Labour Relations Board
Saskatchewan

GARNET DISHAW, Applicant v. CANADIAN OFFICE & PROFESSIONAL EMPLOYEES UNION, LOCAL 397, Respondent

LRB File No. 164-08; January 6, 2009
Vice-Chairperson, Steven Schiefner; Members: Gerry Caudle and Clare Gitzel

For the Applicant: Ronald G. Gates, Q.C.
For the Certified Union: Rick Engel, Q.C.

Practice and procedure – Delay – Board finds that 23 month delay in bringing allegations is excessive – Board finds Union suffered actual prejudice associated with delay – Board not satisfied that Applicant's explanation for delay sufficient to overcome either presumption of prejudice or actual prejudice to Union associated with delay – Board not satisfied that justice can adequately be done because of delay - Board dismisses application.

***The Trade Union Act*, ss. 12.1, 18(p) and (q), 21.1, 25.1 and 36.1(1)**

REASONS FOR DECISION

Background:

[1] Steven Schiefner, Vice-Chairperson: On August 12, 2008, Mr. Garnet Dishaw (the "Applicant") filed an application with the Labour Relations Board (the "Board") alleging that the Canadian Office & Professional Employees Union, Local 397 (the "Union") engaged in a violation of Sections 25.1 and/or 36.1(1) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*") by reason of facts particularized by the Applicant as follows:

> *After being unjustly dismissed from my job as Director of Research and Communications with the Saskatchewan Federation of Labour, COPE Local 397, its staff, officials and advisors abandoned my best interests completely and instead devoted their efforts to protecting the image and reputation of SFL President Larry Hubich. They did this in a discriminatory and extremely arbitrary way and increasingly in bad faith. Furthermore I was denied any application of natural just[ice] by COPE 397.*

[2] On September 16, 2008, the Union filed a reply (the "Reply") to the Applicant's application denying that it abandoned the Applicant's best interest, denying that it was motivated by a desire to protect the image and reputation of the SFL President, denying that it acted in a discriminatory or arbitrary fashion or that it acted in bad faith, and finally denying that the Applicant was denied natural justice in the processing of his grievance. The Union's reply indicated its intention to rely upon the following facts:

> *(a) The Applicant was employed by the Saskatchewan Federation of Labour (SFL) as its director of Communications and Research from 1992 to 2005.*
>
> *(b) In 2004 and 2005, the SFL, and specifically SFL President Larry Hubich, became increasingly critical of Mr. Dishaw's job performance. During this time, their working relationship steadily deteriorated to the point that they could not have a civil conversation with each other. This situation was extremely difficult: Mr. Dishaw was under the sole supervision of Mr. Hubich and was required to work closely with the President on communications and research. In addition, the SFL had a very small work staff of eight employees. There was no other suitable job for Mr. Dishaw at the SFL.*
>
> *(c) Matters came to a head on Friday, September 23, 2005. At the end of working hours, Mr. Dishaw and Mr. Hubich had a severe confrontation in the workplace after everyone else had gone home. During the altercarion, both men were verbally abusive towards each other.*
>
> *(d) As a result of the quarrel, on September 26, 2005, Mr. Hubich suspended Mr. Dishaw from his employment pending dismissal pursuant to the Collective Bargaining Agreement.*
>
> *(e) The Applicant was formally terminated from his employment on October 17, 2005.*
>
> *(f) At the time of his discharge, the grievor had 13 years' service and was 56 years old.*
>
> *(g) On October 4, 2005 COPE filed a grievance on behalf of the Applicant challenging his termination as unjust.*
>
> *(h) Through the grievance process and numerous other meetings, the parties tried but were unable to negotiate a mutually acceptable settlement.*
>
> *(i) Consequently, the parties selected Gwen Gray, Q.C. former Chair of the Saskatchewan Labour Relations Board, as the sole arbitrator to hear the grievance. In addition, pursuant to section 25(20(h), the parties agreed that Ms. Gray would use a mediation process in the first instance to encourage settlement of the dispute.*

(j) The arbitrator held a mediation session on June 23, 2006. Formal arbitration was scheduled to be heard on September 18 – 21, 2006.

(k) During mediation, it became abundantly clear that the contempt and hostility between Mr. Dishaw and Mr. Hubich was palpable and would not dissipate in the foreseeable future. Given the nature of the Applicant's job and the small size of the workplace, it was not possible to negotiate reinstatement. In addition, the parties could not reach an agreement on the quantum of damages in lieu of reinstatement. Accordingly, the mediation ended and both parties agreed to proceed to arbitration.

(l) On July 17, 2006, the SFL tendered a revised offer to settle the grievance that appeared much more reasonable to COPE. The offer consisted of a payment of approximately ten months' salary plus an amount in lieu of pension benefits.

(m) The SFL's July 17, 2006 settlement offer was left open until July 28, 2006.

(n) COPE sent a copy of the settlement offer to the Applicant on July 19, 2006 and requested a response from him by July 27, 2006 at 4:00 pm.

(o) The Applicant did not respond until July 28, 2006 at which point he indicated he was not interested in accepting any settlement offer.

(p) In the meantime, COPE was able to obtain an extension of the deadline of the July 17, 2006 settlement offer until August 4, 2006.

(q) On August 1, 2006, the Applicant informed COPE that he would not accept this particular settlement offer, and further that he would not entertain any offer that did not include a term that he be reinstated to his original position.

(r) On August 14, 2006, COPE's lawyer provided COPE with a legal opinion recommending acceptance of the settlement offer, and recommending against allowing the Applicant's private legal counsel to represent the union at any arbitration of the termination grievance.

(s) On August 23, 2006, COPE's Executive Board agreed, following a thorough discussion, to accept the Employer's monetary offer of July 17, 2006, subject to any monetary improvements its legal counsel might be able to negotiate.

(t) On September 1, 2006, the SFL agreed to modify the proposed terms of settlement, as requested by COPE, to take into account scheduled wage increases in accordance with the collective agreement and to provide for a letter of reference to the grievor.

(u) The SFL's September 1, 2006 settlement offer was clearly a final offer and the "best possible deal" the SFL was prepared to make.

(v) The SFL's September 1, 2006 offer was left open only until September 5, 2006 but also communicated that in light of the costs of preparing for the imminent arbitration, "[i]f this matter is going to settle, we must be notified immediately."

(w) Relying on the advice of legal counsel, COPE determined that the settlement offer was reasonable, and that it was unlikely that the Application would be reinstated at arbitration.

(x) On September 1, 2006, COPE accepted the SFL's offer to settle the grievance in exchange for payment to the grievor of $57,947.32 plus a letter of reference stating the length of the employment relationship and an acknowledgment that the parties ended the employment on amicable terms.

(y) A condition of the September 1, 2006 settlement agreement was that the severance payment would not be released to the Applicant unless he signed Release of Claims that was satisfactory to both COPE and SFL. In the meantime, the settlement proceeds were deposited in trust with the SFL's lawyers, Richmond Nychuk.

(z) Also on September 1, 2006, COPE adjourned the scheduled arbitration of the grievance sine die pending formal withdrawal upon the execution of a formal settlement agreement.

(aa) On September 5, 2006, COPE provided the Applicant with details of the settlement negotiations on his behalf.

(bb) The Applicant refused to execute the required Release of Claim, and has never, to COPE's knowledge, received the settlement funds.

(cc) The Applicant filed the within application on August 12, 2008 and has provided no explanation for this delay even though he threatened on numerous occasions after the mediation session to file a Duty of Fair Representation Application against COPE Local 397.

(dd) The Union requests the Unfair Labour Practice be dismissed either summarily under section 18(p and q) of The Trade Union Act or after a full hearing.

[3] On September 24, 2008, the Union filed an application for summary dismissal of the Applicant's application in accordance with the procedure established by this Board in *Beverley Soles v. Canadian Union of Public Employees, Local 4777 and Parkland Health Region,* [2006] Sask. L.R.B.R. 413, LRB File No. 085-06 (the "application for Summary Dismissal"). In their application for Summary Dismissal, the Union alleged the following basis for summarily dismissing the Applicant's application without oral hearing:

1. That the facts as plead by the Applicant, even if assumed to be true, do not disclosure a violation of the Act; and/or

2. The Applicant's application should be dismissed on the basis of delay either pursuant to section 12.1 of the Act or on the basis of the Board's jurisprudence respecting unreasonable delay.

[4] In *Soles*, *supra,* the Board determined that, in appropriate circumstances, the Board had authority to summarily dismiss an application alleging a violation of the *Act* prior to and without an oral hearing before the Board. In doing so, the Board established a procedure wherein the Applicant would be advised of the potential for summary dismissal of his/her application, provided a copy of the material filed in support of the application for summary dismissal, and be granted an opportunity to respond in writing.

[5] On October 21, 2008, a panel of the Board considered the Union's application *in camera* (not in the presence of the parties) and determined that summary dismissal was an option. In accordance with the Board's usual procedure, the Applicant was invited to respond to the Union's application for Summary Dismissal, which he did, filing additional material with the Board on November 19, 2008.

[6] On November 21, 2008, an *in camera* panel of the Board comprised of Vice-Chairperson Schiefner and Members Wainwright and McCormick, considered the preliminary application of the Union seeking the summary dismissal of the Applicant's application without an oral hearing.

Decision:

[7] In making its decision in this matter, the Board has been guided by the principles in *Soles, supra,* wherein the Board summarily dismissed an application without an oral hearing pursuant to paragraphs 18(p) and (q) of the *Act* on the basis that the application did not disclose an arguable case. In that case, the Board established a two (2) stage test for determining whether or not the circumstances were appropriate for the Board to exercise its discretion to summarily dismiss an application without an oral hearing. The Board determined that the first stage of the test should examine whether or not the applicant had demonstrated an arguable case that an unfair labour practice or violation of the *Act* had been committed. In this respect, in the *Soles* case, *supra,* the Board described this stage of the test as follows at 422:

> *[27] As stated, in the case before us, it is necessary to examine whether the application discloses an arguable case such that it should not be dismissed without an oral hearing. At this stage, we do not assess the strength or weakness of the Applicant's case, but simply*

> *determine whether the application and/or written submission discloses facts that would form the basis of an unfair labour practice or violation of the Act that falls within the Board's jurisdiction to determine.*

[8] If the Board determines that the Applicant has failed to establish an arguable case on the basis of the above noted test, the Board must then proceed to the second stage of the test and determine whether it is appropriate in the circumstances to summarily dismiss the application without an oral hearing. In *Soles*, *supra,* the Board concluded as follows at 430:

> *In our view, given that the application and written submission of the Applicant do not disclose an arguable case, holding an oral hearing concerning this application would be an ineffective use of the Board's resources. It would also be unfair to require the Union to spend time and resources defending a highly speculative claim, the basis of which is simply unknown to the Board or the Union.*

[9] Following the procedures set forth by this Board in *Soles*, *supra,* the Board's first task in the present case is to determine whether or not the Applicant has established an arguable case that the Union is in violation of either s. 25.1 or 36.1(1) of the *Act*. In doing so, the Board is mindful that, at this stage in the proceedings, its duty is not to assess the relative strength or weakness of the Applicant's case; rather, the Board's duty is merely to determine if the Applicant has demonstrated an "arguable case."

No Arguable Case:

[10] The Board has based its decision on the Applicant's application, together with the Union's reply and application for Summary Dismissal, together with the Applicant's additional information provided to the Board on November 19, 2008 (hereinafter collectively referred to as the "material"). In so doing, in the event of an inconsistency in the facts alleged by the parties, the Board has preferred, for the sole purpose of this application for summary dismissal, the allegations of fact set forth in the Applicant's material.

[11] The material indicates that the Applicant was employed by the Saskatchewan Federation of Labour ("SFL") as its Director of Communications and Research from 1992 until 2005 and that, during this period, he was a member of the

Union. The material also indicates that the Applicant was suspended from his position with SFL on September 23, 2005 and his employment was terminated on October 17, 2005. The Union filed a grievance on behalf of the Applicant on October 17, 2005 (the "Applicant's grievance").

[12] The material also indicates that, in an effort to resolve the Applicant's grievance, the Union and SFL participated in mediation on or about June 23, 2006, which was unsuccessful in achieving a mutually acceptable settlement. Formal arbitration was scheduled to be heard on September 18 – 21, 2006. Commencing on July 17, 2006, the Union and SFL began exchanging offers of settlement, culminating on September 1, 2006, with SFL offering what the Union believed to be a " final offer" and the "best possible deal" that the Union anticipated being able to achieve through negotiations. SFL's offer of settlement included a monetary component (severance), together with a letter of reference for the Applicant.

[13] The material further indicates that, during the period of its negotiations with SFL, the Union obtained a legal opinion from counsel dated August 14, 2006 and relied upon the recommendations contained therein. On September 1, 2006, the Union accepted (on behalf of the Applicant) SFL's offer of settlement and adjourned the scheduled arbitration of the Applicant's grievance. On September 5, 2006, the Union provided the Applicant with details of the settlement negotiated on his behalf. The Applicant refused to execute the required Release of Claim and, to the Union's knowledge, has not received the negotiated settlement funds. The Union's conduct in the investigation, prosecution and settlement of the Applicant's grievance is the subject matter of the Applicant's allegations of a violation of the *Act*.

[14] The material goes on to indicate that in 2007 (subsequent to the forgoing events), the employees of SFL applied to the Board to decertify the Union, which Order was granted by the Board on May 7, 2007; concomitant therewith the Board issued an Order certifying the Canadian Union of Public Employees, Local 4828, as the new bargaining agent for the same bargaining unit of employees at SFL.

[15] The Applicant, in his material, disputes the conditions and circumstances leading up to his suspension and dismissal from employment. The Applicant alleges

that the Union failed to adequately advance the issue of reinstatement so as to permit the Applicant to return to the workplace, and that the Union failed to properly investigate and advance the Applicant's allegation of workplace harassment in the prosecution of his grievance with SFL. The Applicant disputed the Union's decision in selection of the mediator/arbitrator and alleges that he was entitled, but was not granted, an opportunity to be consulted and/or to appeal the Union's decision in this regard. Simply put, the Applicant disputed many of the factual assertions of the Union related to the investigation, prosecution and settlement of the Applicant's grievance.

[16] With respect to the issue of delay, the Applicant's material indicates that he has "had a life long commitment to the trade union movement" and that he delayed bringing an application alleging a violation of the *Act* for the following reasons:

> *a. Firstly, it is difficult to obtain replacement employment with unions that are affiliated with the SFL if this grievance was going to be made public and due to the certain fact that it would reflect badly on the President of the Saskatchewan Federation of Labour.*
>
> *b. The applicant has agonized as well over whether or not this matter should be publicly aired and whether or not it would reflect badly on the trade union movement.*

[17] The Board will now examine each of the grounds for summary dismissal advanced by the Union.

Even if Presumed to Be True, Facts do not Disclosure a "*Prima Facie*" Case:

[18] The first argument of the Union was that the facts as plead by the Applicant, even if assumed to be true, do not disclosure a *prima facie* case of a violation of s. 25.1 of the *Act*.

[19] The Board has recognized that a union does not breach its duty of fair representation by settling a grievance without the grievor's consent, even if it does so over the objection of the grievor, unless it acts in a manner that is seriously negligent, arbitrary, capricious, discriminatory or wrongful. See: *Gibson v. Communications, Energy and Paperworkers Union of Canada, Local 650 and Fantastic Cleaning Inc.*, [2002] Sask. L.R.B.R. 574, LRB File No. 089-02.

[20] Furthermore, the Board has held that there is no breach of the duty of fair representation where a union withdraws a grievance after consulting with legal counsel, if it took a reasonable view of the circumstances and if it made a "thoughtful decision" not to advance the grievance. See: *Leblanc v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 555 and Lloydminster Maintenance Ltd.*, [2007] Sask. L.R.B.R. 648, LRB File No. 028-07.

[21] The Board has also confirmed that it does not "sit on appeal" of a union's decision not to advance a grievance and, in particular, will not decide if a union's conclusion as to the likelihood of success of a grievance was correct. See: *Cabot v. Canadian Union of Public Employees, Local 4777 and Prince Albert Parkland Health Region*, [2007] Sask. L.R.B.R. 401, LRB File No. 158-06.

[22] While all of the above supports the Union's assertion that it has committed no violation of s. 25.1 of the *Act*, the Applicant has also plead a violation of s. 36.1 of the *Act*. Furthermore, the allegations of the Applicant and the Union with respect to the investigation and prosecution of his grievance are contradictory and would require a hearing and evidence led before a finder of fact could determine whether or not the actions of the Union gave rise to a violation of the *Act* falling within this Board's supervisory jurisdiction.

Delay – Section 12.1:

[23] The Union also argues that the Applicant's application should be dismissed on the basis of delay pursuant to s. 12.1 of the *Act*.

[24] On May 14, 2008, *The Trade Union Amendment Act, 2008* was given Royal Assent and, in so doing, s. 12.1 was added to the *Act*, which section read as follows:

> ***Deadline to report unfair labour practice***
> *12.1(1) Subject to subsection (2), the board may refuse to hear any allegation of an unfair labour practice that is made more than 90 days after the complainant knew, or in the opinion of the board ought to have known, of the action or circumstances giving rise to the allegation, unless the respondent has consented in writing to waive or extend the deadline.*
>
> *(2) The board must hear any allegation of an unfair labour practice that is made after the deadline mentioned in subsection (1) if the respondent has consented in writing to waive or extend the deadline.*

[25] The Union argues that this section applies to the Applicant's application and that the Board should exercise its discretion thereunder to refuse to hear the Applicant's application. For the Board to exercise the discretion set forth in s. 12.1 of the *Act*, in addition to being satisfied that this would be an appropriate circumstance to do so, it must be satisfied:

> 1. *that s. 12.1 applies to events that transpired prior to the enactment of this new provision (ie. events that transpired prior to May 14, 2008); and*
>
> 2. *that s. 12.1 applies to alleged violations of ss. 25.1 and 36.1 of the Act.*

[26] The Board notes that the Union's application was one of the first times the above captioned issues (regarding the application of s.12.1) has come before the Board for determination. To which end, the Board was reluctant to make any determinations regarding the application of s.12.1 without the benefit of argument and oral representations from the parties. As a consequence and having come to the conclusion that it has for other reasons, the Board declined to make any determination as the application of s. 12.1 to the Applicant's application.

Delay – Board's Jurisprudence:

[27] The Union argues that the Applicant has unreasonably delayed bringing his application and that the Union has suffered prejudice as a consequence of that delay. Specifically, the Union argues that, as it is no longer the bargaining agent for the employees of SFL, it has no ability to promote alternative remedies, such as reinstatement, that could impact other employees in the bargaining unit. Similarly, the Union argues that it has no current knowledge of what is appropriate in the bargaining unit and, as such, is prejudiced in its ability to respond to the Applicant's application or to further prosecute the Applicant's grievances.

[28] A request to dismiss an application because the applicant has delayed bringing it before the Board for an excessive period of time is not granted lightly. Certain policy considerations underlie the Board's general approach to such requests. Often quoted in decisions on this issue is the following passage from the Ontario Labour

Relations Board decision in *McKenly Daley v. Amalgamated Transit Union and Corporation of the City of Mississauga*, [1982] O.L.R.B. Rep. March 420, at 425:

> *It is by now almost a truism that time is of the essence in labour relation matters. It is universally recognized that the speedy resolution of outstanding disputes is of real importance in maintaining an amicable labour-management relationship. In this context, it is difficult to accept that the Legislature ever envisaged that an unfair labour practice, once crystallized, could exist indefinitely in a state of suspended animation and be revived to become a basis for litigation years later. A collective bargaining relationship is an ongoing one, and all of the parties to it - including the employees - are entitled to expect that claims which are not asserted within a reasonable time, or involved matters which have, to all outward appearances, been satisfactorily settled, will not reemerge later. That expectation is a reasonable one from both a common sense and industrial relations perspective. It is precisely this concern which prompts parties to negotiate time limits for the filing of grievances (as the union and the employer in this case have done) and arbitrators to construct a principle analogous to the doctrine of laches to prevent prosecution of untimely claims.*

[29] In the context of civil actions, in its frequently cited decision in *Carey v. Twohig*, [1973] 4 W.W.R. 378 (Sask. C.A.), the Saskatchewan Court of Appeal enunciated criteria for determining whether an action should be dismissed by reason of excessive delay - that the delay be inordinate; that the inordinate delay be inexcusable; and that the defendant be seriously prejudiced by the delay. The essence of the inquiry expressed in that case was whether justice could be done despite the delay.

[30] In approaching questions of delay, this Board has been sensitive to the different context of labour relations proceedings as compared to civil proceedings in the superior court. The Board, in *Saskatchewan Union of Nurses v. South Central Health District*, [1995] 2nd Quarter Sask. Labour Rep. 281, LRB File No. 016-95, observed at 285 that:

> *The question of delay has a somewhat different resonance in the context of labour relations than in that of civil legal proceedings. As the Ontario Labour Relations Board pointed out in the City of Mississauga case, supra, time is of the essence in labour relations in a dramatic and often urgent way. The basic questions - and particularly the question of whether justice can still be done - are much the same, however.*

[31] Another often quoted passage on the issue of determining what constitutes "unreasonable" or "excessive" delay comes from the Ontario Labour Relations Board in

that Board's decision in *Evenlyn Brody v. East York Health Unit*, [1997] O.L.R.D No. 157, wherein the Ontario Board's opinion was as follows, at 19:

> *In determining whether the delay in a particular case is unreasonable or excessive, the Board will consider, among other things, such matters as the length of the delay, and the reasons for it, the time at which the applicant became aware of the alleged statutory violation, whether the remedy claimed would have a disruptive impact upon a pattern of relations developed since the alleged contravention, and whether the claim is such that fading recollection, unavailability of witnesses, and the deterioration of evidence would hamper a fair hearing in the dispute.* ***It is generally accepted that the scale of delay that the Board would find acceptable is to be measured in months rather than years*** *(see City of Mississauga, [1982] OLRB Rep. March 420). However, there is no specified limit with respect to delay, and the Board will consider the circumstances in each case to determine whether the delay is undue. [**Emphasis added**]*

[32] In the present case, the Board finds that on or about September 5, 2006, the Applicant knew or ought to have known of the actions or circumstances giving rise to his allegations of a violation of either ss. 25.1 or 36.1. In the Board's opinion, a delay of over twenty-three (23) months (calculated from September 5, 2006 until August 12, 2008) in bringing allegations of a violation of the *Act* before the Board is excessive.

[33] In addition, the Board finds that the Union has suffered prejudice as a result of the affluence of time associated with the Applicant's delay in bringing his allegations before the Board. In addition to the recognized corrosive effect on the memories of witnesses associated with a delay (presumed prejudice within the meaning of *Brody*, supra), the fact that the Union is no longer the bargaining agent for the workplace directly impacts its ability to respond to the Application's application and/or to further prosecute any grievance on his behalf. In so finding, the Board notes that the change in bargaining agents for the Employer took place approximately eight (8) months after the Applicant knew or ought to have known of the actions or circumstances giving rise to his allegations (from September 5, 2007 until May 7, 2007).

[34] The Applicant indicates that he both struggled with whether or not to bring his allegations before the Board and delayed doing so in the belief that his grievance may impede his search for employment within the labour movement. While it is understandable that applicants may ruminate for a period of time as to whether or not to bring allegations before the Board and that some applicants may struggle, for a variety

of reasons, with their decision to do so, it is also understandable that the parties that are the subject matter of these allegations will expect that any claims, which are not asserted within a reasonable period of time, have been either abandoned or resolved to some reasonable degree of satisfaction.

[35] In the present case, the Board is not satisfied that the Applicant's explanation for his delay is sufficient to overcome either the presumption of prejudice to the Union associated with excessive delay or the actually prejudice that has been accepted by this Board. In the Board's opinion, justice can not be adequately done because of the Applicant's delay in bringing his allegations before the Board.

[36] Finally, while the Board has indicated that it has declined to rule as to whether or not s. 12.1 has application in the present case, the Board notes that the addition of this new provision to the *Act*, together with s. 21.1 (which was added at the same time) signals an intent by the authors of the legislation; that time is of the essence in dealing with disputes in a labour relations context; that the timely commencement and resolution of outstanding grievances is an important component in maintaining amicable labour relations in this Province; and that parties have the right to expect that claims, which are not asserted within a reasonable period of time, or which involve matters which appear to have been satisfactorily settled, will not later re-emerge.

Is this Case an Appropriate Circumstance to Dismiss without Oral Hearing?

[37] The Board is satisfied that a twenty-three (23) month delay in bringing alleged violations of the *Act* before the Board is excessive. The Board is also satisfied that the Union has suffered prejudice as a result of the Applicant's delay. The corollary of these conclusions is that the Board is satisfied that this is an appropriate case for summary dismissal without an oral hearing. To do otherwise would be prejudicial to the Union and would result in an unnecessary use of the Board's scarce resources. Simply put, the Board is not satisfied that justice can be done if this matter proceeded to oral hearing.

Conclusion:

[38] In conclusion, having examined the facts and allegations contained in the Applicant's application and the Union's reply and application for Summary Dismissal,

together with the additional material submitted by the Applicant on November 19, 2008 and having preferred facts propounded by the Applicant (where contradiction in the facts may have existed), the Board concludes that the Union's application for Summary Dismissal must be granted.

[39] The Applicant's application is hereby summarily dismissed pursuant to ss. 18(p) and (q) of the *Act* on the basis that the application discloses no arguable case and that this is an appropriate case for summary dismissal without oral hearing.

DATED at Regina, Saskatchewan, this **6th** day of **January, 2009.**

LABOUR RELATIONS BOARD

Steven Schiefner,
Vice-Chairperson