

Discipline, Interpretation and Enforcement (DIE) Board

Ruling of the Board

Style of Cause: Hirji v. Students' Council (re. U-Pass)

Ruling # 1

Date heard: June 15 2006.

Appearing for the D.I.E. Board:

Presiding Chair: Kanchana Fernando

Tribunes: Dane Bullerwell, Alan Cliff

Appearing for the Applicant: Mustafa Hirji

Appearing for the Respondent: Jason Morris, Speaker of Students' Council

Case summary:

The Universal Bus Pass Referendum had an expiry date of April 30 of this year. As this date has passed without such a pass being established, Mr. Hirji claims that Students' Council is in breach of the referendum. The panel finds that Council's obligations under the referendum extend merely to exercising all reasonable means, rather than actually ensuring implementation.

Mr. Hirji also claims that failure on the part of the Students' Union to contemplate the use of subsidization from operating funds constitutes a violation of Council's obligations. The panel agrees with the respondent that contemplation is required neither by the referendum nor by previous DIE board rulings.

SUMMARY OF ALLEGATIONS

Mr. Hirji alleges that the failure of the Students' Union to establish a Universal Bus Pass program by May 1st constituted a violation of its obligations under the Universal Bus Pass Referendum of March 2004. Hirji claims that the D.I.E. Board Reference *Re. Universal Bus Pass Referendum Question* of November 18th 2004 (U-Pass Ruling #1) established that the Students' Union was obliged to establish a Universal Bus Pass program by April 30.

Mr. Hirji further claims that the fact that the Students' Union has not considered subsidizing the U-Pass from operating funds is evidence of a failure to pursue all reasonable means in implementing the referendum.

FACTS

The Universal Bus Pass Referendum was approved by the members of the Students' Union during the campus-wide executive election of March 2004. The referendum read as follows:

“Do you support the establishment of a Universal Bus Pass subject to the following conditions:

1. That the pass would provide unlimited access to participating municipal transit systems during the Fall and Winter terms
2. That the pass would cost each student a maximum of \$60.00 per Fall or Winter term
3. That the pass would be mandatory for all undergraduate students except:
 - a) Students not residing in a municipality served by a participating municipal transit system;
 - b) Students, who are for an entire term, not attending courses on the University of Alberta campus;
and
 - c) Students who, by reason of disability, are unable to make use of ordinary transit services
4. That this referendum would bind the Students' Union to enter into an agreement on the terms outlined in this referendum as soon as possible; and
5. That this referendum would expire April 30, 2006.”

On May 1, 2006, Students' Union advocacy director Don Iveson stated in an email message to the applicant that no U-Pass agreement had been settled with the municipal transit systems, and that it would not be implemented by September of 2006.

On May 26, 2006, Students' Union president Samantha Power stated in an email message to the applicant that subsidization of the U-Pass from operating funds had not been considered.

RELEVANT LEGAL PROVISIONS

D.I.E. Board ruling *Re. Universal Bus Pass Referendum Question* (U-Pass Ruling #1) of November 18 2004 answered four questions referred by the Students' Union Environmental Coordination Office of Students. In response to the first of these, asking which requirements must be met by the Students' Union by April 30, the Board wrote that:

“[a] referendum must be interpreted in light of what a reasonable student would expect the referendum to mean. Respecting the present referendum question, a reasonable student would expect the Students' Union to take all reasonable measures to establish a Universal Bus Pass under the criteria in the referendum question.”

On January 18, 2005, the D.I.E. Board issued a second ruling, *Re. Universal Bus Pass Referendum* (U-Pass Ruling #2) in response to three questions referred by Mr. Hirji. The first of these asked whether the S.U. would be obligated to subsidize the U-Pass with operating funds in the event that it was necessary to establish a the pass by April 30, 2006. The Board found that “[i]n the event that the cost of the Universal Bus Pass exceeds \$60, the Students’ Union would be required to fund the excess cost of the bus pass to an extent that would be reasonable.”

ANALYSIS

The applicant argues that U-Pass Ruling #1 interpreted the referendum to require the Students’ Union to actually establish the pass by April 30. He bases this interpretation on the second sentence of the Board’s answer to ECOS’ third question, which states that “[t]he referendum requires the establishment of the Universal Bus Pass by April 30, 2006.”

The respondent submits that the earlier finding in the same ruling that “[a] reasonable student would expect the Students’ Union to take all reasonable measures to establish a Universal Bus Pass under the criteria in the referendum question” supersedes the actual-establishment requirement. Under the respondent’s interpretation, U-Pass Ruling #1 requires not actual implementation, but merely that the Students’ Union takes all reasonable measures in that direction. The panel concurs, for a number of reasons.

The all-reasonable-measures requirement is laid out directly in response to the first question of U-Pass #1, “[w]hat requirements are set out by the referendum that must be met by April 30 2006?” On the other hand, the quotation cited by the applicant in support of his interpretation is an incidental statement found in the midst of a largely unrelated response to the third question, about whether “further referenda [are] necessary [...] to maintain a Universal Bus pass established under [the] referendum.” The panel believes that the direct response takes precedence over the passing comment. The language of the referendum question itself supports this interpretation. If the requirement for implementation were an absolute one, the referendum would not refer to establishment “as soon as possible,” and use an expiry date rather than an explicit deadline. U-Pass Ruling #2 also cites the first ruling as finding that “the Students’ Union must take all reasonable measures” towards implementation. If the Board had found that the requirement were one of actual establishment rather than all-reasonable-measures, it would not have bothered to define the circumstances in which subsidization would be reasonable or unreasonable.

The applicant also claimed that the failure of the Students’ Union to consider subsidizing the U-Pass with operational funds constituted a failure to live up to its obligation to use all reasonable measures to establish the pass. While the D.I.E. Board has found that the Students’ Union “would be required to fund the excess cost of the bus pass to an extent that would be reasonable” under some circumstances, (U-Pass Ruling #2) it is actual subsidization, not consideration of subsidization, that is deemed reasonable and therefore required. Despite the fact that email correspondence provided by the applicant indicates that the S.U. has not considered so funding the pass, that failure to consider is does not necessarily constitute a violation of its referendum obligations. Clearly, subsidization would not be a reasonable step, and therefore would not be required by the referendum, unless it could actually lead to the establishment of a pass. The S.U. would therefore be in violation for failing to subsidize if and only if it could be demonstrated that a reasonable amount of internal subsidization would have made it possible to implement the pass.

Despite the failure of the Students’ Union to consider subsidization, the panel has not been presented evidence that a reasonable degree of subsidization would necessarily have been useful in establishing a pass by April 30.

DISPOSITION AND REMEDY IMPOSED

The panel reaffirms that there was no requirement for Students' Council to actually establish the U-Pass referendum by April 30, but rather to exercise all reasonable measures in pursuing establishment. Failure to so establish the U-Pass as defined under the bylaw is therefore not explicitly a violation of the referendum's terms.

The panel found no requirement to *consider* subsidization in U-Pass Ruling #2. In the absence of an evidentiary basis on which to believe that a reasonable degree of subsidization would have allowed the establishment of the pass, the panel cannot establish that a transgression of the all-reasonable-measures principle has occurred in this case.

RECOMMENDATIONS

The panel would remind all parties that D.I.E. Board jurisdiction extends only to interpreting Students' Union Legislation, and not, e.g., to the Post-Secondary Learning Act. (See D.I.E. Board Ruling #3, 2003-2004)

The Discipline, Interpretation And Enforcement (D.I.E.) Board functions as the judicial branch of the Student's Union, and is responsible for interpreting and enforcing all Students' Union legislation. If anyone has any questions regarding the D.I.E. Board, feel free to contact the Chair, Alex Ragan, at ea@su.ualberta.ca.