Labour Relations Board
Saskatchewan

TINA HALBACK, Applicant v. SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Respondent and SASKATCHEWAN PUBLIC SERVICE COMMISSION, Interested Party

LRB File No. 129-06; September 17, 2008
Vice-Chairperson, Angela Zborosky

The Applicant:	Tina Halback
For the Respondent Union:	Rick Engel, Q.C.
For the Interested Party:	No one appearing

Duty of fair representation – Scope of duty – Complaint against Union over settlement of other member's grievance not a "grievance" and therefore s. 25.1 does not apply to complaint.

Duty of fair representation – Scope of duty – Member entitled to expect closure upon settlement of grievance – Withdrawal of applicant's grievance where grievance conflicts with agreed to settlement of other member's grievance not arbitrary, discriminatory or in bad faith – Long term collective bargaining relationship with Employer relevant factor for Union to consider in withdrawing grievance - Board finds no violation of duty of fair representation.

Duty of fair representation – Scope of Duty – Union's representatives fairly investigated facts and circumstances of applicant's and other member's grievances and carefully weighed conflicting rights and interests of affected members – Union entitled to give greater weight to those members' interests that are concrete or have crystallized – Board finds no violation of duty of fair representation.

Duty of fair representation – Scope of duty – Union examined provisions of collective agreement to assess reasonableness of Employer settlement offer – Union and Employer agreeing to terms of settlement different than collective agreement provisions not arbitrary, discriminatory or in bad faith – Standard of duty of fair representation should not discourage peaceful resolution of grievances without arbitration.

Duty of Fair Representation – Discrimination – Favourtism - No evidence that spouse of bargaining unit member had any involvement in or influence upon the settlement of that member's grievance to the detriment of Applicant.

Practice and Procedure – Evidence - Privacy – Identification of individuals masked by use of initials where individuals not

witnesses or parties and otherwise not necessary to identify individuals by full name.

***The Trade Union Act*, ss. 5(d) and 25.1.**

REASONS FOR DECISION

Background:

[1] On August 11, 2006, Tina Halback (the "Applicant") filed an application claiming that the Saskatchewan Government and General Employees' Union (the "Union") failed to fairly represent her, in a manner that was arbitrary, discriminatory or in bad faith, contrary to s. 25.1 of *The Trade Union Act*, R.S.S. 1978, c. T-17, as amended (the "Act"). Although the application itself is lengthy, the Applicant's complaint against the Union centers around a settlement entered into between the Union and the Saskatchewan Public Service Commission (the "Employer") whereby another employee in the bargaining unit (referred to as "L.E.") was transferred into a certain permanent full-time position in which the Applicant had been interested and for which she had previously applied. The Applicant has been employed by the Government of Saskatchewan for approximately 21 years at the time the dispute arose and at all material times, she was a member of the PS/GE bargaining unit represented by the Union.

[2] Section 25.1 of the *Act* provides as follows:

> *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.*

[3] In its reply to the application, the Union denied that it had failed to fairly represent the Applicant, having fully investigated the facts and circumstances surrounding the Applicant's concerns before it decided not to proceed to arbitration with her grievance, and having given the Applicant the opportunity to fully access the Union's internal appeal process. The Union also took the position that there was nothing improper about the transfer of LE into the permanent position and referenced a provision in the collective agreement that allows the Employer to fill a vacancy by way of transfer, rather than by posting the position for bid by other members.

[4] On November 9, 2006 the Union applied for summary dismissal of the Applicant's application, without an oral hearing. On November 16, 2006 a panel of the Board considered the Union's application *in camera* and determined that summary dismissal was an option. On December 7, 2006, following receipt of the Applicant's written submissions, the Board considered the summary dismissal application by the Union and rendered its decision by letter dated December 22, 2006, a copy of which is appended to these Reasons. The Board dismissed the application for summary dismissal but in so doing, identified those issues over which the Board appeared to have jurisdiction to decide under s. 25.1 of the *Act*, and those over which it did not have jurisdiction and appeared to be irrelevant to a determination of the application. At pages 4-6 of that letter decision, the Board stated:

> *For the reasons that follow, we conclude that, on the application of the principles set out in the Soles case, supra, we are denying the Union's request for summary dismissal of the application but will, through these reasons, attempt to focus the claims of the Applicant that we see as appropriate to an application under s. 25.1.*
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> *In our view, the Applicant has disclosed facts that could form a violation of s. 25.1 of the Act that is within the Board's jurisdiction to determine, however, the application contains many facts and allegations that are simply irrelevant to her claim or not appropriately within the scope of a s. 25.1 application. Also, there appears to be some confusion regarding the nature of the claim before us. It is our hope that our comments will provide some direction to the parties and lead to a more efficient use of the Board's and the parties' time and resources.*
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> *. . .*
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> *In light of our characterization of the real issues raised by the facts in the application and submission,* ***we believe the issues before the Board are narrow ones:***
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> ***1. Whether the Union violated s. 25.1 by acting in a manner that was arbitrary, discriminatory or in bad faith when it decided to settle the L.E. grievance by agreeing to the transfer of L.E. into the vacant permanent investigator position without consideration of the interests of the employees in the Maintenance Enforcement Office, including the Applicant, who may have competed for the position had it been posted by the Employer; and***

> ***2. Whether there was any favouritism by the union representative handling the L.E. settlement such that it resulted in discrimination or bad faith on the part of the Union in violation of s. 25.1 of the Act.***
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> *. . .*
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> *Based on our direction above concerning the scope of the issues to be heard by the Board, in our view, the following issues do not appear to be relevant to the application and/or do not appear to be within the jurisdiction of the Board:*
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> *1. Whether the Applicant should be transferred or appointed to the position in question;*
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> *2. Whether the Union breached s. 25.1 for failure to proceed to arbitration with the purported grievance;*
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> *3. How the subject position became vacant is of no importance, only that the applicant had competed for the position some four months earlier and was not successful;*
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> *4. Any details of the workplace issues involving the Provincial Court or Court of Queen's Bench, except to the extent that the Union may choose to use such factual information in defense of its decision to agree to the transfer of L.E.; and*
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> *5. Details concerning the internal appeal process followed by the parties.*

[5] The application was heard by the Board on January 8, 2007. At the outset of the hearing, the Applicant indicated that she agreed that the issues, as narrowed by the Board in its December 22, 2006 decision, accurately reflected her complaint against the Union. We do note, however, that through the course of the hearing, it appeared that the Applicant wished to continue to put in issue the question of whether the Union violated s. 25.1 of the *Act* by failing to proceed to arbitration with her grievance (i.e. excluded issue #2 above). While we will explore that issue further in these Reasons, upon our review of the Board's December 22, 2006 decision and the evidence led at the hearing, the Board agrees that only the first two issues (as narrowed by the Board in that decision and set out above) fall within the Board's jurisdiction to determine under s. 25.1 of the *Act*. As such, the remaining "excluded" issues set out in the Board's decision of December 22, 2006, will not be subject to our analysis, given

that: (i) issue #1 deals with decisions to be made by the Employer, are not within the scope of s. 25.1, and are not the types of remedies this Board could order should we find a violation of s. 25.1; (ii) issues #3 and #4 are factual matters that are irrelevant to the issues before the Board; and (iii) with regard to issue #5, the Applicant made no specific allegation as to how the Union's internal appeal process was a violation of s. 25.1 and, in any event, led no evidence at the hearing about this issue.

[6] At the hearing, the Union requested that the identity of bargaining unit members, other than the Applicant, who are the subject of discussion in these Reasons be masked, through the use of initials. The Board agreed to the request as the individuals were not parties or witnesses and there was no other reason to identify them by name in this decision.

Evidence:

[7] It was decided between the parties that the Union would lead its evidence first, its witness having more knowledge of the facts and circumstances which were the subject of the application. Joe Pylatuk, an employee of the Union in the position of administration agreement advisor ("AAA") and who has previously held elected positions within the Union, testified on behalf of the Union. He was the AAA assigned to handle the LE grievance and was aware of the circumstances of the Applicant's grievance. In response, the Applicant testified on her own behalf.

[8] Before considering the evidence of the individuals who testified at the hearing, we make reference to the following excerpt of the Board's letter decision dated December 22, 2006 (at pages 1 – 2), which summarizes the Applicant's claim, all of which was contained in the pleadings and generally borne out by evidence led at the hearing:

> *At the time the application was filed, the Applicant had been working with the Employer for 21 years, currently holding a permanent part-time position[1] as an enforcement clerk but working in a term position as an investigator in the Maintenance*

[1] We note that at the hearing and in a message to the Board delivered after the hearing, the Applicant indicated that she was actually in a permanent full-time position at the time she was on leave to work in numerous consecutive term positions in the maintenance enforcement office, although nothing in these reasons turns on that fact.

> *Enforcement Office of the Employer. She had been working for numerous successive terms in the investigator position for approximately seven years as of the date of the application. The application filed by the Applicant contains a very detailed recount of certain circumstances that gave rise to her and her co-workers filing a grievance with the Union. Essentially, the Applicant complains that the Union, as part of a settlement of a grievance involving another individual (hereinafter referred to as "L.E."), agreed to the transfer of L.E. into a vacant permanent position of investigator within the Maintenance Enforcement Office, a position to which the Applicant felt she was entitled to be appointed. The Applicant alleges that the Union failed in its duty to properly represent her and her co-workers in the Maintenance Enforcement Office when it negotiated the transfer of L.E., whom the Applicant views as unqualified for the position, and that this transfer took away the opportunity for her, as a qualified applicant, to be appointed to that permanent position. The Applicant notes that she had a number of meetings with representatives of the Union, but ultimately the Union closed the grievance. The Applicant's internal appeals failed, the Union taking the position that the grievance should not proceed.*
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> *The Applicant also alleges that the Union's representative who was involved in the transfer of L.E. was friends with and a former co-worker of L.E.'s husband, implying that this resulted in favouritism and the resulting improper transfer of L.E.*

[9] Mr. Pylatuk testified concerning the circumstances of the transfer of LE into the investigator position in the Maintenance Enforcement Office ("MEO") as a settlement of a grievance she had filed. On approximately December 20, 2002, LE filed a grievance over her failure to be appointed to a judicial officer (deputy registrar) position with the Court of Queen's Bench ("QB") following an open competition. It appears that her failure to be appointed occurred primarily as a result of negative reference checks. In the past, the Union had perceived that many senior qualified employees were being bypassed for positions on the basis of negative reference checks and as such, the Union took LE's grievance very seriously. A new model had recently been developed for handling reference checks whereby a staff member of the Public Service Commission would repeat the reference checks that had been performed by the hiring manager. This was done in LE's case after the grievance was filed. Mr. Pylatuk testified that as a result of that process, and an investigation into the matter by the Union, it appeared to him that the Public Service Commission had come to the conclusion that the LE grievance had merit. In May 2003, during the grievance process but before the matter proceeded to

arbitration, the Employer offered to settle the grievance by appointment of LE into another position, as a judicial officer (court clerk) at the Provincial Court ("PC").

[10] The Union considered the offer and LE met with a member of the Public Service Commission and the manager of the PC position. LE was interested in settling her grievance by an appointment to this position. Mr. Pylatuk also thought the position would be an appropriate settlement to the grievance because quite some time had passed since the successful incumbent for the QB judicial officer had been appointed and was working in that position, and both LE and the Union were concerned over the type of environment LE would find herself in had she replaced that incumbent in QB. In determining that this was an appropriate settlement, the Union also considered the terms of the collective agreement concerning transfers, which provide as follows:

> *6.1.1 Filling Vacancies by Transfer*
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> *A) A vacant position may be filled by transfer of an employee within the department or from another department. This may be initiated by the Commission or Permanent Head of either department.*
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> *. . .*
>
> *C) The Union shall be provided notification of the Employer's intent to fill a vacant position by transfer or demotion prior to the transfer or demotion taking effect.*

[11] Mr. Pylatuk testified that there are very few qualifiers to the Employer's right to transfer, although the individual transferred must be a permanent full-time employee, which LE was. He stated that article 6.1.1 of the collective agreement reflects s. 24(1) of *The Public Service Act, 1998*, S.S. 1998, c.P-42.1, as amended, which provides as follows:

> *24(1) A permanent head may, at any time, transfer an employee in the classified service where the positions involved in the transfer are in the permanent head's department.*

[12] The Employer made an official offer to LE on June 27, 2003, which LE and the Union accepted as a settlement to the grievance, that placed LE in the judicial officer position with the PC, along with back pay reflecting the rate of a level 7 position

as opposed to the level 5 position she had been working in, from the date of her unsuccessful appointment to the QB position to the date of commencement of the PC position. The Union closed the grievance by letter to the Employer July 15, 2003. LE commenced work as a judicial officer in PC on August 12, 2003.

[13] A few months after LE began working in the PC position, the Employer discovered that the position was, in effect, encumbered, in the sense that an employee (referred to as "CY") who previously occupied the PC position (but had moved on to another position with the Employer) still had the ability under the collective agreement to revert back to the PC position.[2] It was not until CY requested to exercise her right to revert back to the PC position that the Employer learned that the position it had placed LE in to settle her grievance, had been encumbered in this way. Upon the Employer advising the Union of this mistake, the Union indicated it intended to go back to its original position on the grievance, that is, LE's appointment to the position at QB.

[14] A meeting was held with the Public Service Commission staffing representative, managers from the MEO and PC, and LE, on October 20, 2003 in order to explore an alternate placement for LE in the MEO. On October 22, 2003, the Employer made an amended offer to settle the LE grievance by transfer of LE into the position of investigator in the MEO. In that letter, the Employer stated that because LE was not fully qualified for the position at the level 7 pay rate, she would be appointed at level 6 for a six-month period, be trained during that time to meet the competency requirements for working at level 7, and that she would be subject to a 12-month probationary period. The settlement offer included the same payment of back pay as the offer to settle on June 27, 2003.

[15] Mr. Pylatuk provided an explanation as to why the Union accepted, as a settlement to LE's grievance, her transfer to an investigator position with the MEO. He stated that the terms of the settlement were again aligned with article 6.1.1 of the collective agreement and s. 24(1) of *The Public Service Act, 1988*. The terms of

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[2] While it was not clear from the evidence whether CY had an unqualified right to revert back to her position, the Employer accepted her right to do so in the circumstances (she was still under probation in her new position). Incidentally, the position from which CY was reverting was the investigator position in the MEO.

settlement also took into consideration some of the provisions of the collective agreement dealing with training periods, which provide as follows:

> ***14.2.1.3 Training Rates – Below Minimum of Regular Range:***
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> *A) If fully qualified candidates are not available, the Commission may authorize the appointment of a "trainee". Training rates will be established on the basis of semi-annual or annual increments, at rates 2% or 4%, respectively, below the minimum of the regular range. Entitlement and withholding of increments shall be governed by the Increment provisions.*
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> *B) A candidate may be hired below the minimum of the regular range if he does not possess the required core competencies for the position.*

[16] Mr. Pylatuk stated that before the Union could agree to LE's transfer to the MEO, it was necessary to examine the impact such a transfer would have on others in the bargaining unit. The Union had several interests to consider, including primarily that of LE's, CY's and the QB incumbent. Mr. Pylatuk testified that the reversion of CY created a situation where, through no fault of LE or the Union, LE could not stay in the PC position, even though the settlement had been made in good faith and LE had a legal right to that position. The Union took the position that given the length of time since the competition and filling of the position in QB, the QB position was no longer a viable option for LE but that LE still had a reasonable expectation that she would be made whole as a result of the Employer discovering that the PC position was encumbered. LE's expectations were met through the offer of the Employer to place her in the MEO investigator position (a position that was vacant and unencumbered), even though she would initially be paid at a lower rate while training to reach the full competencies of the position.

[17] In cross-examination, Mr. Pylatuk denied being aware that the MEO employees thought the Applicant was qualified for the investigator position and should receive the appointment instead of LE. It was suggested to Mr. Pylatuk in cross-examination that the training provisions referred to only apply if "fully qualified candidates are not available," and that the Applicant was a qualified candidate, however, Mr. Pylatuk responded that he was not aware of the Applicant's qualifications and that, in

any event, it is not up to the Union to assess anyone's qualifications. He stated that if faced with a similar situation in the future where the Employer was proposing the use of a training rate, it would not be up to him to determine if there were other qualified employees in the work unit in question. He stated that he does not know if the MEO manager had assessed LE's qualifications. He also stated that by agreeing to utilize a training rate for LE, the Union was not necessarily accepting that LE was not qualified for the position. Mr. Pylatuk explained that the Union simply agreed to the Employer's proposal of a training rate because it was aligned with the terms and conditions of the collective agreement, but that the Union and Employer were not bound to abide by the collective agreement terms in fashioning a grievance settlement. Mr. Pylatuk also stated that he did not know if the Employer looked for other vacant positions for LE. In cross-examination, Mr. Pylatuk suggested that when the Union is agreeing to a settlement that involves the transfer of an employee, the issue of whether a position is encumbered in some way and the reasons why a position is vacant are more important than determining whether the settlement limits promotional opportunities for other employees.

[18] In response to questions by the Board, Mr. Pylatuk stated that although the Union had not discussed the reversion issue with CY (the Employer having agreed to her request to revert), the Union assumed that CY would have wished to file a grievance if her request for reversion had been denied by the Employer and it would therefore have had to address her concerns about the Employer breaching the collective agreement. Mr. Pylatuk stated that the Union took this factor into consideration in handling the LE matter, as well as the fact that if CY had not been allowed to revert upon her request, she would likely have failed her probationary period which would entitle her to mandatory reversion to the PC position. In either case, faced with those rights of reversion, the LE settlement had or would have been breached by the Employer. He stated that in these circumstances, it would be difficult to insist LE stay in the PC position. He therefore felt that the Union's primary obligation was to make LE whole and that when looking at a vacancy for her, the most important concern was to ensure that the position is not being taken away from someone who has a right to that position, as there are always competing interests when it comes to settling grievances. He stated that while the Union prefers that all positions be filled by way of a competition, occasionally the Union has agreed to placement of an individual into a vacant position for the purposes of settling a grievance or meeting its duty to accommodate. He stated that in the circumstances of

this particular case, the interests of LE and CY took precedence over the interests of other bargaining unit employees' opportunities for advancement.

[19] Mr. Pylatuk speculated that even if the Union had not agreed to resolve the LE grievance by transferring LE to the MEO, the Employer could have done so under the right it has to transfer employees, irrespective of what the Union thought. He wished to make it clear, however, that the Employer did not transfer LE under its powers in article 6.1.1 - the transfer was as a result of an agreement between the Union and the Employer. Similarly with the training rate provisions of the collective agreement – Mr. Pylatuk was aware of the provisions and considered them in deciding that the Employer's proposal for settlement of the LE grievance was reasonable. Article 14.2.1.3 was not used by the Employer, *per se*, and it was not the subject of any specific conversations with the Employer.

[20] The Applicant testified that she and the staff in the MEO had no forewarning that LE was transferring to their office and in a staff meeting with the MEO manager, they were told only of the conditions upon which LE was transferring but not the reason for her transfer, except that it was occurring because of the right of reversion exercised by CY.

[21] Mr. Pylatuk stated that prior to entering into the agreement with the Employer to transfer LE into the MEO, he had no knowledge of how that transfer would be accepted by the employees of the MEO. With reference to his notes of a meeting he had with the MEO manager on October 20, 2003, he said he believes the manager mentioned having met with the employees of the MEO, but he did not specifically recall any mention of the employees' problem with the transfer. He stated that he recalls becoming aware of such a problem only after the shop steward for the area contacted him and this occurred after LE began work in the MEO.

[22] Mr. Pylatuk testified that in several conversations with the chief shop steward in the MEO, he discovered that the move of LE into the department was not a popular one, but the Union felt that having amended the grievance settlement by transferring LE into the MEO position was the less disruptive than dealing with the "spin-offs" of either insisting she stay in PC (causing the Union to have to address CY's

complaint that the Employer breached the collective agreement by not allowing her reversion) or taking steps to attempt to displace the incumbent in the QB position.

[23] The grievance filed by the Applicant on October 27, 2003 described the grievance and relief sought as follows:

> ***9. Statement of Grievance:*** *Management not following staffing process of collective agreement when they transfer outside, unqualified person into position they did not bid for and they are not qualified for. Failure to appoint 2nd in line of applicant that was qualified and had bid the position and was doing the job.*
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> ***10. Settlement Sought:*** *Instate grievor to permanent position she bid on, as incumbent reverted to home position. All future positions filled by qualified applicants who pass interview through formal staffing process.*

[24] The Applicant stated that on November 4, 2003, following LE's transfer to the MEO, Mr. Pylatuk and another Union staff member, Susan Saunders, met with her and other MEO staff to discuss the transfer of LE. In that conversation, which the Applicant described as "heated," the Applicant and other staff had questions about why LE was transferred, as well as LE's qualifications for the investigator position.

[25] The Applicant also testified that the MEO staff met with Ms. Crossman, the Union's executive director, on November 27, 2003, in follow-up to the November 4th meeting. The Applicant stated that Ms. Crossman, in speaking about the process used to transfer LE, said that it was a "wrong deal," specifically, that "the Union needs to be responsive to our needs," "needs to do better and learn from the situation," "needs to look for things we can do to press for staffing action," and the Union "won't do this again unless it's extreme circumstances."

[26] The Applicant testified that she believes the main concern of the MEO employees that caused them to make a complaint was because LE was getting a training rate which indicated to them that she was not qualified for the position. She stated that she and the others felt that an unqualified person was being placed in an

investigator position when the Applicant was already working in an investigator position on a term basis.

[27] Mr. Pylatuk testified that on December 17, 2003, following several meetings that the Union's staff and elected representatives had held with the Applicant, Mr. Pylatuk wrote a lengthy letter to the Applicant (at the request of Betty Pickering, the AAA assigned to that work area, and with the support and approval of the Union's executive director, Ms. Crossman), explaining what had occurred with the LE grievance and setting out the reasons why the Union believed the Applicant's grievance had no merit. In addition to explaining that LE's transfer occurred as a result of a grievance settlement, Mr. Pylatuk explained in some detail how and why the language of the collective agreement would not support the Applicant's positions that: (i) the second in line in a prior job competition should be awarded a subsequent vacancy; and (ii) the Employer must post every vacancy for bid and the Employer is not permitted to transfer an employee by way of article 6.1.1. My Pylatuk also explained in his letter that for the Union to continue with the Applicant's grievance, it would be acting contrary to the position it took in settling the LE grievance and would therefore be committing an unfair labour practice under the *Act*. My Pylatuk advised the Applicant in this letter that her grievance would not be pursued by the Union but that she may appeal that decision to the Union's screening committee.

[28] At the same time, the Applicant's grievance was being processed by the Union through the grievance procedure. On April 9, 2004, the Employer provided a lengthy written response at step 2 of the grievance procedure denying the grievance and setting out its reasons for doing so. In that response, the Employer noted that returning to the results of a prior competition to fill a vacancy is not a common practice but that, in any event, it would not have done so in this case because there had been an excessive amount of time between that competition and the new vacancy. In addition, due to there being a number of candidates for that previous competition that were more senior to the Applicant, neither the Applicant nor two others more senior to the Applicant, were even assessed during the staffing process for that initial vacancy. The Applicant acknowledged that she did not receive an interview for the previous posting for the investigator position in MEO (i.e. the one that had been awarded to CY) because there were applicants more senior to her who applied and were fully qualified for the position.

However, she added that after CY gave notice of her intention to revert to PC, two of the managers in the MEO had advised the Applicant that she was the most senior qualified person doing the job and would be successful in getting that position.

[29] Also, in the Employer's letter of April 9, 2004, the Employer expressed concern with the Union over the implications of it taking the Applicant's grievance forward when it arose out of a resolution to a previous grievance, as well as the longer term effect this would have on the parties' ability to resolve disputes together and to consider them final. At pages 1-2 of that letter, the Employer stated:

> *As you know,* [LE's] *appointment was the result of an agreement between the Saskatchewan Government and General Employees' Union and the Employer to resolve another grievance in the department. As such the Employer is now at a loss to understand the basis for continued Union support of the submission of a grievance regarding the resolution to another grievance.*
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> *The parties resolve many disputes through the grievance process and need to be able to trust agreed-to resolutions regarding workplace issues will be supported by both parties. To do otherwise will rapidly lead to requiring a third party to resolve every single dispute and place the entire grievance process, which advocates resolution prior to arbitration, into question.*

[30] Mr. Pylatuk testified that he agreed with the Employer's statements and that in his view, the Union had reached a final agreement to resolve the LE grievance and that agreement must stand.

[31] The Applicant appealed the Union's December 17, 2003 decision to withdraw the grievance. On January 18, 2005, the Union' screening committee wrote to the Applicant indicating that upon its review of the grievance, it recommended the withdrawal and closure of the grievance, given that there was no violation of the collective agreement. The letter is six pages in length and sets out in significant detail why the grievance is not supportable by the language of the collective agreement and arbitration case law, along lines similar to that set out more briefly by Mr. Pylatuk in his letter of December 17, 2003. The screening committee also addressed various questions that had been raised by the Applicant. The screening committee advised of the Applicant's right to appeal its recommendation to the Union's provincial grievance

committee. The Applicant did take an appeal, however, on November 15, 2005, the provincial grievance committee wrote to the Applicant indicating that it upheld the screening committee's decision to close the grievance.

[32] Mr. Pylatuk testified that he was aware that LE was the spouse of another AAA working for SGEU but that he had had no discussions with this AAA concerning the LE grievance and the negotiations Mr. Pylatuk had had with the Employer. He stated that he had no pressure from this AAA to proceed with the grievance or to pursue it in a particular manner. He stated that, in any event, it is the Union's elected officials that have the authority to make decisions, not him, and that the Union has processes in place to ensure that no one person has the ability to affect the outcome of a grievance.

[33] In cross-examination, Mr. Pylatuk denied that Ms. Crossman spoke to him about the complaints of the MEO staff, stating that he met with her to provide a briefing and that the letter he sent to the Applicant on December 17, 2003 was taken in consultation with Ms. Crossman.

Arguments:

[34] The Applicant's argument was very brief. As such, we will first set out the Applicant's argument that was summarized by the Board at page 3 of its December 22, 2006 letter decision concerning the Union's application for summary dismissal:

> *The Applicant also provided a written submission, which the Board has reviewed. The Applicant submits that she has an arguable case and should be permitted the opportunity to present her case at an oral hearing. The Applicant does not view the decision of the Union not to proceed with her grievance as one involving the consideration of competing interests between her and L.E. because L.E. was transferred prior to her and her co-workers filing a grievance. The Applicant submits that the Union acted arbitrarily by transferring L.E. into a permanent investigator position as a resolution to L.E.'s grievance. The Union had previously resolved that grievance through L.E.'s transfer to another position and, in the circumstances, there were alternative courses of action the Union could have taken, including L.E.'s transfer to a position other than the investigator position. The Applicant complains that L.E.'s transfer prevented the possibility of the Applicant being placed in the permanent investigator position and that L.E. is not qualified for the position. The Applicant also*

> *maintains that her management advised her that she would get the permanent investigator position.*
>
> *With respect to the allegations concerning favouritism, the Applicant states that there is a factual foundation for such a claim, including that the union representative in question was not assigned by the Union to handle L.E.'s grievance, he attempted to settle L.E.'s grievance through two transfers instead of one and that the executive director of the Union admitted to the Applicant that the union representative's actions were improper and were being dealt with by the Union.*

[35] At the hearing, the Applicant also took the position that the Union and Employer must adhere to the provisions of the collective agreement in their settlement of a grievance. She stated that the Employer's use of the training rate in article 14.2.1.3 of the collective agreement essentially triggered the entire application of article 14 to the settlement agreement. She stated that the Employer must have thought that LE was unqualified if it used the training rate. Article 14 states that a trainee can only be transferred into a position if there are no qualified individuals for that position and therefore, because the Applicant is qualified for the position, she should have been appointed instead of LE. Similarly, the Applicant argued that article 6.1.1 of the collective agreement, because it was used with article 14.2.1.3 in the grievance settlement, means that the individual in question must be qualified in order to be transferred, although the Applicant acknowledged that article 6.1.1 is silent on the issue of qualifications.

[36] The Applicant also argued that the Union overlooked certain of her rights when it entered into the settlement for LE and that other action could have been taken to advance her interests, including: the fact that she herself could have transferred to the position under article 6.1.1, given that her manager indicated she should get the job; the Employer could have gone back to the list of applicants for the previous competition and awarded her the position as she would have been the most senior and qualified at the time of CY's reversion; or, the Employer could have held a new competition for the vacancy.

[37] The Applicant asked the Board for various remedies, including a declaration that the Union violated s. 25.1 of the *Act*, that she be awarded lost seniority

for not receiving the investigator position, that she be appointed to the investigator position or awarded the next vacant investigator position, and/or that the Union be directed to take her grievance to arbitration.

[38] Mr. Engel, counsel for the Union, argued that the Union had fulfilled its duty of fair representation to the Applicant. He asserted that the LE grievance was properly resolved, after a full investigation and the weighing of competing interests. LE had applied for the QB position and failed to receive that appointment based solely on the results of the reference checks. After an investigation by the Union, it was discovered that the manner in which the reference checks were used was improper, a matter over which the Employer appeared to agree with the Union, resulting in the offer of settlement to move LE into the PC position. LE and the Union agreed to that offer after serious consideration of LE's ability to do the work in that position and consideration of the Employer's statutory authority to transfer her in any event, and the grievance was then closed. Through the mistake of the Employer, the PC position was discovered to be encumbered, and this placed the Union in a difficult position. It had to not only ensure that LE was made whole (by being placed in a comparable level 7 position), but it had to consider the competing interests of other employees, including the person who was appointed to the QB position, as well as CY, who the Employer allowed to exercise her rights of reversion to the PC position.

[39] The Union submitted that in staffing situations, there are always competing interests and the Union must often make a decision to support one member over another. It was argued that the Union must be given significant latitude to make these decisions and that in this case, it properly weighed the competing interests of the employees such that it did not breach the duty of fair representation. The Union argued that in the unique circumstances of this case, the interests of LE, CY and to some extent, the successful appointee to the QB position are not matched by the interests of those employees in the MEO (and employees elsewhere) to bid on a vacancy that may or may not have been posted by the Employer for bid. The Union acknowledged that the "best" result for LE would have been to an appointment to the QB position, but such success at being awarded this position through arbitration could not be guaranteed. In any event, the Union argued, the Board should not require the Union to proceed to obtain only that result which the grievor would have obtained on a successful arbitration

of the issue. In addition, the *Act* and collective agreement encourage the parties' resolution of disputes without the necessity of arbitration.

[40] The Union wished to make it clear that the Employer was not placing LE into the MEO position as a "trainee" within the meaning of article 14.2.1.3 of the collective agreement. The Union and Employer were simply agreeing on terms of settlement that would make LE "whole" after the Employer breached her grievance settlement agreement. The Union argued that it matters not whether the Employer followed the terms of the collective agreement, in whole or in part, when it proposed the transfer of LE to the MEO on the terms and conditions it did, because in a grievance settlement, the Employer and Union can agree on any terms needed to reach a settlement. The Union explained that these provisions in the collective agreement (i.e. 6.1.1. and 14.2.1.3) were simply within the Union's consideration when assessing whether the offer of settlement was a reasonable one.

[41] The Union took the position that to proceed with the Applicant's grievance would be in conflict with the settlement it had achieved on LE's grievance. LE was entitled to expect that the settlement of her grievance would bring closure to the matter and that the unwillingness of other employees to accept that settlement is not a valid reason to re-open the settlement. The Union maintains this position and stated that it apologizes if a Union representative gave a different impression to the Applicant during the processing of her grievance.

[42] Lastly, the Union argued that the Applicant has not demonstrated that the Union acted in an arbitrary or discriminatory manner, or with bad faith, by reason that the spouse of LE is or was a Union staff member. It argued that there was no evidence of actual bias nor any evidence of favourtism in the handling of the LE grievance. The staff member in question was not involved in the handling of LE's grievance and had no influence at all on Mr. Pylatuk.

[43] In support of his arguments, counsel referred to the following decisions of the Board: *Banga v. Saskatchewan Government Employees' Union,* [1993] 4th Quarter Sask. Labour Rep. 88, LRB File No. 173-93, *Connell v. Saskatchewan Government and General Employees' Union and Saskatchewan Public Service Commission*, [2005] Sask.

L.R.B.R. 52, LRB File No. 027-03; *Brian Lymer v. Saskatchewan Insurance Office and Professional Employees' Union, Local 397 (OPEIU) and Saskatchewan Government Insurance*, [2000] Sask. L.R.B.R. 174, LRB File No. 176-99; and *William Campbell v. International Brotherhood of Electrical Workers, Local 2067 and Saskatchewan Power Corporation*, [1996] Sask. L.R.B.R. 620, LRB File No. 080-96.

Analysis and Decision:

[44] The Board's general approach to applications alleging a violation of s. 25.1 of the *Act* was summarized as follows in *Lawrence Berry v. Saskatchewan Government Employees' Union*, [1993] 4th Quarter Sask. Labour Rep. 65, LRB File No. 134-93, at 71-72:

> *This Board has discussed on a number of occasions the obligation which rests on a trade union to represent fairly those employees for whom it enjoys exclusive status as a bargaining representative. As a general description of the elements of the duty, the Board has indicated that it can do no better than to quote the principles outlined by the Supreme Court of Canada in the case of Canadian Merchant Services Guild v. Gagnon, [1984] 84 CLLC 12,181:*
>
> > *The following principles, concerning a union's duty of representation in respect of a grievance, emerge from the case law and academic opinion consulted.*
> >
> > *1. The exclusive power conferred on a union to act as a spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.*
> >
> > *2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.*
> >
> > *3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.*
> >
> > *4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.*

> *5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employees.*

The terms "arbitrary," "discriminatory," and "in bad faith," which are used in the legislative description of the kind of conduct on the part of a trade union which is to be prevented, have been held to address slightly different aspects of the duty. The Supreme Court in Gagnon used the following comments from the decision of the British Columbia Labour Relations Board in Rayonier Canada (B.C.) Ltd. (1975), 2 CLRBR 196, at 201, to convey the distinct attributes of the duty of fair representation:

> *... The union must not be actuated by bad faith, in the sense of personal hostility, political revenge, or dishonesty. There can be no discrimination, treatment of particular employees unequally whether on account of such factors as race and sex (which are illegal under the Human Rights Code) or simple, personal favoritism. Finally, a union cannot act arbitrarily, disregarding the interests of one of the employees in a perfunctory manner. Instead, it must take a reasonable view of the problem before it and arrive at a thoughtful judgment about what to do after considering the various relevant and conflicting considerations.*

This Board has also commented on the distinctive meanings of these three concepts. In Glynna Ward v. Saskatchewan Union of Nurses, LRB File No. 031-88, they were described in these terms:

> *Section 25.1 of The Trade Union Act obligated the union to act "in a manner that is not arbitrary, discriminatory, or in bad faith". The union's obligation to refrain from acting in bad faith means that it must act honestly and free from personal animosity towards the employee it represents. The requirement that it refrain from acting in a manner that is discriminatory means that it must not discriminate for or against particular employees based on factors such as race, sex or personal favoritism. The requirement that it avoid acting arbitrarily means that it must not act in a capricious or cursory manner or without reasonable care. In other words, the union must take a reasonable view of the problem and make a thoughtful decision about what to do.*

[45] In *Gilbert Radke v. Canadian Paperworkers' Union, Local 1120*, [1993] 2nd Quarter Sask. Labour Rep. 57, LRB File No. 262-92, the Board considered the nature of the task before it when assessing the conduct of the union in light of a duty of fair representation complaint. At 64, the Board stated:

> *What is expected of trade union officials in their representation of employees is that they will act honestly, conscientiously and without prejudgment or favouritism. Within the scope of these criteria, they may be guilty of honest errors or even some laxity in the pursuit of the interests of those they represent. In making decisions about how or whether to pursue certain issues on behalf of employees, they should certainly be alert to the significance for those employees of the interests which may be at stake. Given the importance of the employee interests the union has the responsibility to pursue, they should also carry out their duties seriously and carefully. The ultimate decision made or strategy adopted, however, may take into account other factors than the personal preferences or views of an individual employee.*

[46] The Applicant appears to have argued that the Union has violated s. 25.1 of the *Act* on three bases:

(i) That the Union failed in its duty of fair representation by not properly considering her grievance and processing it to arbitration;

(ii) That the Union failed in its duty of fair representation by not considering her interests in the investigator position in the MEO when it agreed to the transfer of LE, in her view an unqualified employee, into that investigator position; and

(iii) That there was favouritism by the union representative handling the LE settlement because LE's spouse was also a Union staff member, such that it resulted in discrimination or bad faith on the part of the Union.

(i) That the Union failed in its duty of fair representation by not properly considering her grievance and processing it to arbitration:

[47] In its letter decision of December 22, 2006, the Board recognized these aspects of the Applicant's claim and concluded at 4 -5:

> *At first glance, it appears that the Applicant has framed her application in terms of a failure of the Union to represent her and her co-workers fairly by refusing to proceed with the grievance they filed over the transfer of an unqualified employee to a*

permanent position, without going through normal hiring procedures. Essentially, the primary complaint appears to be that the Applicant (and apparently her co-workers) did not like the decision of the Union to agree to the transfer of this employee as a resolution to that other grievance. Unfortunately, we were not provided with the actual wording of the grievance or advised whether it was actually processed by the Union, including whether it was submitted to the Employer. It appears, however, that the Union treated the grievance filed by the Applicant and her co-workers as a complaint that the Applicant feels entitled to be appointed to the position of a permanent investigator. It is clear that the Applicant feels that this characterization of the grievance is inaccurate, given her submissions noted above that the Union ignored the entirety of the employees' complaint, as well as her submission that "[t]he basis for the application to the Labour Relations Board is the same as the original grievance. An unqualified person received a permanent position without going through the normal hiring procedures."

In our view, it appears that the complaint of the Applicant which she refers to as a "grievance" is not in its essential nature a grievance against the Employer, but is rather a complaint against the Union for the manner in which it handled the settlement of L.E.'s grievance. It does not seem appropriate to have a grievance against the Employer about action the Union took to settle another grievance, even though it had a detrimental impact on the Applicant's ability to compete for the vacancy. The complaint of the Applicant, as we have framed it, does however fall within the scope of s. 25.1 and is within the Board's jurisdiction to determine.

. . .

In its submission, the Union provided its explanation for the transfer of L.E. and the right to do so under the terms of The Public Service Act and the collective agreement. The Union stated that it was entitled to make this decision even though there were competing interests with other employees. While we note that there is a provision in the collective agreement concerning the Employer's right to transfer an employee, because the Union agreed to the transfer as part of settlement of L.E.'s grievance, the Union's actions may be subject to scrutiny under s. 25.1 of the Act. In the Lymer case referred to by the Union, it is clear that, while the Union can make decisions that result in "discrimination" as between individual employees, the decision must be made "after giving the matter due consideration," "after fairly considering the facts and competing interests at stake" and through "an informed consideration of the facts and a choice based on well-founded reasons that are not arbitrary or otherwise offensive."

[48] We agree with the Board's analysis, as set out above, in so far as it concerns the reasons why the first aspect of the Applicant's claim, that is, whether the Union violated s. 25.1 for failing to properly consider her grievance and process it to arbitration, must fail. The Applicant's complaint is not a "grievance" against the Employer over an alleged violation of the collective agreement, but rather is a complaint against the Union, and perhaps the Employer as well, that the settlement agreement they entered into for LE was improper as the settlement did not follow the terms of the collective agreement and did not properly consider the Applicant's interests in the position as a possible promotional opportunity for her.

[49] However, even if we were to accept that the Applicant's complaint can truly be characterized as a "grievance," it is our opinion that, on the whole of the evidence, the Union did not violate s. 25.1 of the *Act*. It considered the relevant facts and the applicable law and determined that the terms of the settlement were not a grievable violation of the collective agreement.

[50] While the Union denied the Applicant's assertion that Ms. Crossman took the position with the MEO staff that the LE settlement was a "wrong deal" and would not happen again, the Union took the position that once the Union has resolved a grievance in good faith, it cannot renege or change its position on the settlement because of other employees' views about the settlement. In the Board's view, the Union, to the extent it disregarded the personal views of other employees, including the Applicant, when it decided it could not continue with a grievance that was fundamentally at odds with a grievance settlement it had entered into, is not conduct that is arbitrary, discriminatory or in bad faith. A similar situation arose in *Banga*, *supra*, where the Board found that the union to have acted arbitrarily by pursuing a grievance that opened up a settlement it previously entered into. At p. 13, the Board stated:

> *It is further our view that an employee is entitled to expect that the formal settlement of a grievance will bring some closure to the issue which is raised by that grievance. We do not ascribe to the Union any bad faith in accepting the resurrection of the issue through the Wiebe grievance #2; they were conscientiously attempting to address concerns brought to them by other members of the bargaining unit, and were presumably under*

> *considerable pressure to do so. The unwillingness of other employees to accept the resolution of a grievance to which the Union has been a party does not, however, justify the decision to reopen the question, which, as far as Ms. Banga was concerned, had been fully dealt with in 1987.*

[51] Later, the Board stated at p. 15:

> *To borrow from the language of interpretation of the Charter of Rights, treating people fairly does not necessarily mean dealing with them all alike. One element of a fair consideration of the case of Ms. Banga must be to address the settlement of the grievance in 1987. Though there may on occasion in a collective bargaining system be strong reasons for changing the position of employees to their detriment, the decision to bring about such an upheaval should surely take into account past decisions which have been made which alter the circumstances of individuals. There may be decisions which a Union may look back on with regret, or which they think might be improved upon; this in itself does not justify overthrowing a resolution to a problem which an employee may reasonably think has been laid to rest.*

[52] In declining to continue to process the Applicant's grievance, it is the Board's view that the Union properly took into consideration the fact that LE was entitled to expect closure to her grievance upon the settlement of the same, which settlement was entered into in good faith between the Employer and the Union. The possible interests of other employees, including the Applicant (even if they had not been specifically examined by the Union at the time of LE's settlement) do not provide justification for opening up the LE settlement, which would have been inevitable if the Union were to proceed with the Applicant's grievance, as the Applicant's grievance was in direct conflict with the terms of settlement of the LE grievance. In addition, the Union has a significant interest in maintaining a solid and trusting relationship with the Employer in order to protect and advance the interests of its membership as a whole. It was reasonable for the Union to accept the Employer's statements in its letter of April 9, 2004, that the parties need to be able to trust that agreed-to resolutions will be given effect to or the parties will need to have all matters resolved by arbitration. For the Union to have taken a conflicting position from that which it had agreed to in the LE settlement could have damaged its long-term relationship with the Employer, which in turn could detrimentally affect the entire membership. These are proper matters for the Union to consider in deciding not to proceed with the Applicant's grievance and illustrate

that the Union took a reasonable view of the situation and made a thoughtful decision about what to do, in a manner free of arbitrariness.

(ii) That the Union failed in its duty of fair representation by not considering her interests in the investigator position in the MEO when it agreed to the transfer of LE, in her view an unqualified employee, into that investigator position:

[53] The LE grievance appeared to have been settled by the summer of 2003 when LE was placed in the PC position. However, upon being advised by the Employer of the mistake it had made when it agreed to the placement of LE in the PC position once CY had requested to exercise reversion right to that position, the Union was in a difficult position. It needed to take action to make LE whole, yet it needed to consider the interests of others directly affected by this mistake – CY, to whom the Employer agreed to revert to PC, as well as the incumbent of the QB position. The Union was required and did consider multiple and conflicting factors: that the incumbent of the QB position had been working in that position for many months; that LE had no absolute right to the QB position unless and until that right could be established by an arbitrator; that there was no guaranteed success by proceeding to arbitration; that CY could have cause for complaint if the Employer did not allow the reversion; and that CY would obtain an automatic reversion to PC if she ended up failing her probationary period in the investigator position. It is not for us to assess whether the Union gave the proper weight to each of these interests or that its conclusions about how to solve the problem were correct. We must be convinced only that it properly investigated the matter, fairly considered the facts and circumstances, and made a thoughtful and rational decision about how to proceed to settle LE's grievance in light of the conflicting rights and interests of those involved. We are satisfied that it did, for much the same reasons as the Board did in *Lymer, supra*.

[54] In *Lymer, supra*, the applicant complained that the Union failed in its duty of fair representation by refusing to grieve his failure to obtain a posted position in favour of the "most senior qualified applicant." In determining that the union had not failed in its duty toward the applicant, the Board stated at 182:

> *[26] . . . The essence of the Union's position was that there was no violation of the collective agreement, and that, in any event, the interest of Mr. Lymer was secondary to that which it perceived to be in the best interest of the membership as a whole.*
>
> *[27] The evidence establishes to our satisfaction that the Union arrived at its decision not to investigate further or file a grievance after fairly considering the facts and the competing interests at stake. A union, after giving the matter due consideration, is not obliged to represent a member in grievance proceedings where to advance the position would be detrimental to the union itself or to its interests in bargaining; it is entitled to support the interest that it feels is consistent with the proper application and/or administration of the collective agreement. This may result in "discrimination" as between individual employees, but this type of discrimination is not improper if it results from an informed consideration of the facts and a choice based upon well-founded reasons that are not arbitrary or otherwise offensive. . . .*
>
> *. . .*
>
> *[28] We are of the opinion that the Union did not act arbitrarily or in bad faith in arriving at its decision. And to the extent that any detriment to Mr. Lymer is based upon the Union's promotion of seniority as the primary consideration in selection, there was no improper discrimination against Mr. Lymer within the meaning of s. 25.1 of the Act.*

[55] We reach the same conclusion whether or not the Union specifically considered the interests of the Applicant at the time the Union made the agreement with the Employer to transfer LE to the MEO. At that time, the Union was not aware that the Applicant or the MEO staff were opposed to the transfer and/or felt that the Applicant should get the position instead of LE. In the Board's view, by recognizing that the Employer had the power to transfer any employee into a vacancy without posting it for bid by other bargaining unit members, the Union implicitly considered the interests of employees other than LE, CY and the QB incumbent which, by definition, included the Applicant. Since it appeared to the Union that the Employer had such a power of transfer, there were no other specific interests for the Union to consider. In the Board's view, what was really incumbent upon the Union to do was to consider those members whose interests had "crystallized." Neither the Applicant (nor other employees) had any interest that had crystallized as of the date of the Union's decision to settle the LE grievance. The fact was, the Employer had not made a decision to post the vacant investigator position for bid and it appeared to the Union there was no obligation for it to

do so. In the Board's view, even if the investigator position were posted for bid, the Union would not have been in a position to determine that the Applicant would have received the position. Therefore, while the Union's actions in agreeing to the LE settlement may have limited the promotional opportunities of others, including the Applicant, the Union chose to prefer the concrete and established interests of these other members of the bargaining unit and in the Board's view, did not do so in a manner that was arbitrary, discriminatory or with bad faith in taking its course of action and making its decision not to further prosecute the Applicant's grievance.

[56] The Applicant also argued that the Union and Employer must, when reaching terms of settlement on a grievance, comply with the terms of the collective agreement, in this case, the provisions of article 14.2.1.3.. The Applicant argued that the Union and Employer did not comply with the collective agreement because in giving the investigator position to LE at a training rate, they were acknowledging that LE was not qualified and that by the terms of article 14.2.1.3., an unqualified person may only receive a position if no qualified person is available. The Applicant submitted that because she was qualified, she should have been appointed to the position instead. We disagree with the Applicant's assertion. While the Union often needs to consider the interests of other bargaining unit members when it enters into terms of settlement of a grievance, it is not required to ensure that the terms of the settlement itself comply with the provisions of the collective agreement. Grievances often arise because the collective agreement is silent on a matter or because the meanings of provisions of the collective agreement are in dispute between the parties. If the only way in which a grievance can be settled is if it complies with all the terms in the collective agreement, most grievances would need to be resolved by arbitration as only an arbitrator could determine the "correct" result or correct interpretation of the collective agreement. Both the *Act* and the collective agreement foster the purpose of the peaceful resolution of disputes and parties are encouraged to resolve disputes without arbitration wherever possible. The Board would be acting contrary to these purposes if it set the duty of fair representation at the standard demanded by the Applicant.

[57] It appears that the Applicant may have been prompted to make this argument because of the Union's position that it considered the Employer's powers in article 6.1.1 and 14.2.1.3 when it assessed the Employer's settlement proposals on the

LE grievance. These are, however, two different issues. The Union was not agreeing to the Employer's use of these provisions of the collective agreement in transferring LE to the MEO position. It is clear that the Union was merely considering these Employer powers as guidelines to assist it in determining whether the proposal for settlement was a reasonable one. Again, we think this is a rational approach by which the Union assessed and agreed to the LE settlement proposal.

(iii) That there was favouritism by the union representative handling the LE settlement because LE's spouse was also a Union staff member, such that it resulted in discrimination or bad faith on the part of the Union:

[58] The Applicant also alleged that the Union acted with bias or personal favourtism in reaching the settlement concerning LE's grievance because LE's spouse was a AAA with the Union. In the Board's decision in *Campbell*, *supra*, the Board considered a similar allegation, that a union representative was biased against the applicant because the union representative had a close friendship with an individual opposed to the applicant's interests and that that played a part in the union's decision concerning the applicant's grievance. In that case, the Board determined that there was no reason to suppose that "favourtism, personal spite, bias or malice" played any part in the union's decision to withdraw the applicant's grievance, having found that while the union representative in question had some involvement in the discussions about the grievance, "there was no sign he was in a position to influence the outcome of the grievance process unduly, or that he made any effort to do so," and that the major roles in the handling of the grievance belonged to other union representatives. In reaching this conclusion, the Board was guided by the following principles, stated at 637:

> *[62] The trade union is expected, of course, to take the interests of individual members seriously, to avoid favouritism, and to ensure that decisions are not actuated by personal spite or hostility. A union official is not a judge, however. Union officers act in a representative capacity; they are chosen from among the employees they represent, and it is not surprising that there are often ties of acquaintanceship, loyalty and affection with union members, as well as traces of old rivalries.*

[59] We also find that in this case, there was no evidence that "favourtism, personal spite, bias or malice" played any role in the Union's settlement of the LE grievance nor in the decision that the Applicant's grievance had no merit and should be

withdrawn. The evidence indicated that LE's spouse, who is or was a staff representative with the Union, had absolutely no involvement in the handling of either the Applicant's or LE's grievances, Mr. Patyluk indicating that he was not in any way influenced in his handling of the LE grievance by reason that LE's spouse was another representative of the Union and stated that he had had no discussions with him concerning the matter. There were several union representatives involved in both grievances and no one person could have influenced the outcome.

Conclusion:

[60] In all of the circumstances, we find that the Union approached the grievances of LE and the Applicant honestly and diligently, taking a reasonable view of the matters and making thoughtful decisions about what to do. We find that the Union was alert to the conflicting rights and interests of its members and carefully weighed those rights and interests in adopting a strategy to resolve the LE grievance and withdraw the Applicant's grievance. The Union was entitled to give more weight to those members whose interests had crystallized and it was entitled to take into account factors other than the personal preferences and views of the Applicant. We are satisfied that it did so in a manner that was free from arbitrariness, bad faith or discrimination.

[61] For the foregoing reasons, the application is dismissed.

DATED at Regina, Saskatchewan, this **17th** day of **September, 2008.**

LABOUR RELATIONS BOARD

Angela Zborosky,
Vice-Chairperson