

**REPORT OF THE UNIFOR PUBLIC
REVIEW BOARD**

**TO THE 3RD UNIFOR CONSTITUTIONAL
CONVENTION**

August 2019



Jerry Dias
National President
Unifor
205 Placer Court
Toronto, ON
M2H 3H9

Dear President Dias:

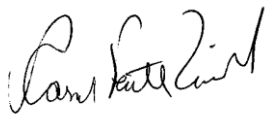
As you know in May of 2015, we lost our treasured friend and colleague, A. Alan Borovoy. Alan served as the Chair of the CAW Public Review Board, and, subsequently, the Unifor Public Review Board, for 30 years. He was a passionate and tireless advocate for civil rights and an ardent supporter of the labour movement. Alan saw the PRB as a unique body with a unique role, and I know he felt privileged to fill the role of Chair for so many years.

I am honoured and humbled to take up the position vacated by Alan. As you know, Alan's death was followed by a period of transition for the PRB, in which Sukanya Pillay and Marv Schiff acted as its Chair for brief periods of time. As a result, this is the first report presented to the Constitutional Convention by the Unifor PRB, with the last CAW PRB Report having been delivered at the 2012 Constitutional Convention.

I hope to be able to carry on the important work of the PRB for years to come and am pleased to present to the National Union and its membership the First Report of the Unifor Public Review Board. In addition to short biographies of the Board members and some introductory remarks about the operations of the Board itself, the Report includes a summary of all appeals decided between August 31, 2013 and July 31, 2019.

I know that I speak for a unanimous Board when I assure you of our commitment to the institution of the Public Review Board as a noble experiment in union democracy. I look forward to seeing you and the delegates in Québec City.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cara Faith Zwibel', written in a cursive style.

Cara Faith Zwibel, LL.B., LL.M.
Chairperson

INTRODUCTION

This report is submitted to the membership pursuant to Article 18 of the Unifor Constitution. The Public Review Board (PRB) is required to prepare and submit such a report of its activities, and includes a summary of appeals that it has considered for members' reference.

The predecessor to the PRB was created in September of 1985 by the delegates to the Founding Convention of the CAW/TCA that was held in Toronto, Ontario. The current PRB was established on August 31, 2013 by delegates at Unifor's founding convention that was also held in Toronto, Ontario. The PRB was established "to ensure fairness and democratic practice for all union members and to safeguard the moral and ethical standards set out in the Constitution and the Code of Ethics" (Article 18, Section 1 of the Constitution).

The PRB is modelled after the CAW's Public Review Board which was in turn modeled after the UAW's Public Review Board which was created in 1957 on the urging of UAW President Walter Reuther. The creation of an independent body to monitor the UAW's and CAW's internal practices were bold and innovative ideas in their day, and the concept continued to be relatively unique amongst unions when the delegates to Unifor's Founding Convention included the autonomous board in its Constitution.

MEMBERS AND STAFF

The PRB consists of five members, including the Chairperson.

As of August of 2019, Chairperson: Cara Zwibel; Members: H       David, Pradeep Kumar, Marvin Schiff, and Gregor Murray. The following is a brief description of the experience each of the members brings to the Board:

Cara Zwibel, Chairperson: Lawyer and Director, Fundamental Freedoms Program at the Canadian Civil Liberties Association. Formerly associate at a national law firm with focus on public law, commercial law and health law. Formerly judicial law clerk at the Supreme Court of Canada. Law degree from Osgoode Hall Law School, Master's of Law from New York University.

H       David: Invited Researcher, Sociology Department, Universit   de Montr      ; Researcher and Consultant on Aging and Work. Formerly: Researcher at the Institut de recherche appliqu       sur le travail in Montr      ; Director, Groupe de recherche sur les aspects sociaux de la sant   et de la pr            , Universit   de Montr      .

Pradeep Kumar: Professor Emeritus, School of Policy Studies, Queen's University; Formerly: Director of the MIR program and acting Director School Of Industrial Relations and Industrial Relations Centre. Has taught graduate and undergraduate courses and conducted research on North American unions, collective bargaining, labour relations, labour market analysis and policy, globalization, and the automobile industry; Published several books and articles on a variety of issues relating to labour relations and human resource management; Current research focused on union revitalization approaches and strategies; Member of a number of research networks including CRIMT, located at the University of Montreal.

Gregor Murray: Professor, School of Industrial Relations at the University of Montreal, Canada Research Chair on Globalization and Work; Director, Interuniversity Research Centre on Globalization and Work. Has taught or been a researcher at the Universit   de Montr      , Universit   Laval, McGill University and Warwick University. Works extensively with labour market partners in Canada, including trade unions.

Acted as a research advisor for the North American Solidarity Project. Published extensively in the field of industrial relations.

Marvin Schiff: Freelance Writer, Editor, Researcher, and Artist. Formerly: Journalist, Globe & Mail; Freelance Contributor, Middle East and Africa, for the Globe and Mail and the Canadian Broadcasting Corporation; Founding Director, Nova Scotia Human Rights Commission; Associate Professor, School of Journalism, Carleton University; Consultant on Race Relations and Diversity Management; Board member, Canadian Civil Liberties Association.

Ron Franklin is the Executive Secretary of the PRB. He is the founder of Franklin Law, which focuses exclusively on advising, supporting, and representing workers, including unionized employees. He was an industrial hygienist, health and safety manager, and consultant before going to law school. He articulated with the CAW and a union side law firm, and also worked as a Staff Lawyer in the Workers' Rights Division at Parkdale Community Legal Services.

The Registrar of the PRB is Lejla Sahovic. She is the Director of Administration at the Canadian Civil Liberties Association and previously worked as Director of Human Resources in a major global financial institution. She has also worked at the Organization for Security and Cooperation in Europe on democratization processes.

OPERATION

In a number of situations, the PRB is the final body to hear a request on the part of a member to review an action taken or decision made by a deciding authority under the Constitution that the member believes was not given fair and reasonable consideration or lacked a rational basis, and results in injury to him or her. Similarly, the PRB is the final body to hear a request on the part of a member, group of members, local union, or other subordinate body to review a decision made by the National Executive Board regarding one or more charges related to a violation of the procedures and responsibilities established by the Constitution or Code of Ethics.

(a) Claims Arising under the Constitution, including the Code of Ethics

In general, the internal remedy provisions of the Constitution can encompass a wide variety of claims which arise as a result of the day-to-day operation of the Union. Union members or subordinate bodies have a wide right to request that actions, decisions, failures or refusals to act on the part of the National Union, the National Executive Board (NEB), any administrative arm of the National Union, a Local Union, or any of its units, committees, officers, committee persons or stewards, or any other subordinate body of the National Union be reviewed. The normal route to do so, except where the Constitution makes specific provision otherwise, is first to the Local Union or accountable body, second to the National Executive Board, unless the appeal begins there, and third to the PRB.

Reference should be made to Article 18 of the Constitution for detailed information regarding requests for reviews. In addition, reference may be made to the Public Review Board's Rules of Procedure as included as Appendix A to this Report.

The Code of Ethics were adopted by the Founding Convention of Unifor in Toronto, Ontario, August 31, 2013. The Code of Ethics is set out in Article 4 of the Constitution, and reference should be made to Articles 4 and 18 when consideration is being given to filing a complaint and/or requesting that a decision or action involving a charge be reviewed.

(b) Procedural Advice

Members may contact the staff of the PRB for information regarding procedures available for relief, at the national level, under the Constitution in general or the Code of Ethics in particular. The staff will not provide advice, however, with respect to the substance or merits of a member's claim.

STATISTICS

Between November 2012 and July 2019, the Public Review Board decided ten (10) requests for review. There are currently no requests for review pending.

REQUEST FOR REVIEWS CONSIDERED – November 2012- July 2019

The following is a summary of each of the requests for review considered by the Public Review Board from November 2012 to July 2019. (Please note that, for the purposes of this summary only, the names of parties to these appeals have been deleted. In their place we have substituted pseudonyms, such as "Ms. X" and "Local A".) Please also note that, while such summaries provide a good impression of the nature of a case, any member consulting such materials in preparation for an actual request for review would be wise to review the full text version. (The full text of these decisions is available upon request without charge. Further, any member of the National Union or any of its local Unions may request to be placed on the mailing list which will ensure receipt of all published decisions and Reports of the PRB.)

Case No. 71/12

Member, CAW Local A v CAW Local A and the CAW National Executive Board (NEB)

Decision Date: November 14, 2012

Board Members, A. Alan Borovoy (Chair), Pradeep Kumar, Marvin Schiff, Lois Wilson

Overview:

Ms. X, a member of CAW Local A, appealed against the National Executive Board's dismissal of her charge against the Local Union President. She alleged that he sent a letter to a third party in which he criticized her harshly and argued he should have to face a trial under article 43 of the CAW Constitution for "conduct unbecoming a member". The NEB concluded that Ms. X's prior conduct was "offensive" and that the President's response was "reasonable in the circumstances". Ms. X argued that consideration of her prior behaviour was irrelevant and improper and suggested that her freedom of speech is being imperilled.

Decision:

The PRB noted that "Union politics are not for those of tender sensibilities" and that in assessing whether certain comments were improper, it would be necessary to examine something of the culture from which the comments have emerged. It held that it was appropriate for the NEB to examine the appellant's prior conduct. In looking at the relevant conduct, the PRB could not conclude that it was unreasonable for the NEB to rule that President's comments were excessive. The appeal was dismissed.

Case No. 72/12***Member, CAW Local B v. CAW Local B and the CAW National Executive Board***

Decision Date: December 21, 2012

Board Members: A. Alan Borovoy (Chair), Marvin Schiff, Lois Wilson

Overview:

Ms. X, a member of Local 2002 was a candidate in the election for district Chairperson in October of 2011. She lost by a margin of 4 votes and filed a formal protest against the election. The local executive board investigated and was prepared to nullify the election. X's opponent appealed to the CAW National President who delegated two national representatives of the union to constitute an appeals panel. Ultimately, the President determined that the election results would stand. Despite the irregularities, the President found that there was no negative effect on the integrity of the election.

Argument:

Ms. X argued that the election was irregular in a number of ways, noting:

- (1) Members of the relevant Election Committee were appointed rather than elected;
- (2) On the first day of polling, the polls opened late;
- (3) The Vice-President of the Eastern Region was at the poll continuously and handed out ballots even though she was not a member of the Elections Committee
- (4) The appellant's scrutineer was told not to "overlook" the counting of the ballots and was not allowed to be one arm's length away from the Committee or to see the spoiled ballots.

The NEB argued that the irregularities did not render the elections unfair.

Decision:

It has long been the policy of the Public Review Board (PRB) to impose a heavy burden on those who seek to upset the results of union elections. There must be serious and compelling reasons to do so. This must be balanced against union members' rights to have confidence in the process. Moreover, since the 2006 Convention, the PRB has been mandated not to overturn any decisions unless they are marred by a lack of reasonableness. In this case, the appeal was dismissed.

Case No. 73/13***Retired Member, CAW Local C v. CAW Local C and the CAW National Executive Board***

Decision Date: February 14, 2013

Board Members: A. Alan Borovoy (Chair), Hélène David, Pradeep Kumar, Marvin Schiff, Lois Wilson

Overview:

Following an election for a number of positions in the Local's retiree chapter, Mr. X, a losing candidate, sought to initiate charges against Y, a supporter of Mr. X's opponents. The charge was conduct unbecoming a Union member. In two emails that were sent to hundreds of retiree members of the local, Y referred to a group of five supporters of his opponents as a "cancer" that had to be dealt with. Mr. X wrote to Y and complained about the comments, noting that it was disrespectful to use the term "cancer" to refer to dedicated trade unionists just because of a policy disagreement. He called for an apology, to no avail. Mr. X took the matter to the Local's executive which dismissed it as devoid of merit. A further appeal to the NEB was also denied.

Argument:

In dismissing Mr. X's appeal, the NEB stated that Mr. X had taken Y's statement out of context and that a reasonable person would conclude that Y had used the term "cancer" as a reference to an evil practice as opposed to a medical condition. The NEB further stated that in order to put someone on trial for conduct

unbecoming, the behaviour of the accused must involve an issue with moral and ethical dimensions and that while Y's words could have been chosen better, they were examples of political comment. The NEB submitted to the PRB that any question of sanctions for conduct unbecoming should be reserved only for "serious, immoral, and unethical behaviour".

Decision:

The PRB recognized that some name calling could be the subject of a trial for "conduct unbecoming" but that generally it must be satisfied that the allegations truly contain moral and ethical dimensions of a serious nature. The PRB noted that while verbal civility may be desirable, verbal incivility must be permissible. The PRB did not accede to the request for a hearing in this case, as the appellant failed to establish that the issue contained the requisite moral and ethical dimensions. The appeal was dismissed.

Case No. 74/13

Member, CAW Local D v CAW Local D and the CAW National Executive Board

Decision Date: October 17, 2013

Board Members: A. Alan Borovoy (Chair), H       David, Pradeep Kumar, Marvin Schiff, Lois Wilson

Overview:

A number of locals were amalgamated and merged to become the amalgamated Local D. The local made a request to the National Executive Board (NEB) to shorten the terms of office of the local's elected officers. This request was made in order to fill vacant positions, bring the elections schedules of the various locals into alignment, fill new positions created by amalgamation and provide new leaders with sufficient time to prepare for an impending collective bargaining exercise. The NEB declined to accede to the Local's request and Mr. X, a member of the Local, appealed to the PRB. Since the next election for the local would be occurring very shortly, the PRB decided it would be inappropriate to issue an order with such a short life span, but provided some guidance for the parties going forward. The PRB determined that the NEB's decision did not provide sufficient reasons explaining why its interpretation of the CAW Constitution should prevail and was therefore unreasonable. But for the issue of timing, the PRB would have remitted the matter to the NEB to either grant the Local's request or provide the missing explanation.

Argument:

The Appellant sought approval for shorter terms for the reasons mentioned above. The membership of the amalgamated local voted overwhelmingly in favour of making the request and felt that sections 8, 9 and 13 of the CAW Constitution mandated the granting of its request. The NEB cited section 3(c) of article 34 of the CAW Constitution which provided that the term of office for all elected officials in the local unions is three years, that such terms are rarely extended and, when they have been shortened, approval has always been sought and granted in advance of the election. The goal behind this approach was to eliminate the use of exceptions to the term limits for political purposes. In the NEB's opinion, the request could be made to shorten the next term, but not the current one.

Decision:

Since the next election was to occur in October 2013, the PRB determined that it would be inappropriate to make an order at this late stage, but instead provided guidance for the parties when they face such requests. The PRB's mandate is to determine whether the NEB's decision was reasonable in the circumstances. In this case, both sides had rational arguments and there was thus a conflict of competing rationalities. Had there been more time, the PRB would have allowed the appeal and remitted the case to the NEB to either grant the request or provide the missing explanation.

Case No. 75/14***Member, Unifor Local E v Unifor Local E and the Unifor National Executive Board (NEB)***

Decision Date: February 11, 2014

Board Members: A. Alan Borovoy (Chair), H       David, Pradeep Kumar, Marvin Schiff, Lois Wilson

Overview:

The appellant sought review of the decision by his local union, backed by the National Executive Board (NEB) to withdraw his grievance over his discharge from employment. The PRB's jurisdiction to hear an appeal over the handling of a grievance is limited. In this case, the PRB only had to determine whether or not there was discrimination or irrationality in the Union's position. The onus was on the appellant in this case to demonstrate the flaws in how the Union handled the case and he failed to do so. The PRB dismissed the appeal.

Facts:

Article 5.02 of the relevant collective agreement states that employment would be terminated for three consecutive working days of absence unless the Company was notified of the cause and such cause was reasonable. The appellant suffered a heart attack on May 30, 2011. He provided his employer with medical notes indicating when and why he would be absent from work. The second note he submitted stated he would be absent from June 18, 2011 to July 20, 2011, but was not transmitted to his employer until July 18, 2011. The next note provided for an absence from July 21 until July 24 but was not provided to the employer until August 2.

Arguments:

The Union argued that the appellant's case was devoid of adequate credibility, and the grievance would be dismissed at arbitration. They relied on Article 5.02 of the relevant collective agreement. The appellant provided some evidence to try to excuse his late submission of the notes to his employer, but there was contradictory evidence. His lawyer alleged that the Union's investigation was inadequate and that the Union failed to address the issue of human rights.

Decision:

The appellant's allegations about the Union's handling of his grievance were not supported by evidence. The appellant did not explain how, when and where the investigation failed to pass muster. There was evidence that the Union kept asking the appellant for more documentation related to his alleged inability to work and was attempting to find documents relevant to human rights issues. The appellant failed to discharge his onus to demonstrate the flaws in the Union's handling of the case. The PRB dismissed the appeal.

Case No. 01/2015***Member, Unifor Local F v. Unifor Committee on Constitutional Matters***

Decision Date: November 10, 2015

Board Members: Marvin Schiff (Chair), H       David, and Pradeep Kumar

Overview:

Ms. A and Ms. B were candidates in an election for the presidency of an amalgamated local. Ms. B won by 112 votes. Ms. A initially requested that the Local Elections Committee (LEC) overturn the election and order a new one. When that request proved unsuccessful, she requested that Unifor's Committee on Constitutional Matters (CCM) do the same. When the CCM upheld the election, she requested that the

PRB review the CCM's decision. The PRB found that Ms. A had failed to demonstrate that the CCM's decision was unreasonable and upheld the election result.

Arguments:

Ms. A submitted that the CCM's decision was unreasonable. She argued that the election had been compromised by, among other things: inappropriate, unfair and unethical election campaigning, untimely provision of voter information, inconsistent voter information, preferential positioning of candidates' names on ballots, inadequate voting opportunities, spoiled and missing ballots, inadequate security, and interference during vote tabulation. She argued, among other things, that the CCM failed to interview members with relevant information, failed to identify members that it had interviewed, and concluded that poor voter turnout was due to voter apathy without supporting evidence. She submitted that the CCM's inquiry was incomplete and contradictory, ignored or "explained away" pertinent evidence, disregarded constitutional and other election requirements, and took much too long (six months).

The CCM, for its part, denied each of Ms. A's allegations and remained steadfast to its position that, although Ms. A disagreed with the result, its ultimate decision to uphold the election was reasonable.

Decision:

The PRB emphasized that the issue before it was not whether or not it agreed with the CCM but rather whether or not the CCM's decision was unreasonable. It explained that it was unlikely to overturn the election and order a new one unless Ms. A tendered evidence capable of persuading it (i.e., on a balance of probabilities) that there was serious fraud, election practices were so loose that they easily could have facilitated or concealed fraud, or election practices were so loose that they could have led to inadvertent mistakes of such magnitude that they could have affected the outcome.

The PRB pointed to shortcomings in the evidence that Ms. A tendered and concerns that it had about the CCM's analysis in some areas but ultimately concluded that Ms. A had not met her burden of persuading the PRB that the CCM's decision not to overturn the election was unreasonable.

Case No. 01/2016

Member, Unifor Local G (former Member, Unifor Local H) v Unifor Committee on Constitutional Matters

Decision Date: November 24, 2017

Board Members: Marvin Schiff (Acting Chair), H       David, and Pradeep Kumar

Overview:

Mr. X is a former member of the now-defunct Unifor Local H. In November 2016, the National Executive Board revoked Local H's Charter. Mr. X applied for review from the PRB, both for the Union's revocation of the Local's Charter and for his outstanding grievances and charges. The request for review was denied in part. The PRB determined it did not have jurisdiction to review the revocation of the Local's Charter. However, the PRB suspended its reviews of how the Union handled Mr. X's grievances and charges until the Saskatchewan Labour Relations Board (SLRB) disposed of his cases.

Facts:

Mr. X is a former member of the now-defunct Unifor Local H.

In 2013, the Communications, Energy and Paperworkers Union of Canada (CEP) and the Canadian Auto Workers (CAW) merged to form Unifor. At that time Mr. X became a member of Unifor's Local H. Local H's Charter was revoked in November 2016.

In 2013, a member of Local H complained about the amount of time Mr. X was taking off. Mr. X's absence from work was the result of his family circumstances and Mr. X said that the employer facilitated that time off. Mr. X filed a charge under Article 18 of the Unifor Constitution against the member of his Local. He subsequently filed a second charge against the same member and this time he asked that the complaint be investigated externally. Mr. X filed charges against other Local officials. He asserted that, in collaboration with his employer, they had carried out a campaign to harm him. Among other things he alleged that they fabricated a disciplinary record and that they had a hand in his termination.

Mr. X was indeed terminated for cause in April 2016, by which time he had been disciplined multiple times for misconduct and Local H had filed roughly 10 grievances on his behalf and a grievance contesting his dismissal. The Local and the Provincial Grievance Committee obtained legal advice. It decided not to take the case to arbitration but instead to proceed by way of a settlement. Mr. X rejected that settlement. He filed a charge against the Local's Grievance Committee. He subsequently also filed a charge against Local H's Executive for allegedly violating his privacy and notifying "the entire membership" of his case against two specific Executive members. A week later the Local's membership voted to approve the settlement with the employer regarding Mr. X's termination grievance. Mr. X refused to sign that agreement.

Mr. X then filed charges against the President and Executive of Local H and the Bylaws and Election Committee. He alleged, among other things, that they had entered into a conflict of interest in voting not to go to arbitration with the employer, that they barred him from attending his own appeal, and that they violated rules of procedure in the grievance appeal meeting.

The Committee on Constitutional Matters (CCM) scheduled a meeting in January 2017 to review the Local's decision not to take Mr. X's grievance to arbitration and not to investigate the charges he laid. In the background, two notable things occurred. First, the Local and the employer finalized the settlement offer. Although Mr. X had not accepted that offer, the settlement funds were deposited directly into his account. Second, in late 2016, Unifor's National Executive Board (NEB) revoked the Charter of Local H.

In December 2016, Mr. X. called for a review of the revocation of the Local's Charter under Article 18(B)(1) of the Unifor Constitution. He asserted that revoking the Charter while his charges were outstanding violated the Constitution, caused him harm, and effectively immunized those he alleged had harmed him. Among other things Mr. X sought relief which would retract all Charter revocations that left charges and issues unresolved.

Unifor's Director of Constitutional Matters said that Mr. X's outstanding charges had become moot since the Local's Charter was revoked. Mr. X subsequently asked Unifor's President, in writing, for a review by the PRB of the NEB's decision to revoke the Local's Charter. In response, the President replied in late January 2017, that Mr. X's case would not be processed, since the PRB was statute-barred by Article 18(A)(6) from reviewing "any matter related to . . . (a) policy of the Union."

The PRB learned of the President's decision not to refer Mr. X's case and expressed its concerns about the constitutionality of that decision. The Union referred Mr. X's case to the PRB.

Also in late January 2017, Mr. X filed an application against Unifor with the Saskatchewan Labour Relations Board (SLRB). This application concerned both the Charter revocation and the handling of his termination grievance. He filed a second application with the SLRB in February 2017.

The PRB then received Mr. X's *Statement of Reasons* and the Union's *Answer*. While the PRB was reviewing the *Record*, the SLRB decided to suspend its considerations of Mr. X's application pending the PRB's determination.

Decision:

The PRB determined that the first question it had to answer was whether Article 18(A)(6) of the Unifor Constitution precluded the PRB from conducting a review of the NEB's decision to revoke Local H's Charter. The PRB held that Article 18(A)(6) bars the PRB from reviewing decisions that, in substance, relate to and are made pursuant to any official Union policy. Policy decisions are not intended to be subject to review by the PRB, but can be addressed through the democratic process or in another legal forum. Thus, while the PRB lacked jurisdiction to review the revocation of the Local's Charter, the SLRB could do so.

While Articles 18(B)(3) and 18(C)(2) of the Unifor Constitution limit access to PRB processes when a member has sought redress from an external body, it was possible that Mr. X filed applications with the SLRB based on a reasonable belief (supported by statements from a Union official) that the PRB process had concluded.

The PRB noted that if the SLRB confirms the revocation of the Charter, then Mr. X would likely only benefit from declaratory relief. But if the SLRB rules that the revocation was unlawful, then the PRB could revisit the other issues Mr. X had raised. At that point it could consider whether he is barred from recourse to the PRB by virtue of Articles 18(B)(3) and 18(C)(2).

The request for review was denied in part. The PRB determined that it did not have jurisdiction to review Unifor's decision to revoke Local H's Charter. The rest of Mr. X's case will remain open pending a decision regarding Local H's Charter at the SLRB.

Finally, the PRB reiterated that all requests for reviews and appeals should be referred to the PRB, regardless of the Union's views of the PRB's jurisdiction. The PRB will, at that point, determine whether it is barred from carrying out a review or considering an appeal.

Case No.01/2017

Member, Unifor Local H v Unifor Local H and the Unifor Committee on Constitutional Matters

Decision Date: 2 February 2018

Board Members: Cara Faith Zwibel (Chair), Marvin Schiff, and Pradeep Kumar

Overview:

Mr. X, a member of Unifor Local H, ran and lost a campaign for President in an Officer's Election. He challenged the results of that election to the Local Election Committee (LEC) and subsequently the Committee on Constitutional Matters (CCM). Both appeals were denied. He appealed to the Public Review Board (PRB) which affirmed that the CCM's decision was reasonable and denied Mr. X's request for review.

Facts:

The Procedural History:

Mr. X is a member of Unifor Local H. In December 2016, he ran for President in the Officer's Election. He subsequently discovered that he lost by a margin of less than 30 votes. After unsuccessful appeals to the LEC and CCM, Mr. X appealed to the PRB which determined that it had sufficient information to hold a hearing in writing and further held that the CCM's decision was reasonable and denied Mr. X's request for review.

The Facts:

In early January 2017, Mr. X informed Local H's Secretary of his intention to challenge the results of the election. Among other grounds he challenged the decision based on the definition of the "simple majority" required to determine a winner. He contended that this definition was open to interpretation. Additionally, he also challenged the conduct of the Election Chair. He also worried that members were not receiving their ballots. In fact Mr. X stated that at least one member had told him that he had not received his voting package. Further, Mr. X asserted that the Chair of the LEG refused to assist him or others to address their concerns about voting packages. Mr. X expressed concern that a member might lose their right to vote purely because their name was missing from the voting list, in contravention of Article 13 of the Local's By-Laws. He further claimed that the Election Chair advised members to vote for another candidate and that the security of ballots was in question. He asked the LEC to investigate his concerns and hold a run-off election.

In early February 2017, the LEC advised Mr. X: "The election committee has reviewed all the appeals that have been submitted and have [sic] decided that the previous rulings will stand." No reasons were given. Nor was an explanation provided as to how the LEC reached its conclusion.

That same day, on February 2, 2017, Mr. X requested that the CCM review the LEC's decision. Both Mr. X and the Local were given the opportunity to provide supporting documentation and advise the CCM of their positions.

Arguments:

The LEC argued that the majority of the Local members did receive their ballots and noted that the LEC emailed all candidates about a process which would enable them to communicate to members concerns about members not receiving ballots. The LEC also stated that those members who had initially not received ballots had been given the opportunity to vote. The Election Chair denied influencing voters, stating that the LEC remained impartial and that members were of voting age and capable of making their own decisions. Lastly, the Locals By-Laws had been amended so as to dispense with the majority requirement (50% plus 1 vote) as well as with the possibility of costly run-off elections.

In June 2017, the CCM denied Mr. X's request for review. It referenced Unifor's Constitution and the Local's By-Laws in its decision and accepted the LEC's evidence that it had attempted to facilitate members' access to ballots. Despite Mr. X's claim, no member had come forward on the appeal to state that they had not received a ballot. The CCM could not therefore conclude that Mr. X's concerns had an effect on the outcome of the election.

The CCM endorsed the LEC's rationale regarding the "simple majority" amendment to the Local's By-Laws.

Mr. X wrote to Unifor's National President requesting that the PRB review the CCM's decision. He said that he could tender the names of two members who had expressed their "distaste" about the Election Chair's conduct during the election. He also disagreed with much of the response he received from the

National about his appeal. In its *Answer*, Unifor pointed out that all of Mr. X's concerns had been investigated. It submitted that there was no basis to conclude that the CCM's decision was unreasonable, and asked that the request for review be dismissed. In his *Reply*, Mr. X asserted that the CCM should have interviewed the two members who approached him regarding the Election Chair's conduct during the election. Mr. X also stated that the LEC could not demonstrate that the Chair could account for every election ballot.

Decision:

The PRB determined that "an election should be invalidated if it was conducted in a fraudulent manner. In the absence of fraud, an election may be invalidated if loose election practices are shown to have been used or if the election was otherwise conducted improperly". That is because "the bar for invalidating an election should not be set too low". This ruling was in keeping with its previous decision in Unifor PRB 01/2015.

Additionally, the PRB is governed by the Unifor Constitution, particularly Section 9 of Article 18: "The Public Review Board will overturn a decision only when the lower body acted unreasonably". Citing *Dunsmuir v New Brunswick*, 2008 SCC 9, the PRB observed that the reasonableness standard allows for a range of reasonable outcomes. It demands a level of deference to lower bodies, focusing on the justification, transparency, and intelligibility of the lower body's decision-making process.

Although the PRB was not required to review the LEC's decision, it would have found that decision unreasonable since there was no justification, transparency, or intelligibility in the decision-making process. In contrast, the CCM's decision was reasonable given the information before it. In particular, the CCM sought information from parties and considered it, turned to the Unifor Constitution and the Local's By-Laws, and arrived at conclusions in response to each of Mr. X's concerns. Its reasons were communicated to Mr. X.

Case No.01/2018

Member, Unifor Local I v Unifor National Executive Board

Decision Date: 14 August 2018

Board Members: Cara Faith Zwibel (Chair), Marvin Schiff, H       David and Pradeep Kumar

Overview:

The National Executive Board (NEB) decided to disaffiliate from the Canadian Labour Congress (CLC). Mr. X, a member of Unifor Local I, argued that the NEB required approval by Convention or the Canadian Council to disaffiliate and that the unilateral disaffiliation was anti-democratic, contrary to the principles of due process, and inconsistent with the Constitution. The case required the PRB to interpret Article 19(2) of the Constitution which deals with disaffiliation from the CLC. The PRB granted the request for review and determined that a decision by the NEB to disaffiliate from the CLC must be approved by Convention or the Canadian Council *before* the decision is implemented. However, since the Canadian Council would be taking place shortly, the PRB did not send the matter back to the NEB for further consideration.

Facts:

Article 19(2) of the Constitution states:

Suspension or disaffiliation from the Canadian Labour Congress may be authorized by the National Executive Board subject to approval of Convention, or the Canadian Council.

On January 16, 2019, Unifor's NEB decided to disaffiliate from the CLC. The decision was communicated to the CLC the following day by Unifor's President.

Arguments:

Mr. X was a member and officer of local I and took the position that the NEB required approval by Convention or the Canadian Council to disaffiliate from the CLC. He argued that the NEB's actions were anti-democratic, contrary to the principles of due process, and inconsistent with the Constitution. He pointed in particular to Articles 3, 4, and 7 of the Constitution and stated that the decision to disaffiliate was made without proper discussion and without guaranteeing accountability and transparency in the union's decision-making and actions. The decision was also made without offering members any opportunity for democratic participation and without a democratic mandate from the membership.

The NEB argued that the Constitution gives it the authority to act as it did, relying in part on Articles 7(C)(13) and (14) which establish its authority, including its authority to make and amend policies between Conventions. It further argued the approval of Convention or the Canadian Council can either reaffirm the decision to disaffiliate or reverse it, pointing to other provisions of the Constitution where language specifies that certain decisions must first be approved before being implemented (Articles 15(A)(3) and 15(A)(4)). It also made a jurisdictional argument, suggesting that the PRB did not have the jurisdiction to review the request until such time as the Unifor delegates make the final determination.

Decision:

The PRB rejected the NEB's jurisdictional argument because it suggested that disaffiliation had not yet occurred or was not final, but the evidence did not support this contention. Disaffiliation was clearly communicated to the CLC and to the membership.

As the PRB can only overturn a decision of a lower body when that body acts unreasonably, it had to consider whether the NEB's interpretation of Article 19(2) was reasonable. The PRB found that the language of Article 19(2) made it plain that the decision to disaffiliate from the CLC does not lie with the NEB alone. The words "subject to" indicate a qualification on the NEB's authority and although there is ambiguity in light of other provisions of the Constitution which are more clear, adopting the NEB's interpretation would effectively render the words "subject to" meaningless. To the extent of any ambiguity, the PRB relied on the principle of contractual interpretation known as the *contra proferentum rule* which holds that ambiguities in a contract should be interpreted against the interests of the party that drafted the ambiguous provision. The Ontario Court of Appeal has applied this principle to union constitutions, noting that these are essentially contracts of adhesion where the membership has little choice but to accept the constitution and its terms.

Since the PRB's decision was rendered just a few weeks before the planned convening of the Canadian Council, the NEB decision was not reversed. If the Council approves of the decision to disaffiliate, there would be no logical basis on which to continue with the case. If the disaffiliation was not approved, the NEB would have to nullify its prior disaffiliation.

Case No.01/2019***Member, Unifor Local J v Unifor National Executive Board***

Decision Date: 24 April 2019

Board Members: Cara Faith Zwibel (Chair), Marvin Schiff, H       David and Pradeep Kumar

Overview:

The Applicant, Ms. X, was suspended by her employer and required to participate in a behavioural coaching program after her employer found she had harassed a co-worker. Ms. X asked the local to grieve her discipline and it declined to do so. Her appeal of this decision went to the National Executive Board (NEB) and then to the Public Review Board (PRB). The NEB argued that the PRB lacked jurisdiction on the basis of Article 18(B)(3) of the Constitution because Ms. X filed a complaint against Local J with the Canadian Human Rights Commission (CHRC). The PRB found that it lacked jurisdiction to hear the appeal and declined to hold a hearing.

Facts:

Ms. X was disciplined by her employer in mid-December 2016. She received a 15-day suspension and was required to participate in behaviour coaching. In late January 2017 she was advised by the Local's Regional Vice-President that he would recommend to the NEB that her discipline not be grieved. Ms. X's request for reconsideration was denied and she appealed the Local's decision not to grieve to the Local's National Executive Board. This appeal was heard and dismissed in October 2017. In November 2017 Ms. X sought a request for review to the President of Unifor. The hearing before Unifor's NEB was heard in March 2018 and the NEB denied Ms. X's appeal in late May 2018. Ms. X then sought to appeal the NEB decision to the PRB.

Three days prior to the NEB hearing, Ms. X had filed a complaint against the Local with the CHRC. The President of the Local received a letter informing him of the CHRC complaint in September 2018.

Arguments:

The NEB argued that the PRB was barred from considering the appeal by virtue of Article 18(B)(3) of the Constitution, which states:

No request for review shall be considered under this Article if a resort to a labour board, court, civil authority or other external body has been commenced prior to exhausting the Constitutional procedures and remedies in this Constitution.

The NEB said that Ms. X's recourse to the CHRC ousted the PRB's jurisdiction. Ms. X argued that the misconduct she sought to address before the CHRC is different from the concerns raised in the appeal, and also noted that she was seeking distinctive types of relief in the two claims. She also argued that the NEB could not raise the jurisdictional argument because it had advised in earlier correspondence that it would not pursue this claim. Unfortunately, this was based on a misunderstanding about a notice that the PRB had sent to the parties and was not in fact the case.

Decision:

The PRB noted that the *Canadian Human Rights Act* (CHRA) is quasi-constitutional legislation that Unifor and its members cannot contract out of. As a result, Unifor is bound by the provisions even if the CHRA is not expressly incorporated into the Unifor Constitution. The PRB can only overturn a decision of the NEB if it is unreasonable. A reasonable decision cannot be unlawful. Therefore, in deciding whether or not the

NEB's decision was unreasonable, the PRB would have to consider, *inter alia*, whether or not the decision was consistent with law and the terms of Unifor's contract with its members, including considerations of whether or not the decision complied with the CHRA.

There appeared to be no legal or factual basis for Ms. X to claim that the misconduct she sought to address through the PRB's process was in substance different from what she sought to address through the CHRA complaint. Indeed, her materials frequently referenced concerns about discrimination which were also before the CHRC.

The PRB determined that it lacked jurisdiction in the matter and did not hold a hearing.

CONCLUSION

Copies of the full text of any of the appeals described in the foregoing are available on request to the Public Review Board at 90 Eglinton Ave. E., Suite 900, Toronto, ON, M4P 2Y3; telephone and fax: 416-861-1291; email: registrar@uniforprb.ca.

Respectfully submitted,

**The Public Review Board
Unifor**

**Cara Zwibel
Chairperson**

APPENDIX “A”

Audited Financial Statements (2017-2018)

Audited financial statements from previous years available on request to the PRB