

**The Labour Relations Board
Saskatchewan**

AIJAZ SHAH, Applicant v. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 529, Respondent Union and BFI CONTRACTORS LTD., Respondent Employer

LRB File No.: 007-10; November 19, 2010
Single Panel: Chairperson, Kenneth G. Love, Q.C.

The Applicant: Aijaz Shah
For the Respondent Union: Heather Jensen
For the Respondent Employer: No one appearing

Duty of Fair Representation – Scope of Duty - Union must fairly and adequately investigate circumstances surrounding grievance and make appropriate investigations concerning issues related to incident which gave rise to grievance – Union must form objective opinion of likelihood of success at arbitration.

Jurisdiction of Board – Applicant did not request grievance be filed – in absence of request for grievance, Board unable to speculate regarding nature of Union’s investigation and process had grievance been filed.

Employee – Trade union disputes – Application of the principles of natural justice – Membership determined by vote of members after completion of probationary period following application – No notice of meeting when membership to be considered – No opportunity to be heard or to know case being presented to membership.

Jurisdiction of Board – Board jurisdiction limited – Where there has been no denial of membership following application for membership, Board cannot speculate as to outcome of membership process and likelihood of success of application.

***The Trade Union Act*, ss. 25.1 & 36.1.**

REASONS FOR DECISION

Background:

[1] Aijaz Shah (the “Applicant”) brings this application under ss. 25.1 & 36.1 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”) based upon his assertion that the International Brotherhood of Electrical Workers, Local 529 (the “Union”) failed to properly represent him with respect to his termination from his employment with BFI Contractors Ltd.

("BFI") and failed to admit him to membership of the local union following completion of his probationary period.

Facts:

[2] This application to the Board relates to two issues arising out of:

- (a) the Applicant's application to join the Union; and
- (b) the Applicant's termination from his employment with BFI and the Union's failure to grieve that termination.

[3] The Applicant came to Saskatchewan from Ontario where he had been certified as a Red Seal Electrician. He had achieved that certification after taking courses at Industrain College in Toronto, Ontario. He received a Certificate of Excellence in Electrician (C&M) Licence Exam Preparation Course on January 14, 2006 from Industrain College. He received a Certificate of Excellence in Industrial Electrician Licence Exam Preparation Course on January 22, 2006 from Industrain College. He received a Certificate of Excellence in Advanced PLC Programming and Maintenance on October 8, 2006 from Industrain College. He also received a Certificate of Excellence in Home Inspection Course on January 8, 2006 from Industrain College.

[4] Three (3) of the courses which lead to these certificates being granted were of short duration, being six (6) weeks in the case of the Electrician (C&M) Course, eight (8) weeks in the case of the Industrial Electrician License Exam Prep., and twelve (12) weeks in the case of the Home Inspection course. The course in Advanced PLC Programming and Maintenance appeared to span a period of just under one (1) year.

[5] Prior to completion of these courses, it appears that the Applicant challenged the Red Seal exam and was successful. He was issued a Certificate of Qualification (Electrician – Construction and Maintenance) by the Province of Ontario on February 14, 2006 and a Certificate of Qualification (Industrial Electrician) by the Province of Ontario on April 12, 2006.

[6] The Applicant worked in the electrical field according to his resume, filed with the Union, from 2002 – 2004 as an Industrial Maintenance Electrician with Magna International. He also claimed to have worked for Green Lane Renovations in Toronto, Ontario as a Journeyman

Electrician from 2004 – 2007, notwithstanding that he had not been certified by the Government of Ontario until 2006.

[7] The Applicant moved to Saskatchewan in 2008 and was issued a Journeyman Electrician's license by the Saskatchewan Ministry of Corrections and Public Safety. His resume indicates that he was employed by as Journeyman Electrician in a non-union environment until 2009. After leaving that employment, he applied for membership in the Union on February 9, 2009 and was dispatched by the Union to a project at the Cory Potash Mine. After lay-off from that position, he was then dispatched to a project at the Queen Elizabeth II Power Plant in Saskatoon, Saskatchewan in the employ of BFI.

[8] The Applicant worked on the BFI project on the night shift for almost four (4) months. When the project was winding down, he was transferred to the day shift. His employment with BFI was terminated on September 23, 2009, four (4) days prior to a large layoff of electricians at the site due to the project completion.

[9] When he applied to join the Union, he was advised that there was a three (3) month probationary period before he could be sworn in as a full union member. However, during that period, he could be dispatched from the hiring hall as a probationary member. There is no specific requirement for such a probationary period in the Union's Constitution. Article XIX of the Constitution provides in Sec. 1 as follows:

Any worker coming under I.B.E.W.'s jurisdiction, of good character, not less than sixteen (16) years of age, is eligible to membership, provided he passes a satisfactory examination when required to do so by the L.U. [Local Union]

[10] Notwithstanding the lack of a specific requirement for a probationary period, the Applicant was made aware of the requirement and accepted that as a requirement for him to join the Union. On May 20, 2009 while employed at the Cory Potash Mine project, the Applicant was rated by his Foreman. That evaluation noted that he met or exceeded expectations in all areas save for his "Knowledge of Trade" and "Ability to Perform Job" which the evaluator indicated as "Needs Change". In the comments section of the form, he noted "[H]e appears to lack industrial electrical experience. He needs to continue mastering his spoken English to facilitate communications."

[11] This evaluation was forwarded to the Union by the evaluator. According to the testimony of Greg Gaudet, the Business Manager for the Union, that evaluation was considered, and the Executive Board determined that the application for membership should be deferred for a period of three (3) months. No details as to when this decision was made was provided by Mr. Gaudet, and the fact of the deferral is noted only by a notation (which appears to be a sticky note attached to the application form, which was then photocopied) on the application that reads “DEFERRED 3 MONTHS.”

[12] No other evaluation appears to have been done following that initial evaluation and deferral of the Applicant’s application for membership. Nor was the Applicant advised by the Union that his membership application had been deferred. As a result, he complained that “I kept waiting and calling them [the Union] to sworn in as they had four (4) different times sworn in ceremony in the last seven (7) months but they did not offer me to sworn in without any reason...” [sic]

[13] The notice of termination provided by the Employer gave the reason for termination that the Applicant “does not meet journeyman standards”. The Employer also provided a Worker Discipline Notice issued by Mr. Rick Fast, the General Foreman, as a part of the discharge which listed “Poor Work” as the infraction, the details of which were that “worker lacks skills needed to work as a journeyman in the electrical trade.”

[14] Mr. Fast, along with Roger Bessette, one another General Foreman, the Superintendent, and the Foreman, Darren Garchinski, authored a letter on September 27, 2009 as follows:

To whom it may concern RE: Aijaz Shaw

This letter is being issued regarding Mr. A. Shaw to give reason as to why his current employer is terminating his employment.

Mr. A. Shaw has been witnessed by his foreman as to be not qualified to do electrical work. Mr. A. Shaw cannot work unsupervised as he does not know how to use power tools common and standard for the electrical trade, Mr. A. Shaw cannot work independently because he has not shown the ability to understand and meet expectations when given clear direction on job tasks. As a journeyman it is expected you are able to supervise apprentices Mr. A. Shaw is not capable. After working with fellow tradesman we have not witnessed Mr. A. Shaw as having the qualifications of a journeyman electrical worker.

Foreman General Foreman Superintendent Superintendent

[15] Mr. Garchinski was called to testify by the Union. His testimony did not provide much by way of concrete examples (apart from an alleged safety violation) to justify the comments in the letter. He acknowledged that the Applicant required more supervision (he was his direct supervisor). He also testified that co-workers came to him with concerns over the Applicant's skills and their safety. He testified that he felt the Applicant's skills needed to be improved.

[16] All of the signatories to the September 27, 2009 letter, although they held supervisory positions with BFI, were members of the Union.

[17] Following the Applicant's termination, he met with Mr. Gaudet of the Union. Mr. Gaudet testified that he had previously been made aware of the termination of the Applicant and another union member by email from BFI. He testified that BFI also made him aware that it would not accept any further persons from the hiring hall that had received their credentials from Industrian College.

[18] Following receipt of the email, Mr. Gaudet testified that he emailed the Employer in response to their advice that they would not accept any other journeymen whose credentials were from Industrian College to determine more precisely who they were referencing. He testified that BFI advised him that the individuals were "travelers from Ontario". He was able to determine who BFI was referring to when the Applicant came to his office.

[19] Mr. Gaudet testified that he "googled" Industrian College to find that it was no longer in operation. He also testified that he called a telephone number he found on the website. The person who answered his call said that Industrian College was no longer in business and he was selling real estate. He testified that he dug deeper into the matter and found that the College had been ordered (by whom he did not say, if he knew) closed.

[20] He says that he also "made some phone calls" to persons employed by BFI, who were members of the Union, including Roger Bessette, one of the General Foremen. He testified that Mr. Bessette advised him that the Applicant needed to work on his English and job knowledge. He testified that he also contacted Charles Gorloff, a Superintendent with BFI who he says advised him that he didn't think the Applicant had the skills necessary to command a

journeyman's wage. He testified that after having discussed the Applicant with these people, that he "found himself siding with the Employer."

[21] He testified that he also examined the Collective Agreement. He testified that he felt that Article 19 of the Agreement (the Management Rights Clause) allowed BFI to "judge suitability of workmen for various jobs and work."

[22] In his testimony, Mr. Gaudet also stated that "99.9% of members on the job are judging Aijaz to be inadequate." He gave no basis for that comment and did not suggest that he had conducted any type of poll or other means as a basis for that comment. He also noted that he relied upon the judgment of the "seasoned electrician" whom he had contacted. He stated his conclusion that a grievance would not be warranted for several reasons.

[23] First, he thought that the Union should not go to the time and expense to file a grievance because it wouldn't be an efficient use of resources, as the job was due to terminate only days after the Applicant's termination and there would be no job to go back to.

[24] Secondly, he didn't think that the sanctions imposed by the Employer that the Applicant not be dispatched to a BFI job site could be removed, presumably based on his understanding of the Employer's right to "judge suitability of workmen for various jobs and work."

[25] Thirdly, he felt that his investigation was pointing to the Applicant having a lack of qualifications.

[26] In the final result, however, the Applicant testified that he did not request the Union to file a grievance on his behalf. Nor did he testify that he had been dissuaded from filing a grievance at any time. His evidence was that he did not request a grievance to be filed, which evidence was confirmed by Mr. Gaudet. Mr. Gaudet, however, was unable to recall if he had advised the Applicant of his opinion that a grievance would not succeed.

[27] Mr. Gaudet testified that he tried to work with the Applicant to assist him and the Union to determine his skill level. He testified that he attempted to send the Applicant, at the Union's expense, to a training facility in Alberta where he could be evaluated. Unfortunately,

there was excess demand from Alberta electricians to use this facility and the Applicant could not be accommodated.

[28] Mr. Gaudet also testified that the Union tried to dispatch the Applicant to a job early in 2010, but found that when called, the Applicant was out of the country. The Applicant, upon his return to the country, called him on April 21, 2010.

[29] On May 21, 2010, Mr. Gaudet called the Applicant to have him look at an electrical problem that the Union office had. He asked the Applicant to put together a materials list for an expansion to the electrified parking plug-ins at the union office. When that materials list was completed, he sent it to Mr. Kelly Shea, the President of the Local, who he advised was an electrician working with the tools and also a part time instructor at The Saskatchewan Institute of Applied Science.

[30] Mr. Shea reviewed the materials list and provided the Applicant with a letter judging his performance of that test. His assessment was that the Applicant had failed since, in his judgment, if the Applicant “were to follow through and actually do the job using the materials you’ve listed it would not meet the minimum standards of the Canadian Electrical Code and therefore would not pass an electrical inspection.”

[31] Mr. Gaudet also testified about another Applicant for membership in the Union who had been “deferred” in obtaining his full membership in the Union for a period of twelve (12) months. He described that Applicant as being of Chinese ancestry who had only recently obtained full union membership.

[32] Like the Applicant, this Applicant also had difficulty with language and had, according to Mr. Gaudet, weak job skills. He testified that this applicant was fortunate that he worked in an environment and with an Employer who partnered this person with someone who spoke his native language. Mr. Gaudet was also of the opinion that this was the “luck of the draw” and that some jobs allow for better supervision or “pigeon holing of job skills.”

[33] Mr. Gaudet advised that he had emails in support of this person being sworn in. His testimony was that 60 members had asked that this person be granted full membership in the Union.

Relevant statutory provision:

[34] Relevant provisions of the *Act* are as follows:

25.1 *Every employee has the right to be fairly represented in grievance or rights arbitration proceedings under a collective bargaining agreement by the trade union certified to represent his bargaining unit in a manner that is not arbitrary, discriminatory or in bad faith.*

...

36.1 *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.*

Analysis and Decision:**UComplaint under s. 25.1**

[35] This application raises some interesting and novel questions for the Board, most of which are unfortunately outside the scope of the Board's jurisdiction. I will deal with some of those issues by way of *obiter dicta* following the reasons related to the application before me.

[36] The application pursuant to s. 25.1 of the *Act* must fail. For the Board to have jurisdiction under s. 25.1, there must be a process (a grievance or rights arbitration process) in respect of which the Union failed to properly represent the Applicant. Here, there was no grievance filed, nor any request by the Applicant to file a grievance, which was acknowledged by both the applicant and the Union. While it might have been argued that the Applicant should have been advised in respect of the grievance procedure, and his rights under the collective agreement, in his testimony and argument, and even in his application, the focus was upon alleged discrimination on the part of the Employer (and the foremen), as well as complaints about his job skills. In his application to the Board, he does complain that "[A]fter receiving dismissal letter the IBEW 529 Local Union does not agree to give me chance to work for them, Instead IBEW Union should help me and suppose to give me favour against workplace discrimination and wrongful and falls dismissal." [sic]

[37] While this allegation could provide support for a concern that the Union failed to provide proper advice regarding the grievance procedure and alleged workplace discrimination, there was no evidence provided by the Applicant to support these allegations. Rather, his focus

seemed to be (as noted in the excerpt from his application) on the Union assisting him to find employment as an electrician and dispatching him from the hiring hall.

[38] The case law that the Board consistently follows with respect to the duty of fair representation owed by the Union to the Applicant as set out in s. 25.1 of the *Act* was extensively reviewed in *Beatty v. Saskatchewan Government and General Employees Union*, [2006] Sask. L.R.B.R. 440, LRB File No. 086-04 at 464 through 473. It is unnecessary to repeat that review here.

[39] That case law requires that the Union carefully consider the facts of the grievance, take pains to investigate the complaint independently, obtain legal advice, if necessary on the situation, and make a determination of the probability of success in the event that the grievance proceeded to arbitration.

[40] Arguably, the Union did not properly investigate the complaint. It did not make adequate inquiry into the factual reasons behind the dismissal of the Applicant. Rather it relied upon a Google search of Industrian College and a follow up telephone call to determine that the College was no longer in operation. However, what had been alleged was that one of their members did not possess the necessary job skills to be a journeyman electrician. The investigation should have sought out a factual basis for that charge, rather than have as its focus an inquiry which seemed to be focused on the qualifications of the Applicant as distinct from the skills that he actually had.

[41] Secondly, the investigation was not independent. It relied upon telephone conversations with supervisors employed by BFI, who, while they were Union members, were in a managerial position in the workplace. There was no interview of the shop steward, or any statement taken from the Applicant. Indeed, as noted above, there was no attempt to determine the underlying facts to which an analysis of the Collective Agreement could be applied.

[42] In his testimony, Mr. Gaudet testified that his job as Business Manager was to determine the validity of a grievance. He testified that "it didn't seem like the Employer was going to change its attitude," but provided no reasons to support that statement. Similarly, he advised that he didn't have an "overall fuzzy feeling" with respect to the potential for a grievance.

[43] To be supported, as not being arbitrary, a determination made by a trade union must be factually based. In this situation, had a grievance been under consideration, the Union arguably failed to consider the events leading to the termination of the applicant, which could have lead to a determination that they were arbitrary in that respect. As noted by the Board in *William Petite v. International Brotherhood of Boilermakers et al*¹ at paragraph 85, et al.

As noted in *Rousseau v. International Brotherhood of Locomotive Engineers et al, supra*, arbitrary conduct has been described as:

A failure to direct one's mind to the merits of the matter, or to inquire into or act on available evidence; or to conduct any meaningful investigation to obtain the data to justify a decision. It has also been described as acting on the basis of irrelevant factors or principles or displaying an indifferent and summary attitude. Superficial, cursory, implausible, flagrant, capricious, non-caring or perfunctory are all terms that have also been used to define arbitrary conduct.

The conduct of the Union in this case, was clearly arbitrary insofar as it did not conduct a meaningful investigation of the incident to determine if the discipline was justifiable, and, in fact, it did not even file a grievance to preserve the Applicant's rights in that regard after being made aware of the Applicant's desire to file a grievance.

[44] Those comments are equally apt here. But for the difference between the Applicant's express desire to file a grievance in the *Petite* case *supra* and the facts of this case, a similar result to the *Petite* case *supra* could have been the result. It would, however, amount to speculation for me to attempt to hypothesize as to what the Union investigation may have been in the event that the Applicant had determined that he wished to file a grievance or had considered filling a grievance. However, my comments regarding the arbitrariness of the Union's investigation must be considered in the light that no official grievance was being considered and was not requested by the Applicant.

Complaint under s. 36.1

[45] 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 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.

[46] This case is not one of union discipline or the withdrawal of membership in the union. Rather, it alleges that the union has failed to accord the Applicant union membership following completion of his three (3) month probationary period. Subject to my comments in paragraph 57 *et seq.*, it falls squarely within the Board's jurisdiction under s. 36.1 of the Act.²

¹ 2009 CanLII 27858, LRB File No. 158-09

² McNairn v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 179, [2004] S.J. No 249, [2004] SKCA 57, 240 D.L.R. (4th) 358, [2005] 3 W.W.R. 457, [2004] 249 Sask. R. 111

[47] The provisions of the Union constitution with respect to membership in the Union are instructive. Article XIX quoted above³ provide for minimal qualifications for admission to the Union. This minimal requirement presumably allows for the usual progression of an applicant member through his apprenticeship towards his status as a journeyman electrician. However, it fails to provide any requirement for qualification for membership in respect of a person who claims to be qualified as a journeyman (based upon examination by provincial licensing authorities).

[48] Nor is there any requirement that there be any “probationary period” before admittance to the Union. However, Article XX of the Constitution provides for rules related to the Admission of Members. That article provides as follows:

Article XX: Admission Members

Sec. 1. No L.U. can admit an applicant who does not reside in, or who is not employed at the trade, in the jurisdiction of the L.U., unless the L.U. is directed to admit him by the I.P.

No L.U. can admit any applicant who formerly was a member of the I.B.E.W., or who was suspended or expelled by, or indebted to any L.U., without consent of the I.S.T. and without first consulting the last L.U. of which the applicant was a member in regard to his character and record. The I.P. shall decide any case in dispute.

Sec. 2. Each applicant for membership shall fill out an application blank furnished or approved by the I.S.T., and answer all questions. The original application or a copy must be sent to the I.S.T.

Sec. 3. The acceptance of an application for membership and the admission of the applicant into any L.U. of the I.B.E.W., constitutes a contract between the member, the L.U. and the I.B.E.W., and between such member and all other members of the I.B.E.W.

Sec. 4. Each applicant admitted, shall, in the presence of members of the I.B.E.W., repeat and sign the following obligation:

“I, _____ (give name) _____, in the presence of members of the International Brotherhood of Electrical Workers, promise and agree to conform to and abide by the Constitution and laws of the I.B.E.W. and its local unions. I will further the purposes for which the I.B.E.W. is instituted. I will bear true allegiance to it and will not sacrifice its interest in any manner.”

Sec. 5. The obligation card signed by the applicant shall be sent to the I.S.T.

The L. U. shall have each applicant, except as provided in Section 10 of this article, take the obligation before a regular meeting or outside the regular meeting in the presence of the president or the vice president or the business

³ *Supra* at paragraph 9

manager or the business manager's designated representative or the recording secretary.

Sec. 6. Each applicant shall pay the admission fee fixed by the bylaw of the L.U. to which he applies, or such fee as approved by the I.P. and ten percent (10%) or more of such fee must accompany the application. Admission must be completed within ninety (90) days after application is made.

Sec. 7. The names of all applicants shall be read or posted at a regular meeting of the L.U. The president shall appoint a committee to pass and report upon the applications, or the Executive Board may perform this function as the L.U. may decide.

Sec. 8. If the applicant or applicants are reported upon favorably, a ballot or vote may be taken as the L.U. may decide, except as provided in Article XV. If an applicant(s) is rejected, his or their names shall not again be proposed for membership for six (6) months, and the admission fee shall be returned to the applicant. If an applicant is rejected for membership and the reasons for rejection are found to be without just cause, the L.U. shall be directed by the I.P. to immediately accept the applicant into membership.

Sec. 9. Any candidate failing to present himself for admission within one (1) month after his election and notification thereof, unless he gives good and sufficient reasons, forfeits his admission fee and cannot again be proposed for six (6) months.

Sec. 10. Any worker or employee coming under the I.B.E.W.'s jurisdiction and residing where there is no L.U., who can qualify according to this Constitution, may become a member by filling out a regular application and sending it to the L.U. having jurisdiction; and if accepted, he shall sign the obligation card and send it to the L.U.

The I.S. T. may accept such an applicant directly if he feels there are good reasons for doing so.

Sec. 11. In the case of an organizing campaign, Sections 7, 8 and 9 of this Article may be waived by the I.P.

[49] Section 7 of Article XX provides for the reading and posting of Applicant's names at a regular meeting of the Local Union. That section also provides for the appointment of a committee to pass and report upon the applications (or as in this case, the Executive Board may perform this function). Section 8 provides that if an application is rejected for membership, then that Applicant is ineligible for membership for six (6) months.

[50] Mr. Gaudet testified as to the process followed by the Union with respect to membership. It may be summarized as follows:

1. An applicant makes application for membership in the union;

2. The applicant is dispatched to jobsites as work is available;
3. After three (3) months of work, the applicant is evaluated by his supervisor⁴;
4. The evaluation is considered by the Executive Committee, who makes a recommendation to the membership regarding the candidate's suitability for membership;
5. A vote is held by the membership at the next general membership meeting concerning the application for membership;
6. If the vote is affirmative, the member is sworn in as a member in accordance with the Constitution.

[51] While this may be the practice and process followed by the Union with respect to membership in the union, it has some significant flaws. Firstly, it does not appear to be in accord with the provisions of the Union's Constitution. The Constitution does provide for passing a "satisfactory examination when required to do so", there was no evidence that the Applicant was to pass any form of examination other than the evaluation following the three (3) month probationary period, which period, it should be noted, is not provided for in the Constitution. Also, such examination could be considered to be the "Red Seal" examination which the Applicant has been certified to have completed successfully.

[52] Secondly, and more importantly for the provisions of s. 36.1 of the *Act*, the process followed by the Union does not conform to the rules of natural justice, particularly with respect to the right to be heard⁵, the right to have notice of the hearing at which the matter will be considered, and the right to know the case to be met. In each of these requirements, the process adopted and followed by the Union is deficient as being contrary to the rules of natural justice.

[53] The Applicant complained that he was not kept aware of the status of his application. He testified that he called the Union to determine the status of his application and received no response. He was not provided a copy of the evaluation which was the basis for the recommendation (or not) of his membership until after this complaint was filed and therefore had no idea of any claimed deficiencies which could lead to his membership not being accepted. He did not receive notice of the hearing of the Executive Committee or the

⁴ See paragraph 10 *supra*

⁵ Often referred to in latin as *Audi Alteram Partem*

membership, at which his application was considered so that he could be present. Nor was he afforded the opportunity to make his case to either the Executive Committee with respect to the evaluation and their recommendation nor to the membership with respect to their vote on his application.

[54] It is clear that there are challenges faced by the Union. On one hand, they seek to build a reliable, competent and industrious body of qualified professionals engaged in the electrical trade. On the other hand, they have limited control over the licensing of electricians, which is a provincial responsibility. Furthermore, the traditional apprenticeship model of obtaining certification is being challenged by person who have acquired qualifications outside the Union's traditional jurisdiction, (North America) who are able to obtain licensing qualification through challenge of the examinations for journeyman status. However, the Constitution of the Union, adopted a short (9) years ago, does not adequately provide the tools for the Union to limit membership to those which it feels possess the necessary "job skills" to be a journeyman, including necessary language skills which are arguably necessary for a safe workplace.

[55] The Constitution does provide that once he is a member of the Union, if a member is:

....not sufficiently acquainted with the branch or type of work on which he is engaged to earn or command the established wages, then a L.U. can, through its Executive or Examining Board...require such member to revert to the proper apprentice grade and pay rate, to attend electrical study classes or devote time toward becoming a competent, properly informed electrical mechanic or employee.

[56] That provision is not applicable in this case since the Applicant has never been admitted to membership in the Union. It appears, however, that the Union may have been attempting to "hybridize" these two provisions so as to deal with the Applicant as if he were already a member in some respects.

[57] While I have some sympathy with the situation in which the Union finds itself, I am directed by the *Act* and the Board's jurisprudence with respect to s. 36.1 of the *Act*. Clearly, the Union has run afoul of the provisions of s. 36.1 insofar as it has not complied with the rules of natural justice in respect of the Applicant's application for membership in the Union. Nor do the current rules under which applications are processed, comply with either the Union's Constitution nor the rules of natural justice.

[58] However, as was the case with respect to this application under s. 25.1 of the *Act*, there is a salient fact that must be considered, which is that there has not been a denial of membership to date. At worst, there has been an inordinate delay in the determination of the Applicant's application for membership.

[59] In the Reply filed by the Union, they make the following admission:

(b) The Union admits the applicant, Aijaz Shah, was and likely remains a probationary member of the union.

Furthermore, in his testimony, Mr. Gaudet opined that he felt that Mr. Shah would make a good member of the Union.

[60] By these statements, the Union agrees that Mr. Shah remains an applicant for membership in the Union, which status he may yet attain. While that membership application does not appear to have been properly dealt with by the Union, it is clear that the Applicant has not been denied membership in the Union. For that reason, the Board has no jurisdiction under s. 36.1 in this situation. In *Rattray v. Communications, Energy and Paperworkers Union of Canada, Local 481*,⁶ the Board considered at length its jurisdiction under s. 36.1. One aspect of that case was that the Applicant had not, at the time the application was filed, applied for membership.

[61] Since the application for membership in the Union is currently unsettled, it will be necessary for the Union to consider and deal with the Applicant's application for membership, that is, to either accept him as a member, or deny membership to him. If membership is granted, then presumably, it may attempt to take advantage of the provisions of Article XIX, section 2 of the Constitution, which may give rise to another application under s. 36.1. Alternatively, if membership is denied then another issue may arise under s. 36.1. However, the Board cannot speculate as to what the outcome of the application for membership might be, or the events which may unfold following that determination.

⁶ {2008 CANLII 53901 (Sk LRB)}

Conclusion:

[62] The application is dismissed.

DATED at Regina, Saskatchewan, this **19th** day **November, 2010**.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson