

**The Labour Relations Board
Saskatchewan**

BRADLEY TEICHREB, Applicant v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 4777, Respondent

LRB File No. 008-13; June 13, 2013; Chairperson, Kenneth G. Love, Q.C.

For the Applicant: Mr. Tom McKnight
For the Respondent Union: Ms. Juliana Saxberg

Jurisdiction of Board – Section 36.1 of *The Trade Union Act* - Candidate for election to Union executive brings application regarding the conduct of a Union Election – Union opposes application alleging Board has no jurisdiction to consider application.

Jurisdiction of Board – Essential Character of the dispute – Board analyzes factual situation and provisions of *The Trade Union Act* applicable to the situation.

Board finds the Essential Character of the dispute arises from a matter arising under the Constitution of the Union – Board finds it has jurisdiction pursuant to section 36.1 of *The Trade Union Act*.

REASONS FOR DECISION

Background:

[1] Kenneth G. Love, Q.C., Chairperson: The Canadian Union of Public Employees, Local 4777, (the “Union”) is certified as the bargaining agent for a unit of employees of Prince Albert Parkland Regional Health Authority. Bradley Teichreb (the “Applicant”) is an employee represented by the Union.

[2] In August of 2012, an election was held for the positions of President and 1st Vice-President of the Union. The election was conducted by mail ballot. Ballots were to be returned on or before October 10, 2012.

[3] The Applicant was a candidate for election at this election. He was not the successful candidate.

[4] Following the conduct of the election, some irregularities were noted in the procedure utilized to conduct the vote. When those irregularities were brought to the attention of the Union, they arranged for an investigation to be conducted by Ms. Mira Lewis. Ms. Lewis' investigation concluded that while there was no evidence of wrongdoing in the conduct of the election, there was a sufficient cloud on the process that she recommended the results of the election be voided and a new election held.

[5] Ms. Lewis' report was presented to the Union on November 13, 2012 without prior notice. That evening, the Union was holding its semi-annual membership meeting. Discussion of the report was not on the agenda for the meeting and the notice of meeting had been posted much earlier, before it was known that the report would be available.

[6] The report was discussed at the meeting, and a resolution passed at that meeting that the recommendation in the report not be followed and that new elections not be held.

[7] The Applicant objected to the process in which the report was considered, objected to the resolution having been passed, and sought to have the matter reconsidered. He also filed this application alleging a violation of section 36.1 of *The Trade Union Act* (the "Act").

[8] A hearing to consider the matter was convened in Saskatoon on May 27, 2013. At the commencement of the hearing, the Union raised 4 preliminary objections, which were:

1. *The Union argued that the complaint made by the Applicant was not within the jurisdiction of the Board to consider under Section 36.1.*
2. *That the Applicant had failed to provide particulars which the Union had requested.*
3. *That the Applicant had not specified any remedy in his application.*
4. *That one of the Union witnesses, due to a medical problem was unavailable to testify on the day of the hearing.*

[9] Following hearing of argument and the parties providing some factual background, the preliminary issues were resolved as follows:

1. *That I would take the jurisdictional objection under review and provide these reasons with respect to that objection.*
2. *That the Union was satisfied with the information provided at the hearing, but reserved the right to request further particulars, if necessary.*
3. *The applicant specified the remedy sought as being:*
 - a. *that the Board order a new election; or*
 - b. *that the Board order the Union hold another meeting to consider Ms. Lewis' report and make a determination on the report.*
4. *That due to the adjournment of the hearing pending the determination of the jurisdictional issue, the attendance of the witness was not required until the commencement of the hearing on the dates to which it was adjourned.*

[10] For the reasons that follow, we find that the Board has jurisdiction over the matters in dispute between the Applicant and the Union.

Relevant statutory provision:

36.1(1) Every employee has a right to the application of the principles of natural justice in respect of all disputes between the employee and the trade union certified to represent his bargaining unit relating to matters in the Constitution of the trade union and the employee's membership therein or discipline thereunder.

(2) Every employee shall be given reasonable notice of union meetings at which he is entitled to attend.

(3) No employee shall unreasonably be denied membership in a trade union.

Arguments of the Parties

[11] The Union argued that the Board did not have jurisdiction over this dispute since the application sought to challenge an internal process of the Union. It relied upon the Court of Appeal decision in *McNairn v. United Association of Journeymen and Apprentices of the Plumbing, Pipe Fitting Industry of the United States and Canada*.¹ The Union argued that the essential character of the dispute was not related to the Constitution of the Union, the Applicant's membership in the Union, nor discipline of the Applicant.

[12] In support of its position, the Union also relied upon this Board's decisions in *Pacholik v. Construction and General Labourers' Union, Local 180*,² *Staniec v. United*

¹ [2004] CanLII SKCA 57.

² [2008] CanLII 47053 (SK LRB).

Steelworkers of America, Local 5917,³ *McMillan v. Saskatchewan Union of Nurses*,⁴ and *Hill and Rattray v. Saskatchewan Government and General Employees' Union*.⁵

[13] In support of his position, the Applicant relied upon this Board's decision in *Rattray v. Communications, Energy and Paperworkers Union of Canada, Local 481*⁶ as well as our more recent decision in *Saunders v. Canadian Union of Public Employees, Local 1975*⁷. The Applicant argued that this dispute did engage the jurisdiction of the Board as it was an internal dispute arising out of the Constitution and Bylaws of the Local, that is, with respect to the principles of natural justice insofar as being entitled to notice of meetings as well as the subject matter of those meetings.

[14] The Applicant also argued in his application that persons elected at the impugned election participated in the vote held which dismissed the report by Ms. Lewis.

Analysis & Decision:

[15] The determination of the Board's jurisdiction in this matter is important. If the Board has jurisdiction, then the Board may determine whether or not the principles of natural justice were complied with in relation to both the issue of proper notice for the meeting at which Ms. Lewis' report was considered and also the propriety of the President and 1st Vice-president voting on the matter. If the Board has jurisdiction, the matter will then be heard on September 26 and 27, 2012.⁸ If the Board has no jurisdiction, then the application must be dismissed and the Applicant will need to seek the assistance of Her Majesty's Courts to resolve the issue.

[16] When the Board is faced with the necessity of determining whether or not it has jurisdiction over a particular dispute, the Court of Appeal in *McNairn v. United Association of Journeymen and Apprentices of the Plumbing, Pipe Fitting Industry of the United States and Canada*⁹ has directed that the Board look at what is the "essential character" of the dispute.

³ LRB File No. 205-00.

⁴ [1999] Sask. L.R.B.R. 33, LRB File Nos. 377-98 & 378-98.

⁵ [2003] CanLII 62851 (SK LRB), LRB File Nos. 002-03 & 011-03.

⁶ [2008] CanLII 53901 (SK LRB), LRB File No. 064-08.

⁷ [2010] CanLII 81335 (SK LRB) LRB File No. 095-10.

⁸ These were the dates to which the matter was adjourned.

⁹ [2004] CanLII SKCA 57.

[17] In *R. v Conway*,¹⁰ Abella J., writing for a unanimous court, discussed at paragraph [30], what was described as the “exclusive jurisdiction model” as enunciated by Madam Justice McLachlin (as she was then) in *Weber v. Ontario Hydro*¹¹ says the following:

[30] *The Weber “exclusive jurisdiction model” enunciated by McLachlin J., which directed that an administrative tribunal should decide all matters whose essential character falls within the tribunal’s specialized statutory jurisdiction, is now a well established principle of administrative law (Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners, 2000 SCC 14 (CanLII), 2000 SCC 14, 2000 1 S.C.R. 360, Quebec (Commission des droits de la personne et des droits de la jeunesse v. Quebec (Attorney General), 2004 SCC 39 (CanLII), 2004 SCC 39, [2004] 2 S.C.R. 185, Quebec (Human Rights Tribunal); Vaughan v. Canada 2005 SCC 11 (CanLII), 2005 SCC 11, [2005] 1 S.C.R. 146; Okwuobi; Andrew K. Lokan and Christopher M. Dassios, Constitutional Litigation in Canada (2006), at p. 4-15.)*

[18] The case under consideration by Madam Justice Abella dealt with the constitutional jurisdiction of administrative tribunals. One of the cases cited by Madam Justice Abella was an appeal taken from our Court of Appeal in *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*.¹² In that case, an arbitrator was asked to arbitrate a grievance filed under a collective agreement between the City of Regina Police Commission and the Regina Police Association. The employer objected to the jurisdiction of the arbitrator to deal with the matter arguing that the matter was governed not by the collective agreement, but rather by the provisions of *The Police Act, 1990*.¹³

[19] The arbitrator turned to the concept of “essential character” to determine if the grievance fell within the scope of the collective agreement or within the provisions of *The Police Act and Regulation*. In her determination, the matter fell outside of the collective agreement and were, therefore, not arbitrable, and she declined to hear the grievance.

[20] The police Union appealed her decision to the Court of Queen’s Bench, who denied the application for judicial review. The police Union then appealed to the Court of Appeal who disagreed with the arbitrator’s analysis, allowed the appeal and quashed the arbitrators decision.

¹⁰ [2010] SCC 22 (CanLII), 1 S.C.R. 765.

¹¹ [1995] CanLII 108 (SCC), [1995] 2 S.C.R. 929.

¹² 2000 SCC 14 (CanLII), 2000 SCC 14, 2000 1 S.C.R. 360.

¹³ S.S. 1990-91, c. P-15.01.

[21] The City of Regina Board of Police Commissioners appealed to the Supreme Court who accepted the appeal. Mr. Justice Bastarache, speaking for the Court, disagreed with the majority decision of the Court of Appeal and agreed, in substance, with the dissenting decision of Mr. Justice Vancisse. At paragraph [16], Mr. Justice Bastarache writes:

Vancise J.A. found that, following this Court's decisions in St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219, 1986 CanLII 71 (SCC), [1986] 1 S.C.R. 704, Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 S.C.R. 929, and New Brunswick v. O'Leary, 1995 CanLII 109 (SCC), [1995] 2 S.C.R. 967, there were two steps to determining whether the arbitrator had jurisdiction to hear and decide Sgt. Shotton's grievance. The first step was to define the essential character of the dispute in the context of the facts. The second step was to determine whether the dispute fell within the ambit or terms of the collective agreement. He found that the dispute clearly centred around discipline. There had been an internal investigation leading to a recommendation for formal charges. There had been notice of intention to initiate formal disciplinary proceedings. The matter was then resolved informally through resignation. The informal resolution of the disciplinary matter did not change the essential character of the dispute from a disciplinary matter to an employment matter.

[22] The Board confirmed its approach to allegations made under section 36.1 of the Act in *Saunders v. Canadian Union of Public Employees, Local 1975*.¹⁴ At para. [29] of that decision, the Board confirmed its approach as set out in *Nadine Schreiner v. Canadian Union of Public Employees, Local 59 and City of Saskatoon*,¹⁵ as follows:

*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. In *McNairn, supra*, the Saskatchewan Court of Appeal held that for the Board to assume jurisdiction pursuant to either s. 36.1 or s. 25.1 of the Act, the "essential character of the dispute" must fall within the subject matter of the provision. The Court stated as follows, at 370:*

Thus sub-section 36.1(1) imposes a duty upon a union (again correlative to the right thereby conferred upon an employee), to abide by the principles of natural justice in disputes between the union and the employee involving the Constitution of the trade union and the employee's membership therein or discipline thereunder. As such, the subsection embraces what may be characterized as "internal disputes" between a union and an employee belonging to the union, but it does not embrace all manner of internal dispute. For the subsection to apply, the dispute must encompass the

¹⁴ [2010] CanLII 81335 (SK LRB) LRB File No. 095-10.

¹⁵ [2005] Sask. L.R.B.R. 523, LRB File No. 175-04.

Constitution of the union and the employee's membership therein or discipline thereunder.

[23] Appendix "B" to the CUPE Constitution¹⁶ establishes Bylaws governing Chartered affiliates. Several of those provisions are important in this case. For ease of reference, they are set out below:

B.2.3 Elections

All officers are elected by majority vote of unspoiled ballots at a membership meeting of the Local Union or by referendum vote if voting at a membership meeting is not practical. Adequate notice must be given where the vote is held at a membership meeting. A referendum vote must be held in a way that permits all members to participate. The Local Union can choose whether to elect officers by majority or plurality vote when it holds a referendum vote.

...

B.5.1 Additional Bylaws

A Local Union can amend or add to its bylaws¹⁷ ...

...

B.6.1 Meeting Agenda

The President will chair the meeting and follow the order of business:

- 1. Roll call of Officers*
- 2. Reading of the Equality Statement*
- 3. Voting on new members and initiation*
- 4. Reading of the minutes*
- 5. Matters arising from the minutes*
- 6. Secretary-Treasurers report*
- 7. Communications and bills*
- 8. Executive Committee report*
- 9. Reports of committees and delegations*
- 10. Nominations, elections, or installations*
- 11. Unfinished business*
- 12. New business*
- 13. Good of the Union*
- 14. Adjournment*

[24] The Union adopted local Bylaws in accordance with the Constitution which, among other things, provided for the nomination, election and installation of officers¹⁸ and for the Rules of Order to be followed by the Union.¹⁹

¹⁶ 2011 CUPE Constitution.

¹⁷ Amendments or additions may only be made in accordance with the conditions outlined in the Constitution.

¹⁸ See Section 12.

[25] At its essence, this dispute is about the conduct of the election for President and 1st Vice-President of the Union, as well as events subsequent to that election which involve processing of Ms. Lewis' report, including notice to members that the report was to be reviewed, and that a motion to disregard the recommendations, would be considered. All of these matters fall within the ambit of the Constitution of the Union as noted by the provisions above from the National CUPE Constitution and the Union's Bylaws.

[26] Additionally, while the Constitution and Bylaws are silent as to ethical considerations and conflict of interest, they do provide that in point 16 of the Rules of Order in Appendix "A" to the Union's Bylaws that:

The presiding officer shall have the same rights as other members to vote on any question. In the case of a tie, he may, in addition give a casting vote, or, if he chooses, refrain from breaking the tie, in which case the motion is lost.

[27] Also, the Rules of Order in Appendix "A" to the Union's bylaws, in point 23 allow for reconsideration of any motion passed at a previous motion on the motion of any two members who have voted in the majority.

[28] The Union's bylaws are passed in accordance with the authority granted by the Union's Constitution. That having been said, I believe it is clear that the matters in dispute are, in their essential character, encompassed by or arise out of the Constitution of the Union. Under s. 36.1, the members of the Union are entitled to be accorded natural justice in matters arising from the Constitution of the Union.

[29] The Union argued that section 36.1 allowed the Board the jurisdiction to only inquire into only matters involving the Constitution of the Union regarding membership in the Union or discipline of a member. In their submission, section 36.1 should be narrowly construed to limit the Board's jurisdiction to those two activities under the Union's Constitution. With respect, we cannot agree with this restrictive interpretation.

¹⁹ See Section 17 and Appendix "A" of the Bylaws. In addition, where Rules of Order were not prescribed, the Bylaws incorporated, by reference, *Beurinot's Rules of Order*.

[30] We are instructed by the Supreme Court in *Rizzo v. Rizzo Shoes Ltd.*,²⁰ to read the words of an *Act* “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of Parliament”. The wording of section 36.1 is clear that it provides for the rules of natural justice to be applicable in respect of all disputes between the employee and the trade Union certified to represent him “relating to matters in the Constitution of the trade union and the employee’s membership therein or discipline thereunder”.

[31] The Board is required by other provisions of the *Act* to make inquiries into aspects of a Union’s Constitution. For example, the Board routinely reviews the Constitution of a trade Union to determine its qualification to become a “labour organization”.²¹

[32] To adapt the interpretation suggested by the Union in this case puts too narrow an interpretation on section 36.1. While it is true that the word “and” in the last line of section 36.1(1) can be read conjunctively which would support the interpretation argued by the Union, a reading of the whole section, coupled with the Board’s natural expertise in the area of employee trade union disputes, leads to a broader and more liberal interpretation of the section.

[33] In my opinion, the word “and” in the last line of section 36.1(1) is disjunctive. That is, it creates a broad jurisdiction in the Board to deal with disputes “relating to matters in the Constitution of the trade union” and requires that rules of natural justice be applicable to those disputes. In addition, and as examples of that jurisdiction, the section provides that the Board specifically has authority over disputes involving union membership and discipline of members.

[34] This interpretation also supports the intention of the legislature to create an administrative tribunal empowered to deal with issues related to employees choosing a bargaining agent,²² dealing with disputes between bargaining agents and employers,²³ and also dealing with disputes between members and their bargaining agent.²⁴

²⁰ [1998] CanLII 837 (SCC); 36 OR (3d) 418; 154 DLR (4th) 193; 33 CCEL (2d) 173; 106 OAC 1 at p. 87.

²¹ See Section 2(j) of the *Act*.

²² See section 3 of the *Act*.

²³ See Sections 5, 11 and 18 of the *Act*.

²⁴ See Sections 25.1 and 36.1.

[35] It is interesting to note that this interpretation is also supported by the provisions of the recently passed, but not yet proclaimed *Saskatchewan Employment Act*.²⁵ In that *Act*, the legislature's intention has been clarified. Section 6-58 of that *Act* reads as follows:

Internal union affairs

6-58(1) *Every employee who is a member of a union has a right to the application of the principles of natural justice with respect to all disputes between the employee and the union that is his or her bargaining agent relating to:*

- (a) matters in the Constitution of the union;*
- (b) the employee's membership in the union; or*
- (c) the employee's discipline by the union.*

[36] This decision does not, of course, make any determination of the issues under dispute here. The only matter which is under consideration here is whether or not the Board has jurisdiction with respect to this dispute. For the reasons set out above, I accept jurisdiction over the dispute as framed above. The matter shall be heard on September 26 and 27, 2012, in our hearing room in Saskatoon, Saskatchewan, commencing at 9:30 AM.

DATED at Regina, Saskatchewan, this **13th** day of **June, 2013**.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson

²⁵ Bill 85 given royal assent on May 15, 2013.