



Government  
— of —  
Saskatchewan

**Saskatchewan Labour Relations Board**

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April 10, 2015

Mr. Robert Flanigan  
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15 Campus Drive  
University of Saskatchewan  
SASKATOON SK S7N 5A6

Bainbridge Jodouin Cheechan  
401, 261 – 1<sup>st</sup> Avenue North  
SASKATOON SK S7K 1X2

**Attention: Mr. Gary Bainbridge**

**Personal and Confidential**

McKercher LLP  
374 – 3<sup>rd</sup> Avenue South  
SASKATOON SK S7K 1M5

**Attention: Mr. David M. A. Stack**

Dear Sirs:

**RE: LRB File No. 261-14; Duty of Fair Representation**

1. Mr. Flanigan (the “Applicant”) has brought an application to the Board alleging that his bargain representative, The University of Saskatchewan Faculty Association (the “Union”) failed to properly represent him with respect to a dispute with his employer, The University of Saskatchewan (the “Employer”) pursuant to Section 6-59 of *The Saskatchewan Employment Act* (the “SEA”).
2. The Applicant has requested pre-hearing production of documents and particulars from the Union and the Employer by email dated January 12, 2015. Both the Union and the Employer resisted the requested production and the Applicant applied to the Board for an order requiring the production of the requested materials.

3. This application was heard by Chairperson Kenneth Love, Q.C., pursuant to Section 6-95(3) of the *SEA* in Saskatoon on April 7, 2015.

**Decision**

4. For the reasons which follow, we decline to order the extensive disclosure sought by the Applicant. The documents and particulars requested are too vague in nature and are, in our opinion, mostly a “fishing expedition” on the part of the Applicant. We are prepared to order production of the following:

- a) Any and all Minutes or records in the possession of the Union of meetings with the Employer in respect of the Applicant’s complaints (or potential grievance) as well as emails or other documents passed between the Union and the Employer related thereto which have not previously been provided to the Applicant.
- b) Minutes or records in the possession of the Union of meetings held by the Union’s grievance committee to consider the Applicant’s accommodation request and/or the filing of a grievance against the Employer in respect of that accommodation.
- c) Copies of all correspondence, minutes or records in the possession of the Union related to its investigation of the Applicant’s complaints against the Employer which have not been produced to the Applicant pursuant to the disclosure ordered in a) and b) above.

**Reasons for Decision**

5. In its decision in *Re: Saskatchewan Assn. of Health Organizations*,<sup>1</sup> the Board reviewed extensively its practices, procedures and jurisprudence

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<sup>1</sup> [2012] S.L.R.B.D. No. 5, 210 C.L.R.B.R. (2d) 229

concerning the production of documents. That review included pre-hearing production as is the case here, as well as production of documents following the commencement of a hearing, and by *Subpoena Duces Tecum*.

6. At paragraph 37 of that decision, the Board says in point 1:

1. ***Pre-hearing production:*** *A party to proceedings before the Board can now seek production of documents prior to the commencement of the hearing. Such applications are typically heard by the Board's Executive Officer. The Board's Executive Officer has delegated authority to grant Orders of production and typically does so based on broad and general principles of relevancy. Generally speaking, an applicant seeking pre-hearing production of documents must merely satisfy the Board's Executive Officer that the desired documents are arguably relevant and/or that there is some probative nexus between the documents or information sought and the matters in issue arising out of proceedings before the Board. However, the greater the number of documents sought, the stronger the probative nexus expected by the Board's Executive Officer, particularly so if considerable expense, time and effort is required to locate and produce the desired documents. In this regard, it is important to note that labour relations boards were established to provide an alternative to the formalistic procedures of courts of competent jurisdiction. While pre-hearing discovery and production of documents may be the norm in civil litigation, such procedures are not the norm in proceedings before tribunals, such as this Board. To which end, while a certain degree of "fishing" is permissible in a request for pre-hearing production of documents (i.e.: to seek out evidence in support of an allegation under the Act), it has not been the practice of this Board to grant broad-spectrum, non-specific or infinite production Orders to in essence, compel the kind of pre-hearing discovery of documents that occurs in civil courts. Similarly, s. 18(b) of the Act (as was the case with its predecessor provision) does not include authority to compel a party to "create" documents or things in response to a production request, such as a statement as to documents. See: Pyramid Electric Corporation v. International Brotherhood of Electrical Workers, Local 529, 2001 SKQB 216 (CanLII), 208 Sask. R. 118 (Q.B.). Simply put, the Board does not have the authority to invoke, nor does it desire to replicate the kind of discovery procedures or production of documents obligation commonly seen in a judicial setting.*

*It should also be noted that in a pre-hearing request for the production of documents, the Board's Executive Officer does not generally concern him/herself with issues of confidentiality or privilege; as the more common practice has been for disputes as the production of documents upon which a privilege is claimed to be resolved by a panel of the Board (either prior to or at the commencement of the hearing). In other words, parties are expected to locate and produce the documents set forth in any production Order of the Board's Executive Officer, save any documents upon which privilege may be claimed. Responsive documents upon which privilege are claimed are delivered to the Board (either the panel seized to hearing the proceedings or another) to determine whether or not production of the disputed documents is appropriate. This practice enables the parties to make representations to the Board on the claims asserted and enables the Board to have the benefit of viewing the disputed documents in rendering its decision. This practice was employed by the parties and the Board in *International Brotherhood of Electrical Workers, Local 529 v. Sun Electric (1975) Ltd., et. al.*, [2002] Sask. L.R.B.R. 362, LRB File No. 216-01, and in subsequent proceedings, [2002] Sask. L.R.B.R. 698, LRB File No. 216-01.*

This rationale has been applied in this case as well.

7. While it is unusual to have a request for particulars come from an Applicant, there is no prohibition against such a request. However, the request was both extensive and much of what was requested was open ended. The requests for additional documents were, in our opinion, too broad in their spectrum, were not sufficiently specific, and/or would require the compiling of documents by the Employer.
8. The Applicant made eight (8) requests for disclosure in his email of January 12, 2015. I will deal with each of these in turn.
9. The materials requested in Item 1 is completely open ended. It seemingly requests that the Union provided any and all documentary or other materials which it might reference during the hearing. That level of pre-

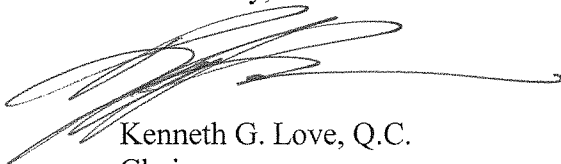
hearing disclosure might be provided for in civil actions, but is not well suited to the summary procedures utilized by the Board.

10. Item 2 refers to comments regarding the Union's comments that it conducted numerous inquiries of the Employer as well as meeting with the Employer. If such meetings were held, this will likely be germane to the Board's inquiry and are arguably relevant. For this reason we have ordered the production of any and all minutes of such meetings in the possession of the Union.
11. Item 3 requests the dates on which legal advice was sought and obtained by the Union regarding the Applicant's accommodation. At the hearing of this matter, the Applicant sought to broaden that request to include copies of the opinions based upon his argument that any privilege associated with those opinions had been lost. Counsel for the Union opposed this expansion. The parties agreed that the proper process would be for the Applicant to make the request for production, to which the Union could respond, following which, the matter could be brought before the Board. Accordingly, we make no ruling in respect of this request.
12. Item 4 requests Minutes or other documents regarding discussions of the Union's Grievance Committee. As noted above in respect of the meetings with the University, such documents are arguably relevant to the matters under consideration and we have ordered their production.
13. Item 5 requests information which should reasonably be within the knowledge of the Applicant regarding terms of the Collective Agreement.
14. Item 6 requests the Union provide legal authority for its position. Such production is unnecessary. There is no provision in civil procedure for

such an order, nor would this Board require production of legal arguments, presuming that legal counsel are aware of the law on either side of an argument.

15. Item 7 requests a broad range of documents. Requests for production need to be more specific in order that the producer of those documents can readily identify them. However, an investigation of the complaints made by the Applicant is a component of the duty of fair representation (See *Lucyshyn v. Amalgamated Transit Union, Local 615* [2010] CanLII 15756 (SKLRB)). Accordingly, if the Union did, in fact, conduct an investigation, the facts surrounding that investigation should be known to or made available to the Applicant. Accordingly, we have ordered production of the documents related to that investigative process.
16. Item 8 again requests the Union to provide legal authority. For the reasons set out above in paragraph 14, we decline to order production.
17. The issue of production does not necessarily end with this determination. Should relevant documents be discovered during the course of the hearing of this matter, the Board retains authority to order production of those documents at that time.
18. An Order setting out the Board's direction as set out above will issue with these Letter Reasons.

Yours truly,



Kenneth G. Love, Q.C.  
Chairperson



**IN THE MATTER OF**

An application for an Interim Order and/or Decision pursuant to clause 6-103(2)(d) of *The Saskatchewan Employment Act*, seeking disclosure of particulars;

**BETWEEN:**

Robert Flannigan, Employee, Saskatoon		<b>APPLICANT</b>
	-and-	
University of Saskatchewan Faculty Association		<b>CERTIFIED BARGAINING AGENT</b>
	-and-	
University of Saskatchewan		<b>EMPLOYER</b>
		<b>RESPONDENTS</b>

**BEFORE:**

Kenneth G. Love, Q.C. Executive Officer	)	<b>DATED</b> at Regina Saskatchewan, on
	)	
	)	the <b>10<sup>th</sup></b> day of <b>April, 2015</b>

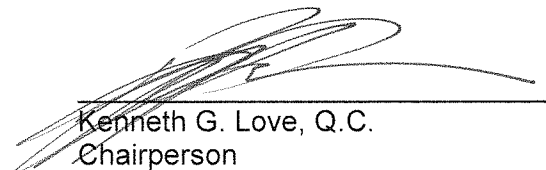
**ORDER**

**THE CHAIRPERSON OF THE BOARD**, sitting alone pursuant to sub-section 6-95(3) of *The Saskatchewan Employment Act*, having considered representations from the parties, **HEREBY ORDERS** as follows;

The Certified Bargaining Agent shall provide to the Applicant;

- i. Any conducted inquires and meetings and any minutes of such inquiries and meetings related to this matter, in the possession of the Union.
- ii. Minutes or other documents internal to the Union's Grievance Committee, in respect of this matter.
- iii. In respect of the investigation and investigation process, conducted by the Union, all documents in relation to this matter.

**LABOUR RELATIONS BOARD**



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Kenneth G. Love, Q.C.  
Chairperson