Editor's Note: Corrigendum released February 1, 2012. The original of the following Reasons for Decision of the Saskatchewan Labour Relations Board was corrected with text of corrigenda appended.

The Labour Relations Board
Saskatchewan

DANIEL MOATE, Applicant v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 859, Respondent and CITY OF SASKATOON, Interested Party

LRB File No. 166-11; January 17, 2012
Single Panel: Chairperson, Kenneth G. Love, Q.C.

The Applicant:	Self Represented
For the Respondent Union:	Ms. Rhonda Heisler
For the City of Saskatoon	Ms. Patricia Warwick

Duty of fair representation – Scope of duty - Union fairly and adequately investigated circumstances and consulted with national union representative and legal counsel before determining likelihood of success at arbitration – arrived at informed and reasonable view with respect to success of grievance at arbitration – union fulfilled duty of fair representation – Board dismisses application.

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

REASONS FOR DECISION

Background:

[1] Daniel Ray Moate Jr. (the "Applicant") brings this application under Section 25.1 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*") based upon his assertion that the Canadian Union of Public Employees, Local 859 (the "Union") had abandoned his grievance filed in respect of his termination from his employment with the City of Saskatoon (the "Employer").

[2] This application was heard by Kenneth G. Love, Q.C., Chairperson of the Board sitting alone pursuant to s. 4(2.2) of the *Act* on January 13, 2012 in Saskatoon, Saskatchewan.

Facts:

[3] The Applicant's application to the Board relates to a grievance filed on his behalf by the Union following his termination from his employment on December 6, 2010.

[4] The Applicant was employed by the Employer as Relief Supervisor/Utility B Operator. He held this position with the Employer for fifteen years, of which the last ten years had been as a full time employee. He was terminated from this position with Employer. His

employment was terminated for being absent without leave from his position on November 12, 2010.

[5] The Applicant applied for a leave of absence from his position with the Employer during the first week of November, 2010. In making his request, he gave as a reason for the request was personal health reasons and that he was required to take care of his father who was ill. That request for a leave of absence was denied. Subsequent to the denial of the request, the Applicant requested that the Employer reconsider the requested leave. That request for reconsideration was also denied on November 8, 2010.

[6] On November 12, 2010, the Applicant did not attend at work. No reason was given for the absence and the Applicant did not contact the Employer to advise that he would not be attending at work. It was subsequently determined from review of an article in the local newspaper that the Applicant had been incarcerated in the Provincial Correctional Centre in Saskatoon as a result of charges laid against him for a sexual assault committed on his step daughter.

[7] On November 17, 2010, representatives of the Employer and the Union arranged to interview the Applicant at the Provincial Correctional Centre in Saskatoon. The evidence from the Applicant and the President of the Union who was in attendance at that interview established that the Employer and the Union first met with the Applicant together. At that meeting the Union was in attendance to represent the Applicant. Following that meeting, the Union officials met separately with the Applicant. At that time, Mr. Mike Stefiuk, the Union President advised the Applicant that, in the event that the Applicant was terminated from his employment, the Union would grieve the termination.

[8] As noted above, the Applicant was terminated by the Employer on December 6, 2010. The Union, as promised, filed a grievance against the termination on December 8, 2010. Under the collective agreement between the Employer and the Union, dismissal grievances are expedited. For those grievances, the first step in the grievance procedure is an appeal of the dismissal to the City Manager of the Employer.

[9] The grievance appeal was heard by the City Manager of the Employer on January 11, 2011. At the hearing, Mr. Stefiuk testified that the Union argued that there were mitigating

circumstances with respect to the Applicant's being absent without leave and that the penalty (dismissal) was too severe. He testified that they were unable to argue the facts of the case because the Applicant had admitted his absence on Novermber 12, 2010.

[10] By letter dated January 18, 2011, the appeal was dismissed by the City Manager and the termination upheld. The next step of the grievance procedure would require that the Union request that the matter be submitted to arbitration.

[11] Under the terms of the collective agreement, the Union has a forty-five day window in which to determine if they wish to submit the grievance to arbitration. Mr. Stefiuk testified that these timelines are taken seriously by the Union, although he acknowledged that they can be extended by mutual agreement of the parties.

[12] During the forty-five day window, Mr. Stefiuk testified that he sought advice from a national CUPE representative as to the likelihood of success at arbitration. He testified that he also contacted CUPE's national legal counsel, Ms. Crystal Norbeck for informal advice in respect to the probability of success if the Union were to proceed to arbitration. Both counseled against proceeding to arbitration citing a low likelihood of success.

[13] With this information and the information he had received during the interview on November 17, 2010 at the Correctional Centre, Mr. Stefiuk took the question of whether or not the Union should proceed to the executive of the Union, who constituted the Grievance Committee for the Union. After discussion and consideration of the facts and the merits of the case, it was determined not to proceed to arbitration.

[14] This decision was reported to the Union membership in the normal course and was not challenged by the membership.

[15] The Applicant was released from the Correctional Centre after serving eight months of his two years less a day sentence. His release occurred on August 9, 2010. Shortly after his release, he was able to find alternate employment where he continues to be employed at present. Approximately two weeks following his release, he contacted Mr. Stefiuk to determine the status of his grievance proceeding. Mr. Stefiuk advised him that the grievance procedure had been exhausted and that it had been unsuccessful.

[16] The Applicant contacted the Board and filed this application on November 7, 2011.

Relevant statutory provision:

[17] Relevant provisions of the *Act* are as follows:

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

Jurisdictional Issue:

[18] Counsel for the Employer did not participate in the evidentiary portion of the hearing. However, counsel advised that she wished to speak to the issue of a proper remedy should the Board find the complaint against the Union to be justified. In essence, the Employer took the position that the Board lacked jurisdiction to remit the matter to arbitration should it determine to uphold the complaint by the Applicant.

[19] For the reasons which follow, the Board has determined to dismiss the application. Accordingly, it is not necessary to deal with or make any ruling with respect to the issues raised by counsel for the Employer.

Analysis and Decision:

[20] The Applicant bears the onus of proof in the present application. For the reasons which follow, the Applicant has failed to satisfy this onus and the application is dismissed.

[21] The case law that the Board consistently follows with respect to the duty of fair representation owed by the Union to the Applicant as set out in s. 25.1 of the *Act* was extensively reviewed in *Dwayne Lucyshyn v. Amalgamated Transit Union, Local 615*[1]. At paragraph 30 of that decision, the Board provided this summary of the Board's jurisprudence with respect to the duty of fair representation:

[1] [2010] S.L.R.B.D. No. 6, 178 C.L.R.B.R. (2d) 96, CanLII 15756 (SKLRB), LRB File No. 035-09

[30] 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 arbitrariness and the scope of the Union's duty. The Board stated at 518 to 526:

> *[27] As pointed out in many decisions of the Board, a succinct explanation of the distinctive meanings of the concepts of arbitrariness, discrimination and bad faith, as used in s. 25.1 of the Act, was made in Glynna Ward v. Saskatchewan Union of Nurses, [1988] Winter Sask. Labour Rep. 44, LRB File No. 031-88, at 47, as follows:*
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> > *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.*
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> *[28] In Toronto Transit Commission, [1997] OLRD No. 3148, at paragraph 9, the Ontario Labour Relations Board cited with approval the following succinct explanation of the concepts provided by that Board in a previous unreported decision:*
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> > *. . . a complainant must demonstrate that the union's actions were:*
> >
> > *(1) "Arbitrary" – that is, flagrant, capricious, totally unreasonable, or grossly negligent;*
> >
> > *(2) "Discriminatory – that is, based on invidious distinctions without reasonable justification or labour relations rationale; or*
> >
> > *(3) "in Bad Faith" – that is, motivated by ill-will, malice hostility or dishonesty.*
> >
> > *The behaviour under review must fit into one of these three categories. …[M]istakes or misjudgments are not illegal; moreover, the fact that an employee fails to understand his rights under a collective agreement or disagrees with the union's interpretation of those rights does not, in itself, establish that the union was wrong – let alone "arbitrary", "discriminatory" or acting in "bad faith".*

> *The concept of arbitrariness, which is usually more difficult to identify than discrimination or bad faith, is not equivalent to simple errors in judgment, negligence, laxity or dilatoriness. In Walter Prinesdomu v. Canadian Union of Public Employees, [1975] 2 CLRBR 310, the Ontario Labour Relations Board stated, at 315:*
>
> > *It could be said that this description of the duty requires the exclusive bargaining agent to "put its mind" to the merits of a grievance and attempt to engage in a process of rational decision making that cannot be branded as implausible or capricious.*
> >
> > *This approach gives the word arbitrary some independent meaning beyond subjective ill will, but, at the same time, it lacks any precise parameters and thus is extremely difficult to apply. Moreover, attempts at a more precise adumbration have to reconcile the apparent consensus that it is necessary to distinguish arbitrariness (whatever it means) from mere errors in judgment, mistakes, negligence and unbecoming laxness.*

. . . .

[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.*
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> *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.*
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> *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:*
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> > *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.*

[39] As noted above, the Canada Labour Relations Board took a similar view in Rousseau v. International Brotherhood of Locomotive Engineers et al., supra. In Johnson v. Amalgamated Transit Union, Local 588 and City of Regina, [1997] Sask. L.R.B.R. 19, LRB File No. 091-96, the Board referred to the evolution of the treatment of the issue of arbitrariness by the Canada Board. At 31-32, the Board observed as follows:

> *The Canada Labour Relations Board initially accepted the notion that, in the case of what were termed "critical job interests," the obligation of a trade union to uphold the interest of the individual employee affected would be close to absolute. What might constitute such critical job interests was not entirely clear, but loss of employment through discharge was clearly among them.*
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> *The Board continued to hold the view that the seriousness of the interest of the employee is a relevant factor. In Brenda Haley v. Canadian Airline Employees' Association, [1981] 81 C.L.L.C. 16,096, the Canada Board made this comment, at 609:*
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> > *This concept (i.e. critical job interests] is a useful instrument to distinguish circumstances where the balance between the individual and union or collective bargaining system interests will tilt in one direction or another. A higher degree of recognition of individual interests will prevail on matters of critical job interest, which may vary from industry to industry or employer to employer. Conversely on matters of minor job interest for the individual the union's conduct will not receive the same scrutiny and the Board's administrative processes will not respond with the same diligence or concern. Many of these matters may not warrant an expensive hearing. Examples of these minor job interests are the occasional use of supervisors to do bargaining unit work, or isolated pay dispute arising out of one or a few incidents and even a minor disciplinary action such as a verbal warning.*

They concluded in the Brenda Haley case, however, that this factor should be evaluated along with other aspects of the decisions taken by the trade union. The decision contains this comment, at 614:

> *As frustrating as duty of fair representation discharge cases may be and as traumatic as loss of employment by discharge may be, we are not persuaded mandatory discharge arbitration is the correct response. It is an easy response but its effect on the group and institutional interests is too harsh. With the same view of the integrity of union officials and the merits of the grievance procedure shared by Professor Weiler we say unions must continue to make the difficult decisions on discharge and we must continue to make the difficult decisions complaints about the unions' decisions often require.*

They went on to summarize the nature of the duty imposed on the trade union, also at 614:

> *It is not the Board's task to reshape union priorities, allocate union resources, comment on leadership selection, second guess its decisions, or criticize the results of its bargaining. It is our task to ensure it does not exercise its exclusive majoritarian based authority unfairly or discriminatorily. Union decision makers must not act fraudulently or for improper motives such as those prohibited by human rights legislation or out of personal hostility, revenge or dishonesty. They must not act arbitrarily by making no or only a perfunctory or cursory inquiry into an employee's grievance. The union's duty of fair representation does not guarantee individual or group union decision makers will be mature, wise, sensitive, competent, effectual or suited for their job. It does not guarantee they will not make mistakes. The union election or selection process does not guarantee competence any more than the process does for those selected to act in other democratic institutions such as Parliament or appointees to administrative agencies.*

[40] Thus, there is a line of cases that suggests that where "critical job interests" are involved (e.g., discharge from employment), depending upon the circumstances of the individual case, a union dealing with a grievance may well be held to a higher standard than in cases of lesser

importance to the individual in determining whether the union has acted arbitrarily (including whether it has been negligent to a degree that constitutes arbitrariness). The Board has taken a generally favourable view of this position as demonstrated in Johnson and Chrispen, supra.

[41] However, in Haley, supra, a case involving the missing of a time limit for referral to arbitration, the Canada Board also recognized that the experience of the union representative and available resources are relevant factors to be considered in assessing whether negligence is assumed to be of a seriousness that constitutes arbitrariness, stating as follows:

> *…The level of expertise of the union representative and the resources the union makes available to perform the function are also relevant factual considerations. These and other relevant facts of the case will form the foundation in each case to decide whether there was seriously negligent, arbitrary, discriminatory or bad faith, and therefore unfair, representation.*

[42] In Chrispen, supra, the Board approved of this position also, stating, at 150, as follows:

> *The reason why cases involving allegations of arbitrariness are the most vexing and difficult is because they require the Board to set standards of quality in the context of a statutory scheme which contemplates that employees will frequently be represented in grievance proceedings by part-time union representatives or even other co-workers. Even when the union representatives are full-time employees of the union, they are rarely lawyers and may have few qualifications for the responsibilities which this statutory scheme can place upon them.*
>
> *In order to make this system work, the legislature recognized that union representatives must be permitted considerable latitude. If their decisions are reversed too often, they will be hesitant to settle any grievance short of arbitration. Moreover, the employer will be hesitant to rely upon any settlement achieved with the union if labour boards are going to interfere whenever they take a view different from that of a union. The damage this would do to union credibility and the resulting uncertainty would adversely affect the entire relationship. However, at the same time, by voluntarily applying for exclusive representative status, the union must be prepared to accept a significant degree of responsibility for employees, especially if an employee's employment depends upon the grievance.*

[22] In the present case, the Applicant argues that the Union failed to properly represent him, insofar as the Union, in the final result, did not pursue the grievance which it had filed regarding his termination, to arbitration.

[23] However, the evidence from the Union showed that the Union considered the facts of the grievance, investigated the complaint independently of the Employer at the meeting on November 17, 2011, received legal and other advice on the situation and concluded that it had no reasonable chance of success in the event that the grievance proceeded to arbitration. Unfortunately, the Union did not communicate its decision to the Applicant.

[24] The Applicant's major complaint was that he was not permitted to participate in the grievance process and that the Union had not communicated with him. This complaint, however, overlooks that grievances filed by the Union are the property of the Union, not the grievor. The Union has great latitude in how it processes grievances, subject to its statutory obligations under s. 25.1 and the terms of its constitution and bylaws.

[25] As pointed out in *Chabot v. C.U.P.E. Local 477,* [2007] Sask. L.R.B.R. 401, LRB File No. 158-06 at para. 71:

> *The Board does not sit in appeal of decisions made by unions, does not decide if a union's opinion of the likelihood of success of a grievance was correct and does not minutely assess and second guess every union action.*

[26] For the Applicant to be successful, it is necessary for him to show that the Union's representation of him, and the decision not to proceed to arbitration was "arbitrary, discriminatory, or in bad faith."

[27] The Applicant failed to provide any evidence to the Board that the actions of the Union were arbitrary. In fact, the evidence from the Union showed that their decision was anything but arbitrary. They conducted an independent investigation, received legal advice from counsel and a senior union representative. The only issue was with respect to the Applicant's notification of the Union's decision not to submit the grievance to arbitration. It was possible to communicate with the Applicant while he was incarcerated either in person, by letter or by telephone. As a minimum, one would expect that he would have been advised of the Union's decision to abandon his grievance and that such communication would be in writing, preferably in letter form, but alternatively by telephone or in person.

[28] While this failure to notify the Applicant is important, it does not amount to arbitrary conduct on the part of the Union[2]. As noted above, in order for the conduct of the Union to be arbitrary, the conduct complained of must be conduct which is "flagrant, capricious, totally unreasonable, or grossly negligent"[3]. Also, as noted above in *Radke v. Canadian Paperworkers Union, Local 1120*[4], the Board commented:

> *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 maybe at stake.*

[29] There is no evidence to suggest that the failure to notify the Applicant was in any way motivated by any desire to conceal the actions of the Executive Committee from the Applicant's scrutiny. I am sure that in the future, the Union will take steps to ensure that there is a record kept of any communication with grievors related to the processing of their grievances.

[30] Nor was there any evidence presented that the decision to withdraw the grievance was in any way marred by discriminatory activities by the Union against the Applicant. The decision was based upon a recommendation of counsel and a senior CUPE representative who had both reviewed the facts and formed the opinion that the case would be difficult to win.

[31] The Applicant also did not provide evidence of bad faith by the Union. The Union conducted an independent investigation of the facts, which were admitted by the Applicant. As noted above, the Union was unable to argue any factual issues at the grievance meeting with the City Manager. The Board therefore concludes that there is nothing in the Union's conduct that can be characterized as being done in bad faith.

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[2] See *Allan Wionzek v. International Brotherhood of Electrical Workers, Local 2067*, LRB File No. 022-11, 2011 CanLII 59456.
[3] See Toronto Transit Commission [1977] OLRD No. 3148, para 28 of *Hargrave et al. v. Canadian Union of Public Employees, Local 3822* [2003] S.L.R.B.D. No. 47, Sask. L.R.B.R. 511, LRB File No. 223-02
[4] [1993] S.L.R.B.D. No. 27, 2nd Quarter Sask.Labour Rep. 57, LRB File No. 262-92 at 64 and 65

Conclusion:

[32] The application is therefore dismissed.

DATED at Regina, Saskatchewan, this **17th** day of **January, 2012.**

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson

CORRIGENDUM

[33] **Kenneth G. Love Q.C. Chairperson:** Paragraph 6 of the Reasons for Decision in the within proceedings issued by the Board on January 17, 2012 contained an error. This paragraph should read as follows:

[6] On November 12, 2010, the Applicant did not attend at work. No reason was given for the absence and the Applicant did not contact the Employer to advise that he would not be attending at work. It was subsequently determined from review of an article in the local newspaper that the Applicant had been incarcerated in the Provincial Correctional Centre in Saskatoon as a result of charges laid against him for sexual exploitation of a minor.

DATED at the City of Regina, in the Province of Saskatchewan, this **1st** day of **February, 2012.**

Kenneth G. Love, Q.C.
Chairperson