

October 11, 2019

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Darren Richens  
Self-Represented

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Dear Mr. Longo, Mr. Richens and Ms. Bogad:

**Re: LRB File No. 186-16– Summary Dismissal Application  
CUPE v D. Richens and City of Saskatoon**

**Reasons for Decision:**

**[1]** The Canadian Union of Public Employees, Local 859 [“Union”] has filed for summary dismissal of Darren Richens’ application alleging that the Union failed in its duty of fair representation, pursuant to section 6-59 of *The Saskatchewan Employment Act* [“Act”].<sup>1</sup> The Union asked that the application for summary dismissal be placed before the Board in accordance with the procedure utilized in *Roy v Workers United Canada Council*, 2015 CanLII 885 (SK LRB) [“Roy”]. Through its application, the Union sought to have the underlying matter dismissed without a hearing.

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<sup>1</sup> Application for Summary Dismissal, LRB File No 186-16; Application for Duty of Fair Representation, LRB File No 006-16.

**[2]** The Union's application has been put before a panel consisting of Vice-Chairperson Mysko and Board members Shelly Boutin-Gervais and Allan Parenteau. These are the Board's Reasons for Decision, dismissing the Union's summary dismissal application.

**[3]** The Union relies on clauses 6-111(1)(o),(p), and (q) of the Act. The Union says that the underlying application is lacking in evidence or an arguable case and/or the allegations do not engage the jurisdiction of the Board as they fail to allege an actionable violation of the Act.

**[4]** Richens' application alleges an unwillingness, presumably on behalf of the Union, to follow "union procedures" in representing its membership, and to file grievances. More specifically, Richens alleges the following:

- 1) *Superintendent threatened physical violence to shop steward;*
- 2) *Misrepresentation by city staff to WCB on injury claim; and*
- 3) *Refusal to file grievance on progressive discipline.*

**[5]** At the core of Richens' application is the contention that the Union has refused to deal with any of the aforementioned matters. In this vein, he alleges:

*...was never told of anything asked [sic] for copies of file from Mike S president cupe 859 and Rhonda H. local cupe National Rep have [sic] received nothing ever.*

*...  
Nothing ever allowed to proceed because of Mike S (President 859) Scott k 859 VP refuse to deal with any of my matters. Even Senior Shop Stewart [sic] Cam Alexander went to Mike S on my issues and was refused chance to file anything on my behave [sic]. Cam was given reasons by Mike S but won't share with me.*

**[6]** In Reply, the Union states that it has provided advice and representation to Richens, has filed a number of grievances on behalf of Richens, and was successful in a grievance resolution wherein the initial discipline was ultimately reduced. The City takes no position with respect to Richens' complaint against the Union but asks to be afforded the opportunity to provide submissions in the event that a "Decision and Order regarding any grievances" is being considered by the Board.

**[7]** The following provisions of the Act are applicable:

**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.*

...

**6-111(1)** *With respect to any matter before it, the board has the power: 6-111(1)  
With respect to any matter before it, the board has the power:*

...

*(o) to summarily refuse to hear a matter that is not within the jurisdiction of the board;*

*(p) to summarily dismiss a matter if, in the opinion of the board, there is a lack of evidence or no arguable case;*

*(q) to decide any matter before it without holding an oral hearing;*

**[8]** In an application for summary dismissal, the Board may consider the subject application, any particulars that have been provided, and the documents (referred to within the claim) upon which the applicant relies to establish his or her case. The onus is on the applicant to provide sufficient particulars to disclose a violation of the Act, or to frame the application in such a manner that the nature of the complaint is comprehensible.

**[9]** In deciding whether to dismiss summarily, the Board assesses whether the allegations, assuming that they are true and are ultimately established, disclose a violation of the Act. If the Board determines that the application has no reasonable prospect of success, then the Board should exercise its power to dismiss the application on a summary basis.

**[10]** The Board must be careful not to prejudge the case before it and must exercise its power to summarily dismiss only in plain and obvious cases, or in cases where the application is patently defective. In deciding whether to summarily dismiss, the Board must avoid weighing evidence, assessing credibility or evaluating novel statutory interpretations.

Roy at paragraphs 8-9.

*See also, Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers (United Brotherhood of Carpenters and Joiners of America, Local*

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*1985) v Saskatchewan Labour Relations Board*, 2011 SKQB 380 (CanLII) [“*United Brotherhood of Carpenters*”] at paragraphs 99 to 110.

**[11]** The Board notes that its ability to summarily dismiss is separate from its ability to decide any matter without an oral hearing: *United Brotherhood of Carpenters* at paragraph 108. Still, in the current case, the Board finds that it is appropriate to decide the Union’s Application on the basis of the written materials alone.

**[12]** To sustain a violation of section 6-59 of the Act, an application must allege that the subject trade union has acted in a manner that is arbitrary, discriminatory, or in bad faith. The Board does not sit in appeal of every decision made by a trade union or seek to ensure that union members obtain their preferred results or avoid undesirable outcomes: *Roy* at paragraph 15.

**[13]** Richens alleges that the Union has failed to represent him by refusing to deal with any of his matters, including his grievance on progressive discipline. In its Reply, the Union suggests that it has filed a number of grievances on behalf of Richens, and has resolved a grievance by achieving a reduction in the discipline imposed by the Employer.

**[14]** While a union has the right to decide whether to proceed with a grievance, the union’s decision must not be arbitrary, discriminatory, or taken in bad faith. Whether the Union has acted arbitrarily, discriminatorily, or in bad faith is a factual matter, as demonstrated by the Board’s decision in *Prebushewski v Canadian Union of Public Employees, Local No 4777*, 2010 CanLII 20515 (SK LRB), cited in *Roy* at paragraph 15:

*[56] For example, this Board has held that there is no breach of the duty of fair representation where a trade union declines to file or withdraws a grievance, if it took a reasonable view of the circumstances and if it made a “thoughtful decision” not to advance the grievance. See: I.R. v. Canadian Union of Public Employees, Local 1975-01, et al., [2006] Sask. L.R.B.R. 344, LRB File No. 139-03; and Dave Leblanc v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 555, et al., [2007] Sask. L.R.B.R. 648, LRB File No. 028-07.*

*[57] Similarly, this Board has recognized that a trade union does not breach its duty of fair representation by settling a grievance without the grievor’s consent, even if it does so over the objection of the grievor, unless it acts in a manner that is seriously negligent, arbitrary, capricious, discriminatory or wrongful. See: Randy Gibson v. Communications, Energy and Paperworkers Union of Canada, Local 650, [2002] Sask. L.R.B.R. 574, LRB File No. 089-02. Similarly (and as already indicated), this Board has confirmed that it does not “sit on appeal” of a trade*

*union's decision not to advance a grievance and, in particular, will not decide if a trade union's conclusion as to the likelihood of success of a grievance was correct or minutely assess each and every decision made by a trade union in representing its members. See: Kathy Chabot v. Canadian Union of Public Employees, Local 4777, supra.*

*[58] This Board has acknowledged that many factors are taken into consideration by a trade union in deciding whether or not to advance a grievance, one of which is the likelihood of obtaining a favourable outcome for the grievor. But there are other factors that may also legitimately influence a trade union's decision, the most obvious being the cost of proceeding to arbitration. By way of further example, this Board has held that it is not inappropriate for a trade union to consider the injury to its credibility and relationship with an employer by advancing a questionable grievance. See: Edward Datchko v. Deer Park Employees' Association, [2006] Sask. L.R.B.R. 354, LRB File Nos. 262-03 & 263-03*

**[15]** In the current case, the alleged reduction in discipline is a mere pleading until proven via evidence properly put before the Board. The same is true of the suggestion that the grievance matters are wholly "resolved". These matters engage the Board's role in weighing and assessing the evidence and thereby determining whether the Union has acted arbitrarily, discriminatorily, or in bad faith.

**[16]** In the current case, the principal issues that fall to be determined are evidentiary. For the Board to conclude that the Union's conduct was fair, non-arbitrary, and non-discriminatory, the Board must weigh the whole of the evidence properly tendered and tested, including through direct examination, cross examination, and documentary evidence, as relevant. While, on an application for summary dismissal, the Board may consider certain documents referred to within the application, no such documents are properly before the Board. For these reasons, it is not plain and obvious that the application has no reasonable prospect of success.

**[17]** The Board notes that the relevance of the harassment and workplace injury allegations is in question. Still, the whole of the application discloses an overriding concern with Union representation in relation to various complaints, and to this extent suggests some association among the various concerns. For this reason, it would not be appropriate for the Board to hive off and dismiss these two allegations, without giving the applicant an opportunity to present evidence for the purpose of establishing this aspect of his case.

**[18]** The Union's Application is thereby dismissed. LRB File No 006-16 will be placed on the Motions' Day schedule for a hearing on that application.

**[19]** This is a unanimous decision of the Board.

Yours truly,

Barbara Mysko, Vice-Chairperson  
Labour Relations Board