The Labour Relations Board
Saskatchewan

M. C. M., Applicant v. HEALTH SCIENCES ASSOCIATION OF SASKATCHEWAN and SASKATOON REGIONAL HEALTH AUTHORITY, Respondents

LRB File No. 077-09; March 25, 2010
Vice-Chairperson, Steven Schiefner, sitting alone.

The Applicant:	M.C.M.
For the Respondent Union:	Peter J. Barnacle
For the Respondent Employer:	Evert Van Olst and Kevin W. Zimmerman

Duty of Fair Representation – Applicant alleges trade union failed to fairly represent her in respect of various grievance proceedings and in facilitating a safe and reasonable return to work program – Applicant alleges trade union acted arbitrarily and/or exercised bad faith - Board finds trade union's representation was reasonable and appropriate and saw no evidence trade union acted arbitrarily or in bad faith – Board dismisses application.

***The Trade Union Act,* s. 25.1 and 36.1**

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson**: The Health Sciences Association of Saskatchewan (the "Union") represents a unit of employees working in the Saskatoon Regional Health Authority (the "Employer"). The Applicant was at all material times an employee of the Employer and a member of the bargaining unit represented by the Union.

[2] On July 14, 2009, the Applicant filed an application with the Saskatchewan Labour Relations Board (the "Board") alleging that the Union failed to fairly represent the Applicant in relations to grievance proceedings with the Employer contrary to s. 25.1 of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "*Act*"). In addition, the Applicant alleged that the Union violated s. 36.1 of the *Act* in the course of representing her.

[3] The Applicant's application was heard by the Board on December 7 and 8, 2009 and on February 22, 23 and 24, 2010.

[4] The Applicant testified in support of her application and called Mr. William Burland, her fiancée. The Union called Mr. Allan Shalansky, Mr. Kevin Glass and Mr. Chris

Driol. Mr. Shalansky and Mr. Glass were Labour Relations Officers with the Union and were both involved in representing the Applicant. Mr. Driol was the President of the Union.

[5] For the reasons that following, the Applicant's application must be dismissed. The Board saw no evidence of a failure on the part of the Union to fairly represent the Applicant in her numerous dealings with her employer or, more specifically, in the conduct and prosecution of grievance proceedings on her behalf. Certainly, the Board saw no evidence that the Union conducted itself in a manner that was arbitrary, discriminatory or in bad faith toward the Applicant. Furthermore, the Board saw no evidence that the Applicant's right to the application of the principles of natural justice within the meaning of s. 36.1 of the *Act* was violated by the Union.

Summary of the Facts:

[6] The findings of fact set forth in these Reasons for Decision are based upon the extensive evidence, both oral and documentary, tendered during these proceedings. Where a witness has testified at variance with the Board's findings of fact set forth herein, I have discredited such testimony because I found it to be in conflict with other credible evidence (either documentary or testimonial).

[7] The Applicant obtained a degree in Indian Social Work from the Saskatchewan Indian Federated College in 1989 and, after a period of time working with the Department of Social Services (Saskatchewan Provincial Government), was hired by the Employer in 2000. The Applicant began working at St. Paul's Hospital, where she performed the duties of a medical social worker. As a medical social worker, the Applicant's role was to assist patients and their families in their psychosocial needs, including assisting them in obtaining necessary resources and community support, such as transportation assistance, supportive counseling, and other forms of social assistance, to facilitate their timely discharge from hospital. In performing her duties, the Applicant worked as part of an interdisciplinary team, working with other medical staff and other medical social workers.

[8] The Union's initial dealings with the Applicant arose in 2003. During the Applicant's tenure at St. Paul's Hospital, she bid on a number of positions. The hour before an interview for one of these positions, the Applicant received a call from a family member regarding a serious and traumatic incident. As a result, the Applicant believed she had done poorly during

her interview. The Applicant contacted the Union in December of 2003 and asked for the Union's assistance in redoing her interview as she believed the phone call had adversely affected her performance. On behalf of the Applicant, Mr. Shalansky, the Union's Labour Relations Officer assigned to this bargaining unit, contacted the Employer and explained the situation. As it turned out, redoing the interview was not necessary, as the Applicant was awarded the position and was deployed by the Employer to work in the Renal In-patient Department at the St. Paul's Hospital.

[9] The Union's next dealings with the Applicant occurred in 2004. After being in her position at the St. Paul's Hospital for a few months, the Applicant became dissatisfied. When she bid on her position, there was a potential that it would be located at the Saskatoon City Hospital. The position posting indicated a multi-site position based out of the Saskatoon City Hospital. However, when the Applicant applied for the position she was advised by the Employer that it would be located at St. Paul's hospital and, upon accepting the position, she was deployed to that hospital. In the spring of 2004, the Applicant asked the Union for assistance as she wished to be relocated from the St. Paul's Hospital to the Saskatoon City Hospital and was hoping to rely on the information indicated on the original posting. On June 7, 2004, Mr. Shalansky initiated a grievance with the Employer seeking to have the Applicant's position assigned (or reassigned) back to the Saskatoon City Hospital. In the months following, the Employer and the Union discussed the Applicant's grievance. Mr. Shalansky indicated that the Employer resisted the Applicant's desire to be deployed to the Saskatoon City Hospital. However, before the Applicant's grievance could culminate in a formal hearing, the Union communicated the Applicant's desire to withdraw her request. Mr. Shalansky testified that, although the Applicant was initially unhappy with being posted at the St. Paul's Hospital, his recollection was that, at the time of the decision to abandon the Applicant's grievance, she was feeling more comfortable at St. Paul's Hospital. While Mr. Shalansky could not recall a specific conversation with the Applicant regarding the decision to withdraw the Applicant's grievance or a specific document evidencing their conversation, Mr. Shalansky testified that he had several conversations with the Applicant regarding the matters and that, based on his standard practice, he would not have abandoned a grievance without consulting with the griever (at least verbally) before doing so. The Board found Mr. Shalansky to be sincere and thoughtful and accepts his testimony that he communicated with the Applicant regarding the status of her grievance and obtained her consent before advising the Employer that the Union was abandoning the matter.

[10] The Union's next dealings with the Applicant occurred in the fall of 2005. Management began a process of coaching the Applicant under the Employer's Attendance Management Policy and the Applicant sought representation from the Union during this process. By this point in time, Mr. Shalansky had retired and Mr. Glass had assumed service responsibilities for the Applicant's bargaining unit. Mr. Glass dealt with the Employer regarding this issue, which appears to have been resolved in September of 2005. Later that month, Mr. Glass was asked to attending another meeting with management to discuss the Employer's "performance expectations" for the Applicant. This later request extended into multiple meetings, occurring on September 30 and October 3, 2006, whereat Mr. Glass attended as the Applicant's representative. Following this process, the Employer issued a "coaching" letter meant to address concerns and complaints that had been made about the Applicant by a number of her coworkers at the St. Paul's Hospital. This letter enumerated the Employer's future expectations regarding the Applicant's performance at work and her contribution to a healthy work environment. A follow-up meeting occurred on December 15, 2006, whereat Mr. Glass was also in attendance. At this point in time, the Employer was attempting to manage a conflict between the Applicant and another coworker and had identified a number of defects in the Applicant's performance at work.

[11] Mr. Glass testified that it soon became apparent to him from attending these meetings that what started as a "performance management" issue appeared to be rooted in a "personality conflict" between coworkers. As a consequence, the Union encouraged the Employer to utilize a process of mediation, hoping to resolve the underlying dispute and avoid the workplace issues escalating into disciplinary matters. In March of 2006, the Employer agreed to the Union's suggestions and engaged to services of two (2) mediators to work with the social work staff at the St. Paul's Hospital. The Union agreed to have two (2) representatives present during the mediation process. Mr. Glass testified that, in situations involving interpersonal conflicts, the Union attempted to have separate representation for members in conflict. Mr. Glass's role was to represent the Applicant.

[12] In anticipation of the mediation process, the Employer and the Union negotiated the terms of what was referred to as a "safety agreement", wherein the parties agreed that the Union would not initiate a grievance based on any information that it received during the mediation process and the Employer agreed not to take any disciplinary action toward any staff based on comments made during the mediation. The goal of this agreement was to allow

mediation to occur in an environment wherein the participants would be free to speak their mind. This agreement was signed, *inter alia,* by the Applicant, representatives of the Employer, and representatives of the Union on the first day of the mediation process.

[13] The mediation process took place in March or April of 2006 and lasted approximately three (3) days[1]. During the mediation process the participants described their respective concerns regarding interpersonal and performance issues in the workplace. The mediation process was described as "*difficult*", with the participants expressing a lot of "*pent-up frustration between coworkers*." At the conclusion of mediation, an effort was made to formalize the consensus that had been achieved by the participants in a written agreement, with several drafts having been prepared, but none ultimately satisfied the wishes of everyone. While no formal agreement was signed following the mediation process, the tenor of what the participants agreed to at mediation was that, if any employee has an issue with a coworker, the Employer would convene a meeting between the two (2) employees and, with the benefit of a facilitator, the coworkers would attempt to resolve their conflict.

[14] While the mediation process was successful in allowing the Applicant and her colleagues to express some of their pent-up frustration with each other, subsequent events would indicate that it was wholly unsuccessful in resolving the underlying tensions in the workplace. In addition, it was clearly unsuccessful at inducing the participants (including the Applicant) to putting aside past disputes.

[15] In the weeks following the mediation process, a conflict arose between the Applicant and a coworker (Debra Down) and the Employer convened a facilitated meeting to discuss that conflict, in accordance with the dispute resolution process agreed at mediation. The Applicant testified that she had difficulty setting aside past disagreements and such was clearly the case as the documentary evidence indicates that the Applicant continued to harbor mistrust for her coworker related to issues that were discussed (and supposedly resolved) at mediation. Furthermore, the conflict between the Applicant and her coworker appeared to relate to the same performance issue that management was coaching the Applicant on prior to mediation (i.e. communication within a coordinated team). In any event, the Employer's first attempt to utilize

[1] In reviewing the documentary evidence, it was noted by the Board that the Employer demonstrated a not insignificant commitment to the goal of maintaining a safe and healthy work environment by agreeing to an extended process of mediation, allowing staff sufficient time to prepare themselves, and ensuring that the process, itself, was conducted in safe and healthy manner.

the dispute resolution process agreed to through mediation was unsuccessful with the Applicant's coworker leaving the meeting feeling intimidated and upset.

[16] By July of 2006, the Employer was concerned that the Applicant was using intimidating and inflammatory language in dealing with her coworkers and that she had made unsubstantiated allegations, contrary to the "spirit of the agreement" of the participants of the previous mediation process. On July 7, 2006, the Applicant's supervisor convened another "coaching" meeting with her, at which Mr. Glass was also present. At this point in time, the Employer appeared to be concerned that, rather than resolving the interpersonal issues at mediation, the Applicant was using the mediation process as a weapon against her coworkers, bringing up incidents had had been addressed in mediation. In response to this allegation, Mr. Glass and the Applicant's supervisor got into a heated exchange, with raised voices. The Employer appeared to be frustrated with the lack of progress in resolving the performance issues it was trying to address with the Applicant. On the other hand, the Union was concerned that the Employer was treating the Applicant's conduct flowing from the mediation process as disciplinary. Correspondence was exchanged between the Employer and the Union regarding their respective concerns. On August 3, 2006, the Employer issued a letter to the Applicant which it described as "coaching" and which the Union saw as "disciplinary". On August 16, 2006, the Union grieved the Employer's letter, alleging that it was disciplinary without cause. Mr. Glass testified that, while he had doubts as to whether or not the letter was in fact disciplinary, the Union's goal was to have the letter removed from the Applicant's personnel file. The secondary goal of the Union at this point in time was to get the Employer back using the dispute resolution process which had been agreed to through mediation. Apparently, the process of allowing employees to confront each other with workplace issues was discontinued by the Employer after being used by the Applicant (in a manner apparently deemed inappropriate by the Employer).

[17] On September 18, 2006, a meeting was held between the Union and the Employer to discuss the Applicant's disciplinary grievance (regarding the letter she received on August 3, 2006). The Applicant was in attendance for this step of the grievance. On October 19, 2006, the Employer wrote to the Union denying the Applicant's grievance at Step #1.

[18] In the meantime, the Employer kept attempting to deal with performance and other issues in the workplace and tensions continued to exist between the Applicant and her

coworkers. By October of 2006, a coworker (Michelle Lang) had filed a harassment complaint against the Applicant related to the Applicant's conduct during a staff meeting, which conduct was alleged to be contrary to the Employer's Respect and Dignity Policy. The investigator interviewed the Applicant, the complainant, and various other coworkers and concluded that the evidence did not substantiate the allegation of harassment. Nonetheless, the description of the Applicant's conduct in the workplace and, in particular, her treatment of Ms. Lang was not particularly flattering to the Applicant or indicative of a desire on the part of the Applicant to promote a safe and healthy work environment. Witnesses described the Applicant as trying to embarrass Ms. Lang by making "*it personal, not for all, just for Ms. Lang*." Witnesses also described the Applicant as "*very defensive*" and unable to "*accept constructive feedback*."

[19] The above captioned investigation report was not released until September 12, 2007 and, in the interim, the Employer continued to attempt to address the conflict issues the workplace. On or about November 27, 2006 (after the harassment investigation but before the investigator's report was released), the Employer convened a meeting to deal with workplace tensions involving the Applicant and a coworker (Ms. Lang).

[20] In December of 2006, the Applicant met with Ms. Barbara Makeechak, the Employer's Respectful Workplace Advisor, because the Applicant wished to file her own harassment complaint against her coworkers.

[21] It is interesting to note that, notwithstanding these intervening events, the Employer and the Union continued to work on drafts of the mediation agreement and, by January of 2007, they were up to their sixth (6^{th}) draft. In addition, the Employer was attempting to coordinate an investigative meeting regarding "coverage" issues, which the Union was attempting to coordinate with the Applicant. Although this meeting started out from a request by the Applicant concerned that she had been left to cover the hospital when all of the other social workers attended a funeral, with the passage of time in coordinating a meeting, the Employer had some issue that it wanted to discuss with the Applicant regarding her performance at work. The Union's primary goal at this time was to encourage the Employer to ensure a reasonable and safe work load for the Applicant and saw the "coverage" issue as part of that equation. However, Mr. Glass also testified that, by this point in time, it was clear to him that the Employer viewed the Applicant as a big part of the problem in the conflict that was occurring in the workplace.

[22] On February 26, 2007, a meeting was held between the Union and the Employer to discuss the Applicant's disciplinary grievance (at Step #2). While the Applicant was not present for this grievance, she was advised of the time and place of the meeting by the Union. On March 30, 2007, the Employer wrote to the Union denying the Applicant's grievance at Step #2. On April 11, 2007, the Union advised the Employer of its intention to advance the Applicant's grievance to arbitration.

[23] During the spring of 2007, the Employer was trying to convene disciplinary meetings with the Applicant. It is unclear from the evidence whether or not the Employer was trying to address new performance issues with the Applicant or this was a continuation of the old performance issues involving the Applicant. In any event, the Employer wanted to have disciplinary meetings with the Applicant and Union was attempting to coordinate these meeting; meetings occurring on May 10 and June 1, 2007.

[24] At the latter meeting, the Employer expressed it concerns and the Applicant gave her explanation. However, near the conclusion of the meeting the Applicant began expressing her concerns regarding the competency of her supervisor and did so in a manner that caused her Union representative, Mr. Glass, to become concerned that her conduct might be seen as disciplinary (i.e. insubordination). As a consequence, Mr. Glass asked for an adjournment to provide him an opportunity to caucus alone with the Applicant. While they were caucusing, it was apparent to Mr. Glass that the Applicant was clearly agitated. She was not giving Mr. Glass an opportunity to explain his concerns, which were that the meeting had gone well with the Employer (i.e. she was not in trouble) but, if she kept saying the kind of things she was saying about her supervisor, she would likely get herself into trouble. The Applicant testified that Mr. Glass was abrupt with her and told her to "*shut up*" and that, if she didn't, he wouldn't represent her any more. Mr. Glass testified that he had difficulty getting her to calm down; that he told her that she needed to stop saying the things she was saying to her Employer; and that if she didn't want to follow his advice, there was no point in him staying to represent her. The Board found Mr. Glass to be sincere and thoughtful and accepts his description of these events. The Applicant testified that she was "*not doing very well*" by this point in time. During this period, the Applicant was away from work on a number of occasions on sick leave, she testified that she was experiencing periods of disassociation in the weeks before she went on medical leave, and subsequent events would tend to support the logical conclusion that the Applicant was

experiencing the effects of the medical conditions with which she would later be diagnosed (i.e. depression and anxiety). In any event, the Applicant followed the advice of Mr. Glass and the June 1, 2007 disciplinary meeting with management concluded without further incident (at least in terms of that meeting).

[25] Soon after this meeting, the Applicant phoned Mr. Glass to get clarification regarding a statement he had made during their private caucus. During their conversation, Mr. Glass had used the term "*severance*" and the Applicant did not know what this meant. Mr. Glass testified that he explained to the Applicant that, if she was interested in no longer working for the Employer, it might be possible to pursue a severance (i.e. a monetary payment), but that a severance may not be a good idea for her unless she had another job to go to. Mr. Glass testified that he used the example of working for another employer, such as a tribal council to illustrate his point. Although Mr. Glass thought his conversation went well with the Applicant (i.e. that he adequately explain the meaning of "severance" and how it might apply to the Applicant's situation), apparently the Applicant took offence to Mr. Glass's comment. The Applicant testified that she found Mr. Glass's suggestion to be racially-based and derogatory.

[26] In fall of 2007, the Applicant met with the president of the Union, Mr. Driol. During this meeting the Applicant expressed her dissatisfaction with being represented by Mr. Glass but did not explain her concern regarding Mr. Glass's comment until May of 2008. Dr. Driol encouraged the Applicant to allow Mr. Glass to continue to represent her on the basis that Mr. Glass was the Union's most experienced person in dealing with an employer's duty to accommodate. The result of this meeting was that Mr. Glass continued to represent the Applicants in her ongoing dealings with the Employer.

[27] The next discipline meeting with the Applicant was scheduled for June 21, 2007. On June 19, 2007, the Applicant received a note from her doctor, Dr. Vicki Holmes, indicating that she should be off work for a month, but with an undetermined return date. No diagnosis or other explanation was provided by Dr. Holmes. The Applicant testified that, at this point in time, she was experiencing disassociation (couldn't remember conversations) and paranoia (believed that people were talking about her).

[28] The Applicant applied for and received medical leave benefits under Employment Insurance from June 24, 2007 until October 16, 2007. In addition, the Applicant's absence from

work triggered the involvement of the Employer's Disability Support Unit, whereupon she applied under the Employer's Disability Income Plan.

[29] While on medical leave, believing that she had been the victim of harassment in the workplace, the Applicant filed a complaint with the Employer's Occupation Health and Safety Officer, Ms. Judy Metcalfe, on July 10, 2007. The Applicant's complaint named the leader of the Social Work Department, her supervisor and three (3) of her coworkers. Each of the Applicant's allegations were investigated and found to be unsubstantiated.

[30] In addition to applying for Employment Insurance benefits and under the Employer's Disability Income Plan, on July 18, 2007, the Applicant applied to the Saskatchewan Workers' Compensation Board alleging that she was suffering from a psychological injury as a result of personal harassment at the work place (i.e. the "WCB claim").

[31] In response to reporting obligations flowing from the WCB claim, Dr. Holmes wrote to the Workers' Compensation Board on July 25, 2007 indicating a diagnosis of "*work related depression and anxiety*". Dr. Holmes' observations with respect to the Applicant and her condition were documented in a report to the Workers' Compensation Board dated July 26, 2007, wherein the doctor expressed concerns related to "*suicidal ideation*" on the part of the Applicant and indicated that the Applicant had been "*traumatized*" and had been experiencing periods of paranoia, depression and anger. Dr. Holmes' report indicated that she had referred the Applicant to a psychiatrist for treatment.

[32] The documentary evidence indicates that, following this referral, Dr. Heather Conacher, performed a psychiatric assessment of the Applicant. In addition, the Applicant began receiving psychological services from Dr. Lana Shimp, a registered psychologist, for treatment of depression and anxiety. Of relevance, Dr. Conacher's assessment, dated March 11, 2008, indicated a diagnosis of "*Major Depressive Disorder*", "*Panic Disorder with Agoraphobia*" and "*Generalized Anxiety Disorder*".

[33] In addition, the Workers' Compensation Board asked that a psychological assessment of the Applicant as part of processing her WBC claim. This assessment was conducted by Dr. Jo Nanson, in August of 2007. Dr. Nanson, a Registered Psychologist, completed her assessment in September of 2007 and concluded that Applicant appeared "*to be*

clinically depressed and to have underlying personality traits that have exacerbated her workplace difficulties". The following excerpts from Dr. Nanson's report are relevant:

> **III.** ***Discussion of Causation***
>
> *Depression is typically multi-factorial. In her case, there are likely to be a number of factors that have contributed to her depression, including her early childhood experiences of foster care and her history of alcohol and drug abuse, which has been in remission for many years. However the difficulties that she has experienced in the workplace have been the proverbial "straw that broke the camel's back", leading her depression to worsen and render her unable to work at the present time.*
>
> ***IV. Recommendations***
>
> ***A. Transitional return to work or function recommendations including time lines:***
>
> *Mrs. M. is not yet ready to go back to work. I would recommend that she have three months of weekly treatment with a psychologist or other mental health professional acceptable to WCB.*
>
> *After three months, she could begin a graduated return to work, at another Saskatoon District Health site, other than St. Paul's Hospital. It is difficult for hospital social workers to work half days, so I would recommend that she start back at 2 days per week, adding one day a week every two weeks until she is back to full time work. If her depression worsens, she should go back to a part time schedule until her symptoms are under better control.*
>
> ***B. Treatment recommendations including time lines and frequency: See above.***
>
> ***C. Recommendations for any further exams:*** *Mrs. M. has been referred to a psychiatrist, Dr. Heather Conacher. Hopefully WCB can expedite this referral. Nevertheless, Mrs. M is opposed to using medication to treat her depression.*
>
> ***D. Are permanent return-to-work restrictions anticipated:*** *Yes. It does not appear likely that she will ever be able to return to the Renal Dialysis Unit at St. Paul's or even to St. Paul's Hospital given the level of workplace conflict.*
>
> ***E. Permanent return to work recommendations including time lines****: See above.*
>
> ***F. Recovery time frame:*** *Six to nine months*
>
> ***V. Other Comments***
>
> *Her employer, Saskatoon District Health may not be willing to have her back at any work place until the harassment charges are dealt with. The Director of Social Work for the SDH has been named in the harassment case, which would*

> *put him in a conflict of interest in working with her in a new job placement. This will have to be explored by her CSR before a return to work plan is implemented.*

[34] By October of 2007, the Applicant was dealing with the Employer's Disability Income Plan; had just received the Investigator's Report (dated September 12, 2007) into the harassment complaints against her by Ms. Lang; was dealing with the Workers' Compensation Board, and advancing her own harassment complaint against her supervisors and coworkers. The Union's involvement in representing the Applicant in these particular processes was limited.

[35] Apparently, frustrated with her circumstances, the Applicant wrote to the then Premier of Saskatchewan, Mr. Lorne Calvert, on October 23, 2007, asking for his personal involvement in her case and alleging gross misuse and mismanagement of tax dollars by her Employer. It is not clear what came of this correspondence. However, on November 21, 2007, the Applicant wrote to Premier Brad Wall, who referred her letter to the Minister of Advanced Education, Employment and Labour, who referred the Applicant to the Occupational Health and Safety Branch of the Ministry of Advanced Education, Employment and Labour. In late 2007 or early 2008, the Applicant filed a claim with that branch alleging that the Employer had violated *The Occupational Health and Safety Act, 1993*, S.S.1993, c.O-1.1 (i.e. the "OH&S claim").

[36] In the meantime, the Applicant's harassment complaint was being internally investigated by Ms. Barbara Makeechak and her report, dated November 30, 2007, concluded that the Applicant's allegations of harassment against her supervisor, Mr. Trevor Siemens, were "unsubstantiated" (i.e. that the alleged harassment against the Applicant had not occurred).

[37] Subsequent thereto, the Applicant's OH&S claim was investigated by an Occupational Health Officer. On April 16, 2008, the investigating officer issued his report indicating that he saw no evidence of a violation of *The Occupational Health and Safety Act, 1993* by the Employer, satisfied that each of the Applicant's allegations had been properly investigated by the Employer.

[38] By February of 2008, the Employer's Return to Work consultant, Ms. Diane Callaghan, was struggling with developing a return to work program for the Applicant and had recognized the potential that she might need to be placed into a new work area or site. In addition, presumably in response to a request from the Union, the Employer concluded that

returning the Applicant to work as an "extra" would be "*rather difficult*" in the social work field. In any event, the Union was regularly involved in communications with the Employer regarding the Applicant's return to work and the Employer was regularly communicating with the Applicant.

[39] At about this point (2008), the Applicant asked that she be permitted to bring a support person, Mr. William Burland, in addition to her Union representation, to her meetings with her Employer regarding her return to work. The Union supported her request and the Employer agreed. The Applicant also requested that she be given more lead time before meetings and that all communication with her be in writing. Again, the Union supported the Applicant's requests. However, the corollary of these requests was that her return to work meetings, which already involved a number of parties, were now even more difficult to arrange and more lead time was required, for example to prepare the desired written agendas.

[40] By March of 2008, the Applicant's health care provider, Dr. Shimp, believed the Applicant was able to return to work subject to a number of specified restrictions, including the following:

M.C.M. Restrictions / Limitations:

- *Can occasionally work under deadline pressures.*
- *Unable to concentrate on intense detail.*
- *Able to function with minimal stimuli present.*
- *Can work with cooperatively with other if expectations are clear.*
- *May react inappropriately to confrontational situations (may withdraw/shut-down if confrontation with Co-worker).*
- *May have occasional lapses in judgment.*

Additional restrictions:

- *Should not work with any of the individuals named in the Harassment Claim:*
  1. *Manager: Trevor Siemens*
  2. *Professional Leader: Bryan Woods*
  3. *Co-worker: Michelle Lang*
  4. *Co-worker: Tanya Greaser*
  5. *Co-worker: Anna Marie Buhr*

Note: It is recognized that it would be unreasonable to the Professional Leader not to have contact with M.C.M., it just must not be as a direct supervisor.

[41] A return to work meeting occurred on March 3, 2008 with the Employer. The Applicant was present, as was her support person, and her Union representative. During this meeting, the participants discussed the restrictions which had been placed on the Applicant's

return to work by her doctor(s). It would appear that the Employer was concerned that it would have difficulty returning the Applicant to the workplace with the restrictions defined by the Applicant's physicians and that it may be necessary to look at positions other than a medical social worker. The Union, recognizing that the restrictions were difficult, was nonetheless taking the position that accommodating the Applicant's restrictions in a social work position would not place an unreasonable burden on the Employer. Certainly at this point, the nature and extent of the restrictions on the Applicant's return to work were an issue. Following this meeting, the Employer wrote to Dr. Shimp and asked for clarification. On March 5, 2008, Dr. Shimp responded to the Employer's letter as follows:

> *I have reviewed the letter you have provided Ms. M dated March 4, 2008*[2] *summarizing the meeting that was held on March 3, 2008 to discuss Ms. M.'s return to work. I have also reviewed the Saskatoon Health Region, Department of Social Work position description for a social worker.*
>
> *I understand that there are concerns that the restrictions that have been outlined for Ms. M (Capacity Report Form 2) are incompatible with the position description of social worker in areas such as mental effort, ability, mental skill, etc and that the workplace wants to place Ms. M in an alternate position.*
>
> *The restrictions that were provided for Ms. M were intended to be temporary, with the expectation being that she would be able to return to full work hours and duties as a social worker within a 3 month time period. Ms. M developed problems with mood and anxiety that developed in response to issues that were occurring with her coworker and management. Ms. M does not have a prior history of problems with disability that would require permanent accommodation (outside of not being able to return to her previous position due to the breakdown in work relations that have occurred).*
>
> *Presently, Ms. M has some residual symptoms of depression and anxiety and is apprehensive about return to work given the previous difficulties that have occurred in the workplace – it is these issues that are contributing to the restrictions that were previously outlined. I fully anticipate that if Ms. M is returned to a health work environment that her confidence will increase and her mood and anxiety issues will resolve such that the restrictions outlined in the Capacity Report Form 2 would no longer be necessary and that she would be able to fulfill the regular duties of a social worker, albeit not in her previous position at St. Paul's Hospital.*
>
> *Please note that this opinion is consistent with that provided by Dr. Jo Nanson, Registered Doctoral Psychologist, who assessed Ms. M as part of a WCB secondary mental health assessment (August 24 and 27, 2007). Dr. Nanson stated that it was not likely that Ms. M would ever be able to return to the Renal Dialysis Unit at St. Paul's Hospital or to St. Paul's Hospital given the level of workplace conflict, but she did recommend a GRTW at another Saskatoon District Health site in a social work position, with an ultimate total recovery time frame of 6-9 months.*

[2] Text of Dr. Shimp's letter taken from the Appeal Decision of Ms. Anne Wallace, dated April 20, 2009.

> *It would be ideal if Ms. M could be provided with temporarily reduced social work duties within her present restrictions (i.e., doing more administrative or routine social work duties) while she acclimatizes to being back in a work environment. If this is not possible, then she could temporarily be placed in another position suited for her training expected that further improvements would be made in her mental health, after which she could return to a social work position. In either case, it would be anticipated that she would be capable of working full duties and hours as a social worker within approximately 3 months.*
>
> *Thank-you for your assistance in helping to arrange for Ms. M to return to the workplace. Please do not hesitate to contact me if you require any further information. {Emphasis in original]*

[42] In May of 2008, the Applicant applied to the Union for assistance so that she could continue to receive psychological services (treatment) from Dr. Shimp. The Applicant had originally been seeing Dr. Shimp with funding from the Workers' Compensation Board. However, apparently the WCB funding had run out. Mr. Driol testified that the Applicant applied to the Union on three occasions seeking funding from the Union's Emergency Fund. Mr. Driol indicated that the first two times, her request was granted in the maximum allowed under the guidelines for that fund in the amount of $500 on each occasion. It was unclear from the evidence when the Applicant's requested such funding or the purpose for which it was requested.

[43] In May of 2008, the Applicant contacted the President of the Union, Mr. Driol. During their conversation, the Applicant indicated that she believed that the suggestion that Mr. Glass had made in June of 2007 (i.e. that she consider going to work for the Saskatoon Tribal Council) had been offensive. Mr. Driol's response was to convene a meeting between the Applicant and Mr. Glass, which took place on May 29, 2008. During this meeting, the Applicant explained her concerns that she believed Mr. Glass's comment to be racially-biased and derogatory. In response, Mr. Glass apologized to the Applicant indicating that he was merely trying to explain the term "severance" to her and that he meant no disrespect by his comments.

[44] The meeting on May 29, 2008 continued and the conversation then turned to the Union's position with respect to her returning to a social work position (as the Applicant did not want to be "accommodated" in another type of position); on obtaining funding from the Union for psychological counseling (as she had exhausted alternate funding arrangements); and the Union's role in prosecuting her OH&S claim with the Occupational Health and Safety Department (as she desired to appeal the decision of the Occupational Health Officer dated April 16, 2008).

The Union advised the Applicant that they would support her in her desire to return to a social work position and would rely on her medical information in working with the Employer on a suitable return to work plan. The Union also indicated that they were not aware of any funding available from either the Employer or the Union for counseling but would follow up with the Employer. Finally, the Union advised that Applicant that they could not assist the Applicant in her desire to appeal the decisions on her OH&S claim, as this matter was outside the scope of the collective agreement.

[45] As indicated, the Applicant had earlier applied to the Saskatchewan Workers' Compensation Board for benefits, which were granted through to November 30, 2007. The Applicant appealed that decision and, in August of 2008, the Workers' Compensation Board agreed to extend her benefits until February 29, 2008. However, in doing so, the Workers' Compensation Board concluded that she would have no further wage loss entitlement after that point (February 29, 2008) on the basis that the Employer was not entirely responsible for the Applicant's absence from work during her leave from the workplace.

[46] By September of 2008, the Applicant was dealing with the Employer's Disability Income Plan regarding benefits under that program. Although unclear from the evidence, it would appear that by this time, the Plan was signaling to the Applicant that her benefits could soon terminate.

[47] On October 8, 2008, another return to work meeting was convened, at which the Applicant, her support person, and her Union representative again met with the Employer. The participants discussed a potential return to work plan for the Applicant, with only one (1) position potentially satisfying the restrictions on the Applicant's return to work; that being, a medical social work position at the Royal University Hospital. The Applicant continued to believe that she should not be "accommodated" into another job; rather, the Applicant wanted to return to her old position, but without having to report to, or work with, any of the supervisors or coworkers whom she previously had experienced conflict with. On the other hand, the Employer was coming to the conclusion that the Application's medical limitations may well prevent her from returning to any position in the social work department. The Employer indicated that he would begin examining alternate positions for the Applicant (i.e. outside of a social work position). Apparently disappointed with this meeting, the Applicant wrote to the Minister of Labour, expressing concern about the Employer's delaying in establishing a return to work program for her and described the

October 8, 2008 return to work meeting as "*an example of support for the abusive behavior to continue*."

[48] In October/December of 2008, the Applicant again applied to the Union's Emergency Fund for assistance so that she could continue to receive psychological services (treatment) from Dr. Shimp. The Union denied the Applicant's request for direct financial assistance on the basis that her request appeared to be outside the parameters of the guidelines for the Union's Emergency Fund (i.e. it was not intended for ongoing financial needs).

[49] By November of 2008, the Employer was seeking clarification from Dr. Shimp as to the extent and during of the restrictions that she recommended for the Applicant. Dr. Shimp replied as follows:

> *Re: <u>M.C.M – Return to Work Restrictions</u>*
>
> *Ms. M forwarded me the letter you sent her, dated November 4, 2008, requesting further clarification regarding whether the following work restrictions are temporary or permanent:*
>
> - *Not to return to St. Paul's Hospital*
> - *Not to work directly with any individuals named in her Harassment Claim*
>
> 1. *Manager: Trevor Siemens*
> 2. *Professional Leader: Bryan Woods*
> 3. *Co-worker: Michelle Lang*
> 4. *Co-worker: Tanya Greaser*
> 5. *Co-worker: Anna Marie Buhr*
>
> *The specification not to return to St. Paul's Hospital was made in order to avoid having Ms. M. return to working with the same colleagues that were involved in her harassment claim and does not have to do with the work duties or actual location. Therefore, the restrictions should be considered to be in place as long as the department is managed by Mr. Siemens and / or if 2 or more of the co-workers named in her harassment claim continue to work in this department. Of course, in the unlikely event that there is a turn-over in management and staff that Ms. M would be able to return to her work at St. Paul's Hospital.*
>
> *The restriction to not work directly under her former manager, Mr. Siemens should be considered a permanent work restriction. I anticipate that she will be able to work with Mr. Woods, Professional Leader in addressing any administrative concerns that may arise, but she would not be able to work with him as a direct manager – this should also be considered a permanent work restriction. It is a permanent work restriction for her not to work directly with the 3 co-workers named in the harassment claim if they are all working together in one unit. However, she may be able to manage working with one of them in the future, such as could occur if she was working on a unit and one of the co-workers named in her harassment claim later transferred onto this unit. This*

> *would better be determined after she settles into a new position and her response to a return to work can be assessed.*
>
> *The goal of the return to work is to acclimatize Ms. M to a work environment. As you are aware, Ms. M has had emotional difficulty coping with reported experiences of harassment in the workplace. Given these experiences there is a level of apprehension regarding RTW, although she remains committed to doing so. She will need to return to a work environment where work relations are healthy and supportive – obviously relations had deteriorated to a point in her prior unit where they cannot be repaired and thus the need for the previously outlined restrictions.*
>
> *I hope that this clarifies the nature of the work restrictions. Please contact me if you require any further information.*
>
> *Sincerely,*
>
> *Lana Shimp, PhD*
> *Registered Doctoral Psychologist*

[50] By December of 2008, the Employer and the Union were continuing to discuss a return to work program for the Applicant in light of clarification of the medical restrictions and trying to arrange a suitable time to convene another return to work meeting. Unfortunately, it appears that the Applicant was unable to meet at the scheduled times because of flu symptoms.

[51] During this period, the Union and the Applicant exchanged correspondence regarding the particulars of the Applicant's return to work program; with the Union explaining that the Employer did not think it would be possible to find any suitable social work positions for the Applicant because all of these positions were supervised by one of the persons with whom she was supposed to have no direct contact (Mr. Woods); and with the Applicant taking the position that she wanted "*the*" Medical Social Worker position she held before she went on medical leave (i.e. the position at the St. Paul's Hospital). In addition, the Applicant now wanted to start seeing the agenda before any more return to work meetings; concerned that discussions were shifting away from placing her back in her old position to moving to "accommodating" her in some other position. The Union attempted to arrange another return to work meeting with the Employer and relayed to the Employer the Applicant's concerns, including the Applicant's new concern that she wanted to see agendas before meetings.

[52] In December of 2008, representatives of the Disability Income Plan also wrote to Dr. Shimp also seeking clarification as to the nature and extent of the Applicant's medical restrictions. Dr. Shimp was uncompromising in her restrictions on the Applicant's return to work

but echoed her earlier position that the Applicant was able to commence a graduated return to work program subject to the stated restrictions. However, Dr. Shimp did note that the Applicant's depression and anxiety had "shown some fluctuation" due to the Applicant's dealing with the appeal of her OH&S claim. By way of background, sometime in 2008, the Applicant appealed the Report of the Occupational Health Officer dated April 16, 2008, which report had concluded that the Employer had not violated *The Occupational Health and Safety Act, 1993*. In accordance with the appeal procedures under that Act, Ms. Anne M. Wallace, Q.C., was appointed as special adjudicator. Dr. Shimp's reference to the appeal of the Applicant's OH&S claim appears to be a reference to proceedings involving Ms. Wallace, the special adjudicator.

[53] Prior to a formal hearing of the Applicant's appeal of her OH&S claim, Ms. Wallace held a pre-hearing meeting with the parties, at which the Applicant, her support person and representatives of the Employer were present. This meeting took place on January 23, 2009. The Union was not present at this meeting. During the meeting, the parties began discussions around a potential settlement and resignation. However, counsel for the Employer was reluctant to engage in such discussions directly with the Applicant without the knowledge and consent of the Union. As a consequence, on January 25, 2009, the Applicant wrote to the Union, indicated her desire to engage in settlement discussions with the Employer. The Applicant and Mr. Glass had a phone conversation on January 27, 2009 during which the Applicant indicated that she was not requesting assistance from the Union in her negotiations with the Employer, as she intended to rely on the assistance of a friend who was a lawyer. As a result, the Union agreed to provide a letter to counsel for the Employer consenting to direct negotiations between the Applicant and the Employer on a potential settlement. Thereafter, the Union took no part in the Applicant's severance discussions with counsel for the Employer.

[54] However, as a result of the settlement discussions between the Applicant and counsel for the Employer, the Union and the Employer agreed to place return to work discussions in abeyance. Although not entirely clear from the evidence how long these discussions took place, apparently the settlement discussions were unsuccessful.

[55] A hearing with respect to the Applicant's appeal of the denial of her OH&S claim before the special adjudicator was conducted in February and April of 2009. The Union did not represent the Applicant in appeal proceedings before the special adjudicator. However, Mr. Glass testified at the hearing, as did Dr. Shimp. Ms. Wallace rendered her Appeal Decision on

April 20, 2009, denying the Applicant's appeal. The following paragraph summarizes Ms. Wallace's reasons for doing so:

> *In summary, I have found that there was no "inappropriate conduct, comment, display, action or gesture" by anyone for whom the Employer is responsible. There is nothing in the evidence that the Employer knew or should reasonably have known would cause M to be humiliated or intimidated. The Employer was following the processes required of it, in the first instance because M complained of harassment, and in the second instance, in an effort to return M to the workplace and accommodate her work restrictions. The Employer's actions with respect to these matters were reasonable actions by the Employer in relation to the management and direction of the place of employment.*

[56] Following the Appeal Decision of Ms. Wallace, the Employer and the Union recommenced discussions with respect to a return to work program for the Applicant and began attempting to schedule meetings with the Applicant.

[57] The Applicant's benefits under the Employer's Disability Income Program discontinued effective May 1, 2009. The Applicant was advised of the decision to discontinue her disability income benefits in a letter dated February 18, 2009. The rationale for doing so was described as follows:

> *The medical evidence that is available to us on your claim file supports that you are able to participate in a gradual return to work program with certain restrictions. The restrictions have been outlined by Dr. Lana Shimp in her letter dated November 12, 2008. Indeed, there is information from Dr. Shimp on file that supports your suitability for participation in such a program dating back to the spring of 2008.*
>
> *SAHO has communicated with you and your employer separately on several occasions regarding the status of establishing a suitable return to work program based on Dr. Shimp's recommendations. Despite of multiple discussions between you, your union representation and your employer, no return to work program has been established for you.*
>
> *At this time, as several months have passed since you were first able to participate in a gradual return to work program and as indications are that you remain medically able to participate in such a program and as there does not appear to be any progress being made in establishing such a program for you, we have determined that we are not able to continue providing you with Disability Income Plan benefits on an indefinite basis. We have, therefore, extended the approval of your claim to April 30, 2009 with the intention of providing an additional and reasonable period of time for a return to work program to be established. Effective May 1, 2009, as it is our determination that sufficient time will have passed for the establishment of and conclusion of a return to work program by that date, your claim will close. No benefits will be payable for periods beyond April 30, 2009.*

[58] On April 26, 2009, the Applicant appealed the decision of the Disability Income Plan to discontinue her benefits. On May 5, 2009, the Plan denied her appeal.

[59] Apparently frustrated with Workers' Compensation regarding the investigation of her harassment complaint and the Union for the lack of success in establishing a return to work plan for her, the Applicant filed claims with the Saskatchewan Human Rights Commission against both. The Applicant's allegations against the Union were that it had discriminated against her on the basis of race and had not adequately represented her in her dealings with the Employer. The Union responded denying her allegations. On May 8, 2009, the Human Rights Commission wrote to the Applicant indicating that they did not have jurisdiction over her allegations against the Union and referred her to this Board.

[60] On May 11, 2009, the Applicant commenced an action against the Union in the Saskatchewan Court of Queen's Bench alleging that the Union wrongfully denied the Applicant all due process and procedural fairness to which she was entitled as a member of the Union. The Union responded with the notice of motion seeking to strike the Applicant's statement of claim and filing material in support of this application.

[61] On May 20, 2009, Mr. Shalansky returned to work for the Union and assumed responsibilities for representing the Applicant. Mr. Shalansky testified that, in light of the action that had been commenced in the Court of Queen's Bench by the Applicant, the Union believed that Mr. Glass would be in a conflict of interest in attempt to continue representing the Applicant. Mr. Shalansky testified that he played no role in the defense of claims being made by the Applicant. Rather, his role was narrowly focused on representing the Applicant in a suitable return to work program for her.

[62] At this point in time, the Applicant was reluctant to have anyone from the Union, including Mr. Shalansky, represent her. Nonetheless, Mr. Shalansky continued encouraging the Employer to find a position for the Applicant's return to work and continued to communicate with the Applicant regarding his efforts to do so. For example, on May 27, 2009, Mr. Shalansky advised the Applicant of a potential position as an accommodation for the Applicant in the Renal Dialysis Unit of the St. Paul's Hospital. It appears that, at this point in time, the Applicant continued to harbor mistrust for the Union, was not particularly interested in going to a new

positions in a new department, and was not particularly cooperative in terms of scheduling meetings to discuss her return to work program.

[63] On July 7, 2009, Allbright J. granted the Union's notice of motion striking the Applicant's Statement of Claim in the Saskatchewan Court of Queen's Bench.[3] The Court concluded that this Board was the appropriate (and exclusive) forum to hear and determine the claims against the Union that had been alleged by the Applicant.

[64] On July 14, 2009, the Applicant filed her application with this Board.

[65] On August 20, 2009, the Employer wrote to the Applicant and advised her that, in the Employer's opinion, the Applicant had not been adequately and appropriately participating in her own return to work program. The Employer was concerned that it had identified two (2) positions that were potential accommodations for the Applicant and she was unwilling to participate in discussions regarding these positions. On August 29, 2009, the Union wrote to the Applicant reiterating her obligations to participate in return to work discussions.

[66] On September 17, 2009, a return to work meeting took place to discuss the position in the Renal Dialysis Unit. The Applicant attended, as did her support person and Mr. Shalansky. At this point, the participants realized that the Applicant had allowed her membership in the Saskatchewan Association of Social Workers to lapse, which designation was a requirement for returning to any social work position. The Union unsuccessfully attempted to convince the Employer to waive this requirement. The Applicant raised the concern that she did not have the money to pay for her membership in the Saskatchewan Association of Social Workers nor to pay for psychological services (counseling) from Dr. Shimp for support in her return to work. Notwithstanding these concerns, Mr. Shalansky described this meeting as positive; the Applicant had things to follow up on, as did the Employer. A follow-up meeting was schedule for October 22, 2009.

[67] On or about October 6, 2009, the Applicant experienced a medical condition resulting in her hospitalization and inability to return to work. In the interim, the Union asked the Employer to "protect" the position in the Renal Dialysis Unit (not fill the position on a permanent basis) so that it would be available as a potential accommodation for the Applicant. Because of

this new medical condition, the Applicant was unavailable for work until February 24, 2010 (the last day of hearing before this Board).

[68] Mr. Chris Driol testified that the Saskatchewan Regional Office of the Union represents approximately 1,600 members, whom are serviced by two (2) Labour Relations officers.

Relevant statutory provisions:

[69] Section 25.1 and 36.1 of *The Trade Union Act* provide as follows:

> *25.1 Every employee has the right to be fairly represented in grievance or rights arbitration proceedings under a collective agreement by the trade union certified to represent his bargaining unit in a manner that is not arbitrary, discriminatory or in bad faith.*
>
> *. . .*
>
> *36.1(1) Every employee has a right to the application of the principles of natural justice in respect of all disputes between the employee and the trade union certified to represent his bargaining unit relating to matters in the constitution of the trade union and the employee's membership therein or discipline thereunder.*
> *(2) Every employee shall be given reasonable notice of union meetings at which he is entitled to attend.*
> *(3) No employee shall unreasonably be denied membership in a trade union.*

The Applicant's arguments:

[70] The Applicant alleged violations of both s. 25.1 and 36.1 of the *Act*.

[71] The essence of the Applicant's allegations of misconduct on the part of the Union related to s. 25.1 can be summarized as a failure on the part of the Union to represent her in four (4) respects; firstly, that the Union failed to advance and/or abandoned her June 7, 2004 grievance related to her desire to transfer or be reassigned from the St. Paul's Hospital to the Saskatoon City Hospital; secondly, that the Union failed to file a grievance with the Employer related to her allegations that she was the victim of harassment in the workplace; thirdly, that the Union failed to file a grievance with respect to the discontinuance of her benefits under the Employer's Disability Income Plan; and finally, that the Union failed the Applicant in working with the Employer to achieve an appropriate return to work program for her (alternatively expressed

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[3] *M.C.M. v. Health Sciences Association of Saskatchewan*, 2009 SKQB 283, Q.B. No. 600 of 2009.

as, the Union failed to grieve the Employer's failure to achieve an appropriate return to work program for the Applicant).

[72] The Application argued that each of these failings on the part of the Union was indicative of an underlying bad faith on the part of the Union and, thus, contrary to s. 25.1 of the *Act*. By way of example, the Applicant pointed to her testimony that the Union's representative (Mr. Glass) had told her to "*shut up*" and threatened to walk out of a discipline meeting with the Employer (on June 1, 2007) unless she stopped talking, as an example of the Union's personal hostility toward her.

[73] In addition (or potentially in the alternative), the Applicant alleged that the Union's misconduct was discriminatory; that the Union's failure to adequately represent her was based on discrimination against her because she was native. The Applicant alleged that the Union made slanderous comments about her and encouraged her to find work elsewhere, for example, the Saskatoon Tribal Council. The Applicant argued that the Union's suggestion that she find work at a tribal council to be racially-based and derogatory. The Applicant asked the Board to see these incidents as examples of discrimination against her on the part of her Union because she was native.

[74] Finally, the Applicant alleged that the Union failed to adequately communicate with her; that the Union failed to explain grievance and other procedures affecting her; that she was not given sufficient notice of meetings with the Employer; that her request for written communication was not respected (i.e. that she did not receive all communication in writing); and that she did not get copies of important documents, including grievances and correspondence between the Union and the Employer.

[75] With respect to the Applicant's allegation that the Union's violated s. 36.1, the Applicant took the position that the Union's conduct in representing her in her various dealings with the Employer was a breach of the principles of natural justice. The tenor of the Applicant's concerns in this regard was that she was the victim of workplace harassment and that the Union failed, both through the grievance process and otherwise, to ensure her workplace was safe and harassment-free and that, following her medical leave (March 1, 2009), to ensure she was able to return to her position under circumstances that adequately respected her medical restrictions, including a safe workload and being free from having contact with the impugned supervisors and

coworkers whom she alleged harassed her. The Applicant pointed to the delay in implementing an appropriate return to work program, the Union's willingness to discuss "accommodation" with the Employer, and the Union's failure to ensure she had adequate and necessary counseling to enable her to return to work, as examples of the Union's unwillingness to fully and appropriately recognize her disability.

[76] The Applicant had difficulty articulating the remedies she was seeking from the Board. She indicated that she wanted better communication from her Union; she wanted to be returned to her old position and objected to be "accommodated" in any position other than her chosen career of medical social work at the St. Paul's hospital[4]; and she wanted monetary compensation from the Union (or someone) for the losses she suffered, including loss of income, inadequacy of benefits (i.e. Workers' Compensation, Employment Insurance, and the Employer's Disability Income Plan), loss of pride, humiliation and embarrassment. In addition, the Applicant sought financial support for ongoing counseling to facilitate her return to work.

The Union's arguments:

[77] The Union denied that it failed to fairly represent the Applicant in any of her dealings with the Employer. The Union argued that the evidence demonstrated that its staff represented the Applicant in numerous proceedings and that, in each and every case, they had done so in a reasonable and appropriate manner, without discrimination or bad faith. In this respect, the Union relied on the decision of this Board in *Andrew Volk v. Canadian Union of Public Employees, Local 2714 and the Town of Maple Creek*, [2008] Sask. L.R.B.R. 432, LRB File No. 049-07.

[78] With respect to the June 7, 2004 grievance (i.e. related to the Applicant's desire to be transferred to the Saskatoon City Hospital), the Union took the position that this allegation was too old to form the basis of a claim pursuant to s. 25.1 of the *Act*. In the alternative, the Union also argued that it advanced a grievance on behalf of the Applicant and that this grievance was handled in an entirely appropriate manner. The Union argued that the evidence of Mr. Shalansky indicated that, while the Union abandoned the grievance, it did so only after consulting with the Applicant and on the basis that it appeared to the Union that she was feeling

[4] During the hearing, the Applicant appeared to modify her position on this issue, indicating that she would be willing to consider other medical social work positions but continued to resist being accommodated in any position outside her chosen profession (i.e. medical social work).

more comfortable at the St. Paul's Hospital at the time the decision was made to abandon her grievance.

[79] With respect to the Applicant's allegation that the Union failed to file a grievance with the Employer related to her allegations of harassment in the workplace, the Union argued that the Applicant's allegation of workplace harassment related to events that transpired during the mediation process that took place in March and April of 2006 and, pursuant to the "safety agreement" prepared in anticipating of mediation, the Union was prevented from relying on any events that occurred during this process. Nonetheless, the Union argued that it investigated Applicant's allegations that she was the victim of workplace harassment and could not find any evidence to support her assertion. The Union observed that the Applicant's assertion that she was the victim of harassment was not the same thing as evidence that she was. Rather, the Union argued that the evidence indicated that she was not the victim of harassment in the workplace.

[80] With respect to the Applicant's allegations that the Union failed to file a grievance with respect to the discontinuance of her benefits under the Employer's Disability Income Plan, the Union argued that, as this matter was outside the scope of the collective agreement, it was also outside the scope of their representative responsibility.

[81] The Applicant's final allegation that the Union violated s. 25.1 of the *Act* was that the Union failed in working with the Employer to achieve an appropriate return to work program was implemented for her or, alternatively, that the Union failed to grieve the Employer's failure to achieve an appropriate return to work program the Applicant. With respect to this allegation, the Union noted that it too was frustrated with the delay in returning the Applicant to the workplace but that it was not response for that delay. The Union argued that it relied on the restrictions defined by the Applicant's medical providers and consistently encouraged and worked with the Employer to develop options for the Applicant's return to work. The Union observed that the Applicant was a difficult member to represent for a number of reasons. Firstly, the Applicant wanted all communications in writing, resulting in extra work for the Union. Secondly, the Applicant wanted her fiancée to be present during her back to work meetings, making these meetings more difficult to arrange. Thirdly, the Applicant wanted agendas to be prepared and distributed in advance of return to work meetings, resulting in additional work and delays in

organizing her return to work meetings. Fourthly, the Applicant was unable to attend return to work meetings and thus they had to be rescheduled.

[82] The Union indicated that they respected all of the Applicant's requests and relied on her medical providers to define her return to work restrictions. While recognizing that the delay in developing a return to work program for the Applicant was understandably frustrating (and a financial burden for her), the Union took the position that the process was also very frustrating from its perspective. The Union indicated that it was required to respond to a growing list of restrictions that made the Applicant's placement back in the work place more and more difficult. In addition, the Applicant's own conduct, in initiating numerous proceedings in multiple forums, required the Union to respond to numerous proceedings at the same time and also placed certain of its staff (for example, Mr. Glass) into a conflict of interest in representing her. The Union argued that, notwithstanding these frustrations for the Union, it ensured that the Applicant had appropriate representation and continued to work with and encourage the Employer to develop a suitable return to work program for the Applicant. While the Union conceded that the Applicant's return to work may have been delayed, it took the position that it was not the cause of that delay.

[83] Finally, with respect the Applicant's allegation that the Union violated s. 36.1 of the *Act*, the Union argued that the Applicant appeared to be proceeding on the basis of an erroneous assumption as to scope of the duty imposed upon the Union pursuant to s. 36.1. The Union argued that there was no evidence that the Applicant was denied the application of her rights as set forth in the Union's constitution or that she was denied membership in the Union or that she was disciplined in any way by the Union. In this respect the Union relied upon the decision of the Saskatchewan Court of Appeal in *Rodney McNairn v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 179*, 2004 SKCA 57 (CanLII), 240 D.L.R. (4th) 358, 249 Sask. R. 111.

Analysis and Decision:

[84] The Board will deal with each branch of the Applicant's allegations in turn.

Alleged Violation of Section 25.1 of the *Act*:

[85] This 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.*

[86] This Board has recognized that a trade 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.

[87] In addition, this Board has confirmed that it does not "sit on appeal" of a trade union's decision not to advance a grievance and, in particular, will not decide if a trade 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. Further, the Board has also confirmed that it will not, with the benefit of hindsight, "sit on appeal" of a trade union's decision as to how to conduct grievance proceedings, including what evidence ought to have been tendered, which witnesses ought to have been called, and which arguments ought to have been advanced and/or abandoned. See: *D.M. v. Canadian Union of Public Employees*, 2009 CanLII 2049, LRB File Nos. 110-8 and 157-08.

[88] Having provided considerable latitude to the Applicant in calling her evidence and presenting his case and having examined all of the evidence tendered by these proceedings, both oral and documentary, the Board is not satisfied that the Union failed to fairly represent the

Applicant in any of her dealings with the Employer. In particular, the Board saw no evidence that the Union conducted itself in a manner that was arbitrary, discriminatory, or in bad faith within the meaning of s. 25.1 of the *Act* in the prosecution of the Applicant's grievances or otherwise as alleged by the Applicant.

[89] Firstly, the Applicant's allegation related to her June 1, 2004 grievance is now too old to sustain an alleged violation of s. 25.1 of the *Act*. This Board has previously stated that the timely resolution of outstanding grievances is an important component of maintaining amicable labour relations in the workplace and that the parties (that are the subject matter of outstanding grievance and claims) have the right to expect that claims, that are not advanced and prosecuted on a timely basis, have been abandoned. See: *Dishaw v. Canadian Office & Professional Employees Union, Local 397,* 2009 CanLII 507 (Sk. L.R.B.), LRB File No. 164-08. The events underlying the Applicant's allegations in this respect concluded in 2004. While the Applicant argued that she did not know about her right to bring applications to this Board until July 7, 2009 (i.e. the decision of Allbright J. of the Court of Queen's Bench), there is no evidence that the Applicant attempted to pursue any claim against the Union regarding her 2004 grievance until May of 2009 (four years later) when she commenced an action in the Court of Queen's Bench. In the Board's opinion, this is simply a matter of too much delay in advancing a claim. However, even if it were otherwise, the Board accepts the evidence of Mr. Shalansky that his consistent practice at the time was to inform an affected member prior to abandoning any grievance with either a phone call or written correspondence. The conclusion that Mr. Shalansky did call the Applicant is consistent with the tenor of concomitant evidence, including Mr. Shalansky's recollection that, at the point in time the decision was made to abandon her grievance, she was feeling more comfortable at St. Paul's Hospital. Also, both Mr. Shalansky and Mr. Glass testified that the Applicant had numerous conversations with the Union subsequent to when the grievance was abandoned and the Applicant neither ask about her grievance nor raise any concern as to its progress (or rather lack thereof) until she filed her Statement of Claim with the Court of Queen's Bench. In the Board's opinion, there is insufficient evidence to sustain an allegation that the Union failed to fairly represent the Applicant with respect to her 2004 grievance.

[90] In the Board's opinion, the Applicant's allegation that the Union failed to file a grievance with the Employer related to her allegation of harassment in the workplace can not be sustained for a number of reasons. Firstly, the Applicant's allegation that she was the victim of

workplace harassment found its genesis in the conversations, statements and disclosures that occurred during mediation. The safety agreement that was signed by the participants of that process, including the Applicant, prevented the Union from filing a grievance of the very nature desired by the Applicant. Secondly, the Board accepts the evidence of the Union that it investigated the matter and could find no evidence that the Applicant was the victim of workplace harassment. Multiple investigations were conducted into the Applicant's allegations and none of these reports supported her assertion that she was the victim of workplace harassment. Rather, the tenor of the evidence tended to point the other direct; that the Applicant may have been the aggressor in the conflict that was occurring in the workplace. In any event, this Board has held that there is no breach of the duty of fair representation where a trade union declines to file a grievance if it takes a reasonable view of the circumstances in doing so. See: *I.R. v. Canadian Union of Public Employees, Local 1975-01, et al.,* [2006] Sask. L.R.B.R. 344, LRB File No. 139-03; and *Dave Leblanc v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 555, et al.,* [2007] Sask. L.R.B.R. 649, LRB File No. 028-07. The Board is satisfied that the Union's decision not to advance a grievance of the nature desired by the Applicant was taken following a reasonable view of the circumstances; circumstances which did not support the allegations being made by the Applicant. Certainly, the Board saw no evidence to support the assertion that the Union acted in an arbitrary or discriminatory manner, as suggested by the Applicant.

[91] With respect to the Applicant's allegations that the Union failed to file a grievance with respect to the discontinuance of her benefits under the Employer's Disability Income Plan, the Board also concurs with the position advanced by the Union that, as these matters (i.e. the operation and provision of benefits under the Employer's Disability Income Plan) occurred outside the scope of the collective agreement, the Applicant's appeal of the denial of benefits thereunder was also outside the scope of the Union's representative responsibilities for the Applicant. Certainly, the Board could not find, and neither party identified, a provision in the Collective Agreement that brought such matters within the scope of the Union's representative responsibilities.

[92] The Applicant's final allegation that the Union violated section 25.1 of the *Act* was that the Union failed in working with the Employer to ensure that an appropriate return to work program was implemented for her or, alternatively, that the Union failed to grieve the Employer's failure to achieve an appropriate return to work program the Applicant. The evidence presented

during these proceedings, when taken as a whole, leads to the inescapable conclusion that the Applicant would have been a very difficult employee to return to work and a very difficult member to represent towards that goal. Firstly, the restrictions defined by the Applicant's medical providers were in direct conflict with the Applicant's stated desire to return to her original position at the St. Paul's Hospital. The Applicant repeatedly expressed frustration with the Union for discussing "accommodations" with the Employer because she wanted to return to "her" position. However, "her" position was at the St. Paul's Hospital, the very location precluded by her medical restrictions

[93] In addition, the restriction on the Applicant's return to work, including the requirement that she not work directly with certain named individuals, represented (and undoubtedly will continue to represent) a significant impediment to returning the Applicant to her desired profession of medical social work, as both Mr. Siemens and Mr. Woods are supervisors in the Employer's medical social work department.

[94] In addition, it does not appear that the restrictions on the Applicant's return to work would have been responsive to the Employer's concerns regarding the Applicant's performance at work prior to her medical leave. It is entirely possible (and arguably probably) that the workplace and performance issues for which the Employer was attempting to coach/discipline the Applicant prior to her medical leave (including her aggression toward and lack of communication and cooperation with her coworkers) found their genesis in her medical conditions. However, it is not axiomatic that the medial restrictions defined by the Applicant's physicians would have been responsive to any of the Employer's concerns in returning the Applicant to the workplace, including the Employer's obligation to ensure a safe and harassment-free workplace for the Applicant's coworkers. Nonetheless, the evidence indicates that the Union relied upon the advice of the Applicant's medical practitioners and consistently advocated on her behalf, pressuring the Employer to find an accommodation for the Applicant. On two (2) occasions, potential candidate positions were advanced by the Employer and communicate to the Applicant by the Union. In both cases, the Applicant resisted placement in these positions.

[95] In addition, it was not abundantly clear that the Applicant was able or willing to participate in a gradual return to the workplace as a medical social worker even with the restrictions defined by her physicians. The Applicant continued to display symptoms of depression and anxiety for which she continued to require treatment, including ongoing

counseling from Dr. Shimp to support her return to work. The Applicant continued to require the support and attendance of her fiancée at her return to work meetings. The Applicant wrote to various third parties, including the Premier of Saskatchewan, making unfounded and inappropriate allegations; she mistrusted the return to work process (as evident by her correspondence to third parties and her requirement for agendas to be prepared in advance and that all communication to be in writing); and she continued to be emotionally vulnerable (as evident by her conduct during proceedings before this Board). All of these are factors that would have be apparent to the Employer and taken into consideration in determining what it deemed to be an appropriate return to work scenario for the Applicant. Certainly, none of these factors would have been indicative of an easy acclimation of the Applicant back into the workplace. Nonetheless, the Union advocated and pressured the Employer to find positions for the Applicant; for example, where she could be an "extra" or where she could return with a reduced workload and with necessary and appropriate supervision by another medical social worker. In this respect, the Union's conduct was entirely responsive to the Application's stated and obvious needs. On the other hand, all of the factors would have increased the difficulty for the Employer in finding a suitable and appropriate situation into which to accommodate the Applicant.

[96] The Applicant pointed to the delay in developing a return to work program as evidence of a failing on the part of the Union to fairly represent her. With all due respect, the evidence does not bear out this assertion. Simply put, the Applicant's medical restriction reduced the potential scope of positions and circumstances that would be available as a suitable accommodation, as did the Applicant's unwillingness (or at least initial unwillingness) to consider positions outside of the medical social work field. In addition, new medical conditions prevented the Applicant from returning to work from October 6, 2009 until February 24, 2010. Finally, it must be noted that the Applicant initiated a not-insignificant number of distractions for both the Union and the Employer, including her multiple appeals of the workplace harassment investigations and multiple claims before both the Saskatchewan Human Rights Commission and the Saskatchewan Court of Queen's Bench. It is inappropriate for the Applicant to now seek to hold the Union responsible for any delays associated with the numerous distractions for which she is singularly responsible for generating.

[97] The Applicant asserted that the conduct of Mr. Glass on June 1, 2007 was indicative of personal hostility toward her and that the Union made slanderous comments about her. In addition, the Applicant asserted that comments that were made to her by Mr. Glass

regarding an alternate employer were racially-motivated and derogatory. The Board saw no evidence to support these allegations. Firstly, this Board accepts the evidence of Mr. Glass as to the events that transpired on June 1, 2007 and the tenor of his conversation with the Applicant. Secondly, the example of a tribal council (whether the Saskatoon Tribal Council or any other tribal council) was an entirely reasonable and appropriate example to use in the context of explaining the concept and implications of a severance package to the Applicant. The Applicant had both a degree and background in Indian Social Work. It is not racially-based or derogatory to use a First Nations employer as an example of a potential alternate employer to a person with training and a background of direct utility to that employer. Furthermore, Mr. Glass unequivocally apologized to the Applicant. With all due respect to the Applicant and the many social, economic and other difficulties that can face the First Nations people, advancing an allegation of racism under these circumstances substantially undermined the Applicant's credibility in these proceedings.

[98] The Board is satisfied that the Applicant suffered from a disability. To which end, the Board is also satisfied that the Union appropriately accommodated the Applicant's disability. The Union provided separate representation for the Applicant (i.e. one servicing representative represented the Applicant and one servicing representative represented the other members in the bargaining unit) and relied on the advice of her medical providers. The Union was responsive to both the medical advice being received from the Applicant's doctors and the needs and restrictions that were defined by the Applicant. The Union consistently advocated on her behalf, notwithstanding the not-insignificant matrix of distractions generated by the Applicant. Throughout all of these proceedings, the Union's conduct was honest, conscientious and without prejudice or favoritism. If the Union made errors in representing the Applicant, such as not getting her copies of certain documents, not giving her sufficient notice of meetings and not adequately explain proceedings that affected her, the Board finds such to be honest errors reasonably made under the circumstances of representing a difficult member in difficult circumstances and of the nature recognized by this Board in *Gilbert Radke v. Canadian Paperworkers' Union, Local 1120,* [1993] 2nd Quarter Sask. Labour Rep. 57, LRB File No. 262-09 as not representing a violation of s. 25.1 of the *Act*.

Alleged Violations of Section 36.1 of the *Act*:

[99] With respect to the Applicant's allegations that the Union violated s. 36.1 of the *Act*, the Board's approach to such allegations was summarized in *Nadine Schreiner v. Canadian*

Union of Public Employees, Local 59 and City of Saskatoon, [2005] S.L.R.B.D. No. 35, LRB File No. 175-04, as follows:

> *Section 36.1(1) of the Act confines the Board's supervision to disputes between union members and a union relating to matters in the union's constitution and the member's membership therein or discipline thereunder. The Board's supervision of those matters is further confined to determining whether the member has been afforded the right to the application of the principles of natural justice, as opposed to considering the merits or perceived correctness of the decision by the union. In McNairn, supra, the Saskatchewan Court of Appeal held that for the Board to assume jurisdiction pursuant to either s. 36.1 or s. 25.1 of the Act, the "essential character of the dispute" must fall within the subject matter of the provision. The Court stated as follows, at 370:*
>
> > *Thus sub-section 36.1(1) imposes a duty upon a union (again correlative to the right thereby conferred upon an employee), to abide by the principles of natural justice in disputes between the union and the employee involving the constitution of the trade union and the employee's membership therein or discipline thereunder. As such, the subsection embraces what may be characterized as "internal disputes" between a union and an employee belonging to the union, but it does not embrace all manner of internal dispute. For the subsection to apply, the dispute must encompass the constitution of the union and the employee's membership therein or discipline thereunder.*

[100] Simply put, the Board saw no evidence that the Applicant's right to the application of the principles of natural justice within the meaning of s. 36.1 of the *Act* was violated by the Union. In this respect, the Board agrees with the Union that the Applicant appeared to hold an incorrect assumption as to the scope of the duty imposed on the Union by s. 36.1 of the *Act*; presumably based on the Applicant's belief as to the meaning of "natural justice". In the present case, the Board saw no evidence the Applicant was denied the application of her rights as set forth in the Constitution of the Union, or was denied membership therein or was disciplined thereunder.

Conclusion:

[101] The Applicant's situation is tragic. She is clearly an intelligent, accomplished and highly-motivated individual. Unfortunately, her medical conditions have dramatically impacted the quality of her life, have prevented her from engaging in her chosen profession, and have forced her to rely on the support of others. It was apparent to the Board that the Applicant's medical conditions have taken a considerable toll on her self-confidence and have had tragic consequences for her and her family.

[102] However, the Applicant appeared to be taking the position that the Union must have been negligent in representing her because she experienced these tragic consequences. The exclusive right to represent a unit of employees brings with it many responsibilities for a trade union, but guaranteeing that no tragedy will befall a member, while a laudable goal, is not a reasonable expectation. Unfortunately, tragic events occur, including medical conditions that impair an employee's ability to perform his/her duties and participate in the workplace. A trade union's responsibility is to advocate on behalf of an affected member to ensure that the provisions of the Collective Agreement are respected and to work with the employer to facilitate that member's timely and safe return to work. The ultimate responsibility for returning an injured or disabled worker to the workplace rests with the employer and, in developing a suitable return to work program, many factors must be taken into consideration by the employer. Simply put, it is not always possible to find a "perfect" solution. Returning a disabled worker to the workplace often involves compromises for everyone, including the employer, the trade union and the employee. To which end, there is an onus on a disabled worker to fully and actively participate in his/her own return to work program and a concomitant obligation not to undermine or frustrate that process.

[103] While the Applicant may be frustrated by the delays and difficulties of her return to work, the Board saw no evidence of a failure on the part of the Union to fairly represent the Applicant in her numerous dealings with her employer or, more specifically, in the conduct or prosecution of grievance proceedings on her behalf. Certainly, the Board saw no evidence that the Union conducted itself in a manner that was arbitrary, discriminatory or in bad faith toward the Applicant. Furthermore, the Board saw no evidence that the Applicant's right to the application of the principles of natural justice within the meaning of s.36.1 of the *Act* was violated by the Union.

[104] For the foregoing reasons, the Applicant's application must be dismissed.

DATED at Regina, Saskatchewan, this **25th** day of **March, 2010.**

LABOUR RELATIONS BOARD

Steven Schiefner,
Vice-Chairperson