



UNITED STEEL, PAPER and FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL and SERVICE WORKERS INTERNATIONAL UNION, LOCAL 9841, Applicant v. JASON RATTRAY, Respondent, SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Respondent Employer and UNIFOR NATIONAL, Respondent

LRB File Nos.: 012-17, 022-17, 104-17 & 105-17; August 24 , 2017

Chairperson, Kenneth G. Love, Q.C.; Members: Jim Holmes and Ken Ahl

For the Applicant Union:	Heather Jensen
For the Respondent Jason Rattray:	Larry Dawson
For the Respondent Employer	Robert Waller
For the Respondent Unifor	Anthony Dale

Section 6-58 – Employee files complaints under Union Constitution – Following filing of complaints Union cancels Local's Charter – Union initially refuses to further process complaints – Union's Public Review Committee agrees to look into complaints – Complaints not yet resolved and Public Review Committee process ongoing.

Section 6-111(1)(l) – Board considers its authority under section to defer consideration of the complaints under section 6-58 – Board determines that it will defer to the Public Review Process under the Union's constitution.

Section 6-59 – Employee alleges that Union settled grievance without his consent in an arbitrary fashion – Union applies to have the application dismissed pursuant to section 6-111(1)(o) alleging that Employee has failed to show an arguable case.

Section 6-59 – Board reviews prior jurisprudence and materials filed on application – Board determines that Employee has made out an arguable case. Application for summary dismissal dismissed by Board.

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love, Q.C., Chairperson:** Jason Rattray (“Rattray”) filed two applications¹ with the Board alleging breaches by Unifor National (“Unifor”) of sections 6-58, 6-59 & 6-60 of *The Saskatchewan Employment Act* (the “SEA”). The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 9841 (the “Steelworkers”) filed summary dismissal applications² in response to the applications made by Rattray.

[2] The applications for summary dismissal were filed by the Steelworkers because they claimed to be the successor to Unifor, Local 481³, as a result of Unifor determining not to represent employees⁴ of other unions. The Steelworkers have undertaken representation of the employees of the Saskatchewan Government and General Employees’ Union (“SGEU”) and have applied to be recognized by the Board as the successor to the bargaining rights of those employees pursuant to section 6-21 of the SEA. No objection was taken by any of the parties to the applications by the Steelworkers.

[3] At the commencement of the hearing, it was agreed that the (2) two applications by Rattray would be consolidated as would the (2) two applications for summary dismissal.

Facts:

[4] Rattray is a former employee of SGEU. He was employed with SGEU as a Labour Relations Officer. He was terminated by SGEU on April 13, 2016 for what SGEU alleged was proper cause. His dismissal was grieved by Unifor⁵ on his behalf. That grievance was settled on June 30, 2016 by Unifor. Mr. Rattray did not agree with the settlement arrived at between Unifor and SGEU and refused to execute the Settlement Agreement.

[5] On September 20, 2016, SGEU advised Unifor that they considered the matter completed and requested that Unifor execute the Settlement Agreement. On September 30, 2016, Unifor was advised by SGEU that they considered all of the grievances filed in respect to

¹ LRB File Nos 012-17 and 022-17

² LRB File Nos 104-17 and 105-17

³ Formerly CEP, Local 481

⁴ The Employees in question were employees of the Saskatchewan Government and General Employees’ Union

⁵ At that time, Unifor represented the employees of SGEU.

Rattray were now resolved. They made payment of the agreed settlement amount to Rattray by cheque dated September 29, 2016.

[6] On November 8, 2016, Unifor revoked its Charter for Local 481, which was the local which represented employees of SGEU. Those employees sought new representation and the Steelworkers were chosen as their representative to replace Unifor. On January 25, 2017, the Steelworkers applied to the Board to be recognized as the successor to Unifor. Unifor Local 481 became the Steelworkers Local 9841. Unifor and the Steelworkers entered into an agreement respecting the transfer of bargaining rights on or about January 20, 2017.⁶

[7] In the interim, on January 10, 2017, Mr. Kevin Yates, as President of the former Unifor, Local 481, confirmed to SGEU that the grievances filed with respect to Rattray “are closed without prejudice”.

[8] On January 26, 2017, Rattray filed his first application against Unifor. That application⁷ engaged section 6-59 of the *SEA* and was primarily in relation to the grievances filed by the union and the resolution of those grievances.

[9] On February 9, 2017, Rattray filed another application⁸ against Unifor. This application engaged section 6-58 of the *SEA* and was primarily in relation to allegations against Unifor and other officials of the Local related to charges brought by Rattray under the constitution of Unifor.

[10] Additional facts as found in relation to particular aspects of the two complaints and the summary dismissal applications will be referenced as necessary during the analysis section of this decision.

Relevant statutory provision:

[11] Relevant statutory provisions provide as follows:

Internal union affairs

6-58(1) *Every employee who is a member of a union has a right to the application of the principles of natural justice with respect to all disputes between the employee and the union that is his or her bargaining agent relating to:*

⁶ See paragraph 4(f) of the Application for Successorship on LRB File No. 022-17 and paragraph 5-10 of the Reply filed by Unifor in LRB File No. 012-17

⁷ LRB 012-17

⁸ LRB File No. 022-17

- (a) *matters in the constitution of the union;*
- (b) *the employee's membership in the union; or*
- (c) *the employee's discipline by the union.*

(2) *A union shall not expel, suspend or impose a penalty on a member or refuse membership in the union to a person, or impose any penalty or make any special levy on a person as a condition of admission to membership in the union if:*

- (a) *in doing so the union acts in a discriminatory manner; or*
- (b) *the grounds the union proposes to act on are that the member or person has refused or failed to participate in activity prohibited by this Act.*

Fair representation

6-59(1)*An employee who is or a former employee who was a member of the union has a right to be fairly represented by the union that is or was the employee's or former employee's bargaining agent with respect to the employee's or former employee's rights pursuant to a collective agreement or this Part.*

(2)*Without restricting the generality of subsection (1), a union shall not act in a manner that is arbitrary, discriminatory or in bad faith in considering whether to represent or in representing an employee or former employee.*

Steelworker's arguments:

[12] The Steelworkers provided a written argument with case authorities which we have reviewed and found helpful. The Steelworkers argued that the materials provided to the Board in respect of the two applications did not disclose an arguable case against Unifor. They argued that the applications and other materials to be considered by the Board were devoid of facts which the Board could rely upon to support an arguable case being found.

[13] The Steelworkers also argued that sections 6-58 & 6-59 did not grant jurisdiction over complaints against the parent national organization for Unifor as that organization was not, at any time, the bargaining agent for the employees of SGEU. Rather, the Steelworkers argued, the bargaining agent for those employees was the Communications and Paperworkers Union of Canada Local 481 ("CEP, Local 481"). The National organization for the Communications and Paperworkers Union of Canada merged with the National organization of the Canadian Auto Workers Union to form Unifor. CEP, Local 481 remained as the bargaining agent for the employees of SGEU until the local Charter was cancelled by Unifor National.

[14] The Steelworkers also argued that the bargaining obligations for employees of SGEU were then assumed by a new Local chartered by the Steelworkers as Local 9841. This entity, or CEP, Local 481, not Unifor National was the proper bargaining representative at all relevant times. As such, any claims against Unifor National should be dismissed.

Unifor's arguments:

[15] Unifor adopted and approved of the arguments advanced by Steelworkers. Unifor stressed the separate legal identity of Unifor from the Local Union chartered by the national organization. That Local entity, it argued, held the bargaining rights for the employees of SGEU.

[16] Unifor also argued that upon revocation of the Local Union's charter by Unifor, that the access to the Unifor constitution was also terminated. Unifor noted, however, that complaints by Rattray were currently under consideration by the Public Review Committee of Unifor in accordance with its constitution. However, Unifor noted that further access to the Public Review Committee process may be unavailable should the Board assume jurisdiction insofar as the complaint by Rattray concerned. Unifor noted that it had argued before the Public Review Committee that Rattray must choose his forum and that any complaint should not be heard in two separate forums.

SGEU's arguments:

[17] SGEU also supported the summary dismissal of the applications by Rattray. SGEU argued that there were no facts provided in support the claims advanced by Rattray. It argued that it had negotiated a resolution of the grievances with the Local Union in good faith.

Rattray's arguments:

[18] The representative for Rattray argued that Unifor was a proper party because representatives of the national organization had participated in bargaining with SGEU and had signed the collective agreement. He argued that Unifor had abandoned charges made by Rattray against Unifor and the local Union's officials.

[19] Rattray's representative also argued that the Local 481 did not consult with Rattray prior to concluding the settlement with SGEU of the grievances. He also argued that

Ratray was an unsophisticated applicant and should be granted some leeway in respect of his filings and any deficiencies therein.

[20] In his arguments, Ratray's representative also acknowledged that the allegations made in LRB 022-17 as against Mr. Kevin Yeates and Mr. Larry Buchinski were not well founded and were withdrawn.

Analysis:

The Board's Jurisprudence:

[21] The Board recently reviewed and confirmed its jurisprudence respecting applications for summary dismissal in its decision in *Lyle Brady v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771 et al*⁹. This process was originally adopted by the Board in *International Brotherhood of Electrical Workers, Local 529 v. KBR Wabi Ltd.*¹⁰ [2013] CanLII 73114 (SKLRB), LRB File Nos. 188-12, 191-12 - 193-12, & 198-12 – 201-12..

[22] In KBR Wabi, the Board established the following test with respect to the exercise of its authority to summarily dismiss an application for lack of evidence or no arguable case. At paragraphs [79] & [80] the Board said:

[79] Taking all of this into consideration, we adopt the following as the test to be applied by the Board on the exercise of its authority under s. 18(p) of the Act.

- 1. In determining whether a claim should be struck as disclosing no arguable case, the test is whether, assuming the applicant proves everything alleged in his claim, there is no reasonable chance of success. The Board should exercise its jurisdiction to strike on this ground only in plain and obvious cases and where the Board is satisfied that the case is beyond doubt.*
- 2. In making its determination, the Board may consider only the application, any particulars furnished pursuant to demand and any document referred to in the application upon which the applicant relies to establish his claim.*

[80] However, the Soles case, supra, also provided for summary dismissal without an oral hearing pursuant to s. 18(q) of the Act. While we recognize that these two powers need not be exercised together, there are occasions when the Board may

⁹ LRB File No. 130-15 & 151-15, Decision dated July 24, 2017 (not yet reported)

¹⁰ [2013] CanLII 73114 (SKLRB), LRB File Nos. 188-12, 191-12 to 193-12 & 198-12 to 201-12.

determine that a matter may be better dealt with through written submissions, without an oral hearing. This was the procedure contemplated by Soles.

The Materials before the Board:

[23] The Board has the following materials before it with respect to these applications:

LRB 012-17:

1. The application filed January 26, 2017
2. Reply filed by SGEU filed February 8, 2017
3. Reply filed by the Steelworkers filed February 8, 2017
4. Reply filed by Unifor, Local 481 filed February 9, 2017
5. Application for Summary Dismissal filed June 6, 2017
6. Responses by Rattray to application for summary dismissal filed July 21, 2017.

LRB File 022-17:

1. The application filed February 9, 2017
2. Reply filed by SGEU filed February 21, 2017
3. Reply filed by the Steelworkers filed February 23, 2017
4. Application for summary dismissal filed June 6, 2017
5. Responses by Rattray to application for summary dismissal filed July 21, 2017.

[24] The matters alleged in the two applications are quite different. We will, therefore, deal with each of them in turn.

LRB File No. 012-17

[25] In paragraph 4 of his application, Rattray provides the following: [sic]

Unifor Local 481 has arbitrarily withdrawn grievances relating to my termination from SGEU. ..Further, Unifor National has arbitrarily revoked Unifor Local 481 Charter...In the attached letter..., it is stated that Unifor will cooperate with your local union to ensure that the interests of your members are safeguarded during

the following transition process". Additionally, several charges against elected members of UNIFOR, Local 481 have been abandoned by Unifor even though the process to hear the charges were underway at the time the letter... was sent.... In following the UNIFOR constitution, I sought application to the Public Review Board to have them review the decision to revoke UNIFOR Local 481's Charter, not hear my grievance appeals or hold a hearing for the charges. This has impacted my employment, has served to absolve those charged with violations of the UNIFOR Constitution and violated my rights to Natural Justice.

Attached to this application was the letter referenced in paragraph [6] above confirming withdrawal of the grievances as well as a letter dated December 23, 2016 to Rattray advising that Unifor National would not be further considering his claims against members of the local Union's executive as Unifor National considered that Unifor constitution no longer applied to the Local.

[26] The Reply from SGEU provided the following:

1. *The Applicant was employed as a Labour Relations Officer with the employer during the period May 20, 2008 to April 13, 2016.*
2. *A Labour Relations Officer is a significant position within SGEU, the duties of which involve providing advice and technical assistance to bargaining units and members, negotiating collective agreements for bargaining units and handling grievances. A copy of the job description for the LRO position is attached as Exhibit 1.*
3. *A primary responsibility of the position is to establish and maintain functional relationships with employer representatives, staff, leaders, members and others, internally and externally, as required and exercise sound judgment.*
4. *Beginning in February, 2015, the applicant was the subject of several coaching letters, a disciplinary letter and two suspensions arising from comments and behaviors displayed to and about those that he was to establish and maintain functional relationships with, culminating in a final disciplinary letter issued November 19, 2015. A copy of the final disciplinary letter is attached as Exhibit 2.*
5. *The Applicant was also the subject to an internal harassment (staff to staff) complaint, the result of which it was determined that the applicant violated the employer's harassment policy. In connection with this complaint there was an initial finding of harassment by an outside investigator, an appeal of the findings launched by the applicant upon which Anne Wallace determined the initial investigation was flawed, followed by a second investigation conducted by the Honorable Ronald Barely Q.C., where it was determined that the Applicant's conduct towards the complainant constituted harassment. The employer then implemented workplace restrictions so as to minimize the contact between the complainant and the applicant.*
6. *The Applicant grieved each disciplinary action and the workplace restrictions and each proceeded through Step 2 presentations under the Collective Bargaining*

Agreement between Unifor 381 and the employee. A copy of the Collective Bargaining Agreement is attached as Exhibit 3.

7. *In each case the discipline was upheld as originally imposed or modified as a result of the Step 2 decision.*
8. *Following the issuance of the final disciplinary letter and the Step 2 decisions, the Employer terminated the employment of the Applicant on April 13, 2016 for just cause. A copy of the termination letter is attached as Exhibit 4. The termination was also grieved by the Applicant.*
9. *Following the termination of the applicant's employment the Employer and Union entered into discussions and negotiations with a view to resolving all of the outstanding grievances, including the termination.*
10. *Because of internal conflicts within the Union local the employer was directed to conduct such discussions with national representatives of the Union.*
11. *These discussions resulted in a resolution and settlement of all outstanding grievances. The settlement agreement between the Employer and Union is attached as Exhibit 5.*
12. *The settlement called for certain payments to be made to the Applicant along with letter of reference in exchange for a final release and withdrawal of all grievances. The payment represented approximately 6 months salary and benefits.*
13. *The Settlement Agreement was signed on June 30 and July 5, 2016 but not immediately executed on as the Union representatives had indicated initially that they wanted to have the applicant sign off or as may be necessary have the resolution reviewed or voted upon by the Union's local grievance committee or membership.*
14. *The Employer allowed that process to occur and was subsequently informed that the local upheld the settlement of the grievances at the membership level.*
15. *After receiving advice that the settlement was upheld by the membership the Employer proceeded to finalize the settlement first issuing a letter to the Union National on September 20, 2016, a copy of which is attached as Exhibit 6 and then a letter to the Union local on September 30, 2016, a copy of which is attached as Exhibit 7.*
16. *The net settlement proceeds were deposited to Mr. Rattray's account on September 29, 2016. A copy of the payment advice is attached as Exhibit 8.*
17. *The money paid to the Applicant has not been returned.*
18. *On January 10, 2017 the Employer received a letter from the Union local closing the grievances. A copy of the letter is attached as Exhibit 9.*

[27] The Steelworker's Reply to the application provided the following facts:

- (a) *The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 9841 is a union as defined in part 6 of The Saskatchewan Employment Act, and*

is the successor union to Unifor Local 481. The respondent union has filed an application for union successorship, LRB File No. 011-17. As of the date of this reply, the application has not been fully processed by the Board and the union is waiting for an order confirming the successorship pursuant to section 6-21 of The Saskatchewan Employment Act.

- (b) *The effective date of the transfer of union obligations as agreed between the predecessor local, Unifor Local 481 and the successor union United Steelworkers Local 9841 is 20 January 2017.*
- (c) *The union local executive existing prior to the transfer of obligations and union successorship has continued after the transfer of obligations and union successorship. The United Steelworkers Local 9841 says that all grievances filed on behalf of Mr. Jason Rattray were processed in accordance with the Local 481 bylaws and with due consideration to the interests of Mr. Rattray and all the union's members, fairly and in good faith.*
- (d) *According to the bylaws of Local 481, the membership is the highest authority of the Local.*
- (e) *In accordance with the bylaws of the Local, the Local's grievance committee has the duty to review, investigate and determine the merits of all grievances, and provide recommendations of grievances to the Local executive regarding proceeding to arbitration or closing the grievance without prejudice.*
- (f) *Prior to withdrawing the grievances, the Local sought a legal opinion on the viability of arbitration success in relation to the termination grievance. The applicant, Mr. Rattray, was given full opportunity to present information to the lawyer preparing the opinion and provide any information he wished to be taken into account in preparation of this legal opinion. The legal opinion identified chance of success of reinstatement of the grievor at less than 5%.*
- (g) *The grievance committee considered the legal opinion and the grievance committee recommended not to proceed to arbitration but to make every effort to secure a severance package for the applicant.*
- (h) *The recommendation of the grievance committee was accepted by the Local executive.*
- (i) *The Local asked the Manitoba/Saskatchewan Area Director of Unifor to engage in negotiations with the employer in an attempt to resolve the grievances by agreement. The Manitoba/Saskatchewan Area Director, Ken Stuart reached an agreement with the employer and recommended the offer to the Local executive as the best the union could achieve. The Local executive accepted Mr. Stuart's recommendation. The union and employer signed a settlement agreement and release including a severance payment, a payment for relinquishing any right of reinstatement and a letter of reference to Jason Rattray. This agreement was signed on behalf of SGEU and Unifor Local 481. A letter of reference detailing dates of employment and duties was provided to the applicant by the employer, and payment pursuant to the agreement was deposited into the applicant's account. The applicant accepted payment pursuant to the agreement and no payment pursuant to the agreement has been repaid, to the best of the union's information and belief.*
- (j) *Following the settlement of the union's grievances, the applicant was afforded an opportunity to appeal the decision of the grievance committee and Local executive to the membership as a whole, in accordance with the Local's grievance and arbitration policy. At an appeal hearing to a meeting of the Local, attended in person and by telephone conference the applicant and his advocate were afforded full opportunity to provide any information or grounds for his appeal of the decision not to pursue the grievances to arbitration and to negotiate a severance package. The applicant was unsuccessful in this appeal and the union membership upheld the decision of the grievance committee and executive not to proceed to arbitration.*

- (k) *The employer, SGEU has paid out the amount owing pursuant to the agreement between the employer and the union to resolve the grievances related to Jason Rattray to Mr. Rattray and to the best of the union's knowledge, such payment to Mr. Rattray has not been returned to the employer or union*
- (l) *The Local decision to withdraw the grievances related to the applicant's termination from SGEU was made with proper consideration of the facts, in consideration of a legal opinion with respect to chances of success, and in consideration of all relevant factors for the local union to take into account.*
- (m) *To the best of the local's knowledge, the applicant has been successful in obtaining subsequent employment since his termination from SGEU.*
- (n) *The United Steelworkers Local 9841 denies violating the grievor's rights to natural justice in any manner.*
- (o) *On or about November 22, 2016, Unifor National revoked the Charter for Unifor Local 481. The local union was not involved in the decision to revoke the Charter of the Local.*
- (p) *The local union does not control and had no input into how Unifor National applied the national constitution to Mr. Rattray, before or after November 22, 2016.*
- (q) *The union Local says it fairly represented the applicant and did not act in a manner that was arbitrary, discriminatory or in bad faith in deciding to not pursue the grievances to arbitration, obtain a settlement agreement, and withdraw the grievances related to the applicant's termination from SGEU.*

[28]

Unifor National provided the following in its Reply:

1) *Communications, Energy and Paperworkers Union of Canada Local 481 ("CEP Local 481") entered into a collective agreement with Saskatchewan Government and General Employees Union ("SGEU"). The current collective agreement is in operation from 2011 to 2016.*

2) *An amended certification order (LRB File No. 182-13) names CEP Local 481 as the bargaining agent for the employees of SGEU that are in the bargaining unit to which the above-mentioned collective agreement applies.*

3) *Unifor Local 481 was the successor of CEP Local 481 as a result of a merger of Communication Energy and Paperworkers' Union of Canada and Unifor in 2013. No declaration of successorship in respect of the transaction was sought from the Board.*

4) *In January of 2015, the Unifor National Executive Board ("Unifor NEB") adopted a policy titled "Members Employed by Other Trade Unions". Copies of that Policy and an accompanying letter from the Unifor National President are attached.*

5) *The 2015 Policy was adopted as a result of concerns by Unifor about the conflicting interests of persons who are employed by (and often members of) a trade union and also represented by a Unifor Local Union as their bargaining agent. Unifor's concerns included concerns that its members who were employed by (and often members of) other trade unions sometimes acted in the interests of their employer and contrary to the interests of Unifor when engaged in Unifor union activities.*

6) *The 2015 Policy emphasized that the continued relationship between Unifor and such local unions was mutually voluntary. It contained a provision that said:*

6) *Unifor representation of members employed by another union is at all times a mutually voluntary relationship based on a shared understanding of these principles to serve the interests of the labour movement. Unifor shall ensure that members employed by other unions are aware of this policy.*

7) *On November 8, 2016, the Unifor NEB revoked the Unifor charter of Local 481 and other Local Unions that represented staff of other trade unions in Saskatchewan and British Columbia. That decision was made pursuant to the 2015 Policy.*

8) *Following the revocation of its local union charter, Local 481 continued to exist as a union as defined in the Saskatchewan Employment Act. It continued as a certified bargaining agent. Its collective agreement with SGEU was unaffected. Unifor did not purport to affect the relationship between Local 481 and its members. That relationship was unchanged.*

9) *Unifor assured Local 481 that Unifor would cooperate with Local 481 to effect an orderly transition following the charter revocation. It provided such assistance. The members of Local 481 subsequently voted to affiliate or join with USW, as set out in the application filed by USW Local 9841 (LRB File No. 011-17).*

10) *In order to confirm the successorship of USW, Local 481 entered into a successorship agreement with USW Local 9841, as described in LRB File No. 011-17.*

11) *Prior to all of the events described above, the Applicant's employment was terminated by SGEU in April 2016. He had filed several grievances about other matters as well.*

12) *Unifor understands that Local 481 has withdrawn or settled the Applicant's various outstanding grievances.*

13) *Prior to all of the events described above, the Applicant had filed various charges against Local 481 's officers pursuant to the Unifor Constitution. In December 2016, Unifor informed the Applicant that it would not continue to hear those charges. Unifor had severed its relationship with Local 481 by revoking Local 481 's local union charter. Unifor considered that it no longer exercised any authority over Local 481.*

14) *Despite the fact that Unifor has severed its relationship with Local 481 by revoking Local 481's local union charter, the Applicant has continued to make requests or appeals pursuant to the Unifor Constitution including a request for review made to the Public Review Board which exists pursuant to the Unifor Constitution.*

Response to Section 6-58 Allegations

1) *The applicant's union for all purposes was Local 481. It was his bargaining agent.*

2) *Section 6-58 imposes natural justice requirements "with respect to all disputes between the employee and the union that is his or her bargaining agent". Those natural justice requirements therefore apply to Local 481. They do not apply to Unifor.*

3) *The essential character of the matters complained of that concern Unifor is that Unifor acted improperly when it revoked Local 481's local union charter pursuant to its 2015 NEB Policy. That is a matter about the relationship of a local union and its parent trade union.*

4) *If the legislature had intended to impose natural justice requirements on matters concerning relationships between local unions and their parent trade union, it could have done so but did not.*

5) *Even if section 6-58 applied to Unifor, the Applicant does not plead any facts that would support a finding that he was deprived of natural justice by Unifor in a matter concerning its Constitution. Unifor. His application ought to be dismissed on the basis that it does not set out a prima facie case that section 6-58 of the Act has been violated.*

Response to Section 6-59 Allegations

1) *Similarly, the Applicant cannot rely on section 6-59 of the Act to ground a complaint against Unifor. That section permits a complaint to be made against the union that was his bargaining agent. His bargaining agent was Local 481. Unifor was not his bargaining agent.*

2) *Even if section 6-59 applied to Unifor, the Applicant does not plead in any way that Unifor acted arbitrarily, in bad faith, or in a discriminatory way. His application ought to be dismissed on the basis that it does not set out a prima facie case that section 6-59 of the Act has been violated.*

Response to Section 6-60 Allegations

3) *This section is a remedial provision which cannot be the basis for a finding of a contravention.*

[29] Rattray's Reply to the application for summary dismissal provided little by way of additional facts. It presented arguments as to why the application for summary dismissal should not be granted.

Analysis and Decision regarding LRB 012-17

[30] In respect of applications under section 6-59, the Board does not review the facts to determine if the grievance has merit or not. What its inquiry is limited to is the process and procedures used by the Union in respect to the grievance and whether the process was tainted by arbitrary conduct, discriminatory conduct or bad faith on the part of the Union towards the applicant.

[31] The jurisprudence adopted by the Board is similar, in many respects, to the jurisprudence adopted by the Courts in respect to its examination of whether or not a statement

of claim discloses a reasonable cause of action. In *R. v. Imperial Tobacco Canada Ltd.*¹¹, Chief Justice McLachlin set out the principles governing such applications:

- (a) *it is incumbent on a plaintiff to clearly plead the facts upon which it relies in making its claim (para 22);*
- (b) *such applications proceed on the basis that the facts pled are true, “unless they are manifestly incapable of being proven” (paras 22 and 23);*
- (c) *a claim will only be struck if it is plain and obvious it discloses no reasonable cause of action, that is, it has no reasonable prospect of success (para 17); and*
- (d) *“[t]he law is not static and unchanging”, thus, the approach taken in applications to strike “must be generous and err on the side of permitting a novel but arguable claim to proceed” (para 21)*

[32] To establish an arguable case, the Board must be able to glean from the materials filed sufficient facts, which taken to be true, would give rise to a violation of the *SEA*, in this case, sections 6-58 or 6-59 thereof.

[33] In this case, it is undisputed that the Unifor filed a grievance in respect of the termination of Rattray and prosecuted that grievance on his behalf. Ultimately, the Union settled the grievance, albeit without the consent or participation of Rattray in that resolution.

[34] The Board has dealt with similar situations in the past. In *K.L.S. v. Grain and General Services Union and Dawn Food Products (Canada) Ltd.*¹², the Board considered the ability of a Union to withdraw a grievance without the consent of the person affected by the grievance. At paragraph [56] of that decision, the Board cited its earlier decision in *Gibson v. Communications, Energy and Paperworkers Union of Canada, Local 650 and Fantastic Cleaning*¹³, where at paragraphs [23] and [24], the Board says:

[23] The first issue this Board must decide is whether the Union could enter into a settlement with the Employer without the Applicant’s consent. As set out in Berry, supra, the right to take a grievance to arbitration is reserved to the Union. (see also: Cheston v. Saskatchewan Retail, Wholesale and Department Store Union and Sherwood Co-operative Association Limited, [1998] Sask. L.R.B.R. 36 at p. 45, in which the Board confirms the Union’s authority to settle a grievance).

¹¹ [2011] SCC 42 (CanLII), [2011] 3 SCR 45

¹² [2014] CanLII 11662 (SKLRB)

¹³ [2002] Sask. L.R.B.R. 574, LRB File No. 089-02

We find that the Union was entitled to enter into the settlement agreement with the Employer, without the Applicant's consent or agreement as to the terms of the agreement.

[24] The Board must also determine whether the Union acted in an unreasonable or arbitrary manner, disregarding the Applicant's interests or treating them in a manner that could be considered perfunctory. There was no evidence that the Union acted in bad faith or in a discriminatory manner. Neither did the Union act in a manner that could be described as perfunctory, unreasonable or lacking in thoughtfulness. In deciding not to proceed to arbitration and to enter into a settlement agreement with the Employer, the Union conducted a thorough analysis of the many factors that were before it. With this analysis as a basis, the Union entered into a settlement agreement with the Employer, securing the Applicant's immediate reinstatement, partial compensation and status as a permanent employee.

[35] While it appears settled that a union may withdraw a grievance without the consent of the person impacted by the grievance, there is a secondary element as noted in paragraph [24] from *Gibson*. That is, whether or not in the withdrawal of such grievance, the Union acted in a manner which was arbitrary, discriminatory, or in bad faith towards the affected union member.

[36] The only allegation made by Rattray in his application is that " *Unifor Local 481 has arbitrarily withdrawn grievances relating to my termination from SGEU.*" The Replies and other materials filed note that the grievances were, indeed, withdrawn and monies paid pursuant to the settlement agreement to Rattray. He argues that he was not consulted, nor did he agree with the terms of the settlement with SGEU. However, he provides few facts on which we can rely showing that the process was flawed.

[37] In his application with respect to LRB File No. 022-17, some additional issues are raised concerning the appeal process from the decision not to proceed with the grievances to arbitration and to effect settlement of them. Allegations are made that the Union failed to observe its previous process (the Mark Hannant Termination process), failed to review a defective harassment investigation, holding the meeting where Rattray could not attend in person, and issues regarding the conduct of the meeting by telephone conference call and electronic voting. That application also raised issues with respect to the legal opinion provided in respect of the arbitration process.

[38] However, at this stage of the proceedings, the Board does not look at the strength or weakness of the case. It must only determine if there is an arguable case put forward by the materials filed. In our view, the materials presented to the Board, even if they are somewhat imprecise factually, when considered along with the materials submitted in respect of LRB File No. 022-17 raise an arguable case to be brought forward for a hearing pursuant to section 6-59 of the *SEA*.

[39] We have nothing in the materials filed to show the rationale for the withdrawal of the grievance, nor the motivation for such withdrawal. Rattray claims that such withdrawal was arbitrary. He will have to prove such at the hearing of this matter.

LRB File No. 022-17

[40] LRB File No. 022-17 deals principally with section 6-58 of the *SEA*. That section provides that “[E]very employee who is a member of a union has a right to the application of the principles of natural justice with respect to all disputes...relating to (a) matters in the Constitution of the Union.”

[41] Rattray raises issues in this complaint with respect to the actions of some members of the Local Union’s Executive. However, most of those allegations were withdrawn at the hearing of this matter.

[42] Rattray also raises issues with respect to the cancellation of Unifor Local 481’s Charter by Unifor as well as Unifor’s refusal to deal further with his complaints against Local Union officials under the Constitution.

[43] The Board is aware, however, that the process under the Unifor Constitution remains available to him and that a review is currently under consideration by the Public Review Committee of Unifor in accordance with its Constitution.

[44] Until this constitutional process is concluded and a final decision rendered, the Board believes the process should be exhausted and any issues between the parties related to the principles of natural justice refined prior to the Board entering into any consideration of the

matter. The Board has the authority¹⁴ to defer deciding any matter if the Board considers “that the matter could be resolved by ...an alternative method of resolution”. Access to the mechanisms in the Unifor constitution would provide such an alternative method of resolution.

[45] Accordingly, we defer any consideration of LRB File No. 022-17, awaiting a determination by the Public Review Committee of Unifor and any further proceedings under Unifor’s Constitution arising therefrom.

[46] The Steelworker’s application for summary dismissal pursuant to section 6-111(1)(o) is dismissed.

[47] This is a unanimous decision of the Board. An appropriate Order will accompany these reasons.

DATED at Regina, Saskatchewan, this **24th** day of **August, 2017**.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson

¹⁴ Section 6-111(l) of the *SEA*