Labour Relations Board
Saskatchewan

KEITH PETERSON, Applicant v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1975-01, Respondent and UNIVERSITY OF REGINA, Interested Party

LRB File No. 156-08; March 23, 2009
Vice-Chairperson, Steven Schiefner; Members: Michael Wainwright and John McCormick

Practice and Procedure – Delay – Board finds that Applicant's delay in bringing allegation is excessive – Applicant provided no explanation for delay - Board not satisfied that justice can adequately be done because of delay - Board dismisses application.

***The Trade Union Act*, ss. 12.1, 18(p) and (q), 25.1.**

REASONS FOR DECISION

Background:

[1] **Steven Schiefner, Vice-Chairperson**: On July 7, 2008, Mr. Keith Peterson (the "Applicant") filed an application with the Labour Relations Board (the "Board") alleging that the Canadian Union of Public Employees, Local 1975-01 (the "Union") engaged in a violation of Section 25.1 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*") by reason of facts particularized by the Applicant as follows:

> *CUPE Local 1975-01 Union denied me access to my union file, and all documents within said file, when I was medically disabled*

[2] On July 18, 2008, the Union filed a reply (the "Reply") to the Applicant's application denying that it abandoned the Applicant's best interest and denying that it violated s. 25.1 of the *Act* in any way with respect to the Applicant. The Union's Reply indicated its intention to rely upon the following facts:

> 1. *The Canadian Union of Public Employees Local 1975-01 ("the Union") is the certified bargaining agent for a number of employees at the University of Regina.*
> 2. *The Union denies that it has violated s. 25.1 of the Trade Union Act in any way with respect to the applicant and denies all of the allegations contained in the application, except as specifically admitted herein.*
> 3. *Mr. Peterson has filed numerous Unfair Labour Practice applications against the Union (see LRB File Nos: 056-03, 061-03; 062-03; 096-03; 097-03; 098-03 & 104-03). The applications were heard together over*

> *the course of 2 days and all applications were dismissed by decision dated, December 8, 2004.*
>
> 4. *Mr. Peterson is not an employee of the University of Regina or any of its affiliates, and therefore not member of CUPE Local 1975-01 and has not been an employee or members since October, 2003. As such, Mr. Peterson's allegations cannot be properly brought pursuant to Section 25.1 given that he is not an employee as contemplated (and protected) by Section 25.1 of the Act.*
> 5. *Mr. Peterson brings this application almost 5 years after the alleged incident occurred for which he complains of. The changes to the Act, as set out in Bill 6, and since been given Royal Assent, institutes a 90-day time limit for the filing of an unfair labour practice. Clearly, Mr. Peterson is outside the 90-day time limit.*

[3] In their Reply, the Union stated that it will not be in a position to fully address the Applicant's allegations until further and better particulars of the allegations are provided by the Applicant and the Union reserved the right to add to its Reply once further and better particulars were provided.

[4] On July 28, 2008, the University of Regina filed a Reply indicating that it did not appear to be directly involved in the matter, but wished to remain as an interested party, and providing the following statement:

> *The University of Regina has not been a party to, nor has any knowledge of the discussions alleged in the statement. Please note that Keith Peterson has not been an employee of the University of Regina since October 17, 2003.*

[5] The Board received copies of letters from the Union seeking further and better particulars from the Applicant. The Board also received copies of letters from the Applicant to the Board dated December 30 and 31, 2008, wherein the Applicant declined to provide further or better particulars with respect to the allegations contained in his application alleging a violation of the *Act* by the Union. The following letter received by the Board on December 31, 2008 provided as follows:

> *PURSUANT TO MY DEC. 30TH, 2008 DOC. ON FILE WITH YOUR OFFICES, AND THE PROVEN FRAUD(S) PERPETRATED BY THE CORRUPT AND LYING CRYSTAL LEANNE NORBECK AGAINST ME, PLEASE REFER TO THE JULY 07TH, 2008 CUPE UNION REPLY TO FILE NO.156-08 AND IN PARTICULAR ADDENDUM TO FORM 11 REPLY, PARAGRAPH 6, PARTICULARS 9AND ON FILE WITH S.L.R.B.), FOR FURTHER EVIDENCE OF FRAUD PERPETRATED BY CRYSTAL LEANNE NORBECK (AS ABOVE) AND MR. DON MORAN, CUPE NATIONAL OFFICERS.*

> *THE SAID PARAGRAPHS FRAUDULENTLY ASSERTS THAT CUPE UNION HAS NO PARTICULARS IN ITS POSSESSION, WHEN, IN FACT, AND AS PROVEN WITHIN THE SAID DECEMBER 30, 2008 DOC. OF MINE, CUPLE UNION HAS HAD ACCESS TO THE SAID PARTICULARS OF MY FORMAL COMPLAINT (S.L.R.B. FILE NO. 156-08) AND ALL DOCUMENTS WITHIN MY CUPE LOCAL 1975-01 UNION FILE FROM THE GET-GO.*
>
> *I TRUST YOU WILL BE LAYING CRMINAL CHARGES AGAINST MR. MORAN ALONG WITH MS. NORBECK, AS TO THE ABOVE FURTHER PROVEN FRAUD(S) AS PERPETRATED BY MR. MORAN AND MS. NORBECK. I HOPE TO HEAR FROM YOU SOON, AND I TRUST THE S.L.R. BOARD WILL PROCEED ON JAN. 06TH AND HEAR MY FORMAL COMPLAINT, S.L.R.B. FILE NO. 156-08 VS. CUPE LOCAL 1975-01 AS SCHEDULED. I LOOK FORWARD TO YOUR WRITTEN RESPONSE.*
>
> *WITH INTEGRITY*
> *KEITH PETERSON*

[6] In their Reply filed on July 18, 2008, the Union also requested that the Applicant's application be summarily dismissed, without oral hearing, in accordance with the procedure established by this Board in *Beverley Soles v. Canadian Union of Public Employees, Local 4777 and Parkland Health Region,* [2006] Sask. L.R.B.R. 413, LRB File No. 085-06. In their Reply, the Union alleged the following basis for summarily dismissing the Applicant's application without oral hearing:

> 1. *That the application be dismissed, without a hearing, on the grounds that the applicant is not an appropriate party to bring an application under section 25.1 of the Act.*
> 2. *That the application be dismissed, without a hearing, on the grounds that the application was not brought to this Board in a timely manner and in any event, almost 5 years after the alleged incident an inordinate delay, and in contravention of the 90 day timeline dictated by the Act.*

[7] On December 3, 2008, the Union renewed their request that the Applicant's application be summarily dismissed, without oral hearing, and filed written submissions in support of their request (the "application for summary dismissal").

[8] In *Soles*, *supra,* the Board determined that, in appropriate circumstances, the Board had authority to summarily dismiss an application alleging a violation of the *Act* prior to and without an oral hearing before the Board. In doing so, the Board established a procedure wherein the Applicant would be advised of the potential for summary dismissal of their application, provided a copy of the material filed in support of the application for summary dismissal, and be granted an opportunity to respond in writing.

[9] On January 14, 2009, a panel of the Board considered the Applicant's application *in camera* (not in the presence of the parties) and determined that summary dismissal was an option. By letter dated January 22, 2009 from the Board Registrar, the Applicant was invited to respond to the Union's request that his application be summarily dismissed without an oral hearing.

[10] On January 27, 2009, the Board received a letter from the Applicant providing the following reply to the Union's request for summary dismissal of his application:

> *PURSUANT TO THE KIND S.L.R.B. LETTER OF JANUARY 22ND, 2009 (ENCL.), I TRUST*
>
> *A) THE DOCS. DATED DEC.30TH. AND 31ST. 2008 AND INCLUDING DOCS. DATED JAN. 01ST, 2009 – JAN. 10TH, 2009, AND INCLUDING DOCS. DATES JAN. 13TH, 2009, AND JAN. 19TH, 2009 (IN FILE NO. 156-08, ALL ON FILE WITH YOUR OFFICE) WHICH HAVE*
>
> *B) PROVEN BEYOND A SHADOW OF ANY DOUBT THE IRREFUTABLE AND FACTUAL CRIMINAL CODE OF CANADA AND CANADA EVIDENCE ACT CONTRAVENTIONS AS PERPETRATED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES AND CUPE NATIONAL LEGAL REP CRYSTAL NORBECK AND CUPE NATIONAL OFFICER DON MORAN AGAINST ME AND INCLUDING CONTRAVENTIONS OF*
> *1) SECTION 366-368*
> *2) SECTION 380*
> *3) SECTION 397*
> *4) SECTION 361*
>
> *OF THE SAID CODE, AND INCLUDING PERJURY IN CONTRAVENTION OF THE SAID CODE AND THE SAID ACT, SUFFICES IN*
>
> *C) PROVING, THEN AND THEREFORE, THAT THE CANADIAN UNION OF PUBLIC EMPLOYEES WAS NEGLIGENT AND REFUSED TO AFFIRM AND PROTECT THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS ON MY BEHALF AND AT MY REQUEST TO DO SO.*
>
> *I TRUST YOU WILL FIND THIS SATISFACTORY, AND I HOPE TO HEAR FROM YOU SOON.*
>
> *WITH INTEGRITY*
> *KEITH PETERSON*

[11] On February 3, 2009, an *in camera* panel of the Board composed of Vice-Chairperson Schiefner and Members Michael Wainwright and John McCormick, considered the preliminary application of the Union seeking the summary dismissal of the Applicant's application without an oral hearing.

Decision:

[12] In making its decision in this matter, the Board has been guided by the principles in *Soles, supra,* wherein the Board summarily dismissed an application without an oral hearing pursuant to paragraphs 18(p) and (q) of the *Act* on the basis that the application did not disclose an arguable case. In that case, the Board established a two (2) stage test for determining whether or not the circumstances were appropriate for the Board to exercise its discretion to summarily dismiss an application without an oral hearing. The Board determined that the first stage of the test should examine whether or not the applicant had demonstrated an arguable case that an unfair labour practice or violation of the *Act* had been committed. In this respect, in the *Soles* case, *supra,* the Board described this stage of the test as follows at 422:

> *[27] As stated, in the case before us, it is necessary to examine whether the application discloses an arguable case such that it should not be dismissed without an oral hearing. At this stage, we do not assess the strength or weakness of the Applicant's case, but simply determine whether the application and/or written submission discloses facts that would form the basis of an unfair labour practice or violation of the Act that falls within the Board's jurisdiction to determine.*

[13] If the Board determines that the Applicant has failed to establish an arguable case on the basis of the above noted test, the Board must then proceed to the second stage of the test and determine whether it is appropriate in the circumstances to summarily dismiss the application without an oral hearing. In *Soles*, *supra,* the Board concluded as follows at 430:

> *In our view, given that the application and written submission of the Applicant do not disclose an arguable case, holding an oral hearing concerning this application would be an ineffective use of the Board's resources. It would also be unfair to require the Union to spend time and resources defending a highly speculative claim, the basis of which is simply unknown to the Board or the Union.*

[14] Following the procedures set forth by this Board in *Soles*, *supra,* the Board's first task in the present case is to determine whether or not the Applicant has established an arguable case that the Union has violated s. 25.1 of the *Act*. In doing so, the Board is mindful that, at this stage in the proceedings, its duty is not to assess the relative strength or weakness of the Applicant's case; rather, the Board's duty is merely to determine if the Applicant has demonstrated an "arguable case."

No Arguable Case:

[15] The Board has based its decision on the Applicant's application, together with the information contained in the Union's Reply, the Reply received from the University of Regina, together with the additional information provided in the Applicant's letters to the Board dated December 17, 30 and 31, 2008 and January 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 19 and 27, 2009 (hereinafter collectively referred to as the "material"). In so doing, in the event of an inconsistency in the facts alleged by the parties, the Board has preferred, for the sole purpose of this application for summary dismissal, the allegations of fact set forth in the Applicant's material.

[16] The material indicates that the Applicant was employed by University of Regina in the physical education department until his employment was terminated on October 17, 2003. The Applicant filed a number of complaints against the Union in 2003[1] arising out of, or associated with, the Applicant's employment relationship with the University of Saskatchewan and the Union's representation (or rather alleged inadequacies in the representation) of the Applicant in his dealings with the University (collectively referred to as the "2003 complaints").

[17] The material also discloses that all of the Applicant's complaints against the Union (seven (7) in total) were consolidated and heard by the Board over the course of two (2) days. The Board examined each complaint alleged by the Applicant against the Union (all being alleged violations of s. 25.1 of the *Act*), with each complaint being dismissed on its merits by Reasons of the Board dated December 8, 2004.

[18] The Applicant filed a complaint against the Union on July 7, 2008 alleging that the Union violated s. 25.1 of the *Act*. The specifics of the Applicant's allegations were vague; alleging that the Union denied the Applicant access to certain documents ("all documents within my union file") that the Applicant alleges that the Union has or had in its possession. The Applicant did not disclose when he sought access to these documents; nor whom he alleges denied him access; nor when the alleged denial took place; thereto other than to state "*when I was medically disabled.*" The Applicant did not disclose whether his medical disability was physical, emotional or cognitive. The

[1] See: LRB File Nos. 056-03, 061-03, 062-03, 096-03, 097-03, 098-03 & 104-03.

Applicant did not disclose his basis for the belief that the said denial of access arose out of the Union's representative duty toward him; nor the basis for his belief that the said denial was arbitrary, discriminatory or in bad faith.

[19] The Union sought further and better particulars from the Applicant; particulars that the Applicant was either unwilling or unable to provide.

[20] Finally, the material discloses that, at the time the Applicant filed his most recent complaint against the Union with the Board (July 8, 2008), he had not been employed by the University of Regina nor any of its affiliates since October 17, 2003 and that his last dealings with the Union as a member ended with the Board's dismissal of the 2003 complaints on December 8, 2004.

[21] The Board will now examine each of the grounds for summary dismissal advanced by the Union.

Excessive Delay:

[22] The Union argued that the Applicant unreasonably delayed bringing his application and offered no reasonable or sufficient explanation for his delay. The Union took the position that the Applicant's complaints had not been brought before the Board in a timely fashion and that his application should be summarily dismissed on the basis of either excessive delay pursuant to the Board's jurisprudence on delay or on the basis of s. 12.1 of the *Act*.[2]

[23] A request to summarily dismiss an application because the Applicant has delayed bringing it before the Board for an excessive period of time is not granted lightly. Certain policy considerations underlie the Board's general approach to such requests. Often quoted in decisions on this issue is the following passage from the Ontario Labour Relations Board decision in *McKenly Daley v. Amalgamated Transit Union and Corporation of the City of Mississauga*, [1982] O.L.R.B. Rep. March 420, at 425:

> *It is by now almost a truism that time is of the essence in labour relation matters. It is universally recognized that the speedy resolution of outstanding disputes is of real importance in maintaining an amicable*

[2]Section 12.1 was added to *The Trade Union Act* on May 14, 2008 with the Royal Assent of*The Trade Union Amendment Act, 2008*, S.S. 2008, c.26.

> *labour-management relationship. In this context, it is difficult to accept that the Legislature ever envisaged that an unfair labour practice, once crystallized, could exist indefinitely in a state of suspended animation and be revived to become a basis for litigation years later. A collective bargaining relationship is an ongoing one, and all of the parties to it - including the employees - are entitled to expect that claims which are not asserted within a reasonable time, or involved matters which have, to all outward appearances, been satisfactorily settled, will not reemerge later. That expectation is a reasonable one from both a common sense and industrial relations perspective. It is precisely this concern which prompts parties to negotiate time limits for the filing of grievances (as the union and the employer in this case have done) and arbitrators to construct a principle analogous to the doctrine of laches to prevent prosecution of untimely claims.*

[24] In the context of civil actions, in its frequently cited decision in *Carey v. Twohig*, [1973] 4 W.W.R. 378 (Sask. C.A.), the Saskatchewan Court of Appeal enunciated criteria for determining whether an action should be dismissed by reason of excessive delay - that the delay be inordinate; that the inordinate delay be inexcusable; and that the defendant be seriously prejudiced by the delay. The essence of the inquiry expressed in that case was whether justice could be done despite the delay.

[25] In approaching questions of delay, this Board has been sensitive to the different context of labour relations proceedings as compared to civil proceedings in the superior court. The Board, in *Saskatchewan Union of Nurses v. South Central Health District*, [1995] 2nd Quarter Sask. Labour Rep. 281, LRB File No. 016-95, observed at 285 that:

> *The question of delay has a somewhat different resonance in the context of labour relations than in that of civil legal proceedings. As the Ontario Labour Relations Board pointed out in the City of Mississauga case, supra, time is of the essence in labour relations in a dramatic and often urgent way. The basic questions - and particularly the question of whether justice can still be done - are much the same, however.*

[26] Another often quoted passage on the issue of determining what constitutes "unreasonable" or "excessive" delay comes from the Ontario Labour Relations Board in that Board's decision in *Evenlyn Brody v. East York Health Unit*, [1997] O.L.R.D No. 157, wherein the Ontario Board's opinion was as follows, at 19:

> *In determining whether the delay in a particular case is unreasonable or excessive, the Board will consider, among other things, such matters as the length of the delay, and the reasons for it, the time at which the applicant became aware of the alleged statutory violation, whether the*

> *remedy claimed would have a disruptive impact upon a pattern of relations developed since the alleged contravention, and whether the claim is such that fading recollection, unavailability of witnesses, and the deterioration of evidence would hamper a fair hearing in the dispute.* ***It is generally accepted that the scale of delay that the Board would find acceptable is to be measured in months rather than years*** *(see City of Mississauga, [1982] OLRB Rep. March 420). However, there is no specified limit with respect to delay, and the Board will consider the circumstances in each case to determine whether the delay is undue. [**Emphasis added**]*

[27] In the Board's opinion, the Applicant's delay in bringing the within application is excessive. At the time of filing his application, the Applicant has not been an employee of the University for more than fifty-six (56) months and his last dealings with the Union ended over forty-three (43) months previous. The Applicant's explanation for his delay was non-responsive and, as such, the Board is left with no explanation for this delay.

[28] The Board is not satisfied that the Applicant's explanation for his delay is sufficient to overcome the presumption of prejudice to the Union associated with excessive delay. In the Board's opinion, justice can not be adequately done because of the Applicant's delay in bringing his allegations before the Board.

[29] Finally, the Board declines to rule as to whether or not s. 12.1 has application in the present case. However, the Board notes that the addition of this new provision to the *Act*, together with s. 21.1 (which was added at the same time)[3] signals an intent by the authors of the legislation; that time is of the essence in dealing with disputes in a labour relations context; that the timely commencement and resolution of outstanding grievances is an important component in maintaining amicable labour relations in this Province; and that parties have the right to expect that claims, which are not asserted within a reasonable period of time, or which involve matters which appear to have been satisfactorily settled, will not later re-emerge. See: *Dishaw v. Canadian Office & Professional Employees Union, Local 397*, 2009 CanLII 507 (SK L.R.B.), LRB File No.164-08.

[3] See: *The Trade Union Amendment Act, 2008, supra*.

The Applicant is not an Appropriate Party to bring an Application under section 25.1:

[30] The Union took the position that the Applicant was not an appropriate party to bring an application under s. 25.1 for two (2) reasons. Firstly, the Union argued that the Applicant was not an "employee" within the meaning of s. 25.1 and thus not afforded the protection prescribed therein. The Union's position being that the Applicant was not an employee of the University of Regina and had not been so employed for approximately 57 months (almost five (5) years) prior to his application to the Board. As a corollary, the Union argued the Applicant has not been a member of the Union for a similar period of time and the Union's last dealing with him ended 43 months prior to his application, with the dismissal by the Board of his prior complaints. As such, the Union argued the Applicant was not an appropriate party to allege a violation pursuant to s. 25.1 of the *Act*.

[31] Having dismissed the Applicant's complaints for other reasons, the Board is not prepared to rule on this ground other than to note that the Board has held in the past that there might be circumstances under which a trade union would have continuing obligations to employees, even though the employment status of such persons may been terminated. See: *Kenneth Wilson and Richard Fefchuk v. Saskatchewan Abilities Council Regina Transportation Employee' Union and Access Transit Ltd.*, [1992] 4th Quarter Sask. Labour Report 127, LRB File No. 223-92. Nonetheless, the volume of time that has lapsed in this case clearly undermines any effort by the Applicant to claim a violation of s. 25.1.

[32] The Union's second argument on this point was that the Applicant had not disclosed a necessary connection between his complaint against the Union and a grievance or rights arbitration.

[33] Again, having dismissed the Applicant's complaints for other reasons, the Board is not prepared to rule on this ground other than to comment that the Board has held in the past that the Union's representative obligations pursuant to s. 25.1 extends beyond the grievance processes. See: *Mary Banga v. Saskatchewan Government Employees' Union*, [1993] 4th Quarter Sask. Labour Rep. 88, LRB File No. 173-93. On

the other hand, the vagueness of the Applicant's allegations tends to undermine his efforts to claim a violation of s. 25.1.

Is this Case an Appropriate Circumstance to Dismiss without Oral Hearing?

[34] The Board is satisfied that the Applicant's unexplained delay in bringing an alleged violation of the *Act* before the Board is excessive. The Board is also satisfied that the Union has suffered prejudice as a result of the Applicant's delay. The corollary of these conclusions is that the Board is satisfied that this is an appropriate case for summary dismissal without an oral hearing. To do otherwise would be prejudicial to the Union and would result in an unnecessary use of the Board's scarce resources. Simply put, the Board is not satisfied that justice can be done if this matter proceeded to oral hearing.

[35] The Applicant's application is hereby summarily dismissed pursuant to ss. 18(p) and (q) of the *Act* on the basis that the application discloses no arguable case and that this is an appropriate case for summary dismissal without oral hearing.

DATED at Regina, Saskatchewan, this **23rd** day of **March, 2009.**

LABOUR RELATIONS BOARD

Steven Schiefner,
Vice-Chairperson