

CRAIG MacMILLAN, Applicant v UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA LOCAL 179, Respondent

LRB File No. 250-19; November 12, 2021

Vice-Chairperson, Gerald Tegart (sitting alone pursuant to subs. 6-95(3) of *The Saskatchewan Employment Act*)

For the Applicant:

Dylan Lucas

For the Respondent:

Crystal L. Norbeck

Employee-union dispute – S. 6-58 of *The Saskatchewan Employment Act* – Member’s right to application of principles of natural justice in relation to membership in the union and discipline by the union – No breach of principles of natural justice.

REASONS FOR DECISION

Introduction:

[1] Gerald Tegart, Vice-Chairperson: This is an employee-union dispute application. An original application was filed November 13, 2019, with an amended application filed March 5, 2020. The applicant, Craig MacMillan (“the applicant”), was a member of the respondent union (“the union”). His application asks for an order determining whether a contravention of *The Saskatchewan Employment Act* (“the Act”) is being or has been engaged in by the union and requiring the union to refrain from engaging in that contravention.

[2] The allegations forming the basis for the application arise from events leading to discipline proceedings brought by the union against the applicant and his eventual departure from the union. Those events occurred for the most part during the period commencing in late 2018 and culminating in early to mid 2020.

[3] The applicant maintains he resigned his membership in the union under duress and that there was no other basis for his membership to be terminated by the union.

[4] The hearing of this matter was conducted in-person at the Board offices in Regina on November 5, 2020, and September 9 and 10, 2021. The lengthy hiatus was due in significant part to limitations associated with the Covid 19 pandemic and is not to be adversely attributed to either party.

Evidence:

[5] The applicant testified on his own behalf and called two additional witnesses.

[6] Michael McLean was the union's business agent at the time material to the application. At the hearing he was the union's representative providing instructions to counsel. While this was an unusual situation, the union did not object to Mr. McLean being called by the applicant, although counsel for the union indicated that the union would be calling Mr. McLean as its own witness if the applicant did not call him. Nonetheless, the applicant chose to call Mr. McLean. Mr. McLean has known the applicant since 1984 when they attended the same high school.

[7] William Peters was subpoenaed by the applicant. At the time material to the application, he was the union's business manager, an elected position he held for six years. He retired from the union in December of 2020. Prior to being elected as the union's business manager he worked as its business agent. He was a member of the union for 38 years and has known the applicant for about 28 years.

[8] After the completion of the applicant's case, the union chose not to call evidence.

[9] The applicant worked as a journeyman pipefitter before his retirement. The union is the certified bargaining agent for plumbers and pipefitters within the construction industry in Saskatchewan. The applicant was a member of the union for 34 years and remained a member until the events described below.

[10] At some point, apparently around 2016, the applicant became concerned about the administration of the union's pension plan and began raising his concerns with other union members and with representatives of the union leadership, including Mr. Peters, Brandon Faul and Mr. McLean, as well as an official from Global Benefits, which was the company supporting the administration of the pension fund.

[11] He eventually reached the conclusion the pension plan was a "Ponzi scheme". He continues to believe this despite discussions on multiple occasions with union and pension officials.

[12] The applicant also expressed concerns about the union's general finances and asked on several occasions to be provided with copies of the financial statements. Mr. Peters testified that financial statements were available for viewing at the union offices, but did not think the applicant ever saw them.

[13] On the morning of December 19, 2018, the applicant visited the union office in Regina and became engaged in a discussion with Mr. Peters, Mr. McLean and Mr. Faul. The applicant wanted answers to a list of fourteen questions, which he provided at that time. He also wanted Mr. Peters to apologize for cutting off the applicant when he attempted to speak at a then recent members' meeting. According to the testimony of Mr. Peters and Mr. McLean, Mr. Peters made an effort to explain what he believed had transpired at the meeting, but eventually provided an apology in order to defuse the situation. Mr. Peters described the applicant's demeanour as very defiant and said he was yelling. He also said the women working in the union office became increasingly concerned about the applicant's visits based in part on what transpired on December 19.

[14] At a meeting of the union membership on January 19, 2019, the applicant advanced a motion to require Mr. Peters to answer the list of fourteen questions relating to the pension and the management of the union. That motion failed.

[15] At a meeting of the union membership on February 23, 2019, the applicant advanced a motion seeking an audit of the union local and benefit plan funds. That motion failed.

[16] On March 1, 2019, the applicant went to the union's office in Regina for the purpose of meeting with Mr. Peters. The applicant maintains he had made an appointment to meet with Mr. Peters, although Mr. Peters' and Mr. McLean's testimony suggests he had not. However, at that time, according to both of them, the union had an open-door policy, meaning it was not uncommon for members to drop by the office in the hope they could meet with one or more of the union managers.

[17] What transpired during the applicant's visit to the union office on March 1 varies according to the witnesses and according to others who were present in the office that day and who gave statements to the Regina Police Service related to events that day. Summaries of the statements are contained in a supplementary occurrence report prepared by the police service.

[18] According to the summary of the statement provided by Claudia Rubio, one of the administrative staff in the union office, the applicant became upset during a conversation he was having with another member, and she thought he was "out of control" when he entered Mr. McLean's office. He was yelling and demanding to talk to Mr. Peters. Mr. Peters came to Mr. McLean's office and, after some conversation, they asked the applicant to leave. When the applicant refused, she called the police. The applicant was then escorted to the front door of the union office, but refused to leave.

[19] Lori-Jean Gelsinger, another union employee, provided a statement mostly consistent with that of Ms. Rubio. She said Mr. Peters went to Mr. McLean's office and they asked the applicant to leave. He refused and went to another part of the union office. He was raising his voice. Mr. Peters, Mr. McLean and Dan Engen escorted the applicant to the office door. He continued to refuse to leave. Both Ms. Rubio and Mr. Peters then called the police. The applicant left the building but returned. Ms. Gelsinger then called the police as well.

[20] Dan Engen's statement indicates he was present when Mr. Peters asked the applicant to leave the union office and that he and Mr. Peters "herded" the applicant toward the front door. When they got to the front door, the applicant "turned around, got mad and started pushing me".

[21] Mr. Peters' statement to the police varies in certain ways. It says he heard voices being raised and went to Mr. McLean's office and then escorted the applicant to the members' area of the office. Mr. Engen was there. Mr. Peters asked the applicant to leave. When he refused, Mr. Peters and Mr. Engen escorted him to the front door, but the applicant still refused to leave and became belligerent. He pushed Mr. Engen. Mr. Peters then called the police. He and Mr. Engen remained with the applicant at the front until the police arrived.

[22] Mr. McLean's statement corresponds fairly closely with that of Mr. Peters. It says the applicant entered his office and asked for some personal information about certain members, which Mr. McLean refused to provide. The applicant then left the office and went into the hallway. Mr. Peters arrived and asked the applicant what he needed and the applicant became belligerent. Mr. Peters asked him to leave, but he refused. Mr. Engen also asked him to leave. The applicant was "herded" towards the front entrance, and turned around and shoved Mr. Engen. The police were called. The applicant remained at the front entrance until the police arrived.

[23] In contrast to the summaries of the statements, the applicant's testimony described events on March 1 in terms that suggest he conducted himself in a business-like manner and was simply attempting to advance his goal of obtaining answers to his list of questions. He denied that he was angry or raised his voice. He also denied that he pushed Mr. Engen. He generally described those portions of the written statements that he disagreed with as lies.

[24] A video recording from a mounted camera inside the union offices shows activity just inside the front doors of the facility during at least part of the time the applicant was at the union offices on March 1. It's of relatively poor quality and was not explained in detail through oral testimony. While it shows some individuals apparently engaged in discussion and exiting and entering

through the front door, it provides little if any assistance in supporting or refuting the oral testimony offered during the hearing or the written statements provided to the police.

[25] Other than Mr. Peters and Mr. McLean, none of the individuals who provided statements testified during the hearing.

[26] The applicant testified that he subsequently made his own call to the police. Police officers arrived in response to the calls and the applicant was charged on March 2 with two counts of assault, one against Dan Engen and the other against Claudia Rubio.

[27] The applicant denied and continues to deny that he assaulted either person.

[28] According to the police occurrence report, the statements from Ms. Rubio and Ms. Gelsing were taken on March 1. The remaining statements were delivered to the police service by Mr. Peters on March 6.

[29] On March 6, 2019 (which was the same day he delivered the witness statements to the police service), Mr. Peters filed internal disciplinary charges against the applicant based on s. 198 of the union's constitution, which provides for disciplinary measures where members are found guilty of "making threats of physical violence or harm, or who actually assault a Local Union officer or a Local Union appointed representative".

[30] The union's Executive Board (trial committee) met on August 21, 2019, to consider the discipline charges. The applicant was present. On October 22, 2019, Mr. Peters signed a notice to the applicant advising him of the findings and decision of the trial committee and informing him that the Executive Board had reported its findings and decision at a membership meeting on October 19. Because that decision imposed a fine of \$10,000 and expulsion, the notice stated that approval of the General Executive Board was required and that the union local would be filing a petition to that board for approval of its decision. The notice indicated that it was Mr. Engen, rather than Mr. Peters, who had filed the charges against the applicant. In his testimony, Mr. Peters explained that there were internal procedural requirements that required the charges to be filed by someone other than him.

[31] By letter dated October 28, 2019, the applicant advised the union that he was requesting an appeal of the trial committee's decision on his discipline charges. He testified that this was two days after he received notification of the discipline imposed. The letter also advised the union that the criminal assault charges against the applicant had been withdrawn. The applicant

testified that this had occurred on October 16, 2019. The court documents entered into evidence during the hearing indicate that a stay of proceedings was entered on that date.

[32] By letter dated January 22, 2020, the international office of the union in Maryland informed the applicant that the disciplinary charges against him had been “administratively dismissed” by the international office “for procedural reasons”. Mr. Peters and Mr. Mclean testified that they understood the appeal decision was based on the fact Mr. Peters was not present in the room when the trial committee considered the matter. The union local took no further disciplinary action. Mr. Peters testified that this was because the applicant had resigned.

[33] Both Mr. Peters and Mr. McLean were questioned about the discipline process. Mr. McLean said he had little familiarity with discipline and hadn’t been involved in the charges against the applicant. Mr. Peters was directly involved. He said that discipline charges are rare and that he could recall only three times in his experience when charges were brought. He said his personal approach is to try to address problems in other ways. Consequently, he did not consider himself an expert in managing the discipline process. He said he had never acted in an arbitrary or personal manner toward the applicant, and that he believed the discipline charges were truthful, honest, accurate and complete. This was the first time the applicant had been disciplined.

[34] Mr. Peters was asked why the union proceeded with the charges, since the applicant had resigned. He indicated they continued because the charges had been initiated while the applicant was still a member.

[35] The applicant advanced evidence during the hearing attempting to establish that Mr. Engen was no longer a union member on March 1, 2019, or during the processing of the discipline proceedings, and that he was not entitled to be a member of the Executive Board since he was no longer a union member. Mr. McLean expressed the opinion during his testimony that Mr. Engen remained an elected official, as he was elected before he resigned from the union. Mr. Peters said something similar, that Mr. Engen had retired from the union around August of 2018 but that he continued to hold an elected position with the union.

[36] During direct examination, Mr. Peters was referred to Article 16(c) of the union’s Working Rules and By-Laws, which states:

No retired member of Local 179 will be eligible to hold office. Any elected officer who retires during his term of office shall resign the position within three (3) months of his retirement.

[37] He acknowledged that, on its face, this would have made Mr. Engen ineligible to hold an elected position in 2019. However, he said that no one objected to his continuing to hold his position and that the requirement in the article was subsequently rewritten because it was discriminatory.

[38] After the events of March 1, 2019, the union management made the decision to restrict access to the union offices. Doors were locked, including the door separating the offices from the members' common area in the same building.

[39] The applicant had stopped paying union dues once he received the October 22, 2019, notice from the union that the trial committee had reached a decision imposing discipline. He testified that he believed he was no longer required to pay dues, even though he had appealed his expulsion. Both Mr. Peters and Mr. McLean testified that they believed the applicant was required to continue to pay dues as long as he was pursuing his right of appeal.

[40] After receiving notice that his appeal had been granted by the international office of the union, he still did not pay union dues. Eventually, the union purported to terminate the applicant's membership for non-payment of dues. Article 13(h) of the union's Working Rules and By-Laws provides in part:

Any member in arrears for dues or assessments for a period of six (6) months shall stand expelled and be obligated to adhere to these By-Laws and United Association Constitution before being re-initiated.

[41] Mr. Peters testified that the union considered the six-month period to have commenced when the applicant stopped paying dues in October of 2019. When he was confronted during his testimony with the possibility that there was no requirement for the applicant to pay dues while he was appealing the discipline decision, he pointed out that the applicant had already resigned anyway.

[42] The applicant tried to pay his dues arrears in June of 2020, which would have been within the six-month period if it had commenced when the appeal decision was issued in January, but the union refused to accept them. Mr. Peters testified that, since the applicant had resigned and was no longer a member at that point, there would have to be a different process for him to resume his membership. No evidence was presented to suggest the applicant tried to rejoin the union.

[43] Mr. Peters testified that there had been very little work for union members for about the last three years prior to his testimony. The evidence shows that the applicant worked a very small

number of hours during that period, although there was little evidence as to whether this was due primarily to the unavailability of work or his intention to not work in order to meet the requirements under the pension plan to begin drawing on his pension.

[44] The applicant was a member of the union pension plan. The administration of the plan is overseen by a board of trustees, with a company named Global Benefits providing the day-to-day administration. In the midst of the processing of the internal disciplinary charges against him, the applicant took initial steps to withdraw his pension. A July 18, 2019, letter to him from the “pension department” of the plan asked him to complete and return an “application for termination benefit”. A further letter dated July 24, 2019, provided him with a “termination option statement” that explained benefits and options available to him under the plan. The first paragraph of that letter contains the following statement:

Under the current Plan rules, your plan membership will be terminated at the end of 2 consecutive plan years during which you work less than 350 hours in total, which would be January 1, 2021, assuming you would work less than 350 hours during 2019 and 2020 under the Plan.

[45] On August 29, 2019, he completed an “application for termination” of the plan. He said during the hearing that he had completed the form in order to determine the value of his pension, although he acknowledged the termination option statement accompanying the July 24 letter specified the commuted value of his pension as of October 1, 2019.

[46] One of the options set out in the termination option statement was to accept a lump sum payment in lieu of a monthly pension payment, which would be administered through one of three locked-in registered savings vehicles. A letter from the applicant to the “Board of Trustee Local 179” dated September 9, 2019, stated:

I sent in my resignation October 1, 2018 to withdraw from the Union Local 179. My goal is to retire early and I want to make sure my hard earned money is invested safely with a company I trust, which is RBC and RBC Insurance. I want to transfer my pension from Global Benefits with Saskatchewan Piping Industry Pension Plan to RBC Insurance ASAP effective September 2019.

[47] The letter continues:

Please release my pension to RBC Insurance, I have a LIRA setup already.

...

Please allow my pension to be released.

[48] In his testimony, the applicant indicated the reference to October 1, 2018, was a typo, and should have said “October 1, 2019”. While this doesn’t make complete sense given the letter is dated September 9, 2019, it appears the applicant intended to convey his resignation from the union. The steps he took to secure and begin drawing on his pension, as well as his oral testimony, support that. In oral testimony he acknowledged he had resigned but said he had done so under duress. He said he saw the “writing was on the wall” after appearing before the trial committee on August 21, 2019. He believed Mr. Peters wanted to get him out of the union.

[49] The applicant testified that his pension was transferred to RBC following the expiration of the two-year period explained in the July 24, 2019, termination option statement referred to above, and that he began receiving his pension payments through RBC in July of 2021.

[50] Evidence was tendered respecting at least two other situations that potentially demonstrate strained relations between the applicant and the union management. On January 23, 2019, the applicant visited the offices of the Saskatchewan Provincial Building and Construction Trades Council. While there he had a confrontation with Mr. Peters and the council executive director, Dion Malakoff, who were participating in a meeting with a number of union managers to discuss the topic of women in the trades. There was an apparent misunderstanding, with the applicant reaching the conclusion the meeting was for the purpose of discussing him. In a statement provided to the Regina Police Service, Mr. Malakoff indicated that the applicant was angry and entered the board room where the meeting was taking place, demanding to know what was going on. Mr. Peters testified that he, too, was excited during this encounter. They asked the applicant to leave, which he did.

[51] Evidence was also presented that, leading up to the March 1, 2019, events, the applicant had contacted several government agencies and representatives with respect to his concerns about the management of the union and the pension, and had held himself out to be a representative of the union when he did so.

Positions of the parties:

[52] The applicant maintains that the discipline brought against him based on the March 1, 2019, events was improperly brought because Mr. Engen was not properly an “elected official” at that time.

[53] He also maintains he could not be expelled for non-payment of dues because he was not required to pay dues during the period between his initial discipline and the appeal decision in January of 2020.

[54] Finally, he acknowledges he resigned but argues that he did this under duress.

[55] The union maintains that the processing of the discipline proceedings against the applicant complied overall with the union's constitutional documents and the principles of natural justice, and points to the result obtained when the union's internal appeal processes led to the discipline decision being overturned on appeal. Any deficiencies in the union's handling of the discipline were resolved through its own appeal processes.

[56] The union did not address whether its purported expulsion of the applicant for non-payment of dues complied with its constitutional documents. However, it points out that the applicant resigned.

[57] The union says that its officials took every step reasonably possible to resolve issues with the applicant, but that he effectively brought matters to an end by resigning.

[58] Finally, the union argues that the applicant has suffered no damages resulting from conduct on the part of the union that is the subject of his application, and that he seeks no specific remedy other than an order determining that the union has engaged in a contravention of the Act and requiring the union to refrain from engaging in that contravention. It argues as well that any loss of income on the part of the applicant is due to the applicant's election to not pursue work as he sought to qualify to gain access to his pension.

Analysis and reasons:

[59] It is clear from the evidence as a whole that the union officials were not motivated by malice or that their actions related to the applicant, including the pursuit of discipline proceedings, were inappropriately taken. I find that union officials acted in good faith throughout. This is not to say that every action taken was perfectly considered and in complete compliance with the union's constitutional documents. The reversal of the local's discipline decision on appeal to the international office illustrates this. However, it also illustrates that the union's internal processes produced a result that the applicant sought, without his having to resort to an external remedy.

[60] The relationship between union officials and the applicant was less than perfect and was at times tumultuous. The applicant appears to have been frustrated by and disappointed with the

response to his concerns when he raised them with union officials. However, I am satisfied the union treated his request for information seriously and made an earnest effort to respond to his concerns. It is also clear that the applicant was not the easiest person to deal with. While the union bears a responsibility to respond to members' concerns about the management of the union and issues with respect to pension management, there is also an expectation that members will deal genuinely and constructively with union officials.

[61] The fact the discipline proceedings commenced following the March 1 event were ultimately dismissed does not in itself support allegations advanced by the applicant. Again, the ability of the union's internal discipline processes to deliver a result that both the applicant and union officials accepted speaks to the effectiveness of the union's internal systems. It's reasonable to expect that not every discipline process initiated by the union will result in discipline being imposed.

[62] I find it unnecessary to decide whether the applicant's failure to pay dues necessarily led to his expulsion from the union, since I've determined that he had resigned. However, if I had determined that the applicant did not effectively resign his union membership, I would have found that he had failed to meet his obligation to pay dues and that Article 13(h) of the union's Working Rules and By-Laws consequently took effect. I would point out that this provision does not require a decision by the union to expel a member who fails to comply. Rather, a member who fails to pay dues for a six-month period automatically "stands expelled".

[63] At the time the applicant stopped paying dues, he took the position that he was no longer required to pay them given the decision of the trial committee, notwithstanding he was maintaining his right to continue his membership through his appeal to the international office of the union. I agree with the union's position that he was required to continue to pay dues as long as he claimed the privileges of membership, including the right of appeal.

[64] The applicant stated in his testimony that he resigned because he was under duress. He said he saw that the "writing was on the wall" after appearing before the trial committee on August 21, 2019. He believed Mr. Peters wanted to get him out of the union. As noted earlier, the evidence does not support a conclusion that union officials were improperly motivated or conducted themselves inappropriately in their relationships with the applicant. The applicant acknowledged that he was inclined toward early retirement, and he had not worked for any significant periods leading up to the steps he commenced in mid-2019 to gain access to his

pension and terminate his union membership. I find that the decision to resign was his own, and was not inappropriately influenced by union officials or their actions.

[65] The amended application states that the union has been engaged in or is engaging in a contravention of s. 6-58, 6-59 or 6-60 of the Act. Ss. 6-59 and 6-60 deal with matters of fair representation, which were not alleged by the applicant and in relation to which no evidence was called. That leaves s. 6-58, which provides:

***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.*

(2) A union shall not expel, suspend or impose a penalty on a member or refuse membership in the union to a person, or impose any penalty or make any special levy on a person as a condition of admission to membership in the union if:

- (a) in doing so the union acts in a discriminatory manner; or*
- (b) the grounds the union proposes to act on are that the member or person has refused or failed to participate in activity prohibited by this Act.*

[66] I'll deal first with subs. (1), which extends to the applicant the right to the application of the principles of natural justice with respect to the stated matters. It has not been alleged on the part of the applicant that the union's conduct offends any specific principle of natural justice. The applicant's position, as I understand it from the evidence advanced and the oral argument presented, is that the union made errors in its prosecution of the discipline proceedings brought after the March 1 events, that it did not have the authority to treat the applicant's membership as ended based on his non-payment of dues, and that the applicant only resigned his membership because of duress.

[67] As noted earlier, the evidence does not support a conclusion that the union acted inappropriately in commencing or prosecuting the discipline proceedings. I accept that union officials acted in good faith and that the applicant was treated fairly throughout. He was aware of the case he faced. He was able to participate in the discipline proceedings. There is no allegation that he was denied an opportunity to present his case, or that the decision-makers lacked impartiality or were biased. Furthermore, the union's internal procedural requirements providing for an appeal ultimately led to the discipline charges against the applicant being dismissed.

[68] As I've already noted, the applicant ultimately chose to resign his membership, and I do not accept his assertion that he only did so under duress.

[69] Furthermore, although I find it unnecessary to decide this point, I would have found that his membership ended pursuant to the union's Working Rules and By-Laws as a result of his non-payment of dues.

[70] Subs. (2) protects a member against discriminatory actions respecting a member's membership in the union. There are no allegations of discrimination here and no evidence was called to support such an allegation.

[71] For all of these reasons, I conclude that the applicant has not established that the union failed to comply with its obligations under the Act or contravened the Act.

[72] I'll address two additional matters before concluding. The union points to the fact the applicant never advanced a specific remedy in his application or the presentation of his case. Given my conclusions, I find it unnecessary to consider that.

[73] Finally, I want to point out that the applicant was given leave by the Board to be represented at the hearing by Mr. Lucas, who does not have legal training. Despite that limitation, Mr. Lucas provided able representation and was at all times respectful of the Board processes and the other participants in the proceedings. I also want to commend Ms. Norbeck for the thoughtful and respectful manner in which she responded to this unique situation, and for her patience and her flexible approach in representing the union's interests.

Conclusion:

[74] The application is dismissed

DATED at Regina, Saskatchewan, this 12th day of **November, 2021.**

LABOUR RELATIONS BOARD

"Gerald Tegart"
Gerald Tegart
Vice-Chairperson