordance with the constitution. The above referenced provisions of the constitution are quoted in the letter of October 15, 2005:

> ***Article VII, Section 2:*** *Special meetings shall be called by the President of the Local Union when requested to do so by the Executive Board. A notice of such a special meeting shall be mailed to all good-standing members of the Local Union, which notice shall specify the purpose for the call of the meeting.*
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> ***Article VII, Section 6:*** *Any member who is not working at the calling or who is engaged in independent enterprise shall not have a voice or vote at meetings of the Local Union. A retired member shall have voice and vote at Local Union meetings only on matters of direct concern or interest to retired members.*

> ***Article VIII, Section 2:*** *Where initiation fees and dues are not established by a District Council, the Local Union shall, by secret ballot vote on the membership, establish the initiation fee and dues to be paid by its members and apprentice members, in accordance with applicable law.*
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> ***Article VIII, Section 8:*** *When an assessment is proposed by the Executive Board or by action at a meeting of the local Union, where such Local Union is not affiliated with a District Council, a notice shall be mailed to the members in good-standing, at least seven days prior to the next regular meeting of the Local Union, advising them that the proposed assessment will be considered and voted upon at the meeting of the Local Union, by secret ballot. When an assessment has been voted, it shall not be levied until it is first submitted to and approved by the General President.*

[24] Mr. Pacholik stated that, in response to his October 15, 2005 letter of appeal, Ms. Sali responded that she did not think the Union had done anything wrong but advised him that he could speak to the issue at the next union meeting. At the union meeting on October 22, 2005, Mr. Pacholik went through the points in the letter but the Union would not reconsider its decision.

[25] On November 8, 2005, Mr. Pacholik and Mr. Wilson sent a letter to the general president of the Laborer's International Union of North America (the "International") and having received no response, wrote again on November 25, 2005. International representative, Greg Harris, phoned Mr. Pacholik and set up a meeting with Mr. Pacholik and Mr. Wilson, a shop steward and an executive member for the end of November 2005. At this meeting, Mr. Harris stated that he would review the information and provide his decision. At that time, Mr. Wilson stated that, if the International did not do anything, it was their (Mr. Wilson's and Mr. Pacholik's) intention to go to court.

[26] Having received no decision from the International by January 2006, Mr. Wilson and Mr. Pacholik retained legal counsel who wrote to the International on January 20, 2006. Michael Bearse, general counsel with the International, responded in writing on February 21, 2006 indicating that the International believed the dues increase was consistent with applicable constitutional provisions and provincial law. He stated that it was the International's view that article VIII, section 2 of the constitution that stated that ". . . the Local Union shall, by secret ballot vote of the membership,

establish the initiation fees and dues to be paid by its members and apprentice members, in accordance with applicable law," must be interpreted in light of relevant applicable law in the United States that requires a secret ballot vote on such matters. He stated that, given that there is no analogous external law applying to the Union in Saskatchewan and because the Union followed its consistent past custom and practice for increasing dues, including a vote at a regular meeting, there was no constitutional violation. Mr. Bearse also noted in the letter that the International investigated the claim that ineligible members voted on the motion and found that all members who voted were members in good standing.

[27] At the hearing, Mr. Pacholik stated that his main problems with the Union's actions were with the steps the Union took and the increase itself. He wanted the opportunity to debate the issue and felt that, if the Union really needed additional funds, it could have come up with an appropriate increase, noting his observation that the average of dues in the construction trades is 1.25%. He expressed disappointment that the Union took an "all or nothing" approach. He felt cheated and brought this complaint because the change to dues was costing him money. Mr. Pacholik wished to have the Union dues set back to $ .30/hour until the issue of an increase could be dealt with in an appropriate manner. At the hearing, Mr. Wilson testified that he wanted the decision on union dues reversed, his additional union dues returned to him, the current executive board to resign and the holding of a proper meeting with proper notice and a vote by secret ballot (as required by the constitution) to deal with an increase to dues.

[28] Mr. Lyons testified on behalf of the Applicants under subpoena. Although he no longer holds a position with the Union, he said he was appointed as "business agent" of the Union in 1995 by the International while the Union was in trusteeship and under the supervision of the International. While in trusteeship, the Union continued to hold monthly general membership meetings, although the Union was not permitted to vote on any issues as the decisions were being made by the International. The business agent position was a full-time one and, in that position, Mr. Lyons was charged with the responsibility to negotiate collective agreements, deal with local matters and ensure the administration of financial affairs, subject to the directions of the International while the Union was in trusteeship. Mr. Lyons held this position until 2001.

[29] When the trusteeship ended in approximately 1996-97, the Union continued to hold regular monthly membership meetings which Mr. Lyons thought were either the third or fourth Saturday of the month. He said that often one of the summer meetings was waived due to typical low attendance in the summer months. He stated that the number of members attending monthly meetings varied with an average of 30 – 35 members per meeting. Mr. Lyons testified that, in 1995, the Union had approximately 250 members and, while at one point it reached a peak of 1200 members, when Mr. Lyons left the business agent position in 2001, there were approximately 700 members.

[30] Mr. Lyons testified that the Union has a number of separate "units" with separate collective agreements. He stated that the working dues for each unit are set by their respective collective agreements/employer and are therefore different under different collective agreements.

[31] Mr. Lyons testified that, after he negotiated his first collective agreement with the Employer in approximately 1997, he had a discussion with the executive of the Union about changing union dues for the employees of the Employer from a flat hourly rate to a percentage dues structure because the lower paid employees were paying a higher percentage of their income on dues than were the higher paid employees. Mr. Lyons stated that he held a meeting solely with the members who were employees of the Employer (as opposed to the whole membership) to debate this change in dues structure and that the motion to do so was defeated. He believes there may have been two meetings with this group of members because there were two shifts at the Employer's workplace. He thought that approximately 60 members attended. He stated that notice of the meeting was done by way of posters in the workplace and, while he was not sure whether any notices were mailed to employees, he believed that to be normal operating procedure while he was business agent. Mr. Lyons stated that the issue was brought to employees' attention before the meeting in order that they could discuss it ahead of time. He stated that he believed there was a discussion at the meeting at some point concerning the issue of whether the vote should be by secret ballot and the members there waived such a method of voting in favour of voting by a show of hands. He also stated that they did not deal with the issue at a regular general

meeting of the union membership because each unit is separate with a separate collective agreement and each should have the right to make decisions relating to the applicable collective agreement. He believes that employees are entitled to notice of these meetings as they are the ones affected by the decision made and will suffer the consequences of non-payment. He believes the members must have the ability to determine the course of the Union and they know that the amount of dues collected affects what the Union can do for them.

[32] Mr. Lyons testified that the requirement to pay union dues within thirty days is in the collective agreements and, if there is a failure to remit dues owing, membership may be suspended and the employer would issue a notice to the employee that their employment would be terminated.

[33] In cross-examination, Mr. Lyons was confronted with the evidence of Mr. Pacholik and Mr. Wilson that the issue of a change to a percentage dues structure was brought up at one meeting of the membership as a whole, where approximately 200 people attended. In response, Mr. Lyon was quite adamant that this issue was raised in two meetings with only those members who were employees of the Employer. Mr. Lyons stated that the issue was not put to the membership as a whole as there were different levels of dues for the different "bargaining units." Mr. Lyons did not recall bringing this issue forward at any membership meeting of the Union as a whole. He stated that all he remembers is how the Union dealt with it with the employees of the Employer "because they had turned it down" and there had been a "big political debate about it." Mr. Lyons did not recall if other issues were dealt with at this meeting, stating that there may have been if the issues only affected that group of members.

[34] Also in cross-examination, it was suggested to Mr. Lyons that there was nothing in the constitution of the Union that allowed for decision-making at the bargaining unit level, as opposed to by the general membership as a whole. Mr. Lyons described how he viewed the structure of the Union. He stated that the Union is like a "composite local" in the sense that there are several collective agreements under which the members work for different employers. He described these collective agreements as: construction, industrial construction, industrial maintenance, commercial construction, maintenance (for a power plant), and the Shaw Pipe agreement. Although

his evidence on this point was confusing, Mr. Lyons' position appeared to be as follows: that bargaining unit level meetings are not necessarily provided for in the constitution but they are not prohibited and may even be encouraged by the Union's "Canadian Ethical Practices Code" (the "Code"). Also in cross-examination, Mr. Lyons stated that he did not recall the International raising an issue with him about the constitutionality of the bargaining unit level meetings. He acknowledged that the International was opposed to his idea of the Union having annual policy meetings (held in December or January), stating that union policies should be dealt with at the regular monthly membership meetings at any time during the year and not only once per year. Mr. Lyons stated that he had chosen this course of action because the Union's policies were getting changed month to month, depending upon which members attended the meeting and the Union needed more consistency. In response to the concerns of the International that the constitution did not permit policy meetings outside of regular monthly meetings, Mr. Lyons advised the International that the policy meeting was considered the Union's December monthly membership meeting and that members had agreed on this approach.

[35] In cross-examination, Mr. Lyons was shown the minutes of a meeting of the entire membership of the Union on January 17, 1998, a sign-in sheet for that meeting, as well as a written memorandum dated January 5, 1998 directed to the membership of the Union giving notice of issues to be discussed at the January meeting. Upon reviewing these documents, Mr. Lyons stated that he recalled the meeting being held at the Union Centre and that it involved the entire membership. He acknowledged that this was one of the annual policy meetings the executive board had determined to have. He agreed that there was a special agenda for this meeting and the meeting was held because the Union was just coming out of trusteeship and it was therefore necessary to establish a number of policies, including ones related to the "out of work board," dispatch rules as well as the issue of union dues. The notice was sent out to members in order that they knew what was to be discussed and what the new policy was to be as there had been a "democratic deficit" in the Union as it had not been able to make decisions at the local level while in trusteeship. The executive board therefore felt it had to encourage members to start coming out to meetings again and voting on the issues affecting them. The executive wanted these issues debated and therefore a "special meeting" was called and written notice given to the members. Mr.

Lyons acknowledged that the constitution required notice to be given for “special meetings.” The sign-in sheet for this meeting indicated that 117 members had attended. Following his testimony on the issue of the January 1998 meeting, Mr. Lyons continued to be of the view that there had been a separate meeting with the employees of the Employer about the issue of changing dues to a percentage structure.

[36] In relation to the January 1998 meeting, Mr. Lyons stated that he could not recall whether any of the issues were decided by a secret ballot vote. Generally, he was uncertain whether and when secret ballot votes were used for anything other than votes for the ratification of collective agreements. In relation to the vote concerning the dues change as well as other policy issues, he believes it was done by way of a show of hands and that they had some discussion about that at the outset of the meeting.

[37] In examination in chief, Mr. Lyons testified that he was unaware of the practice followed by the Union concerning notice for meetings where the issue of increasing dues would be raised, prior to him becoming the business agent. While the Union had been in trusteeship, there had been no increase in dues.

[38] Mr. Lyons also testified about the institution of the Code, stating that it was adopted by the Canadian members in approximately 1999 or 2000 as a result of a similar Code being enacted in the United States because of concerns there about improper conduct by unions and officials. He stated that the Code is directed at ensuring proper ethical practices such as the development of fair and consistent dispatch rules, transparency of the Union, etc.

[39] In cross-examination, Mr. Lyons stated that written notices were not sent out to members for the regular monthly membership meetings but posters were posted in the workplace, especially if there were issues of interest to be discussed. He stated that the Code did not change this practice. In re-examination, Mr. Lyons speculated that, if the issue of a dues change was to be dealt with at a regular monthly membership meeting, he believed he would still have sent a notice similar to the one he sent for the special meeting of January 17, 1998. He believed he sent out a notice regarding a new dispatch system prior to its discussion at a regular monthly membership meeting.

[40] Ms. Sali testified on behalf of the Union. She has been a member of the Union since 1987 and has worked at both the Co-op Upgrader and for the Employer. She has held the position of business manager since first being elected in 2001 (she was re-elected in 2005). Prior to that, from 1992 to 2001, she worked as a dispatcher at the Union's hall, administering the out of work board and handling the dispatch of members. In 1998 she was appointed the assistant business manager by then business manager Mr. Lyons and, in that capacity, she could make decisions in Mr. Lyon's absence. Ms. Sali had also been elected to the position of recording secretary, having received a variance from the International to hold two executive board positions. Ms. Sali testified that, while the business manager may appoint a "business agent," the Union has never done so. She stated that Mr. Lyons position was actually that of "business manager."

[41] Ms. Sali described the Union's jurisdiction in terms of the south half of the province. She testified that the Union has only one bargaining unit, not several as testified to by Mr. Lyons. In her view, the constitution does not allow for sub-locals or several bargaining units or for separate meetings at that level. The Union's members are covered by several collective agreements depending on the sector in or employer for which they work. Although the evidence was somewhat confusing on this point, it appears that those sectors for which the Union bargains provincially, either with a specific employer or with the Construction Labour Relations Association (on behalf of unionized employers), include the agreement with the Employer (a "shop agreement"), a maintenance agreement, an industrial agreement, a commercial agreement and a piling agreement (with three piling contractors). There are also sectors for which the Union negotiates national collective agreements and these include an industrial maintenance agreement,[3] mainline pipeline agreement and a pipeline maintenance agreement.

[42] Ms. Sali stated that the collective agreements do not set the amount of dues having only provisions that state *when* the dues are to be paid. She stated that it

[3] Although Ms. Sali stated that the Union negotiates the wage page of that agreement directly with the local contractor, Jacob's Catalytic.

is the Union that sets the amount of the dues and the amount of dues has, for the most part, been set at regular monthly general membership meetings.

[43] Ms. Sali testified that the Union holds regular monthly membership meetings on the fourth Saturday of every month (including the summer months) at 10:00 a.m. at the Union's hall, with the executive board meeting at 8:30 a.m. on the same day. This practice has been in place for many years with the date, time and place of the membership meetings remaining constant since at least the 1980's. Even though this has been a consistent practice for many years, a notice of the meeting is also placed in the lobby of the Union's hall. In cross-examination, Ms. Sali stated that the employees of the Employer come to the Union's office from time to time to pick up forms or, as a group of 24 employees did recently, attend to discuss their health and welfare benefits. Ms. Sali stated that the only meetings that are changed are the December meeting (it being too close to the holidays) and in situations where the fourth Saturday of the month falls on a long weekend, in which case notice is given to members indicating the new date of the meeting, the time and place remaining constant. Ms. Sali stated that she did not often attend meetings while in the position of dispatcher for the Union in the event the members wished to raise issues about dispatching. During those meetings, she would remain in her office in the event that anyone had questions for her. In cross-examination, Ms. Sali stated that she did not attend regular general membership meetings from 1987 to 1992 while she was a member of the Union but, when she became assistant business manager in 1998, attending the meetings was part of her regular duties.

[44] Ms. Sali testified that the only time separate meetings may be held with members of a certain sector or working under a certain collective agreement are for the purposes of collective agreement negotiations. In those cases where only a certain group of employees, as opposed to the membership as a whole, has an interest in that collective agreement, the Union will meet with the affected members in order to form a bargaining committee and develop proposals. Once a memorandum of agreement is reached for that sector, the executive board will determine the specific process of ratification, a process which has developed by way of members' preferences where, in some cases, the Union will send out a specific notice to those members affected by that collective agreement of a special meeting held for the purposes of ratification of the

collective agreement. Given that there is a shop agreement at Shaw Pipe and a separate seniority list for members who are employed there, only those members employed at Shaw Pipe participate in the ratification vote. In relation to this agreement, the Union sends written notice only to those members and it also posts a notice in the workplace. A somewhat similar process has been followed with one of the maintenance collective agreements as there are a core group of members who have been working under that collective agreement for Jacob's Catalytic for a long time. This is contrasted with the process used for ratification of a commercial, industrial, maintenance, or pipeline agreement where ratification is done at a regular monthly general membership meeting with all members voting because the work in these sectors is of a more transient nature and members may work under a number of collective agreements. Ms. Sali stated that the ratification vote for the last commercial and industrial agreements was done by way of a show of hands, while the members who are employees of the Employer always voted by way of secret ballot.

[45] In cross-examination, Ms. Sali agreed that there was nothing in the constitution that provided for or required a ratification vote for collective agreements, although the practices stated above have developed over time. She also stated that ratification meetings differ from general membership meetings in that ratification is the only issue discussed at the meeting, except in the cases of the agreements in the industrial/construction sector, which are ratified at a regular general membership meeting. Anyone who attends those regular general membership meetings and is a member in good standing may vote, even if employed at Shaw Pipe, on the basis that, if employees of Shaw Pipe are laid off, they may obtain work in these other sectors. When asked why the Union has ratification votes given that there is no constitutional requirement to do so, Ms. Sali responded that it has been the past practice of the Union to do so and it ensures that the members are happy with the agreement and that the bargaining committee understood the members' proposals. She agreed that it would be fair to say that ratification is also done because the members have a particular interest in what will happen to them under the agreement but stated that, for some collective agreements, such as the industrial agreement, which are considered "everyone's agreement," anyone present at the meeting may vote even if they are not currently working under the agreement.

[46] Ms. Sali stated her view that the regular monthly general membership meetings are held in accordance with article VII, section 1 of the constitution and that notice of such meetings is sent to members only if the meeting is not held at the fixed and regular time, date and place of the monthly meeting. She stated that "special meetings" are covered by article VII, section 2, where it states that the president will call such a meeting when requested to do so by the executive board and that, in such a case, a notice of the special meeting specifying the purpose of the meeting will be sent to all members. She stated that, in her tenure as business manager, a special meeting has never been held. She testified that she considers the meeting called by Mr. Lyons for January 17, 1998 a "special meeting" as Mr. Lyons wanted to deal with a number of special policy issues at the same time. Ms. Sali testified that, at the time of that January 1998 meeting, she was still the dispatcher and the "out of work rules" were very important to the members as that is how many obtained their work. She stated that the constitution does not require that these rules be dealt with at a special meeting and ordinarily they are dealt with at a regular general membership meeting.

[47] Ms. Sali testified that, while Mr. Lyons was the business manager, a dispute arose between him and the International concerning the constitutionality of holding only one annual policy meeting at which the Union's policies were discussed. It was the view of the International and in particular Ron Pink, a lawyer and member of the general executive board of the International, that the business of the Union must be conducted throughout the year at regular general membership meetings. Ms. Sali testified that Mr. Lyons held three such annual policy meetings while he was the business manager, a practice she put an end to upon becoming the business manager. She did so because there were problems with it ethically and because it could be constitutionally challenged and recalled an instance where, at the November 25, 2000 regular membership meeting, a former business manager was prevented from raising a policy issue and told he had to wait for the annual policy meeting. The former business manager said that such a position by the Union could be challenged and it was Ms. Sali's view that, when she became business manager, she would be following the constitution in terms of the procedures for the "order of business" at meetings.

[48] Ms. Sali testified that regular monthly union dues are $25.00 and these are paid by members whether or not they are working. If the member is working, such

dues are deducted at source; otherwise it would be necessary for the member to attend at the Union's office to pay those dues. Working dues are only paid by members if they are working and such dues are deducted at source by the employer. As long as member's dues are paid, the individual is a member in good standing and may vote at the monthly general membership meetings.

[49] Ms. Sali testified that it was her view that it was not necessary to make changes to union dues at a special meeting and that, to the best of her recollection, such changes have only been made at regular monthly membership meetings (but for the attempt to increase dues in January 1998 by Mr. Lyons). When the Union received notice from the Applicants that they were challenging the manner in which the Union raised the dues, Ms. Sali reviewed the minute book containing the minutes of past union meetings in order to determine if the dues change was properly made. Copies of all the minutes which deal with the issue of a change in union dues were produced and entered as evidence at the hearing. These minutes, for the most part, accurately reflected Ms. Sali's recollection – that, over the years, a practice had developed to increase dues at regular general membership meetings. The following are excerpts of all minutes entered into evidence at the hearing which concerned the issue of increasing working dues along with the dates of those regular general membership meetings:

(i) August 11, 1982:

The executive board discussed the increase of work dues to .20 cents hour and was to be discussed at this meeting.

Motion made to leave work dues same. Motion Carried.

(ii) January 11, 1984:

To raise work dues from 10 [cents] per hour to 20 [cents] per hour at Shaw Pipe Protection (Western) Ltd. effective as of February 1, 1984. Motion Carried

(iii) June 11, 1986

That the working dues for Industrial and Pipe Line work be increased .05 cents. Motion Carried

(iv) November 12, 1986

Motion made by Brother Ken Vincent that the working dues for Labourers employed by Shaw Pipe be increased from .20 cents per hour to .25 cents per hour effective January 1, 1987.
Seconded by Brother Don Leader Motion Carried.

(v) March 13, 1991

A motion was made by Brother Leader to have all Working Dues increased to .30 cents per hour for all hours worked. This will be a increase of (.05 [cents]). Note as agreed on Dominion Construction will remain at (.25 [cents]) as they are at the ($12.00) rate. All other Contractors will go to (.30[cents]) effective April 1, 1991.
Seconded by Brother Vincent – Motion Carried.

(vi) April 8, 1992

Discussed raising work dues for pipeline to be increased to .40 cents per hour from .30 cents.
Voted on and passed.

(vii) May 12, 1993

Motion made that pipeline work dues to be raised by 10 [cents] per hour. Motion tabled.

[50] There were also minutes entered into evidence relating to an executive board meeting held on October 6, 1982 where it is noted that a motion was made to increase work dues by $.05 per hour and that *"*This will be brought up at the next regular meeting*."* There were also minutes for a special meeting held on October 28, 1992 because a national representative was present. At this meeting, work dues were increased $0.10 per hour. Ms. Sali stated that this occasion was different in the sense that it was the only time the Union had an international representative in attendance for those kinds of issues and this was the only occasion on which dues were increased at a special meeting. She acknowledged in cross-examination that the minutes for that meeting reflect that the issue of increasing dues was the sole reason for the meeting.

[51] Ms. Sali acknowledged that, although she does not believe any special notice was given to employees concerning the above referenced meetings nor was a secret ballot vote held, it was not apparent on the face of these minutes that special notice of these regular membership meetings was not given to the members or that a secret ballot vote was not held. In re-examination, she stated that the minutes will usually reflect if a secret ballot vote was held and that the minutes, from a previous meeting, will usually indicate if a special notice was to be sent out for the next meeting.

In reviewing the Union's file of minutes, Ms. Sali stated in examination in chief that she could not find anything that would suggest that special notice had been given to the members about these meetings. Ms. Sali acknowledged that the minute book she reviewed contained only the minutes and sign-in sheets back to the 1980's, but not any notices of meetings that might have been given. In her view, there were no special circumstances about any of the meetings that would have required the giving of notice or the holding of a secret ballot vote. She is not aware of any rule or policy within the Union that requires a secret ballot vote on the issue of increasing dues. Ms. Sali explained that different sectors may have different working dues but that, when a change is proposed to a certain sector, every member at the meeting who is a member in good standing, whether or not they are actively working in that sector at that time, will vote on the issue.

[52] In cross-examination, Ms. Sali acknowledged that she did not know what items were of interest to those who attended the January 1998 meeting held by Mr. Lyons (for which employees received notice of the items to be discussed) but that, because 117 members attended, some of the issues were obviously of interest to the members. Ms. Sali stated that, typically, at any time of the year, 10-15 members attend the general membership meetings, noting that the Union is down to approximately 240 members. Also in cross-examination, Ms. Sali acknowledged that the issues that are discussed at general membership meetings might not affect all members and, in fact, a member might attend any given meeting and find that there are no issues that impact him or her and would not know this unless he or she was given notice ahead of time. Ms. Sali agreed that it would be fair to say that, if a member does not attend the meetings, he or she would not know the business of the Union adding that, if one does not attend, they must not be interested. Ms. Sali also acknowledged that the Union could probably impact attendance levels at the meetings by telling members what is or is not on the agenda. Ms. Sali further acknowledged the Union's obligation under the constitution which states that it is the intention that all members attend all meetings and that the Union "should take such steps as may tend to encourage attendance of members at meetings."

[53] In examination in chief, Ms. Sali testified concerning the general membership meeting held on July 23, 2005 when the working dues were changed to a

percentage structure. She entered into evidence the minutes from that meeting along with a sign-in sheet indicating who had attended the meeting. She indicated that the Union had been having financial difficulties for some period of time. For the previous year, the Union had been taking money out of its investment portfolio in order to meet its monthly operating expenses. The Union's investments and financial situation were being monitored by the International and the matter of finances was and is discussed by the executive board and the members at every general membership meeting. The Union thought that the construction business would take off in the spring of 2005 and "things would turn around" (because of increased working dues becoming available) but it had not yet done so. The Union decided that it could not let the financial situation continue to deteriorate and the executive board therefore decided an increase to union dues was necessary to meet monthly financial obligations.

[54] In preparation for the July 23, 2005 meeting, Ms. Sali called all other locals in Canada as well as the building trades organization in Saskatchewan to determine the amount of their dues. She then prepared a hand-out for those members attending the meeting summarizing this information and indicating how the Union might get its finances on track. A copy of the summary distributed at the July 23, 2005 meeting was entered into evidence at the hearing. Ms. Sali testified that the executive board had thought that a more fair way of assessing dues was by percentage. They thought a dues increase on this basis could be more easily absorbed by the members because the Union has members who work under the commercial agreement earning only $12.00 per hour while many contractors are using trainees and apprentices earning just shy of $10.00 per hour. In cross-examination, she added that a number of members work only 40 hours per week, including those in the industrial sector (a sector that also has trainees), the commercial sector and those performing maintenance for one particular employer. The Union is the only labourers' local in Western Canada that pays its dues on a percentage basis, rather than hourly.

[55] The minutes for July 23, 2005 read as follows in relation to the issue of increasing working dues:

> ***11. New Business***
> *Increase in working dues – Lori shared information on past increases and on dues currently paid by other locals. The last*

> *increase in these dues was in 1991 – they are now the lowest in Canada and are not meeting the monthly operating expenses of the local. If the local continues to pull money for operating expenses from the investment account at the current rate the local could continue for a maximum of 10 years and there is increased risk that funds would not be available should the union need to contest a decertification.*
> *A percentage of gross wages is the fairest way to handle an increase and 2.5% of gross would provide the necessary funds. The new assessment would begin September 1, 2005.*
>
> ***Upon motion** by Dan Erb* ***Seconded** by Gerald Ott*
>
> *Move that working dues be assessed at 2.5% of gross wages beginning September 1, 2005.*
>
> ***Carried***

[56] Neither Mr. Erb nor Mr. Ott were members of the executive board at the time the motion was made. They were both members in good standing and working in the industrial sector. In cross-examination, Ms. Sali acknowledged that they may be members for whom the new dues structure is more fair, although she stated that they also work some overtime. She acknowledged that the employees most affected by the dues increase would be those with a very high rate of pay and who work a lot of overtime. Ms. Sali stated she was unsure how this specifically affected each of the members who are employees of the Employer, not knowing the amount of overtime they had been working.

[57] In cross-examination, Ms. Sali acknowledged that the order of business is prescribed by the constitution and that the issue of changing dues would fall under "new business," and that it is part of the Union's regular operations. She insisted it was not "something out of the ordinary," even though, for some employees, it represented an threefold increase to the previous amount of monthly dues paid. In re-examination, Ms. Sali stated that not many members would be paying three times the amount of dues, noting that an apprentice in the industry is actually paying less now than he or she would have at a rate of $.30 per hour. She noted that the Union has become a designated trade and with an apprenticeship program in place, contractors are now utilizing apprentices and paying them at a lower rate. She further noted that the lowest paid employee at Shaw Pipe earns $15.00 per hour and the dues at $.30 per hour or 2.5% of salary are the same. Ms. Sali stated that those working in the pipe line sector

having been paying $.75 per hour since 1994, which is more than 2.5%. In her view, the only way that a member could be paying three times his or her previous amount of dues is if he or she works a lot of overtime. Ms. Sali stated that the top rate of pay at Shaw Pipe is approximately $24 or $25 per hour and indicated that, when the Union was looking at increases, it calculated the amount of dues at various wage rates.

[58] Ms. Sali stated that no special notice was given of the meeting, except for the notice in the Union's hall that states that a regular general membership meeting is held every fourth Saturday of the month. The July 23, 2005 meeting was a regular general membership meeting and not a special meeting. In response to the Applicants' complaint that there should have been a special notice given that the issue of increasing dues was to be raised at a meeting, Ms. Sali responded that, had these members attended general membership meetings on a regular basis, they would have understood the Union's very difficult financial position and the necessity of doing something about it sooner rather than later.

[59] Ms. Sali stated that, after the meeting, the Union contacted all of the employers concerning the change to working dues. In cross-examination, Ms. Sali did not know why the Union did not send out a notice to members after the July 23, 2005 meeting that dues had been increased. She stated that members are usually informed of dues increases by their attendance at membership meetings. As far as she was aware, Shaw Pipe was the only one of the employers to directly advise its employees about the change in dues. She was also aware that, in some cases, members asked the job steward on their job site about the increase in dues and why it was made, but the Union had received no complaints about the increase other than from the Applicants.

[60] Ms. Sali testified that the minutes of the Union's meetings are available to be viewed by any of the members, although they cannot take a photocopy of the minutes because there is financial information about the Union contained in the minutes that the Union does not want distributed. This rule has been in place for many years.

[61] Ms. Sali stated that when Mr. Harris of the International came to meet with the Applicants about their concerns over the increase in dues, Ms. Sali also met

with him. She stated that, when a complaint is sent to the general president of the International, the complaint is referred to the sub-regional office in Vancouver, and then an international representative (in this case, Mr. Harris) is assigned to investigate the complaint. When Ms. Sali met with Mr. Harris, he was interested in why the Union had not sent out a special notice concerning the issue. She advised him of the past practice of the Union as shown in the minutes of past general membership meetings. Ms. Sali also explained the difficult financial situation of the Union. Mr. Harris wanted to ensure that the increase to dues was properly carried out at the meeting and they therefore went through the list of the attendees to ensure the members were all members in good standing and they reviewed the motion to ensure it was properly made and seconded. Ms. Sali stated that Mr. Harris agreed that it was acceptable to deal with the issue at a general membership meeting. Ms. Sali agreed that neither she nor Mr. Harris of the International responded in writing to the complaints filed by Mr. Wilson and Mr. Pacholik. In re-examination, Ms. Sali stated that, while she did not respond in writing to Mr. Pacholik, she did speak to him about his appeal and the propriety of the motion made to increase dues. She also attended the October 22, 2005 meeting at which he raised the appeal and explained to the general membership who attended, which included other employees of Shaw Pipe, the propriety of the motion. All had the opportunity to ask questions. She explained why there was no notice given and why no secret ballot vote conducted.

[62] In her evidence, Ms. Sali reviewed the constitution and, in particular, article VIII, section 2, which was raised with the Union by the Applicants at the October 2005 general membership meeting. In that section, it says that the Union shall, by secret ballot vote, "establish the initiation fees and dues to be paid by its members and apprentice members, in accordance with applicable law." At the time of the membership meeting at which the dues were increased, Ms. Sali had not specifically given consideration to this provision, although at the hearing, she stated that it was her understanding that the International takes the position that the Union does not need to have secret ballot votes for increasing dues because there is no "applicable law" and because the past practice of the Union was not to hold secret ballot votes. She agrees with the position of the International on this issue as set out in its written response to the Applicants' complaint.

[63] In cross-examination Ms. Sali denied any attempt to deliberately deal with the issue of increasing dues at a summer meeting when member attendance is alleged to be somewhat lower. In re-examination Ms. Sali stated that the attendance at summer meetings is only low if there is a lot of work available. When a number of members are out of work, attendance is generally higher because the members want to know what work is coming up that would be available to them. In cross-examination, Ms. Sali did not necessarily agree with the statement that it would be easier to pass a motion to increase dues at a general membership meeting with bare quorum than at a meeting where advance notice was given to employees. She stated that they had no misgivings about proceeding with the issue even though they just had the quorum of 10, because the finances of the Union needed to be dealt with right away. No one at the meeting questioned whether the motion should go ahead at that time. According to the Union's rules of procedure, a member could have tabled the motion to be dealt with at a later date, but nobody so moved. No consideration had been given to holding a secret ballot vote on the issue because none of the members indicated they wished one and, in Ms. Sali's view, the constitution does not require secret ballot votes for increases in dues. As she previously stated, article VIII, section 2 of the constitution does not apply because initiation fees and dues are already established within the Union and what they were dealing with was merely an increase to established dues. She did not agree that changing the dues structure from an amount per hour to a percentage of salary is "establishing" different dues.

[64] Ms. Sali also testified that article VIII, section 8 concerns special assessments (where special notice is given and a secret ballot vote held) and would be inapplicable to the situation of increasing dues, which are not new. She stated that "special assessments" are something that is not already in place, such as the establishment of a strike fund. As far as she can recall, there has never been a special assessment since she became a member of the Union and certainly not since she became business manager.

[65] Ms. Sali testified that there were never membership meetings held to discuss union dues with a certain shop or employer as testified to by Mr. Lyons. She neither knew of nor had she heard about a meeting with only the employees of the Employer. The only meetings held at the shop level would be special interest meetings

to deal with, for example, health and welfare benefits but such meetings are not considered membership meetings (a general membership meeting is attended by anyone in the membership who wishes to attend). In cross-examination, Ms. Sali was asked why ratification meetings are not considered "special meetings" given that they are not general membership meetings. Ms. Sali explained that while they may be a special meeting, they are not the "special meetings" of the general membership as referred to in the constitution. Ms. Sali stated that there are no minutes of the ratification meeting put in the Union's minute book and there is no regular order of business dealt with at the meeting, only the single item of ratification. In cross-examination she agreed that a ratification meeting would be a "meeting called for a particular special purpose."

[66] Ms. Sali stated that nothing prevents the Union from giving special notice of the items to be discussed at general membership meetings.

[67] In cross-examination, Ms. Sali testified that the Code of Ethics is part of the constitution and that one of the ethical practices dealing with "Democratic Practices" states that meetings should be held regularly, with proper notice of time and place, in an atmosphere of fairness and that operations be conducted in a fair and democratic manner. Ms. Sali did not accept the proposition that it is only fair that members are given specific notice of an issue that will dramatically affect them in order that they can attend the meeting and vote on the issue, such as Mr. Lyons apparently did in 1998, stating that she went by past practice and she was not holding annual policy meetings like Mr. Lyons had. In response to the evidence of Mr. Lyons that he gave notice to members of issues that would concern them and that this was also part of the "past practice" of the Union, Ms. Sali stated that Mr. Lyons also established a once per year policy meeting which she did not agree with and has not held since becoming business manager.

[68] Ms. Sali was questioned in cross-examination about the finances of the Union and the Union's rationale for raising membership dues, specifically, its inability to meet monthly operational expenses. She acknowledged that the Union had a significant amount of money in its investments. She stated that the monthly operating expenses are usually $18,000 to $20,000 and that it has been necessary over the last

one to one and a half years to transfer money from the Union's investments to meet these expenses. She stated that the investment account is a savings account that must be managed properly and, while the Union can draw on it, it should not be used as a source of income for paying month to month bills. The investment account had been established a number of years ago when the Union's chequing account had become "rich enough" to start an investment account. The money therefore came from members' previous dues when the pipe line industry was busy. The Union has not been able to transfer money into the investment account for the last six years. Ms. Sali disagreed with the suggestion that the Union was not in a "financial crunch" and, while acknowledging that there was nothing preventing the Union from drawing on these investment funds as and when it needed to, Ms. Sali stated that the Union could not do so indefinitely. She said she was told by Kelly Reardon, manager of the sub regional office of the International in Vancouver, who periodically comes to the office of the Union to review its finances, that something had to be done about the Union's finances. Ms. Sali stated that there was a concern about maintaining a fund of money for something that came up such as fighting a decertification action or for legal fees (although she acknowledged that the Union could possibly issue a special assessment under the constitution for that purpose).

[69] Ms. Sali testified that she was on the bargaining committee for the last negotiations with the Employer and the committee was able to obtain a wage increase of $4.40 per hour over the course of five years, a wage increase which applies to all classifications, except those at the starting rate until they reach a certain increment in hours. Ms. Sali disagreed with Mr. Wilson's evidence that he is paying union dues on union dues. She said this cannot be true as the 2.5% is calculated on gross income. As far as the Applicants' complaint that the dues increase affects them substantially more because the dues are calculated on overtime pay received, Ms. Sali stated that the executive thought this was the most fair way to calculate dues because many of the members work in sectors where the work week is typically 40 hours.

[70] Ms. Sali testified that none of the Union's members have had their membership revoked for refusing or being unable to pay their union dues. In cross-examination, Ms. Sali acknowledged that Mr. Wilson and Mr. Pacholik's memberships would be suspended if they refused to pay the working dues and that, under the union

security provision, they could be terminated by Shaw Pipe upon the request of the Union.

Relevant Statutory Provisions:

[71] Relevant statutory provisions include s. 36.1 of the *Act*, which 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.*

Arguments

[72] Counsel for the Applicants filed a brief which we have reviewed. The Applicants submitted that the Board has jurisdiction under s. 36.1 of the *Act* to hear and determine their complaints. The Applicants relied on the Court of Queen's Bench decision in *Theriault v. S.G.E.U.*, [1996] 7 W.W.R. 84, where the Court reviewed s. 36.1 in the context of a union member's complaint about the union's changes to its pension plan. The Court determined that the Board, and not the Court, had jurisdiction under s. 36.1 to entertain the applicant's complaint, relying on *Stewart v. Saskatchewan Brewers' Bottle and Keg Workers, Local 340*, [1995] Sask. L.R.B.R. 204, LRB File No. 029-95, where the Board stated that s. 36.1 "gives employees recourse to the Board to express concerns about their status or treatment within the trade union" and while the Board is not a body of appeal from every decision made under the constitution or internal procedural rules, where there is an allegation of a violation of s. 36.1, the Board "must scrutinize the internal workings of the union to the extent necessary to determine whether the *Act* has been violated."

[73] The Applicants referred to *McNairn v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 179*, [2005] 3 W.W.R. 457 where the Saskatchewan Court of Appeal held that the proper test to be applied to determine jurisdiction is to determine the essential character of a dispute and examine whether the dispute is grounded in s. 25.1 or 36.1 of the *Act*. The Court of Appeal found that the Court of Queen's Bench and not the Board had jurisdiction over the dispute, it being in the nature of a contractual dispute (an alleged breach of the constitution and working rules of the union) and not grounded in s. 25.1 or 36.1 of the *Act*. The Court stated that, for s. 36.1 to apply, the dispute must encompass the constitution of the union and the employee's membership therein or discipline thereunder. The Applicants submitted that this case is an example of bad facts making bad law and noted that, when McNairn's complaint initially came before the Board (prior to his commencement of an action in the Court), it was an application under s. 25.1 of the *Act*, not s. 36.1. The Applicants argued that the case is distinguishable from the case before us.

[74] The Applicants pointed out that there have been few cases decided by the Board since *McNairn* but that, in all such cases, the Board has held that s. 36.1 only applies to internal union disputes that involve membership in or discipline under the constitution. In this regard, the Applicants referred to *Lalonde v. United Brotherhood of Carpenters and Joiners of America, Local 1985*, [2004] Sask. L.R.B.R. 244, LRB File No. 222-02 (a dispute over a member's revocation of his membership), where the Board relied on *Staniec v. United Steelworkers of America, Local 5917 and Doepker Industries Ltd.*, [2001] Sask. L.R.B.R. 405, LRB File No. 205-00.

[75] The Applicants submitted that the provisions of the constitution of the Union make it clear that the Applicants' dispute falls under s. 36.1 of the *Act* as they have a dispute about their membership in the Union – that, in order to be a member in good-standing and entitled to work, the member must pay union dues and that a failure to pay such dues necessarily denies one membership in the Union.

[76] The Applicants relied on the Board's decisions in *Caroline McRae v. Saskatchewan Government and General Employees' Union*, [2002] Sask. L.R.B.R. 11, LRB File No. 002-02 and *Christine Thompson and Carolyne Poletz v. Saskatchewan*

Government and General Employees' Union, [2002] Sask. L.R.B.R. 171, LRB File Nos. 199-00 & 210-00, both of which involved a complaint by a member against the union over the administration of a union-run benefit plan. In these cases, the Board concluded that s. 36.1(1) applied to such disputes and required the union to apply the principles of natural justice in relation to the members' claims for benefits under the long term disability plan operated by the union. The Board recognized that certain principles of fair procedure could be imposed by the Board under s. 36.1(1) in relation to union-run benefit plans. The Applicants submitted that the principles in *McRae* and *Thompson* apply to the case before us, drawing an analogy between the Board's conclusion that the operation of union benefit plans constitutes a matter of membership under s. 36.1(1), as does the matter of payment and assessment of union dues, a critical component of membership and of significant importance to members.

[77] The Applicants further submitted that, given that the Board has jurisdiction under s. 36.1 to determine their complaints, notice given to the members of the July 23, 2005 meeting where the motion was made to increase dues, was not appropriate notice. In this regard, the Applicants relied on certain provisions of internal union documents, including the Canadian Ethical Practices Code, that there must be democracy, fairness and proper notice of meetings. The Applicants submit that the evidence establishes that the normal method of notice to the Union's members respecting proposed dues increases included posting the notice in the workplace and mailing the notice to members with the specific issue duly noted and that the Union failed to do so in this case.

[78] The Applicants submitted that s. 36.1(2) contemplates that every employee shall be given reasonable notice of union meetings and that the constitution requires the Union to "take such steps as may tend to encourage attendance of members at meetings." Even though members are aware of regular monthly meetings, because of the significance of the issue at hand, the Union ought to have given notice as Mr. Lyons had in the past in order that a full discussion and opportunity to attend and vote could have been afforded to every member. In this regard, the Applicants relied on *Alcorn and Detwiller v. Grain Services Union*, [1995] 2nd Quarter Sask. Labour Rep. 141, LRB File No. 247-94 to support the proposition that, while the requirements of proper notice are particularly important when there is the possibility of discipline to a

member, “the principle of reasonable notice nonetheless applies to all circumstances where decisions may be made of more general effect.”

[79] The Applicants also submitted that, in addition to the constitutional requirement concerning notice, the Union is estopped from denying that a past practice (of giving special notice through mail outs to members identifying the fact that the issue of a dues increase was to be discussed) has been established. Relying on *Miramichi Pulp and Paper Inc.*, (1994) 40 LAC (4th) 37 (where an employer was estopped from relying on strict rights in a collective agreement having engaged in a past practice to negotiate amendments to the pension plan rather than make unilateral changes), the Applicants submitted that the Union, given its past practice concerning special notice, is estopped from asserting the constitution had been followed or that such notice was not required.

[80] With regard to the issue of whether the proper method of voting was used on the motion to increase dues, the Applicants relied on a provision of the constitution that specifically states that a secret ballot vote is to be used when dues changes are voted upon. The Applicants submitted that, by utilizing a show of hands as the method of voting on the motion, the Union did not follow due process and the vote was invalid. The Union should have used a secret ballot vote or there should have been a specific waiver of a secret ballot vote.

[81] Finally, the Applicants submitted that, if the Board finds it has jurisdiction and the notice of the meeting is held to be insufficient and/or the method of voting on the motion is held to have been inappropriate, the Applicants are entitled to a remedy. The Applicants requested that their dues be reassessed based on the previous method of calculation of $.30 per hour worked, retroactive to September 1, 2005. The Applicants also requested costs for the within proceedings from the Union.

[82] Counsel for the Union filed a brief which we have reviewed. The Union submitted that s. 36.1 of the *Act* is concerned with the application of union security provisions as those provisions may affect membership and the internal discipline of members. This includes s. 36.1(2) dealing with notice of meetings – it only applies to those meetings where membership status or disciplinary proceedings are dealt with.

The Union submits that neither s. 36 nor s. 36.1 was intended to confer upon employees particular procedural rights with regard to matters such as the calculation and amount of dues. While the Union may have policies, rules, bylaws and constitutional provisions that address such matters, those provisions are not subject to statutory scrutiny under s. 36.1 unless and until there are actual consequences to the membership status of an employee.

[83] The Union relies on the Court of Appeal decision in *McNairn*, *supra*, and submits that the Applicants' complaint does not fall within the scope of s. 36.1(1) as that scope was defined in *McNairn*.

[84] The Union argues that, although the payment of dues may be a condition of membership (as required by s. 36 of the *Act* and the union security provisions in the collective agreements), membership status is only affected if the member fails to pay. As the Applicants' complaint only concerns the manner in which the Union increased dues, the membership status of the Applicants has not been impaired and thus there is no dispute under the constitution concerning the Applicants' membership in the Union. As such, s. 36.1(1) does not apply.

[85] Specifically with regard to that part of the dispute that the Union must have held a secret ballot vote, the Union submitted that the subject matter of the dispute, a vote, is not within s. 36.1(1) of the *Act* and therefore the Board has no jurisdiction. Only once the Board has jurisdiction do considerations of natural justice arise. The Union submitted that the Applicants were arguing in reverse by suggesting that elements of due process should be incorporated into the interpretation of the constitution, and if they are, the Board should conclude statutory natural justice becomes operative.

[86] With respect to the requirement of reasonable notice of meetings in s. 36.1(2), the Union submitted that it is a principle of natural justice intended only to apply to the situations covered by s. 36.1(1) and thus the Board has no jurisdiction to consider reasonable notice in this case. In the alternative, if the Board finds that s. 36.1(2) applies to all union meetings, the Union submitted that the Board should pay deference to the policies and practices of the Union and assess them in terms of whether they are

manifestly unfair not whether they are preferable or ideal. The Union argued that there are no consistent criteria for what is “reasonable notice” but, rather, consideration must be given to the Union’s policies and practices as well as the subject matter to be decided at the meeting.

[87] The Union submits that the reasonableness of notice should be assessed with regard to the following criteria: (i) whether any deficiency of notice was motivated by bad faith; (ii) whether there has been a clear violation of express provisions of internal union documents, including the constitution, that have been applied in the past in a consistent manner such that continued compliance is an expectation of the members; (iii) whether the deficiency of notice constitutes a clear deviation from well-accepted past practices; and (iv) if there is a deficiency because of a clear breach of the rules or past practice, whether it resulted in prejudice to the members that would not have been contemplated as a result of the kind of decision made at the meeting - in this regard, a decision adverse to members’ interests is not necessarily unfair because, in the context of union decision-making, the interests of certain members may be at odds with the interests of others.

[88] The Union argued that, on the facts, there was no violation of ss. 36.1(1) and/or (2) of the Act. The Union had been having serious financial problems, a matter discussed at several monthly membership meetings and which the executive decided had to be rectified immediately. The business manager prepared background and comparison material which was discussed at the monthly membership meeting at which a motion was passed in accordance with proper rules of procedure to change the dues structure. The International had no problem with the Union dealing with such a motion at a regular monthly membership meeting. The business of the Union is carried out at these meetings and those who do not attend must accept that any number of important decisions can be made, some of which will have a significant financial impact upon them. Passing this motion was not in violation of any mandated alternative approach, past practice generally supporting that dues increases have been made at regular monthly general membership meetings without specific notice and by way of a show of hands, as evidenced by minutes and Ms. Sali’s evidence. At the instigation of the Applicants, the matter was investigated and reviewed by the International and there is no allegation that that investigation was not properly carried out or that the matter was

summarily dismissed. The Union submitted that the policy meeting in 1998 held by Mr. Lyons did not set a precedent in terms of how the Union would deal with a proposed change to dues. The Union was coming out of five years of trusteeship, members had not previously been able to vote on issues and there were questions by the International as to whether such an annual policy meeting to conduct the regular business of the Union was constitutionally valid.

[89] In response to the Applicants' argument that a special meeting should have been called with special notice to deal with this issue, the Union submitted that a special meeting can only be called by the president upon the request of the executive board and this was not the process followed by the duly elected officers who had authority to determine if a special meeting must be called.

Analysis and Decision:

[90] This application involves the interpretation of s. 36.1 of the *Act*. In order to determine the within application, it is necessary for the Board to answer only the following questions:

i. Does the Board have jurisdiction under s. 36.1(1) of the *Act* to hear and determine the complaints of the Applicants?
ii. Did the notice given of the union meeting at which dues were increased amount to "reasonable notice" within the meaning of s. 36.1(2)?

Does the Board have jurisdiction under s. 36.1(1) of the *Act* to hear and determine the complaints of the Applicants?

[91] If the Board has jurisdiction over the subject matter of this application, the Board would be in a position to determine the questions of whether the principles of natural justice were complied with in this case in relation to both the issues of proper notice of the meeting and the proper method of voting, whether by show of hands or secret ballot. If the Board does not have jurisdiction over the subject matter, the application, in so far as it relates to an alleged violation of s. 36.1(1) of the *Act*, must be dismissed.

[92] The Applicants argued that the issue of jurisdiction may be answered through consideration of the Court of Queen's Bench decision in *Theriault*, *supra*, as well as the Board's decisions in *McRae* and *Thompson*, *supra*. In *Theriault*, the Court held that members have the right to the application of the principles of natural justice respecting all disputes between the members and the union and that the effect of s. 36.1 is to remove the court's jurisdiction over "internal union disputes" and place jurisdiction with the Board. The Applicants also relied on *McRae* and *Thompson* where the Board held that a union-run benefit plan constitutes a matter of membership to which the principles of natural justice apply within the meaning of s. 36.1(1). The Applicants suggested that the Board has a supervisory role over all matters of membership, including the setting of union dues.

[93] The leading case that governs the question of jurisdiction is *McNairn*, *supra*, a 2004 decision where the Saskatchewan Court of Appeal undertook an extensive analysis of the scope of s. 36.1 of the *Act* in order to determine whether the Board or the Court had jurisdiction over the subject matter of the complaint before it. Mr. McNairn brought an action in the Court of Queen's Bench for damages against his union alleging a breach of contract by the union in violating the hiring hall rules which governed the allocation of work among unemployed union members. The union brought an application to strike the statement of claim in the Court of Queen's Bench on the ground that the Court lacked jurisdiction to determine the matter. The Court granted the union's application and struck Mr. McNairn's statement of claim, having concluded that the Board had exclusive jurisdiction over the subject matter of the action. The Court found that the essential character of the dispute was an alleged violation of the union's constitution and bylaws and the dispute was therefore an internal union dispute grounded in ss. 25.1 and 36.1 of the *Act.* Thus, the dispute was within the exclusive jurisdiction of the Board. Mr. McNairn appealed to the Saskatchewan Court of Appeal.

[94] The Saskatchewan Court of Appeal rejected the lower Court's findings on the issue of the essential character of the dispute, holding that some internal union disputes fall within the jurisdiction of the Court and not the Board. The Court stated that, in order to determine where jurisdiction lies, it is necessary to determine the essential character of the dispute, having regard for its substance and not its form. To do so, one looks at the constituent elements of the action and, while the manner in

which the dispute is framed is "beside the point in determining the essential character of the dispute," it may say something about the dispute. In *McNairn* the dispute was framed in terms of contract and a breach of contract, and the Court, at paragraph 29, noted the contractual nature of the relationship between the union and its members:

> *[29]. . . The relationship between a union and each of its members is, as a matter of substantive law, in the nature of a contractual relationship, though a special one. Membership in a union entails both the union and the member having agreed to be bound by the constitution of the union, among other things, and generally speaking an action may be brought by a member for breach of the terms thereof.*

[95] The Court in *McNairn* further stated that, in determining the essential character of a dispute, the question which must be answered is whether the dispute arises out of or is governed by 25.1 or 36.1 of the *Act*, a question which necessarily requires one to determine the scope of those provisions of the *Act*. The Court stated as follows at paragraphs 30 and 31:

> *[30] It remains true, however, that if the dispute between the parties arises out of or is governed by sections 25.1 or 36.1 of The Trade Union Act, as Justice Hrabinsky held it was, then that would be its essential character and it would fall to the Labour Relations Board to entertain it to the exclusion of the Court of Queen's Bench.*
>
> *[31] Whether this is so depends in part on the scope of these sections, which is a matter of interpretation. The provisions of The Trade Union Act, no less than any other, fall to be interpreted along the lines laid down by section 10 of The Interpretation Act, 1995, and by the decision of the Supreme Court of Canada in Rizzo and Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27. Section 10 states that every enactment is to be interpreted as remedial and "given the fair, large and liberal construction and interpretation that best ensure the attainment of its objects." The decision in Rizzo and Rizzo Shoes states that words of an enactment are to be read in their entire context and in the grammatical ordinary sense harmoniously with the scheme of the enactment, the object of it, and the intention of the Legislature.*

[96] The approach of the Court of Appeal in *McNairn* does not necessarily overturn *Theriault*, a case relied on by the Applicants, although it refines the principles stated therein and perhaps limits its application. It appears that, in *Theriault*, the Court

said very little about the scope of s. 36.1. While stating that the effect of the enactment of s. 36.1(1) was "to take away the jurisdiction of the superior court over internal union disputes," the Court did not specifically say that all internal union disputes fall within s. 36.1(1). The Court used a slightly different approach than that used in *McNairn* by suggesting that the Board must examine the "internal workings of the trade union to the extent necessary to determine whether the *Act* has been breached," noting that the Board will not become "a body of appeal or of routine review from every decision made" pursuant to a union's constitution or rules. In our view, the Court in *Theriault* was not suggesting that all internal union disputes fall within s. 36.1 of the *Act* and therefore within the exclusive jurisdiction of the Board, but only that the Board must be prepared to scrutinize a union's internal workings whenever such an allegation of a violation has been made. The Court in *McNairn* took a slightly different approach to the issue of jurisdiction, by looking first at the scope of s. 36.1 of the *Act* then determining whether the dispute fell within its terms. If it did, it would be necessary to examine whether the provisions of the *Act* had been breached.

[97] Following consideration of the scope of s. 25.1 of the *Act*, the Court went on to examine the scope of s. 36.1 of the *Act*, noting that "the purpose of this section lies in protecting a member of a union from abuse in the exercise of the power conferred on unions by the preceding section – section 36 – and in particular subsections (4) and (5)," provisions which empower a union to fine members who work during a strike, but which protect a member from being deprived of membership, except for non-payment of dues, as set out in s. 36(3). In light of this noted purpose, the Court described the scope of s. 36.1(1) as follows, at paragraph 38:

> *[38] Thus subsection 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 employee's membership therein or discipline thereunder. And when it does apply, it requires that the principles of natural justice be brought to bear in the resolution of the dispute.*

[98] The purpose and scope of s. 36.1(1) was also considered by the Board in *Lalonde*, *supra*, where the Board stated at 269:

> *[83] 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.*
> *. . .*

[99] Based on the approach of the Court in *McNairn*, it is apparent that, in order for s. 36.1(1) to apply to an internal union dispute, the dispute must involve the constitution and must relate to an issue of an individual's membership in or discipline under the constitution, while keeping in mind that the purpose of the section is to protect a member from abuse of power by the union in relation to those matters. More importantly though, for the purposes of the case before us, it must be kept in mind that the section only provides that the principles of natural justice apply to *the resolution of that dispute* under the constitution.

[100] In the case before us, it is our view that the Applicants have not established either of the two components of s. 36.1(1) necessary to attract the scrutiny of the Board. Firstly, the Applicants' dispute with the Union does not involve a matter of membership in the Union under the constitution. Secondly, the Applicants are not asking us to apply the principles of natural justice to the *resolution* of their dispute with the Union.

[101] On the first point, that the dispute does not involve a matter of membership in the Union under the constitution, it is our view that the dispute about the manner in which the Union changed the assessment of dues is not a dispute about the Applicants' membership in the Union. To be a dispute under the constitution about "membership therein," the individual's membership must be in jeopardy under the terms of the constitution, that is, there is a dispute that could prevent membership or take away membership. The amount of dues may be of significant interest to certain members and, although the failure to pay such dues could result in expulsion from membership, those facts alone do not bring the dispute within the meaning of s. 36.1(1). If the Applicants' argument were accepted, arguably all issues discussed at

membership meetings could then be said to be important “matters of membership” and subject to scrutiny under s. 36.1(1) of the *Act*. In our view, it is clear from the *McNairn* case that not all of the internal workings and decisions of the Union were intended to be subject to Board scrutiny under s. 36.1(1). The application before us does not encompass a dispute about the Applicants’ expulsion from membership and it would therefore be premature to consider such a possible consequence – the Applicants’ dispute is solely about how the dues assessment was changed not about their expulsion from membership.

[102] Secondly, whether in addition or in the alternative to the first ground stated above, s. 36.1(1) does not apply to the application before us because the Applicants are not asking us to apply the principles of natural justice to the resolution of their dispute with the Union about the dues change. The Applicants are instead asking that we apply the principles of natural justice to the manner in which the Union generally conducts its operations and makes its decisions, that is, that the Board should apply the principles of natural justice in a substantive manner to determine in this case what is reasonable notice for a meeting at which a change to dues will be discussed and what is the proper method of voting on such a motion. In addition, the Applicants ask that we interpret the constitution and that, in so doing, we apply the principles of natural justice to our interpretation of those specific provisions that deal with notice of meetings, establishment of dues and the Union’s method of voting on changes. Under s. 36.1(1) the Board is only empowered to apply the principles of natural justice to the manner in which a dispute between a member and his or her union is resolved or, in other words, to the manner in which the union handles the dispute. So even though the Applicants have a dispute with the Union about the change to the dues structure, they are not asking us to apply the principles of natural justice to how they resolve that dispute with the Union, they are asking that we imply the principles of natural justice into the decision-making process of the Union. In our view, the scope of s. 36.1(1) is not extended to matters of the Union’s operations that may have created a concern by members such that they got into a dispute with the Union over the legality of the Union’s initial decision. Although there was some mention in the evidence about how the Union dealt with the Applicants’ complaint internally, both locally and with the involvement of the International (a process which may attract the principles of natural justice within s. 36.1(1) as it involves the resolution of a dispute with the Union), it is clear that the

application does not include a complaint about the processes the Union used to respond to the Applicants' complaint.

[103] When considering the scope of s. 36.1 in *McNairn*, *supra*, the Court of Appeal determined that McNairn's application did not essentially involve allegations of a breach of the duty under s. 36.1 but rather involved a complaint that the union acted contrary to its bylaws as the union's duty to place names on the hiring hall board was found in the bylaws and not s. 36.1. At paragraphs 39 through 41, the Court stated:

> *[39] Seen in this light, and in light of the allegations of fact made in the statement of claim, subsection 36.1(1) has no effective bearing on the essential character of the dispute between the parties. The Union is not alleged to have breached the duty imposed upon it by this subsection, and nothing material to the action and its determination turns on this duty. The Union's duty to place the names of its unemployed members on the unemployment board in prescribed sequence, which lies at the heart of the dispute posited by the statement of claim, is not to be found in subsection 36.1(1) of The Trade Union Act but in Article 11(d) of the Union's Working Rules and Bylaws. And on the facts of the matter, the complaint is not about Mr. McNairn having been deprived of natural justice by the Union, contrary to s. 36.1(1) of the Act. It is about his having been deprived of work, for which he was qualified, because the Union, contrary to Article 11(d) of the Working Rules and Bylaws, moved his name to the bottom of the unemployed board following his job-related experience at Burstall.*
>
> *[40] Nor, having regard for the facts alleged in the statement of claim, is the dispute about whether the Union failed to give Mr. McNairn reasonable notice of a meeting, as required by subsection 36.1(2), or unreasonably denied him membership in the Union, contrary to subsection 36.1(3).*
>
> *[41] In sum, we are of the view the dispute disclosed by the cause of action pleaded in the statement of claim does not, in its essential character, engage section 36.1 of The Trade Union Act. Nor in our view does it engage section 25.1 of the Act. With the greatest of respect, then, we do not share the opinion of Justice Hrabinsky. We are of the opinion the dispute is not governed by these provisions, cannot be said to have arisen out of them, and does not therefore fall within the jurisdiction of the Labour Relations Board. That being so, the Court of Queen's Bench has jurisdiction to entertain the statement of claim. Hence, we are left to allow the appeal, set aside the order, and dismiss the Union's application to strike the statement of claim.*

[104] As previously stated, it is made clear in *McNairn* that not all internal union disputes fall within the scope of s. 36.1(1) such that they must fall within the jurisdiction of the Board. It is our view that, in the case before us, the essential character of the dispute is whether the Union failed to abide by the constitution in changing the method of assessing union dues by not giving proper notice or conducting a proper vote. The duty to give proper notice of the meeting and conduct a secret ballot vote is not found within s. 36.1(1) but rather in the provisions of the constitution. As previously stated, the Applicants have not alleged that the Union failed to apply the principles of natural justice to the resolution of their dispute with the Union under the constitution but rather have asked the Board to interpret rights and obligations under the constitution and, in so doing, to impute certain principles of natural justice into the constitution.

[105] Our application of the principles in *McNairn* to the facts of this case is consistent with the Board's decisions in *Staniec*, *supra* and *Murray McMillan v. Saskatchewan Union of Nurses and Battlefords District Health Board*, [1999] Sask. L.R.B.R. 33, LRB File Nos. 377-97 & 378-97. In *McMillan*, the union had entered into a letter of understanding without having it ratified by the membership. The applicant alleged that the actions of the union constituted a violation of the union's constitution and bylaws. As the *Act* does not require ratification votes, the dispute was obviously over the proper interpretation of the constitution and bylaws. The Board stated that, in such circumstances, the proper interpretation of the constitution and bylaws rests with the union and not the Board under s. 36.1(1). In *McMillan* the Board also stated that s. 36.1(1) of the *Act* ensures members have the right to participate in the union in a manner that accords with natural justice, noting that the applicant had the right to challenge the union's actions/decision internally. The Board stated that its role is to protect the rights of members to access internal procedures and that its supervisory power under s. 36.1(1) is limited to natural justice and does not extend to the interpretation of the constitution and bylaws. The question of whether a letter of understanding must be ratified was therefore left to the internal workings of the union. In *Staniec*, a 2001 decision of the Board dealing with an allegation that certain union elections were improperly conducted, the Board referred to *McMillan*, *supra*, at 418 and 419:

[42] In McMillan, supra, it was alleged that the union had violated s. 36.1(1) in entering into a letter of understanding with the employer, which effectively amended the collective agreement, without referring the matter to the membership for a vote, a procedure which, the applicant asserted, was required by the union's constitution and bylaws. Pointing out that Act does not require a union to seek membership ratification before entering into a collective agreement or letter of understanding, the Board concluded, at 40-41:

> *In the circumstances of the present case, the requirement to hold a ratification vote is founded entirely on an interpretation of the constitution and bylaws of SUN. Mr. McMillan concluded that the constitution and bylaws require SUN to conduct a ratification vote on the letter of understanding, while the elected officers of SUN disagree with this interpretation. In our view,* ***the proper interpretation of the constitution and bylaws of a union rests with the union itself, and not with the Board under s. 36.1(1) of the Act.***
>
> *The Board's role under s. 36.1(1) of the Act is to ensure that employees are granted the right to participate in the union in a manner that accords with the principles of natural justice. Mr. McMillan has been permitted to raise the issue internally within his union; he has received information from a staff representative and elected officials outlining the reasons for their decision and their interpretation of the constitution and bylaws; there have been no efforts to prevent Mr. McMillan from participating in other democratic avenues that may be open to him to challenge the decision, such as attendance at local union meetings and annual union meetings. Under s. 36.1(1) of the Act, the Board will supervise the employee's rights to access such internal procedures, but, as outlined in the Alcorn and Detwiller case, supra, and the Stewart case, supra, we do not sit on appeal of every decision made by a trade union under its constitution.* ***The extent of the Board's supervisory power is limited to matters of natural justice and do not extend to determining the actual interpretation to be placed on the constitution and bylaws of a union. Whether or not the Union was required by its constitution and bylaws to hold a ratification vote in these circumstances is a matter that is left entirely to the internal workings of the union.***
>
> **[emphasis added]**

[106] In *Staniec*, *supra*, there was an allegation that the manner in which the union conducted elections amounted to a denial of the principles of natural justice within the meaning of s. 36.1(1). The applicant had asserted that several internal union documents, including the constitution and bylaws, established that the union's elections were improperly conducted. The union responded that the rules in those documents did not apply to interim elections and that the union could determine its own procedure for such elections. The Board concluded that the union's right to interpret its constitution and bylaws prevailed but that, even if the constitution was breached in the manner proposed, that would not constitute a breach of the principles of natural justice because there was no dispute regarding membership or discipline – it was a difference of interpretation under the constitution. At 419 and 420, the Board reasoned and concluded:

> *[43] In the present case, Ms. Staniec asserts that an array of internal union documents, including its Bylaws, elections procedure manual, a pre-bargaining survey document and other Union literature, demonstrate that the elections of the interim unit chairperson and bargaining committee at the meeting of January 22, 2000, were improperly conducted. The Union's interpretation of its Bylaws and elections procedure manual is that the rules mandated therein do not apply to interim elections conducted prior to certification of a bargaining unit and conclusion of a first collective agreement. Its position is that the Union may determine its own process for election of interim executives and other officials, a procedure that may be adapted to the local conditions that pertain during the period following organizing and application for certification, and when there may be residual turmoil in the workplace.*
>
> *[44] In our opinion,* ***the Union's right to interpret its constitutional documents with regard to the matters complained of by Ms. Staniec must prevail. Whether the requirements of natural justice apply, and the particular content of procedural fairness, is dependent upon the nature of the dispute and the rights alleged to have been violated. The case law concerning s. 36.1(1) of the Act, and analogous provisions in other jurisdictions, indicates that a union's duty to apply the principles of natural justice in respect of disputes between employees and the union has generally been restricted to matters of membership and internal discipline. The provision is not intended to constitute the Board as a body for the routine review of every decision no matter how picayune made by a union pursuant to its constitutional***

structure and procedures. *The Board's policy in this regard was described in Stewart, supra, 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 s. 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 of 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.*

[45] ***In all the circumstances of this case, even if we were to conclude that the Union had breached its Bylaws and election procedures as alleged, in our opinion the violations would not constitute a denial of natural justice.*** *Furthermore, Ms. Staniec apparently has not availed herself of other avenues to challenge the local Union's actions, such as an internal appeal procedure, perhaps because she elected to withdraw from membership and cease to participate in the activities of the Union. The application is dismissed with respect to the allegation of a breach of s. 36.1(1) of the Act.*

[emphasis added]

[107] In our view, the same principles apply whether the issue in dispute is the conduct of elections (*Staniec*, *supra*) or the compliance with rules concerning the assignment of work (*McNairn*, *supra*) or, as is the situation in this case, the notice of a meeting or the method of voting on changes to the dues structure. The Board's supervisory power under s. 36.1(1) of the *Act* does not extend to interpreting and making a determination on the Union's constitution and bylaws. Such a dispute is outside the jurisdiction of the Board, although a superior court may have jurisdiction to determine what is essentially a contractual dispute between the parties.

[108] The Applicants relied on the *McRae* and *Thompson* cases, both *supra*, as support for their position that the Board has jurisdiction under s. 36.1(1) to decide their dispute. It is our view that these cases, both of which were decided in 2002, would have been decided differently post-*McNairn*. It may well be that the cases would have been decided differently after the Board's decision in *Staniec*, *supra*. The facts in *McRae* and *Thompson* are so unique, however, that they are very limited in their use as a precedent, particularly given the very different fact situation before us in this case. In our view, even if *McRae* and *Thompson* are not effectively overturned by *Staniec* and *McNairn*, they are both distinguishable from the present case on the basis that the applicants in those cases sought the application of the principles of natural justice *to the resolution of their dispute with the union*, the dispute being concerned with the administration of a union-run benefit plan. Although the application in *McRae* was decided on different grounds – the complaints were not in relation to the union's handling of the disability application but were directed toward changing the internal structure of the union (i.e. she wanted to "straighten out the union"), a matter it said was not reviewable under s. 36.1(1) - the Board suggested it would have reviewed the issue of the union's handling of the applicant's disability application and specifically those complaints that were suggestive of there being no representation by the union of long term disability complainants. There the Board stated that the union must apply the principles of natural justice in relation to members' claims for long term disability benefits; the operation of the union-run disability plan constituting a "matter of membership" under s. 36.1(1). In other words, the Board was suggesting that those principles applied to disputes between the member and the union when the union was operating such a plan. The Board indicated that similar standards would be imposed on the operation of such a plan as would be imposed on the operation of a disciplinary procedure, indicating it would determine what met the requirements of natural justice and would examine the constitution to help determine what would be fair in the circumstances. It should also be noted that in *McRae*, the Board deferred that part of the applicant's application alleging that she should have received long term disability benefits under the plan to an arbitrator pursuant to the terms of the plan itself.

[109] The Board held similarly in *Thompson*. The complaints in that case also were, for the most part, related to the process of resolving the members' dispute under the long term disability plan. The allegations included that there had been excessive

delay in having the complaint dealt with, the delay was linked to an allegation that the applicant was forced to resign and there was an alleged conflict of interest on the part of the union which negotiated severance for the applicant while at the same time denying the applicant long term disability benefits under the plan it was responsible for administering.

[110] There have been a few decisions made pursuant to s. 36.1(1) since the *McNairn* case, including the decision in *Lalonde*, *supra*, which provides a classic example of the application of s. 36.1(1). The Board in that decision relied on *Stewart*, *Staniec* and *Theriault* while quoting extensively from *McNairn*. In that case, the applicant brought an application under s. 36.1(1) and (3) alleging that he should not have been expelled from membership as the union's rule against dual union membership was unreasonable and because the union breached natural justice in the process of his expulsion. The Board concluded that it had jurisdiction to determine the issues raised by the complaint, stating at 268:

> *The Applicant's main complaint concerns the revocation of his membership in the Union. The essential character of the dispute arises directly out of and engages s. 36.1 of the Act as it fundamentally concerns the application and interpretation of the Union's constitution with respect to the Applicant's membership therein and the procedure adopted to arrive at its determination. The issues raised directly engage ss. 36.1(1) and 36.1(3) – the procedure adopted by the Union in dealing with the matter and whether the Applicant was unreasonably denied (or expelled from) membership.*

[111] In determining the appropriate requirements of natural justice and the role of the constitution in setting those standards, the Board quoted from *Hill and Rattray v. Saskatchewan Government and General Employees' Union*, [2003] Sask. L.R.B.R. 371, LRB File Nos. 002-03 & 011-03, that the processes used to discipline members "must meet the basic contextual requirements of natural justice" and that the Board "is not to provide definitive interpretations of a union's constitution, which is a fluid, political document …" In *Lalonde*, the Board set out procedural requirements applicable to expulsion from membership and, in so doing, examined and essentially adopted those applied in British Columbia under somewhat analogous legislation, given the potential seriousness of the proceedings to the applicant. It must be pointed out,

however, that the Board in *Lalonde* noted that the British Columbia legislation "is somewhat more expansive than our s. 36.1, ostensibly extending to the determination of whether or not a union has complied with the principles of natural justice with respect to any and all matters in its constitution."

[112] It is clear in *Lalonde* that the Board applied s. 36.1(1) only to the dispute between the applicant and the union concerning his membership, that is, to the process the union had engaged in that led to the expulsion of the applicant from membership. The Board did not extend the scope of s. 36.1(1) to examine whether the rule under which the applicant was expelled (i.e. the rule against holding dual membership) had been properly made, in a procedural sense, by the union. The rule itself was examined in a substantive way, only under s. 36.1(3) to determine whether the Applicant had been unreasonably denied membership in the union, that is, whether the rule against dual membership was unreasonable in the circumstances of that case.

[113] In the case before us, if the Applicants' dispute with the Union had arisen consequent to their failure/refusal to actually pay dues, their membership status might be in question, it would then be a dispute about membership in the Union under the constitution, and the principles of natural justice would apply to the *resolution of that dispute* with the Union. If the Applicants were to lose membership over non-payment of dues, the subject matter of the dispute would also invoke the consideration of s. 36.1(3), that an individual not be unreasonably denied membership in a union. These very considerations were before the Board in *Lalonde*, *supra*. In that case the Board examined only the substantive issue of denial of membership under s. 36.1(3) (by examining the reasonableness of the rule the applicant apparently breached that got him expelled from the union) but the Board would not look at the creation of that rule to determine whether certain procedures the union took to create the rule had complied with the principles of natural justice. In *Lalonde*, s. 36.1(1) applied only in so far as ensuring that the principles of natural justice were followed in the process of expelling the member from the union for breaching the union's rule against dual membership. Applied to the present case, it is clear that only if and when the Applicants are deprived of their membership for failure/refusal to pay dues would the Board have jurisdiction to consider the application of s. 36.1(1) and, in that case, it would only be to determine whether the principles of natural justice were complied with in the resolution of that

dispute (the dispute about non-payment of union dues), with s. 36.1(1) having no bearing on the issue of how the dues were set in the first place. While the Board might also consider s. 36.1(3), it would only be in relation to whether the requirement to pay dues was unreasonable.

[114] In conclusion, we find that we do not have jurisdiction to consider the Applicants' complaints under s. 36.1(1) of the *Act*. Subject to our conclusions below concerning s. 36.1(2), if there are any requirements of natural justice applicable to the procedures the Union must use to raise union dues, that is a matter for the Court to decide and not the Board.

Did the notice given of the union meeting at which dues were increased amount to "reasonable notice" within the meaning of s. 36.1(2)?

[115] The Board has had very few occasions to comment about the relationship between ss. 36.1(1) (the principles of natural justice applying to disputes under the constitution concerning membership and discipline) and 36.1(2) (the entitlement to reasonable notice of meetings) of the *Act*. The Board's decision in *Staniec, supra,* appears to suggest that s. 36.1(2) stands separate and apart from s. 36.1(1). In that case, the Board considered two issues: (i) whether notice of a meeting at which union officials were elected was reasonable within the meaning of s. 36.1(2); and (ii) whether the conduct of the elections at the union meeting was a denial of natural justice within the meaning of s. 36.1(1). It is our view that ss. 36.1(1) and 36.1(2) should be considered separate and distinct provisions; although we note that there may be instances where reasonable notice of a meeting required under s. 36.1(2) of the *Act* might also be a requirement of natural justice pursuant to s. 36.1(1). For example, in relation to internal union disciplinary proceedings where there is the potential to suspend an individual's membership in the union, the individual would likely be entitled to reasonable notice of such a meeting, the requirement of reasonable notice being found in both ss. 36.1(1) and 36.1(2). In our view, it is apparent that the legislature intended s. 36.1(2) to have wider application than to notice of meetings to deal with membership and discipline under the constitution and therefore we interpret s. 36.1(2) of the *Act* as requiring reasonable notice to members for *all* meetings at which those members are entitled to attend.

[116] The Applicants appear to be making two separate assertions concerning an alleged violation of s. 36.1(2) of the *Act* through the Union's failure to give reasonable notice of the July 23, 2005 meeting at which union dues were raised:

> (i) that the Union should have held a "special meeting" under the constitution to discuss the issue of raising dues and that, under the constitution, a special meeting requires that special notice be given; and
>
> (ii) that, even if the Union could deal with the issue of raising union dues at a regular general membership meeting, it should have given the members specific notice that the issue was to be discussed at the meeting.

[117] It is our view that assertion (i), that the Union should have held a special meeting as per article VII, section 2 of the constitution, which necessitates the giving of notice also pursuant to that article, is outside of the Board's jurisdiction to determine. In order to answer such a question, the Board would be required to interpret the constitution to determine the circumstances in which the Union is required to hold a special meeting, as opposed to dealing with a certain issue at a general membership meeting. The question raised by the Applicants does not engage and is not founded on the requirement of "reasonable notice" of a meeting within the meaning of s. 36.1(2), but rather it engages and is founded on the interpretation of the union's constitution. As such, it is in the nature of a contractual dispute. While the Board is mindful of the provisions of the constitution in making any determinations under s. 36.1, it is not the Board's function to resolve disputes between the parties over the proper interpretation of the constitution by determining which of the parties' interpretation of the provisions of the constitution is the correct one.

[118] Our views in this regard are consistent with the principles in *Staniec* and *McMillan*, both *supra*. In *Staniec*, the applicant complained that the union was not following the provisions of its constitution and bylaws concerning elections. In examining whether the union had breached s. 36.1(1) concerning the requirements of natural justice, the Board stated that the "Union's right to interpret its constitutional

documents . . . must prevail." In our view, this statement equally applies to s. 36.1(2) of the *Act*. It would lead to absurdities should both 36.1(1) and (2) apply to circumstances that give rise to the same allegation. In *McMillan*, where the applicant challenged the right of the union to enter into a letter of understanding with the employer without the members' ratification of it, the Board observed that the requirement of ratification was not found in the *Act* but rather in the union's constitution and bylaws and that "the proper interpretation of the constitution and bylaws of a union rests with the union itself, and not with the Board under s. 36.1(1) of the *Act."* Although the Board in *McMillan* was addressing an issue under s. 36.1(1) of the *Act*, the following conclusion, stated at 41, is in our view equally applicable to the Applicants' argument made here concerning entitlement to reasonable notice under s. 36.1(2):

> *[26]. . . The extent of the Board's supervisory power is limited to matters of natural justice and do not extend to determining the actual interpretation to be placed on the constitution and bylaws of a union.* ***Whether or not the Union was required by its constitution and bylaws to hold a ratification vote in these circumstances is a matter that is left entirely to the internal workings of the union.***
>
> [**emphasis added**]

[119] Similarly, whether or not the Union was required by the constitution and bylaws to hold a special meeting in these circumstances is a matter left entirely to the internal workings of the Union. We would add that, should the Applicants believe that the Union has violated the provisions of its constitutional documents, it may be open to them to bring an action in court for breach of contract. As the Court of Appeal concluded in *McNairn*, *supra*, where a dispute "does not, in its essential character, engage s. 36.1 of *The Trade Union Act*," the dispute "does not therefore fall within the jurisdiction of the Labour Relations Board" and thus "the Court of Queens' Bench has jurisdiction to entertain the . . . claim." Given our conclusion that it is not within the Board's jurisdiction to interpret the constitution to make a determination that the issue of raising union dues must be dealt with at a special meeting instead of a general membership meeting, it follows that the Board cannot impose the requirement of "special notice" of such a meeting as referred to in article VII of the constitution.

[120] Although we have found that we do not have jurisdiction to consider whether the constitution requires that a special meeting be held to deal with the issue at hand, if we could have, we might have considered the past practice of the Union to assist us in the interpretation of that provision of the constitution. The Applicants argued that a past practice had developed where the Union had held special meetings, with special notice, to deal with the issue of changing dues. As set out later in these Reasons for Decision, no such past practice has been proven. Therefore, an argument that there was a "past practice" requiring a special meeting and the giving of special notice would not have been available to the Applicants as an aid to the interpretation of the constitution.

[121] The second assertion of the Applicants concerning an alleged violation of s. 36.1(2) is that, even if the Union could deal with the issue of raising union dues at a regular general membership meeting, it should have given the members specific notice that that issue was to be discussed at that meeting. Unlike the first assertion above, this assertion does not require us to interpret the constitution in order to make a determination on whether the notice given of the general membership meeting was "reasonable notice" within the meaning of s. 36.1(2). In our view, the Board has jurisdiction to determine whether the notice given for the general membership meeting of July 23, 2005 was reasonable in all of the circumstances.

[122] There have been very few decisions of the Board where s. 36.1(2) of the *Act* has been interpreted. Only passing mention is made in *McNairn, supra,* where the Board noted that the subject matter of the dispute did not raise the issue of "whether the Union failed to give Mr. McNairn reasonable notice of **a meeting**, as required by subsection 36.1(2). . . " In *Staniec*, *supra*, the Board noted that the provisions in the constitution were not the measure of reasonable notice but only a factor to take into account in determining what is reasonable notice under s. 36.1(2) of the *Act*. In that case the Board noted the reasons the union had for giving the form and length of notice it had.

[123] As per the principle stated in *Stewart*, *supra*, the Board must scrutinize the internal workings of the union to the extent necessary to determine if s. 36.1 has been breached. In order to determine whether reasonable notice was given for this

particular meeting to discuss this particular issue, it is necessary for us to examine the provisions of the constitutional documents, the past practices of the Union, the concept of reasonable notice generally, as well as the nature of the matter under consideration.

[124] As stated, the assertion of the Applicants in this regard does not require us to determine which of the parties' interpretation of the constitution is the correct one. The provisions of the constitution are very clear – article VII, section 1 of the constitution requires the Union to "hold at least one regular meeting each month on such day, time and place as established by vote of the membership of the Local Union" but that if "regular meetings are not held at a fixed and regular time and place each month, notice of such meetings shall be sent to each member in good-standing" of the Union. There appears to be no dispute on the evidence that the Union has held regular monthly general membership meetings commencing at 10:00 a.m. on the fourth Saturday of every month,[4] always at the Union's hall, for several years. The evidence also indicated that, on occasions where the meeting could not be held on the fourth Saturday of the month such as during the Christmas holiday period, the Union sent out a notice to the members of the new date, with the time and place remaining the same. In addition to holding regular general membership meetings on the same date and time and at the same place, the Union also posted a notice in the Union's hall of the next meeting.

[125] The Applicants argued that we should accept that a past practice had developed whereby union dues had been raised only at special meetings and only after special notice had been given to the members that the issue of union dues was to be discussed. While we have previously stated our view that no such clear practice had developed over time which would give rise to an expectation by the Applicants that they would get special notice that an increase in dues was to be discussed at a meeting, any past practice with respect to notice (regardless of whether it was for a special or general meeting) may assist us in determining what amounts to "reasonable notice" under s. 36.1(2).

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[4] While Mr. Lyons thought it was every third Saturday of the month, his memory was admittedly not clear on this point. The documentary evidence tended to support Ms. Sali's evidence that it was the fourth Saturday of the month. In any event, there was no serious disagreement that there was a fixed time and date for the meeting, whether it was regularly the third or fourth Saturday of the month.

[126] The Applicants suggested that their evidence and that of Mr. Lyons established a past practice of the giving of special notice to each member that the issue of a dues increase was to be discussed. They say they recall getting such notice on more than one occasion but, other than the meeting called by Mr. Lyons for January 1998, neither of the Applicants had any specific knowledge or recollection about these other meetings or the special issues to be discussed for which they say they got special notice. Although it was apparent that the Union has made several changes to the dues structure/amounts over the last several years while the Applicants were members, the Applicants appeared to have no knowledge or recollection of these instances. In addition to their lack of specificity, we have further difficulties accepting the evidence of the Applicants as it became apparent that each was prone to some exaggeration at times it was favourable to their case including, in this instance, the number of members attending the meeting in January 1998. Furthermore, but for the time that Mr. Wilson was an auditor with the Union, the Applicants have taken little interest in the affairs of the Union over the years (aside, perhaps, from some bargaining issues specific to their workplace), having attended union meetings on a sporadic basis, if at all. Their evidence tended to indicate that they were not aware of the types of issues regularly dealt with at general membership meetings and that any number of decisions made at those meetings could have a financial impact upon them.

[127] On the other hand, we have the evidence of Ms. Sali on the issue of notice, which was largely supported by the documentary evidence, including the minutes of general membership meetings and executive board meetings. Ms. Sali had a specific and unshakeable recollection of the history of the Union's treatment of dues increases. Although she drew certain conclusions from the documentary evidence concerning the notice that had been given, such as her conclusion that the lack of copies of notices with the minutes meant there had been no specific notices, she readily admitted to not knowing certain answers with exact certainty – only that she was drawing conclusions based on the lack of information but also her recollection. Ms. Sali did not dispute that special notice had been given by Mr. Lyons for the annual meeting he had in January 1998 and produced copies of the notice and the minutes for that meeting. For all of these reasons, we have no hesitation accepting Ms. Sali's evidence on the Union's past treatment of dues changes. In our view, the evidence establishes that not only has no past practice been established that dues are increased only at

special meetings after members are given special notice, but it tended to show the opposite – that, but for two occasions, dues increases were always dealt with at general membership meetings. The two occasions where the issue was dealt with at a special meeting were aberrations – on one occasion in the 1980's it is apparent from the minutes that an international representative was in attendance, an obviously rare event that would warrant a special meeting even if the only issue discussed was an increase to dues; and the second occasion was the annual policy meeting held by Mr. Lyons in January 1998.

[128] It is apparent that the Applicants placed great reliance on the notion that special notice of a meeting to deal with dues increases was necessary based on the past actions of Mr. Lyons. We find Mr. Lyons' evidence of little assistance to the Applicants. Mr. Lyons' evidence was fraught with many inconsistencies – if only because of the length of time that has passed since the occurrence of the events to which he testified but also perhaps because Mr. Lyons had no involvement with the Union prior to his temporary assignment as business agent from 1995 to 2001 nor following the end of his term. Mr. Lyons stated that the meeting that he remembers about raising dues which generated quite a debate was a meeting only with those members who worked at Shaw Pipe. Clearly that was not the meeting to which the Applicants referred in their evidence. Later he recalled what he referred to as an annual policy meeting and accepted the documentary evidence that a dues increase was discussed there, among other matters. He called this a special meeting with special notice but later, when confronted with the fact that the International had challenged his ability to have these annual policy meetings, he said he told the International it was the regular membership meeting for that month. In any event, the issue of a dues increase was only dealt with at one of these annual policy meetings – not every year that Mr. Lyons held them. Mr. Lyons' evidence about this being a "composite local" - that different dues were established with different employers and that only those affected vote on their dues, is inaccurate and represents a fundamental misunderstanding of the structure and operation of construction trade unions. Given the inconsistencies in Mr. Lyons' evidence, his lack of clear recollection of the meeting in question that allegedly established the past practice, his misunderstanding of the dues' structure of the Union and how those dues were set and the fact that a dues increase was only discussed at one meeting during Mr. Lyons' tenure, we do not accept

his evidence where it conflicts with Ms. Sali's or the Applicants'. Also, for these reasons, we do not accept his general statement that he always gave specific notice (at least the posting of a notice) of items that might affect certain groups of people.

[129] Therefore, in our view, Mr. Lyons' one time provision of special notice in 1998 does not change what appears to be a longstanding practice of dealing with dues increases at regular general membership meetings, without specific advance notice that it would be a topic to be discussed. It is of significance that the January 1998 meeting at which the dues were discussed (and for which notice was given) was a unique one in that the Union was just coming out of five years of trusteeship where members had not made any decisions about the operation of the Union. In light of those unique circumstances as well as Mr. Lyons' newly developed practice of having what he referred to as annual policy meetings, the validity of which were doubted by the International, it is understandable that the Union deviated from the practice it had followed for many years to deal with dues increases.

[130] On the whole of the evidence it appears that the Union has met the constitutional requirements of giving notice of monthly general membership meetings. There is no clearly established past practice of increasing dues at meetings (whether general or special) only after giving specific notice that a dues increase was to be discussed. Generally speaking, the notice requirements set out in the constitution, as followed by the Union, appear to us to be reasonable, however, that does not end our inquiry. The Applicants assert that the determination of "reasonable notice" requires that the Board take into account the nature of the issue to be discussed and decided upon at the meeting. In the Applicants' view, the issue of raising union dues is a significant one, having a substantial impact on the Applicants' take home pay, and therefore, in order to meet the requirement of "reasonable notice" in s. 36.1(2) of the *Act*, the Union needed to give specific notice to the membership that the issue of an increase in union dues was to be discussed at the July 23, 2005 regular general membership meeting.

[131] Although we agree that what notice is "reasonable" in any given situation could vary with nature of the meeting itself, the Applicants are asking us to go one step further by reviewing the reasonableness of notice based on the topics up for discussion

at the meeting. In our view, there is nothing explicit in s. 36.1(2) of the *Act* to support the contention of the Applicants that the entitlement to reasonable notice of all meetings also includes a requirement to specify the agenda for every meeting, in advance of the meeting. In our view, such a requirement simply cannot be implied in the circumstances of this case. It is, practically speaking, an impossible requirement to meet and would unduly hamper the operations of the Union.

[132] The purpose of general membership meetings is to conduct the business of the Union. The issues addressed at those meetings vary widely - ranging from the ratification of collective agreements affecting the general membership to a review of the Union's financial position to discussions and decisions about the rules concerning the out of work board to discussions of potentially available work in their trade. While not every issue will necessarily be of personal interest to each and every member of the Union, every issue has the potential to affect each and every member of the Union. That is why every member has the opportunity to attend these meetings and to participate in the discussion and the ultimate decisions made.

[133] The difficulty with the Applicants' position is that it is impossible for the executive of the Union to predict which items to be dealt with at a general membership meeting will hold special significance for the members, such that advance notice is necessary. The raising of Union dues in this case provides a prime example. The proposed change to union dues would appear to have held little significance for some members, as the amount of dues they pay has largely gone unchanged following the passing of the resolution to change the dues. In retrospect, it appears that the Applicants have a significant interest in that issue, based ultimately on how it was decided, given that they have somewhat higher wage rates than other members but, more importantly, because they work a significant amount of overtime hours as compared to other members. We must presume, however, that there are others in the membership for whom the issue also holds significance, but for the opposite reason – that they believe they were paying a disproportionately high rate of dues compared to their higher paid fellow members. Therefore it is wrong to suggest that the Union deliberately failed to give notice because it knew that the motion would have been voted down by the members if it had given such notice.

[134] It appears that the Applicants' answer to the Union's problem of not knowing what items might be of significant interest to some members such that advance notice must be given is to say that this provides all the more reason to give advance notice of *all items* on the agenda for every meeting. In our view, this is not a practical solution. This suggestion illustrates one of the further difficulties with the Applicants' position - it is not possible for the executive of the Union to predict every item that will arise to be dealt with at every general membership meeting. While there are some regular matters to be discussed at each general membership meeting, such as the Union's finances, other issues where membership decisions are required appear to arise out of the executive board meeting held just before the general membership meeting. Issues raised and decided upon at the executive board meeting could then become topics for discussion at the general membership meeting, with no ability of the Union to give advance notice of these agenda items. In addition, issues may arise directly from members in attendance at the meeting and clearly it would be impossible to give advance notice that these issues would be discussed at the meeting. If the Board were to impose upon the Union, or any other union, a requirement that reasonable notice in s. 36.1(2) of the *Act* could only be met by providing a complete agenda to members in advance of a meeting and that no issue could be raised at the meeting by the membership that did not appear in the notice to members, the Union would be required to table every matter raised from the floor during a general membership meeting and to wait until the next month to deal with issues that arose at the morning executive board meeting. In our view, such a requirement is wholly unreasonable and would unduly hamper the ability of the Union to conduct its necessary business at the general membership meeting in a timely way.

[135] In addition, what appears to have been ignored by the Applicants in making their assertions is that the constitution, a contract to which the Applicants are parties, requires all members to attend all meetings. While the Applicants point to article VII, section 3 of the constitution to assert that the Union "should take such steps as may tend to encourage attendance of members at meetings," they have overlooked the opening words of that section which state as follows:

> *It is the intent of this Constitution that all members should attend all meetings of the Local Union . . .*

[136] It is our view that, where it has been established that general membership meetings are held at the same time and place on a monthly basis in accordance with the constitution (and the Code of Ethics) and that the purpose of general membership meetings is to conduct the business of the Union, where there is no clear and well-established past practice of special advance notice for certain issues and where there is a constitutional requirement that members attend meetings, it simply is not open to a member to complain about decisions properly made by the Union's membership attending those meetings, in his or her absence. In all of the circumstances, we find that the Union has met the requirements of reasonable notice under s. 36.1(2) in relation to the meeting of July 23, 2005 and the issues decided at that meeting including the decision to change the dues structure in the manner it did.

Summary:

[137] For the reasons stated above, the Board finds that:

(i) The Board has no jurisdiction under s. 36.1(1) of the *Act* to entertain the complaints of the Applicants that the Union failed to comply with the principles of natural justice in relation to the change to the structure of union dues at its meeting of July 23, 2005; and

(ii) In all of the circumstances, the Union did provide reasonable notice of the meeting of July 23, 2005, in compliance with s. 36.1(2) of the *Act*.

[138] The application is accordingly dismissed.

DATED at Regina, Saskatchewan, this **16th** day of **September, 2008.**

LABOUR RELATIONS BOARD

Angela Zborosky,
Vice-Chairperson