

**The Labour Relations Board  
Saskatchewan**

**CHAD WALSH, Applicant v. INTERNATIONAL ASSOCIATION OF HEAT & FROST  
INSULATORS & ALLIED WORKERS, LOCAL 119, Respondent**

LRB File No. 193-08; June 24, 2009  
Vice-Chairperson, Steven D Schiefner

For the Applicant: Mr. Chad Walsh  
For the Respondent Union: Mr. Chuck Rudder

**UNION – CONSTITUTION - Natural Justice – Member’s apprenticeship cancelled by trade union in unionized construction sector for repeated refusals to accept dispatches to employers by union’s hiring hall - Board determines applicable principles of natural justice arising from constitution of union plus any additional safeguards arising to ensure compliance with principles of natural justice in circumstances – Board satisfied trade union complied with contextually applicable requirements of natural justice in resolving internal dispute.**

**UNION – Denial of Membership – Member’s apprenticeship cancelled by trade union in unionized construction sector for repeated refusals to accept dispatches to employers by union’s hiring hall – Constitution of trade union differentiates between apprentice members and full members - Board satisfied that ss. 36.1(3) applies to cancellation of apprenticeship in trade union – Board concludes that cancellation of apprenticeship was reasonable and justifiable under circumstances.**

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

**REASONS FOR DECISION**

**Background:**

[1] **Steven D. Schiefner**, Vice-Chairperson: Pursuant to *The Construction Industry Labour Relations Act, 1992*, S.S. 1992, c.C-29.11 (the “*CILRA, 1992*”), the International Association of Heat & Frost Insulators & Allied Workers, Local 119 (the “Union”) is the designated bargaining agent for employees of unionized employers in the construction sector working as insulators, insulator apprentices and insulator foreman. The Applicant, Mr. Chad Walsh, had been an apprentice member of the Union until his apprenticeship was cancelled by the Union on or about October 17, 2007. On December 1, 2008, the Applicant filed an application with the Saskatchewan Labour Relations Board (the “Board”) alleging that the Union

violated s. 36.1 of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the “Act”) in terminating his membership.

[2] The application was heard by the Board on May 25, 2009 in Regina, Saskatchewan. The Applicant testified on his own behalf and Mr. Chuck Rudder, Business Manager for the Union, testified on behalf of the Union. Neither party was represented by counsel.

**Evidence:**

[3] The Applicant testified that in 2003 he commenced work as a labourer with a unionized employer at the industrial complex in Regina, Saskatchewan commonly referred to as the “upgrader”. When the Applicant commenced work at the upgrader he was a “permitted” worker<sup>1</sup> working within the jurisdiction of the Union. On December 19, 2003, the Applicant made application to the Union to become an apprentice member. The Applicant testified that, after he was accepted into the Union’s apprenticeship training program, he was called out and worked on a number of construction projects throughout the province as an apprentice member of the Union<sup>2</sup>, accumulating over 6,500 hours of work in doing so.

[4] The Constitution of the Union provides for two (2) forms of membership; an apprentice member; and a full member; with the latter reserved for members obtaining the status of journeyman. To become a journeyman, apprentice members of the Union must:

- (a) complete a minimum number of working hours;
- (b) complete an education component and, in so doing, exceed a minimum passing grade (i.e. 70%); and
- (c) pass the journeyman’s exam.

[5] There appeared to be no dispute between the parties that the Applicant had accumulated sufficient working hours to qualify as a journeyman. The Applicant testified that, as an apprentice member, he attended and completed the educational component of the Union’s apprenticeship program. The Applicant also testified that, on April 27, 2007, he wrote but failed his journeyman’s exam. As a consequence, at all material times, the Applicant was an

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<sup>1</sup> The rules of the Union permit a unionized employer to employ non-union employees with the consent of the Union under certain circumstances and subject to certain restrictions. Such workers are referred to as “permitted” workers.

<sup>2</sup> An apprentice member must work under the direct supervisions of a Journeyman.

apprentice member of the Union not achieving the status of journeyman within the Constitution of the Union.

[6] The Applicant testified that, starting in approximately 2006, he found that he was no longer able, for personal reasons, to be dispatched by the Union. The Applicant testified that he spoke to Mr. Rudder each time Mr. Rudder called him offering work but that on each occasion he declined, explaining the particular problem that he was experiencing at that time. The Applicant testified that, during this period, he was involved in the management of an apartment complex; that he had bought a number of houses as investment opportunities; that he had commenced a new relationship and that, because of this new relationship, he did not want to be dispatched to locations away from Regina; and that he had a sick relative (i.e. family member) that he was required to provide care for. The Applicant testified that he thought he made his situation clear to the Union; that being, he was (and continues to be) temporarily unable to be dispatched by the Union.

[7] The Applicant stated that, during this period, "*his phone just kept ringing*" (i.e. that he keep receiving calls from the Union to dispatch him to employers). The Applicant testified that he declined between seven (7) and (9) calls to be dispatched to various worksites. The Applicant further testified that he believed it was his right to refuse calls (i.e. to decline to be dispatched to worksites by the Union). The Applicant stated that, throughout this entire period, even though he was unable to go to work, he continued to pay his membership dues to the Union, including all periods when he was not working.

[8] The Applicant testified that on September 26, 2007 he received a letter from the Union seeking his appearance before a meeting of the Union's Apprenticeship Training Committee to be held on Saturday, October 13, 2007 at the local Union hall. The letter contained the following information:

*IMPORTANT NOTICE*

*Re: Apprenticeship Training Committee Review Meeting*

*In regards to the above referenced subject matter, I would let this serve to verify and confirm that you are to appear before the Apprenticeship Training Committee as listed below;*

*Saturday, October 13, @ 10:15am  
Local Union Hall  
E – 1555 McDonald St  
Regina, SK*

*The purpose of this meeting is to address the issue of your repeated refusals to go to work when called for dispatch by the union. The committee will also be reviewing your status as an apprentice member of Local 119.*

*Failure to appear will result in the committee to proceed as though you were present. This will negate your ability to address any questions that the committee may have.*

*If you have any questions in this regard, please contact me at the above listed office.*

*Yours truly,*

*Chuck Rudder  
Business Manager*

**[9]** The Applicant testified that he understood he was being called to this meeting to discuss his status as an apprentice member of the Union in light of his refusals to accept dispatches by the Union. In cross-examination, the Applicant admitted receiving a call from the Union the day before this meeting offering a placement at a worksite and being advised by the Union that accepting this placement would significantly improve his position before the Apprenticeship Training Committee. The Applicant testified that he initially refused the placement but, when pressed by the Union, accepted the call. However, the Applicant testified that when he was advised by the Union that the worksite had mandatory pre-access testing (for drugs and alcohol), he advised the Union that he could not accept the placement because he had concerns about passing the pre-access test.

**[10]** The Applicant further testified he attended the meeting of the Apprenticeship Training Committee on October 13, 2007 and answered all the questions posed to him by members of the Committee, including questions that the Applicant believed to be none of the Committee's business, such as matters relating to what was happening in his personal life and what he was doing that he could not accept the placements that the Union had offered. The Applicant also testified that he was given an opportunity to make comments to the Committee and that he was then asked to leave while the members ruminated on their decision.

**[11]** The Applicant testified that, while the Committee was deliberating, he reviewed a copy of the Working Rules and Bylaws of the Union and noticed that, pursuant to Section 20(e), member could "de-activate" his/her card "*with the understanding that when he card is re-activated it will be placed at the back of the out of work list.*" The Applicant testified that when he was called back to the meeting, he tried to ask to exercises this right but was refused.

[12] The Applicant testified that he received a letter dated October 17, 2007 from the Union which provided as follows:

*RE: Apprenticeship Training Review Committee*

*Dear Sir:*

*In regards to the above referenced subject matter, the Apprenticeship Training Committee and local union Executive Board members met with you to review your apprenticeship with Local 119.*

*Subsequently, the Training Committee has recommended that your apprenticeship be cancelled by the union. As the Business Manager and coordinator of apprenticeship training for Local 119, I would let this serve and confirm, that I concur with that recommendation.*

*Therefore, please be advised that your name has been removed from our referral process, and your apprenticeship cancelled with The Heat & Frost Insulators & Asbestos Workers local #119, effective immediately.*

*Yours truly,*

*Chuck Rudder  
Business Manager, Local 119*

[13] The Applicant testified that, upon receiving the above captioned letter, he sent at least two (2) letters to the Union questioning whether or not the Union had an appeal process and, if so, to invoke that process; asking whether or not he could be given a second chance by the Union; asking for further particulars as to why his apprenticeship has been cancelled and his name removed from the referral process; asking why he was not allowed to exercise the right to “deactivate” his card in accordance with section 20(e) of the Union’s Bylaws; asking for Minutes of the October 17, 2007 meeting of the Apprenticeship Training Committee; and seeking information as to the process used by the Committee for voting.

[14] The Applicant testified that he did not hear back from the Union and did not receive any answers to his questions. However, in cross-examination, the Applicant admitted that he received a letter dated November 5, 2007 from the Union which provided as follows:

*RE: Cancellation of Apprenticeship/Removal from the Referral Process*

*Dear Sir:*

*In regards to the above referenced subject matter, your apprenticeship was cancelled as a result of your continued refusal to accept calls for work when the union tried to dispatch you to employers who required Insulators.*

*These refusals were not isolated incidents; rather, it was a familiar one that was repeated over and over by you. This continued even after I had told you during an attempt to dispatch you, that as an apprentice, you are not allowed to refuse a call without just cause, having said that, you still turned down the call. You were informed during this call that I would be [referring] this to the Executive Board.*

*Your refusal continued right up until the day before you were to appear before the Training Committee. On this, the last occasion I called you for work; you had reluctantly accepted a call to go to work for Thorpe Brothers in Lanigan. When I told you that there was a pre access Drug/Alcohol test you had to take, you refused the call because you stated "I cannot pass the test", and you subsequently turned down this call as well.*

*The committee found that you had not shown just cause for turning down the union's request to report for work at; Lanigan, Estevan, Loreburn, Estlin, Lloydminster, Belle Plain and Regina. This was determined to be contrary to your responsibilities as an apprentice member of the union.*

*There are no appeals for those apprentice members who have had their apprenticeship cancelled for just cause. I did forward your request (as per your faxes) to the local Executive Board at our Nov. 3<sup>rd</sup> meeting for their consideration; however they declined for the reasons listed above.*

*Yours truly,*

*Chuck Rudder  
Business Manager, Local 119*

**[15]** The Applicant testified that on or about December 14, 2007 he wrote to the International Association of Heat and Frost Insulators and Asbestos Workers in Langham, Maryland, USA, (the "International Association") seeking the intervention of the International Association into the decision of the Union to cancel his apprenticeship and remove his name from the referral process. The Applicant testified that, although he phoned and spoke with someone from the International Association, by the time of the hearing before the Board had had not receive a reply or any other indication from the International Association that they would be intervening in his dispute with the Union.

**[16]** The Applicant testified that, prior to the cancellation of his apprenticeship with the Union, he was a member in good standing and had never been dismissed by an employer or disciplined by the Union.

**[17]** The Applicant indicated that he was seeking full reinstatement back as a member of the Union (without conditions) and then to be granted permission to temporarily withdraw his membership card. The Applicant testified that his personal situation was still too busy for him to accept calls from the Union to be dispatched to employers. The Applicant testified that, in addition to various properties he was managing, he had also started an insulating company.

Simply put, the Applicant indicated that, although he could not go to work for the Union, he wished to remain a member of the Union in the event his personal circumstances changed.

**[18]** In cross-examination, the Applicant admitted that he was aware that apprentice members could attend regular meetings but could not vote on matters before the membership (save certain exceptions not relevant to these proceedings). The Applicant also admitted that he did not regularly attend Union meetings.

**[19]** Mr. Rudder testified on behalf of the Union. Mr. Rudder is the Business Manager for the Union and the only staff member of Local 119. Mr. Rudder testified that he had been a member of the Union for approximately thirty (30) years and was elected Business Manager of the Union in May of 2003.

**[20]** Mr. Rudder testified that the Union as a chartered local of the International Association and subject to its Constitution, with the most recent version having been adopted by the 28<sup>th</sup> Quinquennial Convention in Hollywood, Florida on August 20-22, 2002 (the "Constitution"). Mr. Rudder also testified that the Union had its own bylaws, the relevant version being "the Working Rules and By-Laws for Local Union 119", last amended September 8, 2007 (the "Bylaws").

**[21]** Mr. Rudder testified regarding various times that he had contacted the Applicant in 2005, 2006 and 2007 to dispatch him to various worksites throughout the province. Mr. Rudder testified that he contacted the Applicant approximately nine (9) times during this period to dispatch him to employers and that on each occasion the Applicant had indicated a reason that he was unable to be dispatched to the work offered by the Union.

**[22]** Mr. Rudder testified that in 2005 he verbally advised the Applicant that, as an apprentice member, he did not have a choice when called to be dispatched by the Union. Mr. Rudder testified that, although the Union would attempt to accommodate an individual member's needs, the ultimate decision as to whether or not an apprentice member was dispatched to a worksite was that of the business manager and his authority to do so arose from both the Constitution of the International Association and the Bylaws of the Union. Mr. Rudder testified that he advised the Applicant that apprentice members of the Union had an obligation to comply with the Union's direction regarding calls to work.

**[23]** Mr. Rudder testified that, notwithstanding his right to dispatch the Applicant as demand required, he did attempt to accommodate the Applicant's needs and restriction; testifying that the Union would not dispatch an apprentice during school or training periods; and that the Union would try not to dispatch the Applicant during the period when his family member was sick. In addition, Mr. Rudder testified that, in an effort to accommodate the Applicant's desire not to be placed outside of Regina (because of his new relationship with his girlfriend), the Union tried to dispatch the Applicant to a worksite at the University of Regina in June/July of 2007. Mr. Rudder believed that this work assignment would accommodate many of the concerns that the Applicant had expressed (such as staying in Regina to be close to his family and new girlfriend) and that, in addition, it was a commercial worksite, exposing the Applicant to an aspect of work that he had not previously experienced<sup>3</sup>. Mr. Rudder testified that the Applicant declined this call stating that he did not want to work on a "commercial" worksite. The Applicant testified in rebuttal that the pay at this worksite was significantly lower than the pay he had been accustomed to receiving at an "industrial" worksite. Mr. Rudder testified that the pay members received at "commercial" worksites was often lower than the pay received at an "industrial" worksite.

**[24]** Mr. Rudder testified that, after the Applicant declined the call to the University of Regina, he advised the Applicant that he would have to raise the matter of his continued unwillingness to accept work assignments with the Union's Apprenticeship Training Committee.

**[25]** Mr. Rudder also testified that part of his duty as Business Manager was to make day-to-day decisions on behalf of the Union affecting the welfare of the Union, particularly as it related to protecting the Union's jurisdiction. To which end, Mr. Rudder testified that in October of 2007, a challenge arose to the jurisdiction of the Union by a local of sheet metal workers at a worksite at Lanigan, Saskatchewan. Mr. Rudder testified that the employer was concerned that the Union could not dispatch enough workers to this site to satisfy the employer's needs and the sheet metal workers were offering to dispatch their workers to perform this work. Mr. Rudder testified that the primary threat to the jurisdiction of the Union came from sheet metal workers, whose members perform similar work and have similar skills. Mr. Rudder testified that the Union

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<sup>3</sup> Mr. Rudder testified that all of the Applicant's placements through the Union had thus far been to "industrial" employers and that the Union generally desired apprentices to experience both "commercial" and "industrial" worksites.

was mindful of jurisdictional threats from sheet metal workers and did not want to lose their territory by not satisfying the call for workers at the Lanigan worksite.

**[26]** Mr. Rudder testified that he contacted the Applicant to dispatch him to the Lanigan worksite and that he explained to the Applicant the jurisdictional threat to the Union. Mr. Rudder testified that the Applicant would not accept the Union's call and did not go to work at this worksite. Mr. Rudder testified that the Union did not provide enough workers to the Lanigan worksite and that, in response, the employer called upon the sheet metal workers to dispatch members to complete the work.

**[27]** Mr. Rudder testified that he attended the meeting of the Apprenticeship Training Committee held on October 13, 2007; that he presented the case against the Applicant; that members asked a range of questions of the Applicant; and that, after the Applicant left the room, a member put a motion on the floor to cancel the Applicant's apprenticeship, a motion that was accepted by the majority of the membership in attendance. Mr. Rudder testified that, as business manager, he did not participate in the vote.

**[28]** Mr. Rudder testified that the Applicant was notified of the meeting and the nature of the issues in dispute; namely, the continuation of his apprenticeship within the Union and the right to remain on the Union's referral list. Mr. Rudder testified that the Applicant participated in the meeting of the Apprenticeship Training Committee and was given the last word before the committee began its deliberations regarding the status of his apprenticeship within the Union.

**[29]** Mr. Rudder testified that the Applicant did not ask for a "withdrawal" card prior to the meeting of the Apprenticeship Training Committee on October 13th and that, even if he had, the Union took the position that withdrawal cards were not available to apprentice members.

**[30]** Mr. Rudder testified regarding the differences between an apprentice member and a journeyman; stating that apprentices were not considered full members of the Union; that apprentice members paid reduced dues; that apprentice members had limited voting rights; and that internal disputes involving apprentice members were referred to the Union's

Apprenticeship Training Committee; whereas internal disputes involve journeypersons were referred to the Union's Executive Committee<sup>4</sup>.

[31] Finally, Mr. Rudder testified that he offered to the Applicant that he could re-apply to the Union and complete his apprenticeship in the future<sup>5</sup>. For example, at a point in time when the Applicant was able and willing to be dispatched by the Union. Mr. Rudder testified that the Applicant would be given credit for his training and hours of work in the same fashion that other experienced insulators are given credit for experience and time with other unions when they ask to join the Union. Mr. Rudder testified that, assuming his application to re-apply to the Union was accepted by the membership, he would essentially return to his same status he enjoyed before his apprenticeship was cancelled.

[32] In response to questions from the Board, Mr. Rudder testified that they were a small union consisting of approximately 128 members, approximately 25 of which were at various stages in their apprenticeship. Mr. Rudder testified that in 2006 and 2007 (the period of time relevant to the Applicant's dispute with the Union), the industry was very busy and that very few members of the Union were not working. Mr. Rudder testified that the Union pays for the cost of all training required by apprentice members. Mr. Rudder also testified that the only withdrawal cards that he was aware of being issued were issued to journeyperson and then usually only if they had retired or accepted out-of-scope (management) positions. Mr. Rudder indicated that he was not aware of the Union granting a withdrawal card to anyone in circumstances similar to the Applicant.

**Relevant statutory provision:**

[33] The relevant provision of the *Act* 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.*

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<sup>4</sup> However, Mr. Rudder testified that, for the most part, these 2 committees contained the same persons (presumably because of the small size of the Union).

<sup>5</sup> Mr. Rudder testified that, as with all persons applying for membership, his application would be put to a vote of the membership at that time.

**Applicant's arguments:**

[34] The Applicant took the position that there was nothing in the Constitution of the International Association or Bylaws of the Union that permitted the Union to cancel his apprenticeship and thus revoke his membership in the Union. The Applicant argued that he had the right to decline any calls to be dispatched by the Union that did not fit into his schedule and that, absent express authority in the Union's Constitution, it did not have the right to cancel his membership for refusing to be dispatched.

[35] The Applicant argued that, prior to the cancellation of his apprenticeship, he was a due paying member in good standing with the Union and had a perfect work record with every employer at every site that he had worked at. The Applicant expressed his concern that the Union was merely trying to make an example of him believing that other members of the Union had received far less punishment for actions that he believed to have been far more serious.

[36] The Applicant took the position that there was no difference (or should be no difference) between an apprentice member of the Union and a journeyman and argued that the Union's practice of distinguishing between these two (2) types of membership was unfair. To which end, the Applicant argued that he had the right to obtain a withdrawal card and that, rather than cancelling his apprenticeship, the Union should have been granted him a withdrawal card so that he could have maintained his membership in the Union and work when it fit into his schedule.

[37] The Applicant sought an Order of the Board reinstating his membership in the Union and to directing the Union to grant him a withdrawal card.

**Union's arguments:**

[38] The Union argued that all members of the Union have a responsibility to accept dispatches by the Union and that, pursuant to s.10 of Part XXI (Local Union Officers) he, as the Business Manager, had a duty to dispatch membership, both apprentice and journeyman, in response to the requirements of unionized employers, as and when they arose. The Union argued that the hiring hall concept for the construction sector was predicated on the requirement that members accept calls from their Union and are dispatched to unionized employers when their name comes up on the list. The Union argued that the Applicant was seeking some form of

special exemption and that providing a special exemption to the Applicant would be unfair to other members of the Union who had “paid their dues” (i.e. gone to work when called by the Union).

**[39]** The Union argued that apprentice members were not full members of the Union and they enjoy different rights than members who have achieved the status of journeyperson; including the requirements that they not only accept the Union’s dispatches but that they must expect to be rotated through a variety of work placements. The Union argued that their members, especially apprentice members, do not have the right to pick and choose where and when they work; simply put, members are obligated to answer the Union’s call and to go to work when dispatched by their union. The Union argued that s.10 of Part XXI (Local Union Officers) specifically empowers the Union’s Business Manager to “*place, rotate and assign apprentices to employers as required*”.

**[40]** The Union also argued that the Applicant did not seek a withdrawal card until the day of the October 13, 2007 meeting of the Apprenticeship Training Committee and, by that time, he had already failed to accept a number of calls by the Union to be dispatched. Furthermore, the Union took the position that, even if he had sought a withdrawal card sooner, the Union would not have granted same, because they took the position that withdrawal cards were not available to apprentice members.

**[41]** The Union argued that the Applicant was specifically cautioned by the Union as early as 2005 that he did not have the right to decline to accept calls to be dispatched by the Union and, nonetheless, he continued to refuse to be dispatched. The Union argued that they tried to accommodate the Applicant’s personal situation, including a specific placement at the University of Regina which would have both accommodated the Applicant’s stated restrictions and would have provided a desired exposure to a “commercial” worksite. The Union took the position that the Applicant’s stated reason for declining this call (i.e. not enough pay) was not acceptable.

**[42]** Furthermore, the Union argued that, when it found itself in a jurisdictional dispute with the sheet metal workers at the Lanigan worksite, the Union had no choice but to dispatch the Applicant in an effort to satisfy its obligations to the employer and that the Applicant’s failure to respond to this call was not only unacceptable but injurious to the Union because they lost

their jurisdictional dispute with the sheet metal workers by not providing enough workers to this worksite.

[43] The Union took the position that it clearly explained to the Applicant his responsibilities as an apprentice members of the Union; that the Union provided reasonable notice to the Applicant that the status of his apprenticeship was being referred to the Apprenticeship Training Committee for review; that the Applicant was permitted to respond to the case against him and, in fact, was given the last word on the matter before the committee deliberated; and that the Union had not breached either the Constitution of the International Association or its Bylaws in the process it used or the action it took.

[44] The Union argued that the committee's decision to cancel the Applicant's apprenticeship was based on the Applicant's own conduct (i.e. refusing to be dispatched when called by the Union); conduct which the Applicant did not dispute, and that the Union had been patient and accommodating as long as it could.

[45] Finally, the Union took the position that the cancellation of the Applicant's apprenticeship within the Union was neither a harsh nor inappropriate remedy for two (2) reasons. Firstly, the Applicant's own testimony was that he did not want to work in the field at this time; and secondly, because the Applicant could re-apply for membership in the Union when and if he does want to work in the field and, if he did re-apply, he will be granted credit for his past education and experience and essentially return to his original status.

**Analysis:**

[46] The right to the application of the principles of natural justice and the content thereof was extensively canvassed by this Board in the decision of *Lalonde v. United Brotherhood of Carpenters and Joiners of America., Local 1985*, [2004] Sask. L.R.B.R. 244 dated November 5, 2004, L.R.B. File No. 222-02. The Board wrote as follows:

**(i) The Content of the Principles of Natural Justice**

[88] *Section 36.1(1) of the Act confines the Board's supervision to disputes between union members and a union relating to matters in the union's constitution and the member's membership therein or discipline thereunder. The Board's supervision of those matters is further confined to determining whether the member has been afforded the right to the application of the principles of natural justice, as opposed to considering the merits or perceived correctness of the decision by the union.*

[89] *Labour relations boards are generally reluctant to interfere with the right of a trade union to demand solidarity and compliance from its members, as long as the union acts within the bounds of the its constitution and applies same in accordance with the rules of natural justice. The content of the principles of natural justice is not rigid. It is variable, depending upon the nature of the dispute and the rights alleged to have been violated: See, Staniec, supra, and Ward v. Saskatchewan Government Employees' Union, [1994] 4th Quarter Sask. Labour Rep. 94, LRB File No. 173-94.*

. . .

[91] *In Schreiner, at 458 (as cited supra), the Board advocated a restrained approach to the exercise of its jurisdiction under s. 36.1 of the Act, at least as concerns matters of internal discipline, as being necessary to further the interests of the union in maintaining solidarity in support of effectively achieving collective bargaining objectives.*

[92] *And recently, in Hill and Rattray v. Saskatchewan Government and General Employees' Union, [2003] Sask. L.R.B.R. 371, LRB File Nos. 002-03 & 011-03, at 372-373 (application for judicial review dismissed [2004] S.J. No. 502, July 26, 2004 (Sask. Q.B.)), the Board commented that:*

*[7] The Board is the monitor of union membership disputes within a unionized setting only to the extent of determining if the processes used to discipline union members meet the basic contextual requirements of natural justice. The Board's role is not to provide definitive interpretations of a union's constitution, which is a fluid, political document, subject to change at each annual convention of the union.*

[47] The Board is satisfied that the dispute between the Union and the Applicant falls within the supervisory jurisdiction of the Board pursuant to s. 36.1 as it involves both the constitution of the trade union (i.e. the Constitution of the International Association and Bylaws of the Union) and the Applicant's membership therein and discipline thereunder. As a consequence, the question before the Board is whether or not the Union complied with the applicable principles of natural justice in the resolution of that dispute within the meaning ascribed by s. 36.1(1) of the *Act*. In addition, as the Applicant has been expelled from the Union, the second issue for the Board to determine is whether or not the Applicant was unreasonably denied membership contrary to s. 36.1(3) of the *Act*. The Board will deal with each of these issues in turn.

Did the Union apply the Appropriate Principles of Natural Justice in Resolving its Internal Dispute with the Applicant:

[48] In exercising the Board's supervisory jurisdiction pursuant to s. 36.1(1), there are two (2) sources to the procedural protections that a trade union must afford to members that are the subject matter of internal disputes. Firstly, the procedural protections provided for in that trade union's own constitution, and secondly, any additional procedural protections that may be implied into the constitution by the Board based on the circumstances of the internal dispute to ensure compliance with the principles of natural justice.

[49] The Board, having reviewed the Constitution of the International Association, together with the Bylaws of the Union, agrees with the position advanced by the Union that apprentice members of the Union enjoy different rights than those enjoyed by persons who have obtained the status of journeyman. Both the Constitution and the Bylaw differentiate between apprentice members (also described as "improvers or helpers") and full members. In making this observation, the Board's role is not to determine whether or not these different classes of membership are appropriate; that is a matter for the members of the Union to determine; only to satisfy itself that the Union's different treatment of apprentice members finds its genesis in its Constitution.

[50] Having satisfied itself that the Constitution of the Union does differentiate between apprentice and full members, the Board also agrees with the Union's position that neither Part XXIV (Offenses and Charges) nor Part XXV (Trials and Appeals) of the Constitution of the International Association nor Section 3 of the Bylaws of the Union were applicable to the within dispute, with these provisions being reserved for internal disputes involving full members or journeymen.

[51] On the other hand, the Constitution of the Union is not silent as to disciplinary procedures for apprentice members. Section 4 of Part III (Membership) of the Constitution of the International Association provides as follows:

**Section 4.** *Where a local union has an approved indentured apprenticeship program, cancellation of an apprentice's agreement, for a just cause, after notice and hearing by the Joint Apprenticeship Committee, shall automatically cancel*

*his membership in the International Association of Heat and Frost Insulators and Asbestos Workers and the local union.*

*There will be no appeal to the International Association of Heat and Frost Insulators and Asbestos Workers by an apprentice on cancellation of his membership.*

**[52]** While the Union's Constitution does not articulate the circumstances under which a local union may cancel a member's apprenticeship, it clearly does anticipate that a local union can cancel an apprenticeship for just cause. Furthermore, in the cancellation of a member's apprenticeship, the Union's Constitution defined the procedure to be utilized and, as it does in many areas involving apprentices, it established a procedure different than that utilized for internal disputes involving full members. Again, the Board's role is not to examine the merits or perceived correctness of doing so, only to ensure that whatever procedure is utilized conforms with the applicable principles of natural justice.

**[53]** Firstly, the Board can not accept the position advanced by the Applicant that, absent clear and express authority in its Constitution to do so, the Union did not have the right to discipline the Applicant for his repeated refusal to accept dispatches by the Union. In the Board's opinion, concomitant with the Union's role in the education and supervision of its apprentice members, is the discretion on the part of the Union to refuse to promote an apprentice member through to the status of journeyman for refusing to comply with the education requirements or other directives of the Union arising pursuant to that apprenticeship. Similarly, the Union's authority to cancel the apprenticeship of a member for refusing to comply with the directives of the Union arises by necessary implication of the Union's discretion in accepting members into its apprenticeship training program.

**[54]** On the other hand, the Board is satisfied that the Union must comply with all applicable procedural requirements in exercising that authority, including those procedural requirements set forth in its constitution, together with any procedural safeguards that may be implied into the Union's Constitution to ensure compliance with the principles of natural justice.

**[55]** Although possibly not well articulated, the Board is satisfied that the Union's constitution demanded that it provided reasonable notice to the Applicant that his actions were in conflict with the constitution of the Union; that the Applicant's apprenticeship only be cancelled following a hearing before its Apprenticeship Training Committee; that the Applicant have

reasonable and prior notice of that hearing; that the Applicant have the opportunity to participate in that hearing; and that the Applicant's apprenticeship only be cancelled by that Committee for just cause.

**[56]** However, in addition to these procedural safeguards, the Board must determine whether or not any additional procedural requirements should be implied into the Union's Constitution to ensure compliance with s. 36.1(1) in the circumstances.

**[57]** In *Lalonde, supra*, this Board cited with approval the following articulation of the rules of natural justice that may be implied by a labour relations board into the constitution of a trade union in dealing with disputes between a member and his/her union articulated by the British Columbia Labour Relations Board in the case of *Coleman and Leaney v. Office and Technical Employees' Union, Local 378*, [1995] BCLRB No. 282/95:

1. *Individual members have the right to know the accusations or charges against them and to have particulars of those charges.*
2. *Individual members must be given reasonable notice of the charges prior to any hearing.*
3. *The charges must be specified in the constitution and there must be constitutional authority for the ability to discipline.*
4. *The entire trial procedure must be conducted in accordance with the requirements of the constitution; this does not involve a strict reading of the constitution but there must be substantial compliance with intent and purpose of the constitutional provisions.*
5. *There is a right to a hearing, the ability to call evidence and introduce documents, the right to cross-examine and to make submissions.*
6. *The trial procedures must be conducted in good faith and without actual bias; no person can be both witness and judge.*
7. *The union is not bound by strict rules of evidence; however, any verdict reached must be based on actual evidence adduced and not influenced by any matters outside the scope of the evidence.*
8. *In regard to serious matters, such as a suspension, expulsion or removal from office, there is a right to counsel.*

**[58]** In citing the above captioned rules of natural justice, this Board in *Lalonde, supra*, noted that the list was neither exhaustive nor will it necessarily apply in its entirety to every

internal union dispute; concluding that the context of the dispute will dictate the depth of the procedural safeguards must be afforded by the union, with such contextual factors including consideration of the seriousness of the consequences for both the individual and the trade union.

**[59]** The present case raises somewhat unusual circumstances. In *Lalonde, supra*, the Board was mindful of the serious consequences for an individual associated with loss of membership in a construction trade union because it could affect that individual's ability to earn a living in the unionized construction sector. In so finding, the Board in *Lalonde, supra*, concluded that the seriousness of such consequence for Mr. Lalonde demanded the full panoply of procedural safeguards enumerated by the British Columbia Board in *Coleman, supra*, in that case.

**[60]** On the other hand, the Applicant's own testimony in the present case indicated that he was not seeking to earn a living in the unionized construction sector at the time of the hearing. Concomitant with his desire to be re-instated as a member in the Union was his desire to be granted a withdrawal or de-activation card because his personal circumstances continued to preclude him from accepting dispatches from the Union at that time. Furthermore, the Union offered to allow the Applicant to re-apply to their apprenticeship program if the Applicant's personal circumstances changed and, assuming his application was accepted by the general membership, to be reinstated to essentially the same position he previously enjoyed within the Union.

**[61]** In the Board's opinion, while any discipline by a trade union involving the revocation or cancellation of membership therein is a serious matter, the circumstances of the present case are distinguishable from the circumstances before the Board in *Lalonde, supra*. In the Board's opinion, the circumstances of this particular dispute demanded compliance with the basic tenants of procedural fairness set forth in the Union's Constitution (stated above) but not necessarily the same strict compliance with all of the procedural safeguards enumerated by the British Columbia Board in *Coleman, supra*, as demanded by this Board in *Lalonde, supra*.

**[62]** In examining the applicable procedural safeguards, the Board is satisfied that the Applicant knew and understood the charge against him, including the potential consequences of his continued refusal to accept dispatch calls by the Union. While the Applicant may have had a different interpretation of his rights and obligations under the Union's constitution, there was little

doubt that he did not understand the position that the Union was taking regarding his rights and his obligations under the Union's constitution. In this regard, the Board is satisfied that the Union gave reasonable notice to the Applicant that his actions were in conflict with the Union's constitution.

**[63]** The Board is also satisfied that the Union's procedure of utilizing its Apprenticeship Training Committee for resolution of its internal dispute with the Applicant was reasonable and appropriate under the circumstances. Furthermore, the Board is satisfied that the Applicant was given reasonable notice of the hearing before the Apprenticeship Training Committee with sufficient particularity to understand the charges against him and the potential consequences of an adverse finding by that Committee.

**[64]** The Board is also satisfied that the Applicant was afforded an appropriate opportunity to answer the charges against him and/or to make submissions to the Committee and/or to call his own evidence, if he chose to do so. However, on this point, it does not appear that there was any dispute between the parties as to the facts. There was no dispute between the parties that the Applicant had repeatedly refused, for personal reasons, to be dispatched by the Union's hiring hall. Rather, the dispute between the parties was the consequences for the Applicant of his refusal to be dispatched by the Union; with the Applicant taking the position that the Union could not or should not cancel his apprenticeship for doing so and/or that he should be permitted to temporarily withdraw or de-active his membership.

**[65]** The Board saw no evidence that the proceedings of the Apprenticeship Training Committee were conducted with either bias or anything other than good faith on the part of the members of that Committee. The Board is also satisfied that the Committee decision was based on just cause. In coming to this conclusion, the Board is mindful that its supervisory responsibility under s. 36.1(1) is not to second guess the perceived correctness of the Union's decision but rather only to ensure that the Applicant was afforded the protection of the applicable principles of natural justice during the resolution of his dispute with the Union.

**[66]** Simply put, the Board saw no evidence that the procedures utilized by the Union in resolution of its dispute with the Applicant were contrary to the Constitution of the International Association or the Bylaws of the Union or any other contextually appropriate requirements of

natural justice. In the present case, the Board is satisfied that the Union did comply with the applicable principles of natural justice in the resolution of its internal dispute with the Applicant.

Was the Applicant Unreasonably Denied Membership in the Union (Expelled):

**[67]** In *Lalonde, supra*, this Board concluded that the prohibition against unreasonably denial of membership provided for in s. 36.1(3) of the *Act* also prohibited the unreasonable expulsion from membership in a trade union. In such cases, the Board concluded that its supervisory responsibility pursuant to s. 36.1(3) required it to balance the seriousness of the consequences of expulsion for the worker against the interests the trade union was trying to protect in the action it took.

**[68]** As stated previously, in *Lalonde, supra*, the Board was mindful that expulsion from membership for workers earning their living in the unionized construction sector could be economically devastating and potentially career-ending. In that case, because of the serious nature of the consequence for the expelled member, the Board concluded that the union's action could only be defended if, when viewed objectively and reasonably, it was undertaken for the purpose of defending and protecting the existence of the union.

**[69]** In the present case, the action of the Union was to cancel the apprenticeship of the Applicant. However, the consequence of doing so was the expulsion of the Applicant from the Union. The Board is satisfied that the circumstances of the present case attract the statutory protection afforded by ss. 36.1(3) and that, as an apprentice member, the Applicant's apprenticeship could not be unreasonably or unlawfully cancelled. As a consequence, the supervisory responsibility of the Board is to objectively examine the actions of the Union in expelling the Applicant against the interests the Union was trying to protect or advance in the action it took.

**[70]** The Applicant argued that he did not believe he had an obligation to accept calls when dispatched by the Union's hiring hall and that the Union did not have authority to cancel his apprenticeship for refusing to be dispatched. In the alternative, the Applicant argued that the Union should have provided him with a withdrawal or de-activation card when it was apparent that he was temporarily unavailable to be dispatched by the Union.

[71] The Board has found that the Applicant was an apprentice member of the Union and that he refused to be dispatched by the Union between seven (7) and nine (9) times during 2005, 2006 and 2007, notwithstanding that he was cautioned that, in the Union's opinion, he did not have the right to do so. The Union argues that it reasonably tried to accommodate the Applicant's stated restrictions but that ultimately it decided to cancel the Applicant's apprenticeship for refusing to comply with the Union's demands. The question for this Board to determine is whether or not it was reasonable for the Union to do so under the circumstances.

[72] The Board is satisfied that the Union had the discretion to cancel the apprenticeship of a member for refusing to comply with the directives of the Union arising pursuant to its Apprenticeship Training Program. As previously stated, concomitant with the Union's role in the education and supervision of its apprentice members, is the right to cancel the apprenticeship of a member refusing to comply with the directives of the Union arising pursuant to that apprenticeship.

[73] The Applicant also argued that the Union shouldn't have cancelled his membership; rather, the Union should have granted him a withdrawal or de-activation card and permitted him to temporarily pursue his personal interests. The Applicant argued that doing so would help (not hurt) the Union by allowing the Union to expand its membership (presumably by allowing the Union to have a new class of members - members that do not want to work but are willing to pay dues to the Union).

[74] The Board can not accept the position advanced by the Applicant. In the construction sector, there is a unique relationship between members and their union and, in the unionized construction sector, the obligation to answer the call of your hiring hall is the *quid pro quo* of receiving the benefits of membership in your trade union.

[75] The significance of the unique relationship between a member and his/her trade union in the unionized construction sector must be understood in the historical context of labour relations in this sector. Unlike other industries, in the construction sector, trade unions play a vital role in the recruitment and provision of employees to employers by utilizing the hiring hall system. This historical significance of the hiring hall system and import role of a trade union in maintaining that system was well described by the British Columbia Labour Relations Board in

the case of *R.M. Hardy & Associates Ltd. and Teamsters, Local Union 213*, [1977] 2 Can. L.R.B.R. 357 (B.C.):

*The typical construction project involves erection of a single, large, permanent structure at a fixed location. Thus, the production rhythm in construction differs markedly from the manufacturing industry; where the employees all work together at one location, at one time, in one integrated operation, mass producing goods which are sold for use elsewhere. Construction remains a quasi-handicraft industry. In order to secure some of the virtues and economies of the division of labour, there has developed a complex network of actors, each specializing in some segment of the operation. The owner is the client, the purchaser of the new structure. It hires an architect and/or and engineer to design and oversee construction. The overall contract is put out for bid by general contractors which does much of the basic work itself and manages the entire construction process. In turn, the general contractor subcontracts skilled technical work – such as electrical, plumbing, or painting – to trade contractors who come on site to make that specific contribution to the undertaking. Construction workers exhibit the same variety of specialized skills and tasks, which are required at different phases in the project. The normal working pattern is for tradesman to come to the project site to perform the function required of them and, when they are finished, to go on to another project at another site.*

*Most of the workers in the construction industry are skilled tradesmen, usually having obtained tradesmen's qualification certificates after years of apprenticeship. Each of the distinctive trades has its own craft union, which may have a century-old tradition of representing its members in collective bargaining with the contractors who employ members of that trade. But most building trade unions have another role besides the customary representation of employees in collective bargaining: the hiring hall function. The reason is the highly cyclical nature of employment in the construction industry – stemming both from the rhythm of individual projects and the intermittent and erratic pattern in which major construction investments are brought on stream. In response to that pattern, contractors – whether general or specialty contractors – normally do not maintain a regular work force. They may retain a nucleus of key employees, but the bulk of their workmen are recruited as and when they are need for a specific project for which the employer has obtained a contract. Where do they get these tradesmen? Through the union which represents the craft. The union office keeps a list of available tradesmen; the contractor phones the union office for certain kinds and numbers of workmen; and the crew is then dispatched through the union hiring hall to the job site. In effect, the trade union performs the basic personnel function in the construction industry, by allocating jobs among the members of the work force. Any one tradesman may be employed by a number of contractors in a number of areas in any one year. Besides paying the immediate take-home wage to the tradesmen on the job, the contractor also forwards directly to the union hourly contributions for health and welfare, vacation, and pension benefits, and these funds are administered by the union for its members. And the consequence is that the primary and enduring relationship in construction is between craft unions and tradesmen-members, not between employers and employees.*

[76] The Board agrees with the position advanced by the Union that the hiring hall concept in the construction sector is predicated on the requirement that members working in the unionized construction sector accept calls from their hiring hall and are dispatched to unionized

employers when their name comes up on the hiring hall's list. The exclusive right to work in the respective trade or craft jurisdictions in the unionized construction sector is earned by the membership collectively fulfilling its obligations to unionized construction employers.

**[77]** The Board is satisfied that the unfettered discretion sought by the Applicant to decline calls for placement with unionized employers would undermine the vital role played by trade unions in the construction sector. It is difficult to image how the hiring hall concept would survive as envisioned by the Applicant. Undoubtedly it would work well for the Applicant; the Union would call him on each occasion that work was available and he could decide, based on his personal schedule at the time, if he desired to work or not. However, it is doubtful that such a system would work well for trade unions in the construction sector because they could not know, at any given time, the strength of their workforce, with the increased potential that they could not fulfill their obligations to supply workers to unionized employers.

**[78]** The Board is satisfied that the actions of the Union were based on its legitimate desire to protect the role of its hiring hall and its specific desire to protect its territorial jurisdiction in its dispute with the sheet metal workers. In the Board's opinion, the interests the Union was trying to protect in the action it took, when viewed objectively, were reasonable and justifiable.

**[79]** Furthermore, and without commenting on the extent of the Union's obligation to do so, the Board is satisfied that the Union reasonably attempted to accommodate the Applicant's stated restrictions.

**[80]** Finally, the Board is satisfied that the Applicant's demonstrated disinterest in earning a living in this sector and his capacity to regain membership in the Union in the future dramatically reduced the seriousness of the consequences of the Union's decision for him.

**[81]** Simply put, the Board was not satisfied that the Union's decision to cancel the Applicant's apprenticeship was either unlawful or unreasonable under the circumstances. The Board is mindful that its supervisory responsibility under s. 36.1(3) is not to test the perceived correctness of the Union's decision but rather only to ensure that the Union's decision, when viewed objectively, was reasonable and justifiable. To which end, the Board is satisfied that the Union's decision to cancel the Applicant's apprenticeship found its genesis in the Union's

Constitution and was in furtherance of its legitimate desire to protect and defend the viability and existence of the Union.

**Conclusion:**

**[82]** Having reviewed the evidence of both the Applicant and the Union and having considered the argument advanced by the parties, in the Board's opinion, this application must be dismissed.

**DATED** at Regina, Saskatchewan, this **24th** day of **June, 2009**.

**LABOUR RELATIONS BOARD**

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Steven D. Schiefner  
Vice-Chairperson