

**The Labour Relations Board  
Saskatchewan**

**BARBARA METZ, Applicant v. SASKATCHEWAN GOVERNMENT AND GENERAL  
EMPLOYEES' UNION, Respondent**

LRB File No. 164-00; July 17, 2003

Chairperson, Gwen Gray, Q.C.; Members: Leo Lancaster and Donna Ottenson

The Applicant: Barbara Metz  
For the Respondent: Rick Engel

**Duty of fair representation – Scope of duty – Board considers each allegation in application and finds no evidence establishing that union acted in manner that was arbitrary, discriminatory or in bad faith in pursuing applicant's grievances – Board dismisses application.**

***The Trade Union Act, s. 25.1***

**REASONS FOR DECISION**

**Background:**

[1] The details of Barbara Metz's application to this Board were set out in our preliminary Reasons for Decision reported at [2003] Sask. L.R.B.R. 28, LRB File No. 164-00. In these Reasons, the Board will determine if any of the allegations made by Ms. Metz in relation to the procedures adopted by Saskatchewan Government and General Employees' Union (the "Union") in settling her accommodation grievance breached the requirements of the duty of fair representation.

**Relevant Facts:**

[2] We will address the relevant facts in relation to the allegations raised by Ms. Metz in her amended application (May 13, 2003). The allegations are set out below in the underlined paragraphs. Much of the evidence presented at the hearing did not assist the Board in understanding Ms. Metz's complaints. As a result, much of the evidence is not summarized in these Reasons.

1994 – Union failed to file and/or to pursue a grievance based upon the Employer's discrimination

**[3]** This complaint relates to an early encounter between Ms. Metz and Doug Taylor, an agreement administration advisor with the Union. Ms. Metz recalls that Mr. Taylor informed her that “the employer can do what it likes” in relation to the accommodation of an employee who has been injured and who is on Workers' Compensation benefits.

**[4]** Ms. Metz's evidence also established that the Union filed numerous grievances pertaining to the accommodation issues and reached a settlement with the Government of Saskatchewan (the “Employer”), which included a permanent position for Ms. Metz in a higher classification than her pre-injury position and a significant financial settlement.

1996 – Union failed to assist the applicant in dealing with Employer assessments

**[5]** Ms. Metz complains that the Union did not protect her from having to undergo repeated job assessments (a total of four) in clerical positions. She indicated that her complaints about the job assessment process fell on deaf ears. She was of the opinion that the Union should have refused to allow the Employer to require more work assessments even if it meant that she would be cut off of Workers' Compensation benefits. Ms. Metz felt that the Union could have protected her in this event by providing her with long term disability benefits under the Union-run long term disability plan.

1996 – Union failed to apply for employment benefits on behalf of the applicant

**[6]** At the time of the hearing, Ms. Metz did not recall the basis of this complaint.

1996 – Union failed to inform the applicant of job openings available for bid

**[7]** Ms. Metz was of the view that the Union owed her a positive obligation to make career bulletins available to her so that she could apply for various jobs in executive government. She did receive career bulletins from the Public Service

Commission from 1997 onwards but she was critical of the Union for not arranging this service for her earlier.

1996 – Union denied the applicant access to a job, which the Employer proposed

**[8]** Ms. Metz, at the time of the hearing, could not recall the basis of this complaint.

1996 – Union threatened to withdraw representation when applicant complained of the representation

**[9]** Ms. Metz recalled that, when she complained about the quality of representation she was receiving from the Union, someone in the Union threatened to stop representing her. She did not recall who made the comment, other than it was not made by her staff representative, Susan Jeannotte Webb.

1996/97 – Union refused to allow proposed accommodation

**[10]** At one point in the negotiations with the Employer over the accommodation of her disability, Ms. Metz asked for a number of accommodations that the Employer found to be excessive. She recalled that the Employer's representative said words to the effect that her (Ms. Metz's) demands were ridiculous. Ms. Metz complains that the Union representatives at the meeting did not come to her defence.

1996/97 - Union refused to take signed grievance to arbitration and to file other grievances

**[11]** Ms. Metz wanted the Union to file a grievance against the Public Service Commission, as opposed to her home department, for offering only clerical positions as the positions into which she could be accommodated. The Union refused to do so.

1997 – Union failed to obtain time off for her shop steward to assist the applicant in dealing with an assessment sought in part by the Employer

**[12]** Ms. Metz was of the view that the Union owed her a positive duty to permit her shop steward, Wayne Lee, union leave to attend with her at a medical assessment. The Workers' Compensation Board required Ms. Metz to undergo the assessment. Ms. Metz's evidence established that the Union had granted paid union

leave to Mr. Lee for this purpose but had not communicated that fact to him in a timely manner. In his role as shop steward, Mr. Lee had never attended a medical assessment with any other employee.

1998 - Union changed the agreement administrative advisor in spite of requests not to because of familiarity with the matter, its complexity and the former advisor's willingness to continue

**[13]** Ms. Metz complained that the Union changed the staff representative assigned to her grievance in mid-stream. She objected to Susan Saunders because Ms. Saunders suggested to her in the first meeting that they needed to start over. Ms. Metz was informed by the Union that the change in staff representatives was related to a re-assignment of staff workloads.

1999 - New advisor agreed over the objection of the applicant to further assessments, despite the existence of previous assessments addressing the matters which thereby further delayed return to work

**[14]** Ms. Metz objected to the Union agreeing that she would undergo a work assessment in the position she now occupies. Ms. Metz was of the view that the Employer had assessed her on four previous occasions and that no further assessment was required. Although she disputed the Workers' Compensation Board finding that she was no longer disabled, she felt that the Employer ought to have accepted the Workers' Compensation Board finding and put her back to work without further assessment.

**[15]** Ms. Saunders, who was called as a witness by Ms. Metz, testified that the assessment was necessary to ensure that the work was safe for Ms. Metz given her disability and past record of not being able to complete work assessments.

2000 – Union negotiated a Letter of Agreement without consultation on its terms

**[16]** Ms. Metz felt unduly pressured to sign a return-to-work agreement which set out the terms of her re-integration into the workforce, including the Employer's and the Union's agreements to assist with the accommodation. Ms. Metz indicated that she was presented with the agreement in a meeting and was asked to sign it at the same meeting. She refused to do so and felt that Ms. Saunders was agitated with her. Eventually, Ms. Metz agreed to sign the document.

[17] Ms. Saunders indicated that she was not upset with Ms. Metz for refusing to sign the return-to-work agreement on the day of their initial meeting concerning the agreement. She thought that Ms. Metz had valid questions that required answers before the agreement was signed. She pointed out email exchanges between her and Ms. Metz and the Employer dealing with the questions.

Union intimidated the applicant by indicating disputes to the Employer during negotiations - deliberate tactics to embarrass

[18] Ms. Metz indicates that Ms. Saunders raised her voice in an angry fashion during a meeting between Ms. Metz and Ms. Saunders. As a result, Ms. Metz left the meeting in tears. On her way out of the room, she passed the Employer's representative who was coming to attend a further meeting with the Union and Ms. Metz to discuss the return-to-work agreement. Ms. Metz indicated that she was humiliated by the incident.

[19] Ms. Saunders did not recall Ms. Metz leaving a meeting in tears but she did indicate that feelings ran high at times due to the frustrations experienced by Ms. Metz and those in the Union who were attempting to help her. She did not deny that she may have raised her voice on occasion, as did Ms. Metz.

Union misrepresented terms of agreements and information available

[20] Ms. Metz complained that the Union entered into a Letter of Agreement with the Employer to settle the monetary portion of her accommodation grievance and her human rights complaint without her consent. She testified that she was informed by Fred Bayer, then Chief Executive Officer of the Union, that the Union had entered into the agreement. Mr. Bayer had set out the terms of the agreement in a letter to Ms. Metz dated November 7, 2001. Ms. Metz was not aware of the actual terms of the agreement until she was provided with a copy of the Letter of Agreement by the Human Rights Commission sometime later. She was surprised to see that the Union purported to settle her human rights complaint in the agreement. The actual agreement required Ms. Metz to file a letter with the Human Rights Commission indicating that the terms of the agreement represented a reasonable settlement of her human rights complaint as a condition of payment of the funds by the Employer to her.

**[21]** Prior to the Union entering into the Agreement, Ms. Metz told Mr. Bayer not to settle the matter on the terms proposed by the Employer. Ms. Metz was informed by counsel for the Union, Mr. Engel, at a meeting on June 21, 2001, that the Employer would want to settle all of the outstanding claims at once – that is, the grievances, human rights complaint and unfair labour practice complaints.

**[22]** Ms. Metz did not want the Union to act as her exclusive representative in relation to her human rights complaint. She was of the view that, since the Court of Appeal issued its decision in *Cadillac Fairview Corp. v. Saskatchewan (Human Rights Commission)* (1999), 173 D.L.R. 4<sup>th</sup> 609, leave to appeal dismissed (1999) S.C.C.A. No. 492, the Union had a positive duty to advise her that she could proceed to have the matter determined by the Human Rights Commission and Tribunal and she was not restricted to pressing the matter under the terms of the grievance and arbitration system established under the collective agreement and *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”). She objected to the Union’s “ownership” of the grievance and thought that she could achieve a better settlement before the Human Rights Commission.

**[23]** In some senses, Ms. Metz did achieve a better agreement through the Human Rights Commission process but with the assistance of the Union and the co-operation of the Employer. The issue of her seniority was resolved in her favour through this process, as was a taxation problem. Both matters were addressed by the Employer and the Union through a Letter of Agreement amending the main agreement setting out the terms of the compensation payable to Ms. Metz for the Employer’s delay in accommodating her disability.

**[24]** The Union pointed out that legal counsel for the Human Rights Commission had advised Ms. Metz early in the process that she needed to elect to be represented by the Commission or by the Union. Ms. Metz indicated to Ms. Saunders that she wished to proceed with the grievances because the Human Rights Commission process was focused on termination of employment and severance, as opposed to accommodation of her into productive work.

**[25]** Ms. Metz also complained that the Union interfered with the settlement of her human rights complaint by being unwilling to provide a release of liability to the

Employer. As explained in the earlier Reasons, the Union was requested to sign a release indicating that the payment of the \$50,000 to Ms. Metz by the Employer under the terms of the Letter of Agreement between the Union and the Employer, constituted complete settlement of Ms. Metz's and the Union's claims against the Employer. Faced with Ms. Metz's duty of fair representation complaint, the Union was unable to sign such a release because this Board could potentially order the Union to refer Ms. Metz's grievances to arbitration.

**[26]** In the end result, after the Board's initial ruling in this matter deferred its jurisdiction over the settlement of the accommodation grievance to the Human Rights Commission, the Union did sign a release. Ms. Metz has signed a settlement agreement between her and the Employer relating to her human rights complaint, which settlement incorporates the Letter of Agreement reached between the Union and the Employer relating to the accommodation grievances. The seniority and tax issues are also covered off by the terms of the settlement agreement. This settlement is subject to the approval of the Human Rights Commission. The Chief Commissioner has indicated that the Letter of Agreement between the Union and the Employer provides a reasonable settlement of the accommodation issues.

Union willingly or unwillingly colluded with the Employer in its delaying of return to work, by not addressing monetary interests including failing to file grievances on those issues

**[27]** No issues were raised by Ms. Metz under this specific heading in her evidence.

**[28]** Other headings of complaint added to the amended application filed on May 13, 2003 were not canvassed in their individual form before this Board but were subsumed in the matters raised above. We will not review the evidence that pertains to each of these allegations as the evidence is already outlined above in relation to other allegations.

**Relevant Statutory Provision:**

**[29]** The duty of fair representation is set out in s. 25.1 of the *Act* as follows:

25.1 *Every employee has the right to be fairly represented in grievance or rights arbitration proceedings under a collective bargaining agreement by the trade union certified to represent his bargaining unit in a manner that is not arbitrary, discriminatory or in bad faith.*

**Arguments:**

[30] Ms. Metz's main arguments centered around her assertion that the Union ought to have advised her, once the Court of Appeal decision in the *Cadillac Fairview* case, *supra*, was published, that she had the option to pursue her discrimination claim before the Human Rights Commission without assistance from the Union and without the Union exerting its authority as her exclusive representative.

[31] Mr. Engel, counsel for the Union, argued that the Union achieved positive results in its representation of Ms. Metz including her return to work in a position that was classified in a higher pay range than her pre-injury position and a complete wage loss and damages settlement. In circumstances where the outcome of the Union's representation is successful, the Board should only censure the Union's actions in the rarest of circumstances. In this case, the Union argued that there was no cause for criticizing the Union in relation to the process it used to settle Ms. Metz's grievances. Contrary to Ms. Metz's position, the Union asserted that it had a positive obligation under the Supreme Court of Canada's decision in the *Central Okanagan School District v. Renaud*, [1992] 2 S.C.R. 970, to take all steps to represent Ms. Metz in relation to her accommodation grievance and to take steps within the Union to ensure that she was accommodated.

**Analysis:**

[32] The Board finds that there is no evidence establishing that the Union acted in a manner that was arbitrary, discriminatory or in bad faith in relation to the manner in which Ms. Metz's grievances were pursued by the Union. As a result, the Board dismisses Ms. Metz's application. We will outline our reasons for this finding by considering each of the points from Ms. Metz's application outlined above.



1994 – Union failed to file and/or to pursue a grievance based upon the Employer's discrimination

**[33]** The Union did file grievances in 1996 and 1997 in relation to a discriminatory remark made by a manager in Ms. Metz's home department to the Workers' Compensation Board and breach of the duty to accommodate. These grievances coincided with the time period during which Ms. Metz was in receipt of total disability benefits from the Workers' Compensation Board. These benefits commenced in April, 1993 and continued to be paid until March, 1998, sometime after the Workers' Compensation Board was in receipt of an assessment from the Canadian Back Institute, which concluded that there was no objective foundation to support Ms. Metz's claim of disability. Mr. Taylor's earlier refusal to file a grievance in relation to the duty to accommodate Ms. Metz was not prejudicial to her in the sense that, at the time the remarks were made, Ms. Metz was determined by the Workers' Compensation Board to be totally disabled. The question of accommodation would not have arisen at that point.

**[34]** When Ms. Metz's doctor provided the Employer with a list of restrictions for Ms. Metz's return to work in September, 1995, the Union and the Employer commenced their work in attempting to find Ms. Metz a position that she could perform without re-injury. The work assessments took place between September, 1995 and April, 1997. Ms. Metz could not perform any of the positions in question.

1996 – Union failed to assist the applicant in dealing with Employer assessments

**[35]** Ms. Metz's complaint under this heading is unfounded. The Union was under an obligation to assist Ms. Metz in finding a position that fit her physical limitations, as was the Employer. If the Union resisted the Employer's requests for work assessments, the Employer's attempts to accommodate Ms. Metz back into the workforce may have come to a halt. Ms. Metz also had a positive obligation to cooperate with the accommodation attempts: see *Renaud, supra*, at 593 where the Court stated: "When an employer has initiated a proposal that is reasonable and would, if implemented, fulfill the duty to accommodate, the complainant has a duty to facilitate the implementation of the proposal." The Union would have been remiss in its duty to Ms. Metz if it had adopted her strategy of refusing to undergo the work assessments.

1996 – Union failed to apply for employment benefits on behalf of the applicant

**[36]** No evidence was led with respect to this assertion.

1996 – Union failed to inform the applicant of job openings available for bid

**[37]** Although the Union has an obligation to assist with the accommodation of a member who seeks to return to work with a disability, it is not responsible for every aspect of the matter. The employee is required to use common sense and to make diligent efforts on her own behalf to find suitable re-employment opportunities. We do not find that the Union's failure to provide Ms. Metz with job bulletins constitutes a breach of the duty of fair representation.

1996 – Union denied the applicant access to a job, which the Employer proposed

**[38]** No evidence was led in relation to this assertion.

1996 – Union threatened to withdraw representation when applicant complained of the representation

**[39]** Ms. Jeannotte Webb and Ms. Saunders both testified as Ms. Metz's witnesses at the hearing. They impressed the Board with the thoroughness and care that they both brought to the settlement of Ms. Metz's grievances. Both are experienced and knowledgeable staff representatives. They demonstrated patience and a caring attitude toward Ms. Metz and her problems. Ms. Metz did not recall who made the threatening remark to her but she was clear that it was not Ms. Jeannotte Webb who was then her staff representative. We conclude that the remark, if made, was an off-the-cuff remark that did not affect the manner in which Ms. Jeannotte Webb or Ms. Saunders performed their representational duties toward Ms. Metz. Consequently, we do not find that the Union breached its duty of fair representation because the remark did not affect the quality of the representation of Ms. Metz. Nor did it demonstrate an attitude of bad faith or discrimination on the part of the persons assigned primary responsibility for representing Ms. Metz.

1996/97 – Union refused to allow proposed accommodation

**[40]** Ms. Metz's complaint in relation to the Union's failure to come to her defence in relation to one remark made at a meeting by management is petty. The Union representatives worked diligently to help Ms. Metz find a position. They had to develop a strategy for dealing with the Employer that furthered Ms. Metz's cause. It is not uncommon for Union representatives to let certain remarks slip by without comment in the interest of getting a settlement for an employee. The key concern must be on the results obtained by the Union, not the details of conversations that took place in the course of arriving at the settlement. We do not find that this conduct violated the duty of fair representation as it does not demonstrate an attitude of general indifference, bad faith or discrimination on the part of the Union toward Ms. Metz.

1996/97 – Union refused to take signed grievance to arbitration, and to file other grievances

**[41]** The Public Service Commission is the collective bargaining agent assigned to act on behalf of government departments in negotiating collective agreements, settling and handling grievances and other collective bargaining issues with the Union. Ms. Metz wanted the Union to file a grievance against the Public Service Commission for its failure to settle her grievances in her favour by accommodating her into a higher paying position. The Union's option, however, if it didn't find the accommodation efforts to be satisfactory, was to pursue the main accommodation grievance against Ms. Metz's home department. The failure to file a further grievance against the Public Service Commission was not a breach of the duty to fairly represent Ms. Metz. It was not a necessary or preferred course of action for the Union to take.

1997 – Union failed to obtain time off for her shop steward to assist the applicant in dealing with an assessment sought in part by the Employer

**[42]** Ms. Metz claimed that she was entitled to have her shop steward attend with her at her medical assessments. This is a novel claim. The Union had permitted Mr. Lee to attend at many meetings with Ms. Metz and some assessments. However, there is nothing in the concept of fair representation that would require a union to provide such a high, personal level of service to a member. It is indicative of the demanding nature of Ms. Metz that she assumed she was entitled to such assistance. Mr. Lee

impressed the Board as having assisted Ms. Metz above and beyond the call of duty for any shop steward, having, in his words, spoken to Ms. Metz one or two times a day for eight (8) years at least.

1998 – Union changed the agreement administrative advisor in spite of requests not to because of familiarity with the matter, its complexity and the former advisor’s willingness to continue

**[43]** Ms. Saunders took over from Ms. Jeannotte Webb as staff representative in late 1998. The reassignment occurred as a result of a general reorganization of staff assignments. There is no indication in the evidence that the reassignment was motivated by bad faith or discriminatory reasons relating to Ms. Metz. Both staff representatives performed their representational roles with a great deal of professionalism and care. The Board does not find that the reassignment constitutes a breach of the duty of fair representation. Although the change may have been frustrating for Ms. Metz, the Union has the right to decide staff representative assignments.

1999 - New advisor agreed over the objection of the applicant to further assessments, despite the existence of previous assessments addressing the matters which thereby further delayed return to work

**[44]** Ms. Metz was successfully placed in a position that was at a higher pay grade than her pre-injury position. Prior to being assigned to the position, the Employer required her to undergo a work assessment. Ms. Metz resisted the work assessment and thought that she should be awarded the position without an assessment, based on the Workers’ Compensation Board finding that she was no longer disabled.

**[45]** However, the position she was placed in was not her home position and it was not one that she ordinarily would have access to without competing, on a seniority basis, with other qualified employees. The Union, in essence, was waiving these requirements to the detriment of its other qualified and more senior members in order that Ms. Metz could be re-integrated into the workforce.

**[46]** Part of the accommodation required Ms. Metz to undergo an assessment of her ability to perform the work with modifications agreed to between the Employer, the

Union and Ms. Metz. This was not an unreasonable demand on the part of the Employer. We do not find that the Union's support of the further work assessment violated the duty of fair representation as the work assessment was a necessary part of the Employer's and the Union's efforts to accommodate Ms. Metz. The delays in the return to work were occasioned both by the need to ensure that the work was modified to permit Ms. Metz to perform it adequately and by her resistance to the work assessment process.

2000 – Union negotiated a Letter of Agreement without consultation on its terms

**[47]** This allegation is without a factual basis. Ms. Metz was consulted on the terms of the return-to-work agreement and she was given an opportunity to consider the agreement prior to signing it. She posed various questions to the Union and the Employer and was provided with answers to those questions.

Union intimidated the applicant by indicating disputes to the Employer during negotiations - deliberate tactics to embarrass

**[48]** Angry tones and frustration with a grievor do not, in themselves, constitute breaches of the duty of fair representation: see *Gregoire v. United Steelworkers of America, Local 5890 and IPSCO Inc.*, [1997] Sask. L.R.B.R. 766, LRB File No. 317-95. There must be a general attitude of indifference, discrimination or bad faith on the part of the union toward the member to bring the matter within the purview of s. 25.1 of the *Act*. In this instance, Ms. Saunder's angry tone on one occasion is insufficient to demonstrate indifference, discrimination or bad faith.

Union misrepresented terms of agreements and information available

**[49]** The crux of this complaint is that the Union entered into a settlement agreement with the Employer on the financial portion of Ms. Metz's accommodation grievance. The agreement required Ms. Metz to inform the Human Rights Commission that the settlement was a reasonable settlement of her human rights complaint. If Ms. Metz did not provide the Human Rights Commission with such a letter, the Employer could withhold payment of the sum.

[50] Ms. Metz argued that the Union had no right to purport to settle her human rights complaint. She understood from the Court of Appeal's decision in the *Cadillac Fairview* case, *supra*, that she had the right to pursue her human rights complaint independent of the Union. In essence, she argued that, in relation to the human rights complaint, the Union ought not to have represented her.

[51] Ms. Metz further complained that the Union failed in its duty to fairly represent her by failing to inform her of the *Cadillac Fairview* decision, *supra*.

[52] We find that the Union did not breach its duty to represent Ms. Metz either by entering into a settlement agreement with the Employer concerning her accommodation grievances or by failing to inform Ms. Metz of the Court of Appeal decision in the *Cadillac Fairview* case, *supra*.

[53] As explained in the excellent judgment of Ball J. in *Brown v. Westfair Foods Ltd.* (2002), 213 D.L.R. (4<sup>th</sup>) 715 (Sask. Q.B.), the jurisdiction of an arbitrator acting pursuant to the terms of a collective agreement in relation to a duty to accommodate grievance is concurrent with the jurisdiction of the human rights tribunal. That is, either body has statutory authority to hear and determine the dispute.

[54] The lesson of *Cadillac Fairview*, *supra*, is that an employee may elect to have a human rights dispute determined by the Human Rights Commission and not by an arbitrator acting under the terms of a collective agreement. If the employee elects to proceed under both statutory schemes – that is, *The Saskatchewan Human Rights Code*, S.S. 1979, c. S-24.1 and the arbitration provisions mandated by the *Act* - at some point, one tribunal will be required to defer its jurisdiction to the other tribunal. Such was the case with this Board in its earlier Reasons dealing with the quality of the settlement reached between the Employer and the Union.

[55] In the present case, on Ms. Metz's urgings, the Union filed a duty to accommodate grievance and pursued it to the point of settlement. When it entered into settlement negotiations with the Employer, it agreed to make the payment of the settlement funds conditional on Ms. Metz advising the Human Rights Commission that the settlement was a reasonable settlement of her human rights complaint. Obviously,

the Employer was not willing to pay funds to Ms. Metz if the funds did not result in a complete settlement of all of her outstanding complaints.

**[56]** Because Ms. Metz had filed a complaint with the Human Rights Commission, the settlement agreement entered into between the Union and the Employer was subject to review by the Human Rights Commission. Chief Commissioner Scott reviewed the settlement and found it to be a reasonable settlement of Ms. Metz's human rights complaint. As a result, the Chief Commissioner would not refer the complaint to the adjudication processes established under *The Saskatchewan Human Rights Code*.

**[57]** Should the Union have stopped representing Ms. Metz in the grievance process in relation to the duty to accommodate grievance once it learned that she had filed a complaint with the Human Rights Commission? In our view, there is nothing contradictory about the Union continuing to deal with and settle the accommodation grievance under the provisions of the collective agreement. The Union had a positive duty to assist in finding an accommodation for Ms. Metz. In this case, it undertook its responsibilities by filing grievances and by pursuing those grievances to a satisfactory settlement with the Employer.

**[58]** It is also clear from the *Cadillac Fairview* case, *supra*, that the Union and the Employer could not contractually oust the provisions of *The Saskatchewan Human Rights Code* in their settlement agreement. As a result, any settlement agreement reached between the Employer and the Union in relation to the duty to accommodate Ms. Metz's disability was still subject to the approval of the Human Rights Commission. If the Commission found that the agreement did not satisfy the provisions of *The Saskatchewan Human Rights Code*, it could proceed to refer the complaint to adjudication against both the Employer and the Union: see *Central Okanagan School District No. 23*, *supra*.

**[59]** This system of resolving accommodation complaints is not abnormal. When the Legislature enacted *The Saskatchewan Human Rights Code*, it anticipated that there could be a multiplicity of proceedings relating to the subject matter of a human rights complaint. Section 27.1(2)(d) permits the Chief Commissioner to dismiss a

complaint where she is of the opinion that “the substance of the complaint has been appropriately dealt with pursuant to another Act or proceeding.”

**[60]** Should the Union have informed Ms. Metz of the Court of Appeal decision in the *Cadillac Fairview* case, *supra*? The Union encouraged Ms. Metz to file a human rights complaint as part of the overall strategy in getting Ms. Metz back into the workplace. The Human Rights Commission informed Ms. Metz that she would need to choose to be represented by the Union or the Human Rights Commission. Overall, we conclude that the Union provided Ms. Metz with considerable information and support in relation to her rights under both the collective agreement and *The Saskatchewan Human Rights Code*. We do not read the duty to fairly represent an employee to impose on the Union a positive duty to provide legal advice to a member on a matter of the choice of forum in which to pursue a complaint. The Union can make reasoned suggestions and encourage a choice of forum strategy but, in our view, it is not obligated to advise the member of all of the alternative avenues in which her complaints may be pursued.

Union willingly or unwillingly colluded with the Employer in its delaying of return to work, by not addressing monetary interests including failing to file grievances on those issues

**[61]** No evidence was led with respect to this issue.

**Conclusion:**

**[62]** In reviewing Ms. Metz’s complaints and keeping in mind that the Board is only considering the processes used by the Union to arrive at the settlement agreements with the Employer, we do not find that there is any evidence that the Union acted in a manner that constituted arbitrary treatment, bad faith or discrimination against Ms. Metz.



**[63]** As indicated, the Board dismisses Ms. Metz's application and an order will issue accordingly.

**DATED** at Regina, Saskatchewan this **17th** day of **July, 2003**.

**LABOUR RELATIONS BOARD**

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Gwen Gray, Q.C.,  
Chairperson