The Labour Relations Board
Saskatchewan

J. K., Applicant v. CANADIAN AUTO WORKERS, LOCAL 4209, and DELTA BESSBOROUGH HOTEL, Respondents

LRB File No. 113-09; May 28, 2010
Vice-Chairperson, Steven Schiefner, sitting alone.

The Applicant:	Appearing in person
For the Respondent Union:	Mr. Ken Stuart
For the Respondent Employer:	Ms. Nancy Range

Duty of Fair Representation – Arbitrariness – Applicant alleges trade union failed to fairly represent him in respect of harassment and/or bullying he alleged was occurring in the workplace and with respect to his dismissal by employer - Trade union files multiple grievances and takes grievances through to mediation – Following unsuccessful attempt to mediate grievances, trade union asks its national service representative to assess potential for obtaining successful outcome for Applicant – Following this review, trade union decides to abandon grievances - Applicant alleges trade union's decision to abandon his grievances was unreasonable and premature – Board not satisfied that trade union acted arbitrarily or otherwise in violation of *Trade Union Act*.

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

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson**: The Canadian Auto Workers, Local 4209 (the "Union") represents a unit of employees employed by the Delta Bessborough Hotel (the "Employer"). The Applicant was, at all material time, an employee of the Employer and a member of the unit of employees represented by the Union. The Employer operates the historic and landmark hotel in downtown Saskatoon, Saskatchewan, commonly known as the "Bessborough". The Applicant was a bartender/server at the Bessborough until he was dismissed by the Employer on May 8, 2008.

[2] On October 13, 2009, the Applicant filed an application with the Saskatchewan Labour Relations Board (the "Board") alleging that the Union failed to fairly represent him in relation to his dismissal by the Employer contrary to s. 25.1 of *The Trade Union Act*, R.S.S.

1978, c.T-17 (the "*Act*"). The Employer filed a Reply on October 22, 2009 and the Union filed a Reply on October 30, 2009.

[3] The Applicant's application was heard on April 12, 2010 in Saskatoon, Saskatchewan.

[4] The Applicant testified on his own behalf. The Union called Ms. Karen Naylor, the National Service Representative for the Canadian Auto Workers (CAW) responsible for the unit of employees of which the Applicant was a member. The Employer did not call any witnesses.

Facts:

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

[6] The Applicant began working for the Employer at the Delta Bessborough in November of 1992. The Applicant held a number of positions during his sixteen (16) year tenure with the Employer. However, for the last many years, the Applicant was a bartender/server in a lounge facility located therein known as "Stovin's Lounge". In this position, the Applicant was responsible for bartending and serving duties in both the Stovin's Lounge and an associated restaurant known as the "Samurai".

[7] Because of his years of service, the Applicant was the most senior employee in the department in which he worked. Over the years, he had indicated to management and other staff his preference to work serving on the floor (rather than bartending) when there was more than one (1) employee working with him. At this workplace, serving was generally more profitable as more gratuities were generated serving than were received when bartending. The Applicant admitted that, while it was his practice to tip the bartender approximately 20% of his gratuities, he preferred serving because it was more profitable.

[8] The Applicant testified that, for the most part, his preference to work serving was accepted by his co-workers. However, the situation changed in the fall of 2007, when two (2) new employees were hired. Apparently, soon after being hired, the new employees concluded that the assignment of duties between servers and bartenders was unfair due the Applicant's singular preference for serving. Apparently, the other employees in the department agreed. This issue was discussed at a staff meeting in late October of 2007. At which time, it was agreed that there would be an even rotation of shifts between serving and bartending to provide a more equitable distribution of gratuities. The new shift proposal was agreed to by Ms. Patty Schweighard, the Bessborough's Director of Operations.

[9] Believing that the shift schedule should not be changed, the Applicant contacted his shop steward and asked the Union to intervene, to compel the Employer to revert back to the past practice (whatever that might have been) that permitted the Applicant to utilize his seniority to work his preferred shift arrangement. The Union intervened. The Union filed a grievance on behalf of the Applicant regarding the change in shift procedures. The Applicant testified that the Union's intervention with the Employer was successful in putting the new shift proposal on hold. However, doing so apparently had an unintended consequence.

[10] The Applicant testified that the two (2) new employees were upset with him because the shift rotation proposal had been put on hold. The Applicant testified to becoming the victim of "harassment" and testified as to his belief that the two (2) new employees were the primary instigators, if not perpetrators, of the harassment he experienced. The Applicant testified that, during this period, there was considerable tension in the workplace between the Applicant and his co-workers. As is too often the case, these tensions escalated from frustration to confrontation. The Applicant testified that in January of 2008 he and one of the new employees had a number of verbal confrontations at the workplace, during which his co-worker called him a "*greedy*", *"petty*", "*little man*" and told him that it was "*unfair"* that the Applicant always had his preference of shifts just because he had seniority.

[11] The Applicant testified that the comments made by certain of his co-workers became offensive. Apparently, the tension in the workplace and the conduct of the Applicant's co-workers reached the point where two (2) things happened. Firstly, on November 6, 2007, the Applicant went to see Dr. Steven S. Goluboff, B.A., M.D., F.C.F.P., for symptoms associated with

stress, including insomnia, difficulty with focusing and concentration, and extreme anxiety. Dr. Goluboff referred the Applicant for psychological counseling. Secondly, on or about January 21, 2008, the Applicant filed a harassment complaint against the two (2) new employees with the Employer.

[12] Pending a hearing on his harassment complaint, the Applicant asked the Employer to schedule him to work on different shifts than the two (2) new employees with whom he was having a dispute. The Applicant testified that, after he filed his harassment complaint, there continued to be a lot of tension in the workplace and the Applicant wanted to avoid any further confrontations at the workplace. The Applicant testified that he was informed by management that his request could not be accommodated. The Applicant testified that, by this point in time, he started to come to the conclusion that management was trying to get rid of him. By way of example, the Applicant testified that, when he presented his harassment complaint to management, his supervisor's initial response was to ask him, "*why can't you just get along with other people*". Furthermore, the Applicant believed that management's decision to force him to continue working with the co-workers following his harassment complaint was intended to cause him stress; in the Applicant's words "*to stress me out*".

[13] The Applicant believed management's desire to get rid of him was related to a complaint that he anonymously filed in September of 2007 related to what the Applicant believed was unethical behavior by employees at the Bessborough Hotel through a telephone hotline established by Delta Hotels, called the "Ethics Hotline". Apparently, Delta Hotels launched an investigation at the Bessborough as a result of the Applicant's phone call and the Applicant came to the conclusion that management somehow knew (by the process of elimination or otherwise) that he was the one that filed the complaint. Whether or not management actually knew (at that time) who made the complaint on the Ethics Hotline is unknown.

[14] In addition to the tensions which started at the workplace, the Applicant's problem with his co-workers continued outside of the workplace. The Applicant testified that in February of 2008, someone, whom he believed to be one of the new employees, used the Applicant's email address in an advertisement on a public website called "Kijiji". The apparent intent of doing so was to embarrass and/or humiliate the Applicant. The Applicant testified that he responded by contacting the police.

[15] Both management and the Union investigated the incident(s) underlying the Applicant's harassment complaint against his co-workers in mid February of 2008, including interviews with the participants. The conclusion of management following its investigation was that all of the participants bore some responsibility for the tension in the workplace and that each had been, to a certain degree, at fault and had acted inappropriately in the workplace. All of the participants were disciplined; the Applicant and one of the new employees received written warnings; and the other new employee, who was on probation, did not complete his probation. The essence of the written warning was to promote more professional conduct by the employees in the workplace. The Union filed a grievance on behalf of the Applicant with respect to the discipline he received.

[16] In late February, another confrontation occurred between the Applicant and the one (1) remaining new employee. As a result of this confrontation, the new remaining employee quit and management wanted to discuss the incident and other issues with the Applicant. The Union was advised of management's concerns and arrangements were made for a meeting with the Applicant.

[17] Attending the meeting was Mr. Andrew Turnbull, the Bessborough's General Manager, Ms. Patty Schweighard, the Bessborough's Director of Operations, the Applicant and Bobby Banga, as shop steward. During this meeting, management expressed its concern about the Applicant's inability or unwillingness to get along with his co-workers and saw him as playing a part in the tensions that were occurring in the workplace. Apparently, management had received complaints from the two (2) new (now past) employees complaining about the Applicant's conduct toward them. In addition, management had also received complaints from two (2) other co-workers indicating that the Applicant had a "*low tolerance*" and could be "*aggressive*" with co-workers. In addition, management identified past incidents wherein the Applicant had been involved in conflicts with co-workers. Finally, management had recently received a complaint from a customer (via a guest comment card) regarding poor service by the Applicant. The Applicant disputed any allegation that he had been aggressive or unprofessional in the workplace or that his service had been anything other than exemplary or, if it had, there was a valid explanation. Simply put, the Applicant saw management's accusations toward him as a "*biased*". Apparently, management did not accept the Applicant's explanations and issued a non-disciplinary, coaching letter to the Applicant.

[18] Following this meeting, the Applicant returned to work but asked the Union to grieve the coaching letter he received, which the Union did.

[19] In his testimony to the Board, the Applicant discounted any idea that he played any role in the tension that had occurred in the workplace. Rather, the Applicant stated his belief that he was the "*victim*" of workplace harassment and that the General Manager was merely retaliating against him for going "*over his head*" when he complained to Delta's Ethics Hotline in September of 2007 about unethical behavior by staff at the Bessborough and that the Director of Operations was upset because he had opposed the rotating shift proposal, which she had agreed to initiate.

[20] On March 13, 2008, the Applicant attended to Dr. Goluboff, who concluded that he was unable to work due to illness. Dr. Goluboff's diagnosis was "*acute situational stress reaction*". Dr. Goluboff re-valuated the Applicant on March 26, 2008 and concluded that the Applicant continued to be unable to return to work due to his illness.

[21] While on medical leave, the Applicant applied for benefits under the Employer's short term disability plan, which was administered by Great-West Life Assurance Company ("Great-West Life"). In addition, the Applicant also applied for Employment Insurance benefits ("EI benefits"). While the Applicant was granted EI benefits, Great-West Life appeared to be taking the position that the Applicant's reasons for not working were unrelated to a disabling medical condition. In support of the Applicant's claim for short term disability benefits, Dr. Goluboff wrote the following letter to Great-West Life on April 11, 2008:

> *April 11, 2008*
>
> *Heather H.*
> *Case Manager*
> *Great-West Life*
> *Fax: 1-519-435-7000*
>
> *Dear Heather:*
>
> *I am writing on behalf of Mr. J. K. from the Delta Hotels Limited Group Plan #55064. Identity #D501700298.*
>
> *This patient has been unable to work due to a severe acute situational stress reaction, anxiety and moderate depression. He has been faced with major stress in the work place due to management issues. He has described harassment and unfair work practices which are being dealt with by his Union.*

> *I first saw him on November the 6th, for somatic symptoms reflective of the stress he was under. He has been experiencing insomnia, difficulty with focusing and concentrating, extreme anxiety when faced with the work place. He has been under my care for several months and has been referred for clinical psychological counselling.*
>
> *His disability is clearly one of severe psychological stress. Until resolution of that can be obtained through negotiations between the Union and the Employer, he is not able to work. I believe this is a disability that deserves honoring his short term disability benefits.*
>
> *If you have specific questions please let me know.*
>
> *Sincerely yours,*
>
> *S. S. Goluboff, B.A., M.D., F.C.F.P.*

[22] Apparently, Great-West Life was not satisfied with Dr. Goluboff's conclusions and the Applicant's claim for short term disability benefits was denied.

[23] While still on medical leave, the Applicant embarked upon another course of action; an action he undertook without first consulting with the Union. The Applicant wrote a detailed letter to Mr. Bill Pallett, the person at Delta Hotels responsible for Delta's Code of Ethics in that region. In his correspondence, dated April 17, 2008, the Applicant identified himself as the complainant in the complaint he previously and anonymously left on the Delta Hotel's Ethics Hotline in September of 2007. In his correspondence, the Applicant details his problems at the workplace, including those described above. In doing so, the Applicant accused the Bessborough's management of failing to adequately respond to the harassment he alleged he experienced in the workplace. The Applicant described his meetings with management and indicated that the suggestion (of management) that he played a role in the tensions that occurred in the workplace as "*demeaning*" and "*character assassination*". In his correspondence, the Applicant accused Ms. Schweighardt (i.e. the Bessborough's then Director of Operations) of lying and making false allegations against him and generally accused Mr. Turnbull (i.e. the Bessborough's General Manager) of incompetence. Finally, in his correspondence, the Applicant made the following statement:

> *Everything I have written I believe is true to the best of my knowledge, I will be relentless in clearing my good name and my personal file, and I will not return to work until this entire matter is resolved, because this is a health issue and a safety concern.*

[24] On April 30, 2008, the Employer's Director of People Resources wrote the following letter to the Applicant:

> *[J.K.]*
> *(address)*
>
> *Re: Work Absence*
>
> *Dear [J.]:*
>
> *It has come to my attention that the Delta Hotels, short term disability provider, Great West Life, has reveiewed your application for benefits and has declined this claim effective April 25, 2008 with the conclusion that your work absence is directly related to work issues rather than a totally disabling medical condition.*
>
> *With this in mind, we will be scheduling you for regular duties in Stovin's Lounge as you are not currently on an approved medical leave or any other type of approved leave. Dawn Fleischhacker, People Resources Coordinator has attempted to reach you several times via telephone to discuss return to work options with you. We would have liked to discuss a return date with you but because Dawn was unable to reach you, we have made the decision to put you on the regular work schedule effective May 7, 2008.*
>
> *[J.], if you choose not to return to work as scheduled on May 7, 2008 we will consider that you have refused to work and thus abandoned your position with the Delta Bessborough.*
>
> *I look forward to seeing you on May 7th, 2008.*
>
> *Regards,*
>
> *Nancy Range*
> *Director, People Resources*

[25] It would appear that the Employer's letter provoked an exchange of emails between the Applicant and the Union regarding the status of grievances that had been filed on his behalf by the Union; firstly, related to the discipline (i.e. the written warning) that the Applicant received following the confrontations with his co-worker in January of 2008; and secondly, related to proposed change in shift rotation. The Union had agreed with the Employer to take these grievances to a mediator but mediation could not take place until June 18, 2008. The Applicant wanted a quicker response; presumably believing that the resolution of these grievances would assist him in his return to work. In an email to the Applicant dated May 1, 2008, the Union's National Service Representative explained the status of the Applicant's grievances in the following manner:

Subject: Your grievances

Hi [J.]

Don forwarded a copy of your email to me for response.

I agree that June 18th is a long time to wait for mediation.

…

The reason we have chosen mediation over arbitration at this point is that arbitration is a straight forward win or lose scenario while mediation allows for the parties to come to a mutually agreed position. We still have the right to go to arbitration if we are not satisfied with the outcome from mediation.

One of the main issues in our decision is that we have a number of challenges to overcome in both of your grievances.

The discipline grievance will be hard to win as the discipline is minimal, the other party in the matter was fired and all of the people interviewed by the Company and Union stated that you did play somewhat of a role in the incident.

The case of the rotating schedules ahs its' own challenges. Your position is classified as Server/Bartender and your job description outlines the duties of a server and a bartender. ***The onus in this grievance is on the Union to prove their case****. I think we would have a hard time proving that employees can chose their listed duties by seniority. This would mean a front desk clerk could say I am senior so I do not want to answer the phone, I will just check-in guests. As I told you before, I believe our strongest argument is an estoppel argument. They have always let you serve and they can't just tell you that you have to rotate through the bar. The problem with this argument is that the Company can "break any estoppel" but simply serving notice on the other party during negotiations that they are going to rotate employees through the bar. As we are in negotiations in June the estoppel argument would only be effective until them.*

I am not saying we are not going to fight your cases. I am just letting you know the problems with the cases.

I was a little concerned about the part in your email where you suggest that you will not return to work until your grievances are resolved. You could be putting your job in jeopardy. The only reason you can remain off work is if you have proper medical evidence of disability. Again, it would be hard to argue that the Hotel is an unsafe environment as all of the people involved in the incidents are no longer there.

I hope this clarifies the issues. You stated in your email that you would be forwarding more information and details. It would be good if we could get that information as soon as possible as it may change some of the above.

Karen (Emphasis in original)

[26] In another email, the Applicant asked Ms. Naylor for assistance from the Union regarding his scheduled return to work on May 7, 2008. The Applicant took the view that he continued to be unable to return to work and expressed his concerns to the Union in the following email dated May 2, 2008:

> *Subject: Re: Your grievances*
>
> *Hi Karen, in your email you stated that the other party was fired. There were two incidents one with Steve and the next day with Mark, I was told by Patty that Mark was let go for other reasons other than my complaint, Steve quit. As for the people that were interviewed that say I had somewhat of a role in all of this what was this role and which one, with Steve or Mark or both. These are two separate incidents, and I still maintain that I did nothing wrong, that I was a victim, but none the less I can't remark too much because I don't know what the other people stated or who they were so I can't defend or explain myself one way or another. As for the discipline letter I've always denied what was written and there was never any explanation, just that I did what was stated in the letter cut and dry.*
>
> *Today I got a letter from Nancy stating that I'm back on the schedule May 7, and if I don't show up they will consider that I abandoned my position. I have a doctors letter of approval to be off work, if the company wants more information then I will ask my doctor for this and pass it on to Nancy. I am not quitting and don't have any intention of quitting. Can you help me on this.*
>
> *I am also sending you something that should for the most part explain itself also the letter that I received from Nancy today.*
>
> *[J.K.]*

[27] On May 6, 2008, Ms. Naylor responded to the Applicant with the following information:

> *Subject: RE: Your grievances*
>
> *Hi [J.]*
>
> *Tomorrow is May 7th and I am concerned about your medical situation and work. Have you talked to Nancy about the required medical information? It is my understanding that the insurance company did not accept your doctor's note with respect to total disability. Have you passed that information on to your doctor and requested that he/she provide a more detailed report? If you don't have medical evidence of disability the Company may be able to make a case of job abandonment.*
>
> *As the Union has not seen any of the medical information and cannot legally ask the Insurance Company or Nancy to disclose any personal medical information I really can't make any informed decision as to what should happen next. I am not*

> *sure if you are aware that the Local Union has a professional on retainer who can help you with any problems or an appeal of the insurance company's decision. His name is Ken Kalturnyk and he can be reached 1-866-540-5803 (toll free).*
>
> *Email me and let me know what is happening.*
>
> *Karen*

[28] Ultimately, the Applicant did not return to work as scheduled on May 7, 2008. As a result, the Employer deemed the Applicant to have abandoned his position at the Bessborough. On May 8, 2008, the Employer wrote the following letter to the Applicant:

> *[J.K.]*
> *(address)*
>
> *<u>Without Prejudice</u>*
>
> *<u>RE: YOUR EMPLOYMENT STATUS – DELTA BESSBOROUGH</u>*
>
> *Dear [J.]:*
>
> *After reviewing all the information regarding your absence from the Delta Bessborough since March 17, 2008 we have concluded that you are not on an approved medical leave or any other type of approved leave from your employment obligations.*
>
> *Dawn Fleischhacker, People Resources Coordination has tried several times to discuss your return to work in some capacity to which you have denied. We have been patient and understanding in waiting for you and your physician to provide additional documentation to the Delta Hotels, short-term disability provider, Great West Life to support your absence. We were notified that after their second review of your application for short term disability benefits that your claim has been declined effective April 25, 2008 with the conclusion that your work absence is directly related to work issues rather than a totally disabling medical condition.*
>
> *After receiving this information from Great west Life we contacted you once again to discuss returning to work and provide you with notice that you were scheduled for work effective May 7, 2008. We also indicated that if you did not show up for this scheduled shift that we would consider your position with the Delta Bessborough abandoned. [J.], you did not show up to work as scheduled on May 7, 2008 and therefore we conclude that you have refused to return to work and thus have abandoned your position with the Delta Bessborough. Therefore effective May 7, 2008 your employment relationship with the Delta Bessborough is discontinued with cause.*
>
> *Regards,*
>
> *Nancy Range*
> *Director, People Resources*

[29] The Union filed a grievance on behalf of the Applicant regarding the Employer's conclusion that the Applicant had abandoned his position.

[30] The Union and the Employer proceeded to mediation on the Applicant's grievances, which by this time included the grievance related to the shift rotation proposal, a grievance related to the written warning the Applicant received and another related to the coaching letter, and the job abandonment grievance. Unfortunately, the mediator was unsuccessful in promoting resolution of any of these matters.

[31] During the meetings between the Union and the Applicant during the mediation process, the Union advised the Applicant that, in their opinion, to obtain a successful outcome from the Applicant's grievances either better medical evidence would be required and/or the Applicant would need to be successful in getting Great-West Life to reverse its decision to deny his benefits.

[32] With respect to Great-West Life, the Union retained Mr. Ken Kalturnyk, whose role with the Union was to assist members in obtaining benefits from third party providers. Mr. Kalturnyk prepared an appeal on behalf of the Applicant. With respect to the medical evidence, Dr. Goluboff was asked to prepare a response to a series of questions posed by Great-West Life related to the Applicant's condition. Dr. Goluboff's response was as follows:

> *August 20, 2008*
>
> *TO WHOM IT MAY CONCERN:*
>
> *I have been asked to answer a few questions regarding this gentleman's condition.*
>
> *[J.] suffered from extensive anxiety and depression during a period of stress at this work place. The symptoms included insomnia, difficulty focusing, general physical and mental weakness and just generally feeling unwell. Since he has been out of the direct work place he has improved with regards to the noted symptoms above. His symptoms were clearly triggered by situation at work which is well known to all of the parties involved. It was related to issues of harassment and lack of perceived response by management to deal with the problems. Obviously a resolution of the issues in the work place would contribute to [J.]'s recovery and his ability to return to his original job which he had for many years. Insurance company claims that his inability to work is because of work issues and not because of his symptoms. His symptoms are the direct cause of his inability to work. The underlying stressors in the work environment contributed to his symptoms. The two are directly inter-related. If you have any further questions please let me know.*

Sincerely yours,

S.S. Goluboff, B.A., M.D., F.C.F.P.

[33] In addition, the Union asked the Applicant to obtain continuing progress notes or reports from the psychologist[1] whom the Applicant had been seeing for counseling following his initial referral in November of 2007. The Applicant did not obtain this information believing that he had already provided enough medical information or, in the alternative, decided that if the Union wanted this information, they should obtain it.

[34] The Applicant's appeal was heard but was unsuccessful and Great-West Life continued to deny benefits. Great-West Life's explanation for its decision was contained in a letter dated September 12, 2008 addressed to Mr. Kalturnyk:

> *Dear Mr. Kalturnyk:*
>
> *RE: [J.K.]*
> *DELTA HOTELS LIMITED*
> *Group Plan Number 55064*
> *Employee ID Number D501700298*
>
> *Mr. [K.]'s claim for Short Term Disability benefits has again been reviewed upon receipt of your letter dated August 25, 2008.*
>
> *As you are aware, Mr. [K.]'s claim was previously declined on the basis that his absence from work is due to workplace issues rather than a disabling condition. While we do not question that Mr. [K.] has suffered from various symptoms including anxiety and stress, these symptoms have arisen due to the employment issues. The medical documentation submitted to date as well as information regarding the workplace situation substantiate this fact.*
>
> *Mr. [K.]'s employer has confirmed that prior to his leaving work, Mr. [K.] had been reprimanded for certain actions and he was not in agreement with recent procedural changes. The employer reports there had also been interpersonal conflict with other employees. We have been advised that a formal grievance has been filed by Mr. [K.] through his union.*
>
> *On the Attending Physician's Statement completed by Dr. Goluboff on March 26, 2008, he indicates that Mr. [K.]'s condition is related to his employment. In the clinical note of March 13, 2008, the physician refers to "major problems at work" including harassment. The letter from Dr. Goluboff dated April 11, 2008 indicates that Mr. [K.] has been "faced with major stress in the workplace due to management issues." He refers again to workplace harassment and unfair work*

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1 The Applicant and the Union were initially under the impression that the person to whom the Applicant had been referred, and who had been counseling the Applicant, was a psychologist. The Applicant testified that it was around this time that he discovered that this person was not a psychologist but rather was a counselor.

practices as reasons for Mr. [K.]'s symptoms. It is noted that these symptoms are exacerbated "when faced with the workplace." Dr. Goluboff states that until the workplace issues are resolved through union and employer negotiations, Mr. [K.] will be unable to work.

In the most recent letter from Dr. Goluboff, dated August 20, 2008, mention is made of Mr. [K.]'s condition improving since being off work. He reiterates that "a resolution of the issues in the workplace would contribution to [J.]'s recovery and his ability to return to his original job."

Based on all information on file, it remains our position that Mr. [K.]'s absence from work is due to his dissatisfaction with his job and conflict with his employer. While Mr. [K.] may suffer from some level of anxiety and stress, these symptoms are a direct result of the unresolved workplace issues. It is up to Mr. [K.] and his employer to resolve these issues. Alternately, Mr. [K.] should be advised to seek employment elsewhere.

We have advised Mr. [K.] that we require copies of progress notes or reports from the psychologist involved in his treatment. Also, if a referral to a psychiatrist has taken place, a copy of that specialist's consultation report should also be submitted. Any further appeal of this claim should include this information.

Should you have any questions regarding this letter, I can be reached at (519) 435-4680.

Sincerely,

Ms Brescia Berry
Team Manager

[35] Thereafter, the Union asked its National Service Representative to review the status of the Applicant's outstanding grievances with a view to determining the potential for obtaining a satisfactory outcome for the Applicant. Ms. Naylor reviewed the Applicant's file and came to the conclusion that the Union would not be successful if the matter proceeded to arbitration. As a consequence, the Union decided to abandon the Applicant's grievances. The Union's decision was contained in a letter dated January 31, 2009 from Ms. Naylor:

Dear [J.]

This is in reference to the grievances which remain outstanding with regard to your employment at the Delta Bessborough. I am writing to advise you that the Union, after much consideration of the matter at hand, is hereby closing these files.

As you know, the Union filed a number of grievances on your behalf and pursued them through the grievance procedure up to and including mediation with the assistance of the Provincial Mediator without success. You were present at the mediation meeting. On several occasions throughout the grievance process the Union advised you of the challenges relating to your case. One of the main problems was that your employment was terminated when you did not return to

work on May 7, 2008 after being advised that failure to do so would be considered job abandonment. Your claim for disability had been declined by Great West Life due to lack of evidence of total disability which the Hotel used as the basis of your termination.

At the mediation meeting the Union advised you that without proper medical information or a reversal of the decision of the insurance carrier we would be unable to prove that you were disabled and had not in fact abandoned your job. We indicated to you at that time that we would send your file to a professional disability advocate paid for by the Local Union. He would be instructed to appeal your case and if we were successful in the appeal the Union would then have a basis to move forward to arbitration. Unfortunately the appeal was declined. The insurance carrier indicated in their letter declining the claim that they told you that they require copies of continuing progress notes or reports from the psychologist involved in your treatment or a copy of a specialist's consultation report. Without these documents or proof of an ongoing treatment program, the Union has reached the point where we cannot proceed any further with any hope of success. Unfortunately the onus to provide disability rests with the employee.

With respect to making an argument that you could not return to work as the Hotel was a poisoned workplace due to the alleged co-worker harassment that you experienced, the fact that the co-workers no longer were employed at the Hotel as of May 7, 2008 would make it a hard argument to win.

[J.] we have looked at this matter from every angle and have reviewed all of the documentation, notes and investigation reports as well as undertaken an extensive review of relevant jurisprudence/legal precedent. The Union has come to the conclusion that we would not be successful at Arbitration for the reasons listed above as well as many other challenges with the case. We are therefore unable to proceed with the grievances and are hereby closing the files.

We have enjoyed working with you and wish you much success in your future endeavors. If you have any questions or concerns please contact Don Lajoie at the Local Union Office and he will be able to address them.

Yours truly

Karen Naylor
National Representative CAW-Canada

[36] The Applicant did not contact Mr. Lajoie or initiate any other communicate with the Union regarding its decision to abandon his grievances. In response to a question from the Board, Ms. Naylor indicated that, if the Applicant had contact Mr. Lajoie or the Union, arrangements could have been made at that time for the Applicant to appeal the Union's decision to abandon his grievances to the general members.

[37] In response to a question from the Board as to why the Applicant did not return to work on May 7, 2008 when scheduled to do so on May 7, 2008 by the Employer, the Applicant indicated that he felt that management had played a part in the bullying and harassment he

experienced at the workplace. The Applicant also indicated that he did not want to return to work until he had an opportunity to clear his name. Both of these concerns related to the Applicant's belief that management at the Bessborough wanted to get rid of him and/or were biased against him.

[38] As indicated, the Applicant filed his application with the Board on October 13, 2009.

Argument of the Parties:

[39] The Applicant argued that the Union failed to fairly represent him in a number of respects. Firstly, the Applicant argued that the Union was aware of the harassment and bullying of which the Applicant alleged he was a victim and did little to prevent it, particularly so in light of the fact that he was a senior employee and the perpetrators were new employees. Secondly, the Applicant argued that the Union erred in abandoning his grievances because he had a strong case for wrongful dismissal against the Employer for a number of reasons, including the fact that his doctor had not yet certified him to return to work when he was scheduled to return on May 7, 2008 and because he had the right to refuse to return to work if he considered his workplace dangerous or hazardous to his health at that time (which he did). In addition, the Applicant argued that the Union's decision to abandon his grievances was premature because there was one more level of appeal with Great-West Life available at the time the Union closed his file. Thirdly, the Applicant argued that he was not informed by the Union of his right to appeal the Union's decision to abandon his grievances to the general membership.

[40] With respect to the appropriate remedy, the Applicant asked to be reinstated to his former position with the Employer and to receive financial compensation for the time he spent off work and for the pain and suffering he experienced.

[41] The Applicant filed a written argument, which I have read and found to be helpful in understanding the Applicant's allegations against the Union.

[42] In response, the Union took the position that they had fully satisfied their obligations to the Applicant pursuant to section 25.1 of the *Act*. The Union argued that the evidence demonstrated that representatives of the Union had consistently and appropriately represented the Applicant in all his dealings with the Employer; that the Union investigated the

Applicant's complaint that he was harassed by his co-workers; that the Union investigated each of the incidents associated with the grievances that were filed on behalf the Applicant; that the Union filed numerous grievances on behalf of the Applicant; that the Union took his grievances to mediation; that the Union utilized the services of Mr. Kalturnyk to prepare the Applicant's appeal of Great-West Life's decision to deny his benefits; and that the Union's decision to abandon the Applicant's grievances only occurred after a careful and thoughtful review of the circumstances by the Union's National Service Representative. Simply put, the Union argued that it not only satisfied its duties as prescribed by s. 25.1 of the *Act* but that they went well above and beyond in many respects.

[43] The Union argued that they took the Applicant's allegations of harassment very seriously and that a proper investigation was conducted under the terms of the Collective Agreement in place with the Employer. The Union argued that the Applicant was fully informed of all of the actions and decisions of the Union as they were made. The Union observed that it was the Applicant's decision not to return to work on May 7, 2008 and the Union cautioned him as to the potential risks of failing to return to work.

[44] The Union argued that medical evidence was a critical component of the potential success of the Applicant's grievances and, when asked to obtain the progress notes and/or reports of the psychologist, the Applicant's failure to do so was indicative of a lack of cooperation on his part with the Union's efforts to represent him.

[45] Finally, the Union argued that the Applicant did not contact the Union following their decision to abandon his grievance. The Union indicated that they explained their decision in detail to the Applicant and offered for him to contact their Mr. Lajoie if he had any questions or concerns. To which end, the Union argued that the Applicant failure to do so and his delay in filing his application with the Board should prevent the Applicant from seeking remedy from the Board on the basis that the Applicant's application was untimely.

[46] In support of their position, the Union relied upon the decision of this Board in *Kathy Chabot v. Canadian Union of Public Employees, Local 4777,* [2007] Sask. L.R.B.R. 401, CanLII 68749, LRB File No. 158-06; *C.A.B. v. Saskatchewan Government and General Employees Union,* [2008] Sask. L.R.B.R. 158, CanLII 47054, LRB File No. 073-07; *Trevor Malyon v. Service Employees International Union, Local 333,* [2008] Sask. L.R.B.R. 261, CanLII

47036, LRB File No. 155-07; and *Arkangelo Dau Ajak v. United Food and Commercial Workers, Local 1400*, [2008] Sask. L.R.B.R. 692, LRB File Nos. 075-07, 076-07 & 077-07.

Relevant statutory provisions:

[47] Section 25.1 of *The Trade Union Act* provides 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.*

Analysis and Decision:

[48] This Board's general approach to applications alleging a violation of s. 25.1 of the *Act* was well summarized in *Laurence 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.*

[49] The Applicant did not allege, and this Board saw no evidence of, discrimination on the part of the Union within the meaning accepted for that term by this Board. Also, the Applicant did not allege, and this Board saw no evidence of, bad faith on the part of the Union in the sense that it acted out of personal animosity or hostility toward the Applicant or based on political revenge or dishonesty.

[50] The whole of the Applicant's complaint centered around the issue of "arbitrariness", with the Applicant essentially arguing that the Union's investigations were cursory or perfunctory and/or that the Union's strategies were inadequate or flawed. Simply put, the Applicant argued that the Union's decisions related to his grievances were made without reasonable care such that the Union fell below the standard expected of them by this Board.

[51] In *Hargrave, et al. v. Canadian Union of Public Employees, Local 3833 and Prince Albert Health District*, [2003] Sask. L.R.B.R. 511, LRB File No. 223-02, the Board set out the principles applicable to an analysis of the duty of fair representation, with a particular focus on the definition of "arbitrariness" and the jurisprudence of labour boards in distinguishing "mere negligence" from the kind of conduct necessary to sustain a violation of s.25.1. The Board stated the following at pp. 34 to 38:

> *[34] There have been many pronouncements in the case law with respect to negligent action or omission by a trade union as it relates to the concept of arbitrariness in cases of alleged violation of the duty of fair representation. While most of the cases involve a refusal to accept or to progress a grievance after it is filed, in general, the cases establish that to constitute arbitrariness, mistakes, errors in judgment and "mere negligence" will not suffice, but rather, "gross negligence" is the benchmark. Examples in the jurisprudence of the Board include Chrispen, supra, where the Board found that the union's efforts "were undertaken with integrity and competence and without serious or major negligence. . . ." In Radke v. Canadian Paperworkers Union, Local 1120, [1993] 2nd Quarter Sask. Labour Rep. 57, LRB File No. 262-92, at 64 and 65, the Board stated:*
>
> > *What is expected of trade union officials in their representation of employees is that they will act honestly, conscientiously and without prejudgment or favouritism. Within the scope of these criteria, they may be guilty of honest errors or even some laxity in the pursuit of the interests of those they represent. In making decisions about how or whether to pursue certain issues on behalf of employees, they should certainly be alert to the significance for those employees of the interests which may be at stake.*
>
> *[35] Most recently, in Vandervort v. University of Saskatchewan Faculty Association and University of Saskatchewan, [2003] Sask. L.R.B.R. 147, LRB File Nos. 102-95 & 047-99, the Board stated, at 193:*
>
> > *[215] Arbitrariness is generally equated with perfunctory treatment and gross or major negligence. This standard arose from Canadian Merchant Service Guild v. Gagnon . . . .*
>
> *And further, at 194-95, as follows:*
>
> > *[219] In Rousseau v. International Brotherhood of Locomotive Engineers et al., 95 CLLC 220-064 at 143, 558-9, the Canada Labour Relations Board described the duty not to act in an arbitrary manner as follows:*
> >
> > > *Through various decisions, labour boards, including this one, have defined the term "arbitrary." Arbitrary conduct has been described as a failure to direct one's mind to the merits of the matter; or to inquire into or to act on available evidence; or to conduct any meaningful investigation to obtain the data to justify a decision. It has also been described as acting on the basis of irrelevant factors or principles; or displaying an indifferent and summary attitude. Superficial, cursory,*

> *implausible, flagrant, capricious, non-caring or perfunctory are all terms that have also been used to define arbitrary conduct. It is important to note that intention is not a necessary ingredient for an arbitrary characterization.*
>
> *Negligence is distinguishable from arbitrary, discriminatory or bad faith behaviour. The concept of negligence can range from simple negligence to gross negligence. The damage to the complainant in itself is not the test. Simple negligence may result in serious damage. Negligence in any of its variations is characterized by conduct or inaction due to inadvertence, thoughtlessness or inattention. Motivation is not a characteristic of negligence. Negligence does not require a particular subjective stage of mind as does a finding of bad faith. There comes a point, however, when mere/simple negligence becomes gross/serious negligence, and we must assess when this point, in all circumstances, is reached.*
>
> *When does negligence become "serious" or "gross"? Gross negligence may be viewed as so arbitrary that it reflects a complete disregard for the consequences. Although negligence is not explicitly defined in section 37 of the Code, this Board has commented on the concept of negligence in its various decisions. Whereas simple/mere negligence is not a violation of the Code, the duty of fair representation under section 37 has been expanded to include gross/serious negligence . . . The Supreme Court of Canada commented on and endorsed the Board's utilization of gross/serious negligence as a criteria in evaluating the union's duty under section 37 in Gagnon et al. [[1984] 1 S.C.R. 509]. The Supreme Court of Canada reconfirmed the utilization of serious negligence as an element to be considered in Centre Hospitalier Régina Ltée v. Labour Court, [1990] 1 S.C.R. 1330.*

[36] In North York General Hospital, [1982] OLRB Rep. Aug. 1190, the Ontario Labour Relations Board addressed the relation of negligence to arbitrariness as follows, at 1194:

> *A union is not required to be correct in every step it takes on behalf of an employee. Moreover, mere negligence on the part of a union official does not ordinarily constitute a breach of section 68. See Ford Motor Company of Canada Limited, [1973] OLRB Rep. Oct. 519; Walter Princesdomu and The Canadian Union of Public Employees, Local 1000, [1975] OLRB Rep. May 444. There comes a point, however, when "mere negligence" becomes "gross negligence" and when gross negligence reflects a complete disregard for critical consequences to an employee then that action may be viewed as arbitrary for the purposes of section 68 of the Act. In Princesdomu, supra, the Board said at pp 464-465:*
>
> > *Accordingly at least flagrant errors in processing grievances--errors consistent with a "not caring" attitude--must be inconsistent with the duty of fair representation. An approach to a grievance may be wrong or a provision inadvertently overlooked and section 60 has no application. The duty is not designed to remedy these kinds of errors. But when the importance of the grievance is taken into account and the experience and identity of the decision-maker ascertained the Board may decide that a course of conduct is so, implausible, so summary or so reckless to be unworthy of protection. Such circumstances cannot and should not be distinguished from a blind refusal to consider the complaint.*

[37] In a subsequent decision, Canada Packers Inc., [1990] OLRB Rep Aug. 886, the Ontario Board confirmed this position as follows, at 891:

> *A review of the Board's jurisprudence reveals that honest mistakes, innocent misunderstandings, simple negligence, or errors in judgment will not of themselves, constitute arbitrary conduct within the meaning of section 68. Words like "implausible", "so reckless as to be unworthy of protection", "unreasonable", "capricious", "grossly negligent", and "demonstrative of a non-caring attitude" have been used to describe conduct which is arbitrary within the meaning of section 68 (see Consumers Glass Co. Ltd., [1979] OLRB Rep. Sept. 861; ITE Industries, [1980] OLRB Rep. July 1001; North York General Hospital, [1982] OLRB Rep. Aug. 1190; Seagram Corporation Ltd.. [1982] OLRB Rep. Oct. 1571; Cryovac, Division of W.R. Grace and Co. Ltd., [1983] OLRB Rep. June 886; Smith & Stone (1982) Inc., [1984] OLRB Rep. Nov. 1609; Howard J. Howes, [1987] OLRB Rep. Jan. 55; George Xerri, [1987] OLRB Rep. March 444, among others). Such strong words may be applicable to the more obvious cases but may not accurately describe the entire spectrum of conduct which might be arbitrary. As the jurisprudence also illustrates, what will constitute arbitrary conduct will depend on the circumstances.*

[38] The British Columbia Labour Relations Board has taken a similar view with respect to matters of process. In Haas v. Canadian Union of Public Employees, Local 16, [1982] BCLB No. L48/82, that Board stated as follows:

> *... similarly, the Board will be reluctant to find a breach of Section 7 by virtue of the manner in which particular grievances are pursued. As stated earlier, a complainant must demonstrate shortcomings in the union's representation beyond the areas of mere negligence, inadvertent errors, poor judgment, etc. The shortcomings must be so blatant as to demonstrate that the grievor's interests were pursued in an indifferent or perfunctory manner.*
>
> *Too often the intended purpose and limits of Section 7 are not well understood. A union is afforded wide latitude in the manner in which it deals with individual grievances; the Board will only find violations of Section 7 where a union's manner of representation of an individual grievor is found to be an obvious disregard for his rights or for the merits of the particular grievance. Broadening the scope of Section 7 beyond the areas described in earlier pages of this decision would not be in keeping with the purpose and objects of the Labour Code; it would encourage the filing of a myriad of unfounded and frivolous Section 7 applications to the Board and it could also force unions to untenable positions in grievance handling because of the weight they would have to give to possible Section 7 complaints hanging over their heads.*
>
> . . .
>
> *Each case must be decided on its own merits; suffice to say, however, that the Board may well find shortcomings in the manner in which the union dealt with a particular matter without finding that such shortcomings support a Section 7(1) complaint. The Board may well find that a union could have been more vigourous and thorough in its investigation of the facts in a particular case; it may even question the steps taken in dealing with a grievance and the ultimate decision made with respect to that grievance. However, that does not necessarily mean that a complaint under Section 7(1) will be substantiated. To substantiate a charge of arbitrariness, there must be convincing evidence that there was a blatant disregard for the rights of the union member.*

[52] This Board has confirmed that it does not "sit on appeal" of a trade union's decision not to advance a grievance to arbitration and, in particular, will not decide if a trade union's conclusion as to the likelihood of success of a grievance was correct nor will the Board minutely assess each and every decision made by a trade union in representing its members. See: *Kathy Chabot v. Canadian Union of Public Employees, Local 4777, supra*. For example, this Board has held that there is no breach of the duty of fair representation where a trade union withdraws a grievance, if it took a reasonable view of the circumstances and if it made a "thoughtful decision" not to advance that particular grievance to arbitration. 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. 648, LRB File No. 028-07. In other words, when confronted with an allegation of arbitrariness on the part of the trade union in the representation of its members, the Board is not looking to determine whether or not the union erred in its strategies or if its decisions were, in our opinion, wrong. To successfully sustain an allegation of arbitrariness, an applicant must establish more than mere negligence (i.e. mistakes on the part of the Union), he/she must satisfy the Board that the trade union's impugned conduct was grossly or seriously negligent (i.e. reckless, capricious, or perfunctory). See: *Randy Gibson v. Communications, Energy and Paper workers Union of Canada, Local 650*, [2002] Sask. L.R.B.R. 574, LRB File No. 089-02.

[53] After reviewing the evidence presented in these proceedings, I am unable to conclude that the Union's conduct was arbitrary or otherwise in violation of s. 25.1 of the *Act*.

[54] The Union investigated the Applicant's complaint that he was the victim of harassment in the workplace, as did the Employer. Contrary to the Applicant's assertions, it is not clear from the evidence that the Applicant was the victim of harassment or bullying. While there was evidence of inappropriate conduct by certain employees toward the Applicant (both inside and outside of the workplace), the tenor of the evidence was more consistent with conflict between co-workers related to working conditions (and the concomitant monetary implications associated with potential changes in those conditions) that inappropriately escalated into unprofessional conduct by the participants. It is not axiomatic, as suggested by the Applicant, that he was the victim of harassment or bullying by either his co-workers or management. Not all conflict between co-workers involves victimization and discipline by management is not the same thing as harassment. However, even if the Board were to accept that the circumstances in the

workplace had escalated to the point where the Applicant was the victim of harassment by his co-workers, the Applicant's expectation that it was the Union's responsibility to prevent such harassment from occurring was misplaced.

[55] From time to time, interpersonal conflicts occur in the workplace. Co-workers do not always like each other; nor are the expected to. But they are expected to work together; to be professional while in the workplace and in the performance of their duties. For the most part, as mature adults, people are able to resolve their conflicts or, at least, agree to disagree in a manner that does not interfere with the performance of their responsibilities at work. However, if interpersonal tensions begin to affect the workplace or if they escalate (as they did at the Bessborough) into inappropriate conduct, it is management's responsibility to intervene. Management not only has the right but the responsibility to do so. Trade unions become involved in representing members not because they are in conflict but because those conflicts escalate to the point where management intervenes. In which case, a trade union's responsibility is to represent members in their dealings with management; not to represent members in disputes between each other, *per se*, and it is certainly not a trade union's role to take sides in such disputes.

[56] The Applicant seemed to be asserting that the Union should have given preference to his version of the dispute with his co-workers because he had seniority. It would be inappropriate for a trade union to prefer one side of this dispute merely because that member had seniority. In this case, I am satisfied that the Union's representation of the Applicant was appropriate under the circumstances. The evidence indicated that the Union appropriately represented all of the members who became subject to management's interventions because of their interpersonal conflict. Appropriate representation doesn't mean that members will not be disciplined or terminated. Rather, the Union's role is to ensure that discipline is administered fairly by management and meted out in accordance with the collective agreement.

[57] It was management's responsibility to sort out the dysfunction in the workplace being caused by the participants and it is generally recognized that interpersonal conflicts can be the most difficult problems for management to resolve. Generally speaking, by the time management becomes involved in these disputes, by definition, they have already escalated beyond the boundaries of appropriate conduct. The motivations, explanations and justifications of the participants are typically (from management's perspective) confusing, illogical, and represent unjustified amplifications of what would otherwise appear to be minor trespasses. Simply put, interpersonal disputes in the workplace represent exasperating and unproductive distractions for management and they seldom involve unilateral wrong-doing from which the victim and the perpetrator can be identified.

[58] For the same reasons, co-workers involved in interpersonal disputes can also be very difficult members for a trade union to represent. In this case, the Applicant was willfully blind to his participation in the conflict occurring in the workplace, seeing himself wholly as a victim of the aggression of his co-workers and the bias and incompetence of management.

[59] In representing the Applicant, the Union filed and advanced multiple grievances, including a grievance related to the shift rotation proposal, a grievance related to the written warning the Applicant received and another related to the coaching letter, as well as the job abandonment grievance. The evidence indicates the Union investigated each of the incidents associated with these grievances. The Applicant acknowledged that the Union took his grievances to mediation, albeit he was disappointed with the result. To bolster the Applicant's position in his grievances, the Union utilized the services of Mr. Kalturnyk to prepare the Applicant's appeal of Great-West Life's decision to deny his benefits. Furthermore, I am satisfied that the Union reasonably kept the Applicant informed as to the status of these proceedings. Finally, I am satisfied that the Union's decision to abandon the Applicant's grievances only occurred after a careful and thoughtful review of the circumstances by the Union's National Service Representative.

[60] In coming to this conclusion, the Board notes that the Union appropriately explained its reasons for abandoning the Applicant's grievances in the letter dated January 31, 2009. In her letter, Ms. Naylor identifies several impediments to obtaining a successful outcome for the Applicant. As indicated, it is not the Board's role to assess the correctness of the Union's

decision to abandon the Applicant's grievances; only to determine if that decision was reasonably made following a thoughtful review.

[61] The Applicant's letter dated April 17, 2008 to Mr. Pallett gave management both evidence and a valid reason to believe that the Applicant's absence from work was for reasons other than a disabling medical condition. This letter was not only ill-conceived; it was palpably insubordinate and potentially defamatory. Then, the Applicant failed to heed the advice of Ms. Naylor about the potential implications of refusing to return to work on May 7, 2008. Finally, the Applicant was unable or unwilling to obtain further medical information when requested to do so by the Union. All of these are factors that the Union was entitled to take into consideration in deciding whether to advance or abandon the Applicant's grievances. The cooperation of the grievor is a factor that may be taken into consideration by a trade union in assessing the likelihood of obtaining a successful outcome through grievance proceedings. In doing so, the trade union must not be motivated by a desire to punish an uncooperative member (no matter how frustrating or self-destructive the conduct of that member may be) but rather the trade union must base its decision on a reasonable and thoughtful assessment of the potential of achieving a successful outcome, together with other relevant factors, such as the reasonable use of the trade union's scarce resources.

[62] While it is not the role of this Board to assess the relative strength or merit of the Applicant's grievances, the evidence in the proceedings did not, contrary to the Applicant's suggestion, inescapably lead to the conclusion that the Applicant's grievances were so clear and so compelling that the Union's decision to abandon them could be seen as indicative of the kind of recklessness or non-caring attitude necessary to sustain a violation of s. 25.1 of the *Act*.

[63] Simply put, after reviewing the evidence presented in these proceedings, I am not persuaded that the Union's decision to abandon the Applicant's grievances was so unreasonably made or so grossly negligent that I am able to find a violation of the nature suggested by the Applicant.

[64] Finally, the Applicant asserted that the Union failed to advice him of his right to appeal the Union's decision to abandon his grievances to the general membership. While it is arguable that this was a defect in Ms. Naylor's letter, I am satisfied that the open invitation in the letter for the Applicant to contact Mr. Don Lajoi provided basis information to the Applicant on

how to proceed if he had any questions or concern about the Union's decision. To the extent that there was insufficient information contained in this letter describing the options that would have be available to the Applicant at that time, I am satisfied that such was the kind of mistake that this Board has characterized as falling outside of the Board's supervisory responsibilities. See: *Glynna Ward v. Saskatchewan Union of Nurses, et al.,* [1988] Winter Sask. Labour Rep. 44, LRB File No. 031-88 and *Gilbert Radke v. Canadian Paperworkers Union, Local 1120*, [1993] 2nd Quarter Sask. Labour Rep. 57, LRB File No. 262-92.

[65] For the foregoing reasons, I am unable to conclude that the Union's conduct was arbitrary or otherwise in violation of s. 25.1 of the *Act*.

[66] Because of the disposition of the Applicant's application, I have declined to comment on the issue of delay asserted by the Union.

Conclusion:

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

[68] In these proceedings, personal medical information of the Applicant was tendered and, in my opinion, this information was relevant to the Board's analysis and conclusions. However, because these Reasons for Decision contain personal medical information of the Applicant, I have elected to replace the Applicant's name with the initials "J.K.".

DATED at Regina, Saskatchewan, this **28th** day of **May, 2010.**

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson