MARK WINSTON KENNEDY, Applicant v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 3967, Respondent

LRB File No. 316-13; June 18, 2015.
Vice-Chairperson, Steven D. Schiefner; sitting alone pursuant to s.6-95(3) of *The Saskatchewan Employment Act*.

For the Applicant: Self-Represented
For the Respondent Union: Mr. Robert Logue

PRACTICE AND PROCEDURE – Bar to Application - Applicant was member of local trade union – Applicant runs for elected office within union – Prior to election, all candidates advised in writing of prohibition against campaigning at polls on election day - Returning Officer holds meeting with candidates to review rules of election, including rule prohibiting campaigning at polls – During meeting, applicant states his intention to campaign on election day and does so – Returning officer suspends election – President of union brings charges against Applicant under union's Constitution – Trial of allegations against applicant held but before decision rendered by panel, applicant enters into settlement agreement with union – In settlement agreement, applicant agrees to not run for elected office or attending meetings of local union for specific period of time – Applicant applies to Labour Board seeking to set aside settlement agreement – Applicant alleges that union breached principles of natural justice in selecting panels for trials, in conduct of trials, and in entering into settlement agreement with applicant – Board concludes that no basis exists to set aside settlement agreement – Board satisfied that settlement agreement precluded applicant from bringing application before the Board - Board also concludes that applicant's application was moot – At time of hearing, all penalties set forth in settlement agreement had expired and no live issue remained to be determined.

UNION – Internal Union Affairs – Applicant was member of local trade union – Applicant runs for elected office within union – Prior to election, all candidates advised in writing of prohibition against campaigning at polls on election day - Returning Officer holds meeting with candidates to review rules of election, including rule prohibiting campaigning at polls – During meeting, applicant states his intention to campaign on election day and does so – Returning officer suspends election – President of union brings charges against Applicant under union's Constitution – Trial of allegations against applicant held but before decision rendered by panel,

applicant enters into settlement agreement with union – In settlement agreement, applicant agrees to not run for elected office or attending meetings of local union for specific period of time – Applicant applies to Labour Board seeking to set aside settlement agreement – Applicant alleges that union breached principles of natural justice in selecting panels for trials, in conduct of trials, and in entering into settlement agreement with applicant – Board satisfied that Union complied with its Constitution in prosecuting applicant – Board also satisfied that union complied with all applicable principles of natural justice.

The Trade Union Act, s. 36.1

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson:** The Applicant, Mr. Mark Kennedy, is a member of the Canadian Union of Public Employees, Local 3967 (the "Union"). While a member of the Union, the Applicant sought election to the office of the Vice-President of the Union. As a result of events that occurred during the election process, the Applicant was charged with a contravention of the Union's Bylaws and prosecuted for that offence under the Union's Constitution. After the charges against the Applicant had been heard by a trial panel, but before a decision was rendered by that panel, the Applicant entered into a settlement agreement with the Union. In the settlement agreement, the Applicant admitted to violating the Union's Bylaws and agreed to refrain from running for elected office and attending meetings of the local for specified periods of time (i.e.: until June 1, 2014 and June 1, 2013, respectively). The Applicant also agreed to bring no other action or proceeding against the Union related to these events. During the term of the settlement agreement, the Applicant filed an application with the Saskatchewan Labour Relations Board (the "Board") alleging the Union violated s. 36.1 of *The Trade Union Act, R.S.S. 1978, c.T-18.1* (the "*Act*"). While the Applicant's application was multifaceted, the essence of his application was that the Union breached the principles of natural justice in selecting the panel(s) for his trial(s), in the conduct of his trial(s), and in entering into a memorandum of understanding with the Applicant. The Applicant sought to set aside the MOU and to obtain declaratory relief that the Union had violated the *Act*.

[2] The Applicant's application was heard by the Board on April 27, 28 & 29, 2015 and on May 6 & 7, 2015. In addition to testifying himself, the Applicant called Ms. Janet Morrissette, Mr. Lyle Theriault and Mr. Greg Ranalli. The Union called Mr. William (Bill) Robb.

[3] On May 7, 2015, the Board dismissed the Applicant's application. These are the Reasons for that Decision.

Facts:

[4] The Applicant was the Head Cook at the Regina Pioneer Village, which is a large special care home in Regina, Saskatchewan. However, at the time of the hearing, the Applicant had been off work for approximately two (2) years as a result of a stroke, heart problems and a residual partial disability.

[5] The Applicant testified that he had concerns about the conduct of the Union's executive and how the Union was spending its money. In 2011, the Union held an election for the offices of Vice-President and Secretary-Treasurer. The Applicant's concerns motivated him to run for election to the Office of Vice-President. The events relevant to these proceedings occurred during that election process.

[6] By way of background, approximately four thousand (4,000) employees of the Regina Qu'Appelle Health Region are members of the Union. These individuals work in various health care facilities throughout the Region, ranging from hospitals to care homes.

[7] By way of additional background, the Applicant testified that he had a troubled relationship with the Union's President, Mr. Scott McDonald. The Applicant had earlier brought a motion of non-confidence involving Mr. McDonald in his role as President. The Applicant had also sent a letter to the Canadian Labour Congress complaining about Mr. McDonald and the Union. Simply put, the Applicant felt devalued and disrespected by the Union's executive and he believed the Union was disinterested in representing his interests and the interests of his co-workers.

[8] In 2011, Ms. Pauline Yung was appointed as the Chief Returning Officer for the election of the Union's Vice-President and Secretary-Treasurer (hereinafter referred to as the "2011 Election"). During the 2011 Election, Ms. Yung became concerned that some candidates were removing and/or defacing the campaign posters of other candidates. There was an unproven allegation that the Applicant was engaged in these activities. In addition, some health care facilities had specific rules regarding the distribution of campaign material and some

candidates were distributing campaign material in contravention of these rules, causing issue for the management of these facilities. On October 25, 2011, Ms. Yung sent a letter to all candidates outlining the various rules and information related to the conduct of the upcoming election, including distribution of campaign material. In addition, Ms. Yung specifically cautioned all candidates against tampering with the campaign material of other candidates and about the rules prohibiting campaigning at polling places while polls were opens. Voting stations had historically been established in various health care facilities throughout the Region. In 2011, similar arrangements had been made with management and various voting stations were identified at specific locations at various health care facilities. The rule prohibiting campaigning on election day was succinctly described by Ms. Yung as follows:

> *Candidates are NOT allowed to campaign while the polls are open at a facility. If a candidate is caught campaigning in any part of the facility while voting is currently taking place, the poll will be shut down immediately.*

[9] On November 22, 2011, the day before general voting in the 2011 Election, Ms. Yung convened a meeting of candidates to discuss various issues related to the conduct of the election. Simply put, a number of troubling issues had come to Ms. Yung's attention involving the conduct of candidates during the election, including distribution of objectionable material and defacing and/or tearing down of campaign posters. Ms. Yung wanted to address these issues. During the meeting, Ms. Yung encouraged the candidates to be more respectful to each other during the election and to comply with the rules that had been established for the conduct of candidates during the 2011 Election. The Applicant was invited to and was present for this meeting. In addition, Mr. Ranalli was present for this meeting because he was also running for the Office of Vice-President and Mr. Theriault was present because he was running for the Office of Secretary-Treasurer. In addition, Mr. McDonald was present for this meeting, as well as Ms. Susan Posyniak, a National Representative for the Canadian Union of Public Employees.

[10] While a variety of issues were discussed during this meeting, of particular significance to these proceedings, the subject of campaigning on election day was discussed. Ms. Yung outlined for candidates where they could and could not campaign. In doing so, Ms. Yung reminded all of the candidates about the rule prohibiting campaigning at a polling facility on election day and a discussion ensued between the participants about this rule. Mr. Theriault, Mr. Ranalli and the Applicant each expressed their view that the rule was unfair and/or

unnecessary and tended to advantage the incumbents in the election. However, during the meeting, Ms. Yung reinforced the Union's position that no campaigning was permitted on election day and all candidates agreed to abide by the rule, except the Applicant. The Applicant testified that Mr. Ranalli speculated during this meeting that a candidate could potentially affect the outcome of the election by campaigning at specific polls with the intention of disrupting voting at those polls for a period of time (while those polls were shut down). At or near the conclusion of this meeting, the Applicant stated his belief that the rule did not apply to him and announced his intention to campaign at various polling places on election day while the polls were open.

[11] On election day, the Applicant made good on his announcement the previous evening. The next morning, the Applicant attended to the Wascana Rehabilitation Centre where he distributed election material on various tables at the polling place while the polls were open. The Applicant distributed the material of another candidate, as well as his own material critical of the Union and certain officials. The material distributed by the Applicant at the Wascana Rehabiliation Centre was collected by the poll clerk working at that polling station, who reported the infraction to Ms. Yung. Later that day, the Applicant went to the Pasqua Hospital with Ms. Morrissette. Ms. Morrissette testified that the Applicant went directly to the polling station at the Pasqua Hospital. Upon arriving, the Applicant was recognized by the Union's election officials and, before he got a chance to distribute any election material, he was asked to leave the facility. In doing so, the poll clerk asked the Applicant why he was trying to sabotage the poll. Rather than distributing more election material, the Applicant merely asked if he could vote, which was permitted. Ultimately, the Applicant was escorted by security from the building. Finally, it would appear that sometime earlier in the day the Applicant had also gone to the poll set up at Regina Pioneer Village. In total, the Applicant attended three (3) of the polls established for the 2011 Election on election day. However, he only staged his so-called "*protest*" at the Wacana Rehabilitation Centre.

[12] Upon hearing of the Applicant's conduct, Ms. Yung convened a meeting of various table officers for the Union. As a result of this meeting, Ms. Yung made a decision on November 23, 2011 to not just close the polls at the Wascana Rehabilitation Centre and the Pasqua Hospital but to suspend the whole election. As a result, all of the polls were closed and the ballot boxes were secured and returned to the Union's office for safe keeping. The decision of Ms. Yung to suspend the election was endorsed by Aina Kagis, CUPE National's Regional

Director for Saskatchewan. Ms. Kagis recommended that CUPE conduct an investigation into the alleged improprieties that occurred during the 2011 Election.

[13] During the 2011 Election, the application prepared the following document and distributed this information to members of the Union:

> ***Sssh! Cupe 3967 to membership***
>
> ***DON"T air our dirty Laundry****!*
>
> *What is our dirty laundry? Implicitly this statement is an admission that we have some…so what is it. Ask our Table officers Particularly Scott McDonald President CUPE 3967 phone 757-7925 Gloriaria Fingas Vice President Cupe 3967*
> *Our constitution seeks to protect our union from anyone who would seek to cause it harm. Unfortunately that intent has been turned on its head. It is used instead to protect our leaders from criticism from the members. Members who speak out about abuses or concerns are threatened with what. Brother Kenny (CUPE at work. "Cupe tried to silence me": http://www.m-f-d.org/article/cupe/ta0czrs6uzq.php..) ….has called "the big bad wolf syndrome". National Representatives are hired by the local and advise the executive on how to intimidate and silence dissenting members. Members who ask questions, raise doubts or criticize the current regime are given warning letters to cease and desist or face trial at a membership meeting that is usually only attended by executives who are PAID to be in attendance. The outcome, if the membership at large (who are not paid to be in attendance) is pretty much a forgone conclusion. The Secretary Treasurer (one of the aforementioned executives) is well known and well liked. He is the executive that hands out PER DIEM, in cash, (35.00 a day) at conferences mostly attended by those same executives as ..you guessed it, are mostly elected by each other. Members at large are not paid to attend. On top of per diem they are paid wages lost while attending meetings and conferences, expenses and mileage. So if you ask these people how they justify this and suggest that this is not what the members want they will tell you "they get the union they deserve" or "if you don't like it attend meetings" or "run for office if you don't like it" So if you run for office you are now confronted with rules made up from who knows where and told if you don't follow these rules you will face trial…guess where. At the meeting where executives are paid to be in attendance (and members aren't). Not all executives are bad apples, I would say probably about one third genuinely have the member's interests at heart but they are a minority they need support from members at General meetings where the members by sheer voting power can force the executive to the memberships will. Where do your executives stand? Is a picture of how these people stay in power emerging? What do you think? Read your bylaws, policies, terms of reference, ask questions. They can't put 5500 plus members on trial. But we can put them on trial at the polls and at our General Meetings next one November 29, 2011. Watch your union boards these dates tend to change.*
>
> *We Deserve better*
>
> *……Expect more….. from your Union*
>
> *3 of 4 candidates challenging our current Vice President and Secretary Treasurer have been threatened with trials Is this democracy?*

[14] It was unclear if this was the material that the Applicant distributed at the Wascana Rehabilitation Centre on November 23, 2011. While the Applicant had only previously distributed this information to select members of the Union, someone had forwarded the

information to the Union's executive, where it came to the attention of Mr. McDonald. It also came to the attention of Ms. Yung, the Returning Officer for the 2011 Election either from Mr. McDonald or from the poll clerk at the Wascana Rehabilitation Centre.

[15] As a result of these events, a number of things occurred. Firstly, the Union launched an investigation into the alleged improprieties that occurred during the 2011 Election, including the conduct of the Applicant, as well as the decision to suspend the election. Secondly, on January 19, 2012, Mr. Theriault brought charges against Mr. McDonald under the Union's Constitution and asked for a trial. Mr. Theriault alleged various misconducts on the part of Mr. McDonald, some of which arose out of the 2011 Election. Thirdly, on January 30, 2012, Mr. McDonald brought charges against the Applicant under the Union's Constitution and asked for a trial. Mr. McDonald alleged that the Applicant had circulated false and defamatory information; information intended to harm Mr. McDonald's reputation and to harass the table officers of the Union. In addition, Mr. McDonald alleged that the Applicant breached the Union's bylaws by campaigning on election day when he knew that doing so would shut down the election. Finally, on February 9, 2012, the Applicant brought charges against Mr. McDonald under the Union's Constitution and asked for a trial. The Applicant's allegations against Mr. McDonald were general in nature and contained few, if any, specifics. The essence of the Applicant's allegations was that Mr. McDonald had bullied, harassed and misled the membership. However, not specific incidents or events were alleged in the Applicant's material.

[16] A general meeting of the membership of the Union was held on November 29, 2011. In addition to the membership's usual business, the membership was informed as to why the 2011 Election had been suspended. The membership was advised that the 2011 Election had been suspended because of alleged improper conduct by a candidate at a polling facility while that poll was open. In addition, Mr. McDonald indicated that the candidate had been distributing slanderous material critical of the Union and two (2) candidates while campaigning. Union officials did not identify the Applicant as the subject of the misconduct. However, the Applicant was in attendance for this meeting and he admitted that he had distributed election material on election day at a polling facility. The Applicant informed the membership that he did not intend to shut down the election in doing so. The Applicant testified that he saw his actions as a "*protest*" against the Union akin to an act of "*civil disobedience*". At the meeting, the Applicant told the membership that he thought his actions might shut down a single poll for a period of time; but that he did not think it would shut down the whole election; nor did he want it

to. To the contrary, the Applicant testified that he believed Ms. Yung, under pressure from the Union, suspended the election to embarrass and humiliate him by amplifying the consequences of the actions that he had taken.

[17] During the Union's membership meeting on November 29, 2014, Mr. McDonald and other members of the Union's executive referred to the subject campaign material as "*slanderous*". The material was not distributed by the Union at the meeting. However, the Applicant felt that all members of the Union had a right to know specifically what he had said in his campaign material. As a result, the Applicant then circulated an email on December 1, 2011 widely distributing the very material that Mr. McDonald and other members of the Union found to be offensive.

[18] Mr. John Lepine, CUPE's then Acting Regional Director for Manitoba, was appointed by CUPE National to conduct an investigation into the 2011 Election and the allegations of misconduct by the Applicant. After conducting his investigation, Mr. Lepine's conclusion was that Ms. Yung was justified in suspending the election because of the Applicant's conduct. Mr. Lepine recommended that the Union's election resume as soon as possible. In doing so, Mr. Lepine agreed that no campaigning should occur on election day at any polling place and he encouraged all candidates in the future to stay away from open polling stations except to cast their own ballots.

[19] The Constitution of the Canadian Union of Public Employees ("CUPE National"), of which the Union is subject, provides a mechanism for the prosecution of members who are alleged to have violated the Bylaws of a chartered local. Under this procedure, any member in good standing may bring a charge against another member (or an officer) with an offence. The Constitution goes on to specify that such charges are adjudicated by a trial panel and defines the process for selecting a trial panel. Simply put, the trial panel is selected from the membership of the local, with obvious exclusions. For example, any member who is anticipated to be a witness is not permitted to sit on a trial panel. In addition, both the accuser and the accused having the right to object to the selection of a particular member. CUPE National's Constitution also defines various rules regarding the conduct of trials. For example, both the accused and the accuser have the right to be represented at a trial by another member in good standing. When a trial is conducted, the local is responsible for the payment of union leave for

the members of the trial panel, for any witnesses that are called, and for the accused and the accuser and their respective representatives.

[20] Trials are not a common occurrence for most locals. As a result, when CUPE National heard that the Union was going to have three (3) trials, Mr. William (Bill) Robb was appointed to act as an advisor to the Union on the conduct of the trials. Mr. Robb was responsible for providing advice to the Union, as well as advice to the trial panels once they were selected. On or about February 27, 2012, Mr. Robb held meetings with the Union, with Mr. McDonald, and with Mr. Theriault and the Applicant. The purpose of the meeting with the Union was to make arrangements for the trials and to answer any questions that the Union might have regarding the selection process and the conduct of the trials. The purpose of the meetings with the participants was to ensure that the participants knew the procedures and requirements for the trials and to answer any questions they might have.

[21] The Applicant asked Mr. Theriault to represent him during the two (2) trials that he was involved in; firstly, where the Applicant was the accused; and secondly, where the Applicant was the accuser. Mr. Theriault agreed to do so. In exchange, the Applicant agreed to help Mr. Theriault with his case against Mr. McDonald.

[22] CUPE National's Constitution provides that trial panels are to be selected at the next regularly scheduled meeting of the local. After the three (3) charges were filed with the Union, the next regular meeting of the Union was scheduled to take place on March 20, 2012 in Grenfell, Saskatchewan. As this was a rural meeting, both the Applicant and Mr. Theriault were concerned that it may not be well attended by the general membership. Both of these individuals were concerned that more table officers than members would attend this meeting and they assumed (without knowing) that table officers of the Union would tend to be biased in favour of other table officers. As a consequence, the Applicant and Mr. Theriault asked that the trial panels not be selected until the next meeting in Regina, where more members were anticipated to be present. The Union agreed to this request. To accommodate this request, a special meeting of the membership of the Union was held on April 2, 2012 in Regina.

[23] It should be noted that by March 20, 2012, voting in the 2011 Election had resumed and the results were announced at the March 20, 2012 meeting of the membership in Grenfell. The results of the election were reported as follows:

Ballots Distributed:	*4070*
Ballots Cast:	*1096*
For position of 1st Vice-President:	
Gloria Fingas (elected):	*541*
Greg Ranalli (the Applicant's witness):	*393*
Mark Kennedy (the Applicant):	*182*
For position of Secretary-Treasurer:	
Jim Carr (elected):	*610*
Rebecca Morrisette (Janet Morrissette's daughter):	*246*
Lyle Theriault (the Applicant's witness):	*237*

[24] Approximately fourty (40) to sixty (60) members of the Union were present for the special meeting held on April 2, 2012. The sole order of business for this meeting was the selection of trial panels and three (3) panels were selected; one for each of the three (3) charges; During the selection process, the Applicant exercised his right to object to the nomination of specific members to his trial panel(s), as did the other participants. For example, the Applicant nominated Mr. Theriault to be a potential member of his trial panel. However, Mr. McDonald objected and his name was refused. The meeting was conducted in accordance with CUPE National's Constitution.

[25] In April of 2012, the heads of the respective trial panels wrote to the parties of each of the trials and outlined the date, time and location for the trials. In addition, the trial panels also outlined the procedure that would be followed during the trials, including the right of the parties to call witnesses, the right to cross-examine the witnesses of other parties, and right to make opening and closing statements. In addition, each party was asked to prepare a witness list and the reason why that particular witness would be testifying. Finally, with respect to the trial involving the Applicant's allegations against Mr. McDonald, the Applicant was asked to provide further and better particulars of his allegations. At various stages during the process, Mr. McDonald had taken the position that the Applicant's allegations against him were vague.

[26] It should be noted that during this period, the Applicant made numerous, almost daily, requests for information from the Union, including copies of reports, bylaws, minutes of meetings, and various other information desired by the Applicant. Without enumerating all of these exchanges, I am satisfied that the Union diligently responded to these requests, in most

cases providing the information desired by the Applicant. Where the Union did not do so, it explained why.

[27] Prior to the commencement of the trials, the Applicant prepared his witness lists for his trials, together with statements as to the anticipated evidence each witness would be providing. Interestingly, the Applicant did not indicate on his witness lists that he intended to testify in either of his trials. While the Applicant received Mr. McDonald's witness list, he did not receive an outline of what evidence would be provided by Mr. McDonald's witnesses. The Applicant wanted this information prior to the commencement of the trials but did not receive it.

[28] The first trial occurred on May 15, 2012. This trial involved Mr. McDonald's allegations against the Applicant. The trial commenced at 9:00 in the morning. Mr. McDonald was represented by another member and the Applicant was represented by Mr. Theriault. Mr. Theriault cross-examined each of the witnesses called on behalf of Mr. McDonald. In addition, various witnesses were called to testify on behalf of the Applicant and both Mr. Theriault and the Applicant testified. The trial concluded at approximately 9:30 pm. The panel did not render a verdict at that time. However, it should be noted that the penalties being sought against the Applicant included the potential loss of his membership in the Union (temporary or otherwise) and a claim for the cost of the trial.

[29] The second trial occurred the following week, on May 23, 2012. This trial involved the Applicant's allegations against Mr. McDonald. A couple of problems arose in relation to this trial. First, Mr. Theriault, who was to represent the Applicant at this trial, submitted his application for union leave only days before the trial was to take place. While Mr. Theriault's application was submitted within the Union's timeline, the employer denied Mr. Theriault's request for union leave because of staffing levels in the workplace on that particular day. As a result, Mr. Theriault was not available on the day of the second trial. As a result, the Applicant attended that day on his own. Secondly, the Applicant was not feeling well the day of the second trial. The Applicant had a medical history including heart problems and he testified that he was in some discomfort the day of the second trial. Both Ms. Morrisette and Mr. Ranalli confirmed that the Applicant did not look well and that his colour was off. At the outset of the trial on May 23, 2012, the Applicant asked for an adjournment because his representative was not available (not because he was sick). This request was denied and the Applicant began presenting his case against Mr. McDonald. The Applicant called Mr. Ranalli to testify on his

behalf. After Mr. Ranalli's testimony, the hearing took a break. During the break the Applicant asked Mr. Ranalli if he would represent him. Mr. Ranalli testified before this Board that he felt the Applicant's case against Mr. McDonald was not going very well but he didn't really want to get involved in conducting the trial for him. Mr. Ranalli had only agreed to be a witness and the Applicant's request caught him off guard.

[30] However, during the break, Mr. McDonald and/or the Union proposed a deal to the Applicant; a deal that involved a voluntary resolution of both trials. Mr. Ranalli agreed to represent the Applicant with respect to the negotiation of this deal. To begin with, Mr. Ranalli told the Applicant that, if he was too sick to continue, he had the right to just walk away. In this second trial, the Applicant was the accuser and not the accused. Mr. Ranalli told the Applicant that he did not have to negotiate anything that day if he didn't want to. In response to the Applicant's concern about the penalty that could be imposed by the trial panel, Mr. Ranalli told him that, if he didn't like the decision of the panel from the first trial, he had the right to appeal that decision to CUPE National. Mr. Ranalli testified to this Board that it was the Applicant's decision to proceed with settlement negotiations on May 23, 2012.

[31] The Applicant testified that, at this point in time, he wanted to get things resolved as soon as possible and he was afraid that the Union could suspend or terminate his membership and/or might expect him to pay back the cost of the trials. However, the Applicant testified that, by the time of the hearing this Board, he had come to believe that the Union could not suspend or terminate his membership and that the Union could not ask him to pay for the cost of the trials. The Applicant testified that, if he had this information on May 23, 2012, he would not have wanted to negotiate a settlement; he would have just waited for the decision of the trial panel. The Applicant did not explain the basis for his belief that the Union could not suspend or terminate his membership or ask him to pay costs.

[32] In any event, settlement negotiations did commence on May 23, 2012 and the following memorandum of understanding ("MOU") was agreed to by the parties and endorsed by the respective trial panels:

> *Memorandum of Agreement*
>
> *The parties agree that the following Terms / Conditions form the basis of a final and binding resolution for*

McDonald vs. Kennedy May 15, 2012
And
Kennedy vs. McDonald May 23, 2012

Trial procedures and the issues related thereto:

1. *Brother Kennedy cannot run for or hold an executive position in Local 3967 for two (2) years from June 1, 2012 to June 1, 2014.*
2. *Brother Kenney cannot attend a membership meeting for twelve 912) months from June 1, 2012 to June 1, 2013.*
3. *Brother Kennedy withdraws all charges, Brother McDonald withdraws all charges.*
4. *The parties further agree that no further action as it relates to these issues will be taken in any forum or legal procedure in the future.*
5. *Brother Kennedy admits to violating Local 3967 Bylaws during the November 23, 2012 election.*
6. *Brother Kennedy agrees to offer a verbal apology to Brother McDonald.*

Dated May 23, 2012

Mark Kennedy	*Scott McDonald*
Rose Rein	*Fern Forsythe-Hohm*

[33] It should be noted that, in testimony before the Board, the Applicant stated "*I believe I was wrong to do what I did*"; being a reference to his decision to campaign on election day. Furthermore, the Applicant acknowledged that he knew that campaigning on election day would likely result in him being prosecuted by the Union for a breach of the Union's bylaws. However, the Applicant did not believe his campaign material was slanderous. Furthermore, while the Applicant admitted to the Board that he anticipated being punished by the Union for his conduct on election day, he did not believe he should have been punished for shutting down the whole election. Rather, the Applicant believed he should only have been prosecuted for shutting down one poll; not the whole election.

[34] After the MOU was signed by the parties, the question arose as to whether or not the Applicant was precluded from continuing in his role as a shop steward. While the Applicant had agreed to not run for elected office for a two (2) year period or to attend meetings of the membership for a one (1) year period, he did not think the terms of the MOU would preclude his capacity to function as shop steward. On June 14, 2012, the chairpersons of the two (2) trial panels confirmed that the settlement agreement reached by the parties did in fact preclude the Applicant from holding office as a shop steward for a two (2) year period.

[35] After the trials were concluded, it came to the Applicant's attention that the Union had paid Mr. McDonald's representative for his time in preparation for Mr. McDonald's trials. When this information came to the Applicant's attention, he wanted to know why Mr. Therault was not paid for the time he spent preparing for the Applicant's trials. Ultimately, Mr. Therault prepared and submitted a bill for his preparation time in assisting the Applicant and that bill was paid by the Union.

[36] As for Mr. Therault's charges against Mr. McDonald, on the assigned day for this trial, Mr. Therault did not appear. As of the date of the hearing, it was unclear as to whether or not these charges were still pending.

[37] Finally, soon after the MOU was signed, the Applicant's health deteriorated to the point where he was unable to work. At the time of the hearing, the Applicant had been away from the workplace for almost two (2) years because of health concerns.

Relevant statutory provision:

[38] Section 36.1 of *The Trade Union Act* reads 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.*

Analysis:

[39] The exclusive right to represent a unit of employees places many responsibilities on a trade union. For the most part, these responsibilities are prescribed by legislation. For example, under Section 25.1 of *The Trade Union Act*, trade unions are responsible for the representation of its members in grievance and rights arbitrations under the terms of applicable collective agreements. While trade unions have considerable discretion in the exercise of this responsibility, including the right to decline to do so, trade unions must not act in a manner that is arbitrary, discriminatory or in bad faith. This Board has been delegated supervisory authority

to ensure that trade unions comply with this particular statutory obligation; being, the duty of fair representation.

[40] Another area of supervisory responsibility assigned to this Board involves certain kinds of internal disputes between employees and the trade union that has been certified to represent them. For example, this Board plays a supervisory role in disputes that involve an employee's membership in the Union and/or discipline under the Union's Constitution pursuant to s. 36.1 of *The Trade Union Act*. In exercising this supervisory authority, it is not the function of this Board to shield employees from discipline by their union; rather the function of the Board is to ensure that trade unions, in disciplining their members, comply with certain basic procedural requirements. Firstly, trade unions must comply with the requirements set forth in their Constitution. Secondly, trade unions must comply with any additional procedural requirements indicated by the rules of natural justice in that particular context.

[41] In past decisions this Board had noted that it is not our responsibility to ensure that the discipline to which a member becomes subject is "*correct*"; only that the procedural safeguards utilized by the union in dispensing that discipline were appropriate for the circumstances and commensurate with the severity of the discipline being dispensed. This important distinction was set forth by this Board in the decision of *Timothy John Lalonde v. United Brotherhood of Carpenters and Joiners of America, Local 1985,* [2004] Sask. L.R.B.R. 244, 2004 CanLII 65627 (SK LRB), LRB File No. 222-02 (decision dated November 5, 2004). Chairperson Seibel 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. Quite recently, the Saskatchewan*

Court of Appeal carefully and extensively reviewed the jurisprudence supporting this proposition in Saskatoon District Health Board v. Rosen (2001), 2001 SKCA 83 (CanLII), 213 Sask. R. 61, 202 D.L.R (4th) 35. At paragraphs 59 and 60, Vancise, J.A., on behalf of the majority, stated:

> *59 Having found that there is a duty of procedural fairness both at common law and under the statute and the regulations, one must determine the scope or the extent of that duty in the present circumstances. The scope or content of the duty to act fairly is succinctly set out in Knight. Madam Justice L'Heureux-Dubé writing for the majority stated that like the principles of natural justice the contents of procedural fairness are extremely variable and its content is to be determined in the specific context of each case. The Supreme Court of Canada had previously adopted the famous passage of Lord Morris of Borth-Y-Gest in Furnell v. Whangarei High Schools Board that:*
>
> > *Natural justice is but fairness writ large and juridically. It has been described as "fair play in action". Nor is it a leaven to be associated only with judicial or quasi-judicial occasions. But as was pointed out by Tucker L.J. in Russel v. Duke of Norfolk [1949] 1 All E.R. 109, 118, the requirements of natural justice must depend on the circumstances of each particular case and the subject matter under consideration.*
>
> *60 The Supreme Court pointed out in Syndicat des employés de production du Québec et de l'Acadie v. Canada (Canadian Human Rights Commission that the rules of natural justice are variable standards and the content will depend on the circumstances of each case, the statutory provisions and the nature of the matter to be decided. There is no fixed content. The court will decide the approach to be adopted by reference to all the circumstances under which the tribunal operates*

[90] In Knight v. Indian Head School Division No. 19, [1990] 1 S.C.R. 653 (referred to in the passage above), a case involving termination of employment, L'Heureux-Dube, J., on behalf of the majority, described the common law duty of fairness as depending upon three factors, as follows, at paragraph 24:

> *24 The existence of a general duty to act fairly will depend on the consideration of three factors: (i) the nature of the decision to be made by the administrative body; (ii) the relationship existing between that body and the individual; and (iii) the effect of that decision on the individual's rights.*

[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.*

> *[93] However, in our opinion, the degree of "restraint" exercised by the Board in matters of union membership and internal discipline is variable and also depends upon a consideration of the three factors referred to by Madam Justice L'Heureux-Dube in Knight, supra. For example, a more restrained approach may be exercised where a union is dealing with matters that may bear upon its very survival, and a less restrained approach may be appropriate where the effect of the union's actions on individual rights weighs more heavily in the balance.*

[42] This Board's approach to allegations of an alleged violation of s. 36.1 of the *Act* was further summarized by Chairperson Seibel in *Nadine Schreiner v. Canadian Union of Public Employees, Local 59 and City of Saskatoon*, [2005] Sask. L.R.B.R. 523, 2005 CanLII 63091 (SK LRB), LRB File No. 175-04 (decision dated November 4, 2005) as follows:

> *[37] …. 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 constitution of the union and the employee's membership therein or discipline thereunder.*

[43] While the Applicant's complaints against the Union were multifaceted, the essence of the Applicant's allegations in his application to this Board was that the Union failed to comply with the principles of natural justice in selecting the panel(s) for his trial(s), in the conduct of his trial(s), and in entering into a settlement agreement with him on May 23, 2012.

[44] Having considered the evidence in these proceedings, I dismissed the Applicant's application on May 7, 2015 and I did so for a number of reasons. Firstly, the Applicant's application was barred by the terms of his voluntary settlement agreement and no evidentiary basis was tendered to justify setting aside that agreement. Secondly, by the time of the hearing, the issues in dispute between the parties were moot. The terms of the settlement agreement had expired and no live issues remained to be adjudicated by the Board. Furthermore, no compelling reason was tendered for the Board to exercise its discretion to decide matters that had become academic other than the Applicant's desire for vindication, which in my opinion, was not sufficient. In the alterative, having heard all of the evidence, it was my opinion that the Union had complied with the terms of its Constitution and all applicable rules of natural justice in prosecuting the Applicant for his conduct during the 2011 Election. The discipline to which the Applicant became subject was well within a reasonable range of possible outcomes in light of nature of the Applicant's conduct during the 2011 Election. Of particular significance, the discipline to which the Applicant became subject did not affect his eligibility for employment with his employer. Under the circumstances, the procedures employed by the Union well exceeded the protections required by the rules of natural justice.

Claims Barred by Terms of the Memorandum of Understanding:

[45] In the settlement agreement, all parties, including the Applicant, agreed that no further action related to these proceedings would be taken in any forum in the future. In my opinion, the terms of the MOU preclude the Applicant from bringing his application to the Board. The Applicant asserts that the MOU should be set aside on the basis that he was forced to sign it by the conduct of the Union and his fear of punishment; punishment that he now believes was unavailable to the Union. With all due respect, the evidence did not support the Applicant's assertions. The Applicant was not forced to sign anything on May 23, 2012. He did so voluntarily. Even if the Board accepts that he was sick on the day of his second trial, he was the prosecutor during those proceedings; at most, his charges against Mr. McDonald would have been dismissed.

[46] With respect to this outcome of the first trial, Mr. Ranalli advised the Applicant that he had the right to just walk away on May 23, 2012 and let the trial panel make its ruling. He was further advised of his right of appeal from that ruling to CUPE National. The Applicant was offered a voluntary resolution and Mr. Ranalli agreed to act as his representative in

negotiating the terms of a settlement. There was absolutely no evidence that the Applicant did not understand the nature and consequences of the agreement that he entered into and his assertions to the contrary were simply not credible. Mr. Ranalli (the Applicant's own witness) testified that, while the Applicant was sick that day, he understood what was being proposed and he wanted to proceed with settlement discussions.

[47] No credible evidence was tendered by the Applicant to support setting aside the MOU. There was no evidence of mistake, misrepresentation or frustration sufficient to void the terms of that agreement. The MOU was certainly not contrary to public policy. Many disputes between employees and their trade unions are resolved by voluntary agreements and, in light of the disruptive, self-serving and thoughtless conduct of the Applicant during the 2011 Election, the discipline to which he became subject was entirely reasonable. In my opinion, the Applicant's application is barred by the terms of the agreement he signed on May 23, 2012. This Board has stated that finality is an important consideration in a labour relations context and that parties have the right to assume that matters, which appear to have been satisfactorily settled, will not later re-emerge. The concept of finality has been recognized by this Board as important in maintaining amicable labour relations in an organized workplace. See: *Garnet Dishaw v. Canadian Office & Professional Employees Union*, 2009 CanLII 507 (SK LRB), LRB File No. 164-08.

[48] Simply put, there was no basis in law or policy to reset the clock, to set aside the MOU voluntarily executed by the Applicant in 2012, and to reconvene trial proceedings that were properly concluded over three (3) years ago.

Mootness:

[49] In *United Food and Commercial Workers, Local 1400 v. Wal-Mart Canada Corp.*, [2013] 222 C.L.R.B.R. (2nd) 107, 2012 SKCA 131 (CanLII), 358 D.L.R. (4th) 313, the Saskatchewan Court of Appeal confirmed that this Board had the right to decline to decide a matter which, for whatever reason, has become moot. The Honourable Madam Justice Jackson, speaking on behalf of a unanimous court, stated the following:

> *The Board's role is to decide live disputes, not those of no practical significance or those of a merely hypothetical nature, except perhaps in extraordinary circumstances, which is a matter for the Board in the exercise of its discretion.*

[50] The current statement of the law pertaining to mootness comes from the decision of the Supreme Court of Canada in *Borowski v. A.G. Canada*, 57 D.L.R. (4th) 231, [1989] 3 WWR 97, 75 Sask R. 82, [1989] 1 SCR 342, 1989 CanLII 123 (SCC). In *Borowski, supra*, the Court established a two (2) part test for the application of the doctrine of mootness. The first part of the test is for the Board to determine whether or not a live controversy or concrete dispute exists or continues to exist between the parties. Simply put, the doctrine of mootness applies when the decision of the Board will not have the effect of resolving a tangible and concrete dispute involving or affecting the rights of the parties or if, for whatever reason, there no longer continues to be a live controversy between the parties. If the Board is satisfied that a particular issue is moot, the Board may nonetheless decide the matter if it believes the collateral consequences or special circumstances of doing so justify the expenditure of the Board's scare resources. This is the second part of the test established by the Court in *Borowski*. For example, the Board may exercise its discretion to decide an issue that has become academic if the question to be answered is of sufficient import to the labour relations community and it is in the public interest for the Board to address the matter (i.e.: to settle a state of confusion in the law). Similarly, the expenditure of the Board's resources may also be warranted in cases involving reoccurring disputes that are typically brief in duration and the strict application of the doctrine of mootness might prevent examination of an important question because, in the normal course of events, certain matters are settle and/or resolved before the issue can reach the Board. See: *United Food and Commercial Workers, Local 1400 v. Wal-Mart Corp.*, 2009 SKCA 69 (CanLII), 331 Sask. R. 247. As the Court noted in *Borowski, supra*, the decision to decide an issue which is moot is a departure from the general practice and doing so must be justified under the particular circumstances.

[51] The penalties to which the Applicant became subject, pursuant to the terms of the MOU, expired on June 1, 2014. By the time of the hearing before this Board, the Applicant's right to run for elected office and/or attend meetings of the membership of the Union had been restored. Other than the Applicant's unwavering desire for vindication, by the time of the hearing, there was no longer a live issue in dispute between the parties. The issue that had been in dispute became academic when the penalties in the settlement agreement expired. In my opinion, the Applicant's application was moot (as well as barred by the terms of the MOU) because no tangible and substantive issue remained in dispute between the parties by the time of the hearing. Simply put, the Applicant asked this Board to decide a matter that no longer affected the rights of the parties.

[52] With respect to the second part of the *Borowski* test, the only basis suggested by the Applicant to justify intervention by the Board arose out of the Applicant's belief that the discipline to which he had become subject had sent a "*chilling*" effect through the membership of the Union and that other members were reluctant to challenge the Union and its executive because he had been disciplined. Firstly, there was no credible evidence of a chilling effect on the membership; nor could such effect by reasonable implied by the evidence. Secondly, a legitimate component of sentencing is deterrent so that others will not be inclined to commit the same offence. In my opinion, the penalty to which the Applicant became subject was entirely appropriate for the misconduct in which he engaged. As such, it was entirely reasonable for the Union to hope that other candidates in future election would learn from the Applicant's mistakes and comply with its election rules. This is not a "*chilling*" effect; it is learning through the mistakes of others.

[53] In my opinion, no valid basis existed for intervention by the Board at the time of the hearing. The trial procedures of the Union are unique to chartered locals of CUPE National and are not applicable to the broader labour relations community. Furthermore, the penalty to which the Applicant became subject involved a two (2) year period providing a more than ample opportunity for the Applicant, or any other party subject to a similar penalty, to bring the matter before the Board in an appropriate adversarial context. This was not an example where the strict application of the doctrine of mootness would allow an issue of importance to the broader labour relations community to escape review by this Board. Finally, while undoubtedly important to the Applicant, the particular issues in dispute in these proceedings would not have import to the broader labour relations community; particularly so in light of the repeal of *The Trade Union Act*.

No Breach of Section 36.1:

[54] In the alternative, after having heard and considered the evidence in these proceedings, much of which was the Applicant's own evidence, I was satisfied that the Union had complied with its Constitution in selecting the trial panels and in prosecuting the Applicant for his conduct during the 2011 Election. Furthermore, there was no evidence that the Union breached the principles of natural justice in selecting the trial panels; no evidence that the Union breached the principles of natural justice in prosecuting the Applicant for his conduct during the 2011 Election; no basis to conclude that the Union breached the principles of natural justice in

the conduct of the trial on May 23, 2012; and no evidence that the Union breached the principles of natural justice in entering into a voluntary agreement with the Applicant in settlement of the two (2) trials.

Selection of the Trial Panels and Allegations of Bias:

[55] The Applicant argued that the selection of trial panels was tainted by the conduct of the Union. Firstly, the Applicant proposed a theory that table officers attend membership meetings of the Union more commonly than do other members. Furthermore, the Applicant argued that table officers are generally predisposed to favour the position of incumbents (a status enjoyed by Mr. McDonald at the time of the Applicant's trials). As a consequence, the Applicant took the position that the selection of trial panels on April 2, 2012 was tainted by a disproportionate composition of table officers vs. members. With all due respect, there was no basis in evidence that the composition of the membership meeting of the Union on April 2, 2012 was disproportionate. In fact, the Union agreed to a variance of its trial procedures to permit the selection of trial panels at a meeting in Regina and the evidence demonstrated that approximately fourty (40) to sixty (60) members were present for this meeting. With all due respect, the Applicant's assertions regarding the biases of table officers of the Union were speculative and provided a wholly inadequate basis for alleging a breach of the principles of natural justice.

[56] While the Applicant admitted he was wrong in campaigning on election day during the 2011 Election, he argued the actions of the Union in suspending the election (as opposed to merely shutting down a few polls) amplified the issue in the eyes of the membership, caused him humiliation, and tended to bias members against him. It was my opinion that these assertions must fail. The action of the Union in suspending the 2011 Election was entirely reasonable. The premediated actions of the Applicant in intentionally trying to shut down specific polling places on election day was unprecedented and reprehensible. The Applicant flouted the rules established by the Returning Officer and selfishly sabotaged the Union's election of its officers. In doing so, the Applicant displayed a staggering willingness to disrupt the democratic rights of his coworkers and squander the Union's resources. The Union's decision to suspend the election was entirely reasonable under the circumstances. In light of the Applicant's pronouncement of his intentions the night before and his actions the next day in implementing those intentions, the Union was left with little option but to suspend the election.

Failing to do so would have permitted the Applicant to achieve his misguided goal on election day; whatever that may have been.

[57] Finally, the Applicant argued that the Union seeded bias in the membership against him by describing his campaign material as slanderous when explaining why the 2011 Election had been cancelled. In my opinion, this allegation was entirely without foundation. Firstly, there was no evidence that the membership or more importantly the trial panels were biased against the Applicant; save the Applicant's speculation. Secondly, the Union tried to maintain confidentiality with respect to which candidate had violated the election rules. However, it was the Applicant who told the membership that he was the one who had campaigned on election day. Furthermore, it was the Applicant that circulated the impugned campaign material to the membership of the Union and it was he who identified his material as the impugned "*slanderous*" material. If the membership of the Union was influenced by these events, responsibility for that influence rests solely with the Applicant's own conduct; not the actions of the Union. Finally, slander is a legal term commonly used to describe false and damaging statements about someone. The Applicant's material was alleged to be false and damaging. Under the circumstances, it is difficult to find fault with the use of the term "slanderous" by the Union.

[58] Having considered the evidence in these proceedings, I saw no evidence that the individuals selected to hear and adjudicate the charges against the Applicant were biased in any way. To the contrary, the procedure utilized by the Union in selecting the trial panels was commendable, as were the procedures used by the trial panels in conducting the trials.

<u>Prosecution of the Applicant for his Conduct during the 2011 Election</u>:

[59] The Applicant had two (2) primary complaints regarding the conduct of his trial on May 15, 2012. Firstly, the Applicant became aware that Mr. McDonald's representative was paid for representing him. However, the Applicant asserted that his representative was not paid. Secondly, the Applicant argued that the prehearing information provided by the Union for his trial was inadequate. The Applicant noted that he was required to explain to the Union before the trial why each of his witnesses were being called to testify. However, he did not receive Mr. McDonald's explanation as to why his witnesses were being called to testify.

[60] In my opinion, neither of these complaints were persuasive as neither represented a breach of the principles of nature justice. The rules of natural justice do not require paid representation for an accused. Furthermore, the Applicant's representative was paid union leave for this attendance at the Applicant's trial on May 15, 2012 and reimbursed when he submitted a claim for preparation time. Similarly, the rules of natural justice do not require pre-hearing disclosure of the nature desired by the Applicant. In light of the Union's undertaking to pay leave for the witnesses being called to testify, it had every right to ask the trial participants to provide an explanation as why they were being called to testify. There was no evidence that this information was provided to Mr. McDonald. As such, there was no evidence that the pre-hearing disclosure received by the Applicant was any different than the pre-hearing disclosure received by Mr. McDonald.

[61] In considering the rule of natural justice, there was no dispute that the Applicant knew the accusations against him and that he had sufficient particulars to know when and by what means he was alleged to have violated the Union's bylaws. The Applicant was given reasonable notice of the charges against him, of the trial(s) and the procedures that would be used by the trial panel. Furthermore, the procedures utilized by the trial panel provided an ample opportunity for the Applicant to test and rebut the evidence against him, including the right to cross-examine witnesses. The Applicant had and exercised the right to bring evidence in his own defense. While the Applicant argued otherwise, I was satisfied that the Applicant's trial was conducted in accordance with all applicable principles of natural justice. On many occasions, the trial panel made concessions to the Applicant to avoid breaches of the rules of natural justice, including its decision to permit him to testify when had had not placed his own name on his witness list.

[62] In measuring the conduct of the Union against the rules of natural justice, I have assumed that suspension and/or termination of the Applicant's membership was an option available to the trial panels. If, however, the only penalty available to be imposed on the Applicant was a prohibition from running for elected office and/or attending membership meetings, the procedures utilized by the Union far exceeded the contextual requirements of natural justice. If these were the only penalties to which the Applicant could have been subject, the principles of natural justice could have been satisfied without an oral hearing.

[63] Additionally, it should be noted that there were no statutory obligations on the Union toward the Applicant arising out of s. 36.1 of the *Act* related to the Applicant's charges against Mr. McDonald and the trial that occurred on May 23, 2012. In my opinion, s. 36.1 placed no obligations on the Union in favour of the Applicant related to the second trial because in that matter the Applicant was the accuser. While the Union's Constitution may give the Applicant certain rights, the exercise of those rights are not protected by s. 36.1 and do not fall within the supervisory jurisdiction of this Board; at least as far as the Applicant is concerned.

Execution of the Memorandum of Understanding:

[64] The Applicant argued that the Union breached the principles of natural justice in negotiating a memorandum of understanding with him. The basis of the Applicant's allegations in this regard stemmed from his assertion that he was sick on May 23, 2012 and the trial panel hearing the proceedings that day should have agreed to his request for an adjournment. Firstly, it is not apparent that the Applicant requested an adjournment on May 23, 2012 because he was sick. He requested an adjournment on that day because his desired representative was not present; not because he was sick. Secondly, the second trial did not proceed on that day. Rather, the Applicant was presented with the option of a voluntary resolution. The Applicant agreed to this option and his representative negotiated the terms of the MOU; terms quite favourable to the Applicant in light of his conduct during the 2011 Election.

[65] Simply put, I say no evidence that the Union breached any principle of natural justice in negotiating a settlement agreement with the Applicant on May 23, 2012. As noted, there was no evidence that the Applicant did not understand the nature and consequences of the agreement that he entered into on May 23, 2012 and his assertions to the contrary were simply not credible. Mr. Ranalli, his own witness, testified that, while the Applicant was sick that day, he understood what was being proposed and that it was the Applicant's decision to proceed.

Conclusion:

[66] For these reasons, the Applicant's application was dismissed on March 7, 2015.

[67] There was little doubt that the Applicant distrusted the Union and all of its officials. However, having considered the evidence, it was my opinion that the Applicant's distrust for the Union had coloured his perception of the events relevant to these proceedings.

He was willfully blind to his own misconduct during the 2011 Election and was quick to find conspiracy, animosity and corruption in the otherwise innocent actions of others.

DATED at Regina, Saskatchewan, this 18th day of June, 2015.

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson