



Government
— of —
Saskatchewan

Saskatchewan Labour Relations Board

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April 13, 2015

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Attention: Mr. Gary Bainbridge

Personal and Confidential

McKerchker LLP
374 – 3rd Avenue South
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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 Employer by email dated January 8, 2015. 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.
4. The Board issued reasons for decision and an order in respect of production requested by the Applicant from the Union on April 10, 2015. These reasons are to supplement those reasons and to decline to order further production as against the Employer.

Decision

5. For the reasons that follow, we decline to order any of the 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 or are to be produced by the Union pursuant to our order of April 10, 2015.

Reasons for Decision

6. In its April 10, 2015 decision, the Board quoted from its decision in *Re: Saskatchewan Assn. of Health Organizations*,¹ the Board reviewed extensively its practices, procedures and jurisprudence 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*.

This rationale has been applied in this case as well.

7. The Board does not have a copy of the email dated January 8, 2015 addressed to Ms. Sommervill and Mr. David Stack. In his Brief to the Board, the Applicant identified (1) one general and (5) five specific

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

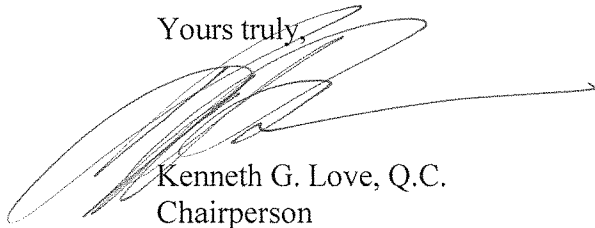
requests made to the Employer for production of documents. I will deal with each of these in turn.

8. The materials requested in Item 1 (the general request) is completely open ended. It seemingly requests that the Employer 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.
9. Item 2 refers to comments regarding the Employer's comments that it "worked with the University of Saskatchewan Faculty Association...to address concerns raised by USFA and the Applicant". Production of materials related to this issue has been ordered to be produced by the Union in our April 10th Order. There is no need to order its production from the Employer as well.
10. Item 3 requests information regarding the Applicant's RAP application. There is little relevance to these documents insofar as his complaint against the union is concerned. Furthermore, most of the information requested by the Applicant at the hearing of this matter related to the RAP application is in the public domain (or at least within the domain of the academic community at the University of Saskatchewan) and can be produced should further proceedings under the collective agreement be mandated.
11. Item 4 requests similar materials to that sought under item 3. Again, for the reasons above, we decline to order its production.
12. Item 5 requests information regarding the appointment of faculty members to the "Appointments Forum". The relevance of this information was not clearly connected to the Applicant's complaint against the Union.

13. Item 6 requests the Employer provide information with respect to investigations it conducted into his accommodation. We cannot see any reasonable relevance to the production of this information in respect to the duty of fair representation complaint as it is the actions of the Union, not the Employer which are subject to scrutiny by this Board.

14. No further production will be ordered against the Employer.

Yours truly,

A handwritten signature in black ink, appearing to read 'Kenneth G. Love', with a long horizontal flourish extending to the right.

Kenneth G. Love, Q.C.
Chairperson