SHARON MAY STROHAN v SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION AND GOVERNMENT OF SASKATCHEWAN

LRB File No: 205-18; April 15, 2019
Chairperson, Susan C. Amrud, Q.C. (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*

For the Applicant:	Andrea Buettner
For the Respondent Union:	Crystal Norbeck
For the Respondent Employer:	Curtis Talbot

Preliminary issues – Duty of fair representation – Application to dismiss entire application for undue delay not granted – Undated allegations and allegations respecting matters preceding arbitration dismissed for undue delay.

Preliminary issues – Duty of fair representation – Application to dismiss for no arguable case not granted.

Preliminary issues – Duty of fair representation – Applicant granted leave to amend application to claim remedies within Board's jurisdiction.

REASONS FOR DECISION

Background:

[1] Susan C. Amrud, Q.C., Chairperson: Sharon Strohan ["Applicant"] was an employee of the Government of Saskatchewan ["Government"]. The Government's Reply in this matter states that in the period November 2014 to January 2017, she filed three harassment complaints and one set of discriminatory action complaints with the Government, with many of the complaints being upheld. On July 30, 2017 she resigned. On August 3, 2017 she attempted to withdraw her resignation but was told by the Government that their decision to accept her resignation would not be reversed. On August 10, 2017 the Saskatchewan Government and General Employees' Union ["Union"] filed two grievances on her behalf:

> *2017 003 042S: Employer has failed to properly consult with the Union and properly accommodate Sharon Strohan in regards to her accommodation/return to work.*[1] *["Grievance 042S"]*
>
> *2017 003 043S: Employer did not reconsider the resinding [sic] of Sharon Strohan's resignation letter or consider the stress, duress, and or any mitigating factors Sharon Strohan was under at the time.*[2] *["Grievance 043S"]*

[2] Grievance 043S proceeded to arbitration on January 11, 2018. On February 27, 2018 the arbitrator dismissed the grievance. On May 16, 2018 the Applicant was advised that the Union had withdrawn Grievance 042S.

[3] The Applicant filed an application ["Application"] with the Board on September 28, 2018 alleging that the Union failed to fairly represent her with respect to her employment with the Government contrary to section 6-59 of *The Saskatchewan Employment Act* ["Act"]. The Union filed a Reply on October 26, 2018; the Government filed a Reply the same day. The Union filed an amended Reply on February 14, 2019. Both Union Replies were signed on October 15, 2018.

Preliminary issues:

[4] A hearing was held on March 25, 2019 to consider a number of preliminary issues raised by the Union and Government. The Union and Government asked the Board to dismiss the Application on one or more of the following grounds:

(a) Delay;
(b) No arguable case;
(c) Lack of jurisdiction to grant the relief sought.

[5] The relevant statutory provisions in consideration of these issues are the following:

> ***Rules of arbitration***
> *6-49(2) The finding of an arbitrator or arbitration board:*
> *(a) is final and conclusive;*
> *(b) is binding on the parties with respect to all matters within the legislative jurisdiction of Saskatchewan; and*
> *(c) is enforceable in the same manner as a board order made pursuant to this Part.*
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> ***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.*

[1] Exhibit U-1.
[2] Exhibit U-2.

(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.

Powers re hearings and proceedings
6-111(1) With respect to any matter before it, the board has the power:

. . .

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

Proceedings not invalidated by irregularities
6-112(1) A technical irregularity does not invalidate a proceeding before or by the board.
(2) At any stage of its proceedings, the board may allow a party to amend the party's application, reply, intervention or other process in any manner and on any terms that the board considers just, and all necessary amendments must be made for the purpose of determining the real questions in dispute in the proceedings.
(3) At any time and on any terms that the board considers just, the board may amend any defect or error in any proceedings, and all necessary amendments must be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

(a) Delay

[6] The first issue the Board considered is whether the Application should be dismissed on the basis of delay. Although the Application refers to events dating back to 2009, at the hearing the Applicant confirmed that her claim is only with respect to the Union's conduct of the January 11, 2018 arbitration.

Argument on behalf of the Union

[7] The Union concedes that there is no statutory timeline for filing a claim under section 6-59 of the Act. While the delay in this matter was not excessive, the Union notes that prior to the hearing the Applicant provided no reasons for the delay. The Union made three requests for particulars, which the Applicant ignored. Applicant counsel's explanation was that the Applicant instructed her not to provide the information. As the Board advised her at the hearing, the Union was entitled to the requested particulars and it was her responsibility as a lawyer to explain that to the Applicant and to comply with her obligations in this regard.

[8] The Union relies on *Nistor v USWA*, 2003 CanLII 62878 (SK LRB). They submit that it is very similar to the facts in this case. In that case, the employee filed his duty of fair representation application with the Board eight months after an arbitrator dismissed the grievance of his termination. With respect to the issue of delay the Board made the following comments:

> *[17] . . . .The Board noted that the fundamental question is whether justice can still be done despite the delay and noted the various factors that will be considered in arriving at the decision. In particular, the Board will consider if the respondent union is prejudiced in its prosecution of the grievance as a result of the delay.*
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> *[18] In the present case, given the timing of the application under s. 25.1, the Union would not be able to prosecute the grievance even if it were found to have been in breach of the duty of fair representation in relation to the suspension grievance. The intervening event, that is, the termination of the Applicant's employment and the resulting arbitration award upholding the termination, render it impossible for the Union to prosecute the Applicant's suspension grievance. The Applicant has no employment status with IMS at this time as s. 25(1.2) of the Act renders the arbitration award "final and conclusive." The only remedy available for a breach of s. 25.1 in these circumstances is an order for damages against the Union.*

[9] The Union also relied on *Hartmier v RWDSU, Local 955*, 2017 CanLII 20060 (SK LRB) ["*Hartmier*"], where the Board made the following findings, at paragraph 120:

> *This survey of relevant Board Decisions reveals that while each decision turned on the particular facts of the case, nevertheless a number of factors figure prominently in the Board's analysis of undue delay applications in duty of fair representation claims. The more prominent factors include:*
>
> - *Length of Delay: The length of delay is critical. An applicant will bear the burden to explain the reasons for any delay and the longer the delay, the more compelling must be the reasons for the delay in filing the application. Now that the Legislature has mandated a statutorily prescribed time limit for the filing of unfair labour practice applications, the Board's tolerance for exceptionally long delays has decreased significantly.*
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> - *Prejudice: Labour relations prejudice is presumed in cases of delay; however, if the delay is extensive or inordinate this factor will weigh more heavily in the analysis. The longer the delay, the greater the prejudice to a respondent. Evidence of actual prejudice to a respondent likely will result in the main application being dismissed.*
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> - *Sophistication of Applicant: An applicant's knowledge of labour law and labour relations matters, generally is an important consideration when assessing the veracity of the reasons for the delay.*
>
> - *The Nature of the Claim: The issues at stake for an applicant will be weighed in the balance. If the consequences of dismissing an application for reasons of delay are significant to an applicant, this will weigh in favour of permitting the application to proceed despite a lengthy delay in its initiation.*
>
> - *The Applicable Standard: When adjudicating delay applications, the standard which has been applied consistently is: can justice be achieved in the matter despite a lengthy delay in commencing it?*

[10] The Union reviewed the application of each of these factors to this matter:

- With respect to length of delay, the Union notes that some of the Applicant's allegations date back to 2009, and some do not specify a date or timeframe. The onus is on the Applicant to justify the delay and, prior to the hearing, no explanation was provided.

- The Union notes that labour relations prejudice is presumed, however in this case actual prejudice would result from the great difficulty that would arise in marshalling evidence relating to some of the allegations given the excessive delay. The Union is also prejudiced because it is no longer able to take action on the Applicant's behalf because her employment status has ceased to exist.

- The Union acknowledges that the Applicant herself is unlikely to have a sophisticated understanding of the law, however on June 6, 2018 she advised the Union she was represented by counsel, negating this factor as an excuse for her delay.

- With respect to the nature of the claim, the Union asserts that the loss of employment was pursued and adjudicated.

- The Union submits that justice cannot be achieved in this matter, either in the proceedings in which the Application will be considered (because of loss or destruction of evidence over time) or in the result of the Application if the Applicant is successful (because the remedies sought by the Applicant cannot be ordered).

Argument on behalf of the Applicant

[11] The Applicant states that her delay in proceeding with this Application was caused, for the most part, by her difficulty in finding a lawyer who would represent her. The Applicant did not give evidence at the March 25, 2019 hearing, but her husband did. His uncontradicted evidence was that they began looking for a lawyer to assist them with this matter in March 2018. A number of lawyers declined to represent her because of conflicts of interest and she was unable to secure legal representation until early June 2018.

[12] She also argues that, until she was advised on May 16, 2018 that the Union was not proceeding with Grievance 042S, the totality of her claim had not been established.

[13] The Applicant referred the Board to *Health Sciences Association of Saskatchewan v Medstar Ventures Inc.*, 2014 CanLII 46713 (SK LA), a case that dealt with the issue of want of prosecution, which is not the issue before the Board.

[14] The Applicant did not address the factors set out in *Hartmier* that the Board has established for considering the issue of delay.

Analysis and Decision

[15] In applying the *Hartmier* factors to this case, the Board makes the following findings.

[16] First, with respect to length of delay, the following facts are relevant. The arbitration decision was issued on February 27, 2018 and provided to the Applicant on March 2, 2018. After receipt of the decision the Applicant's husband sent emails to the Union on March 6, 2018 and March 8, 2018, expressing their dissatisfaction with the conduct of the arbitration[3]. The Union advised the Applicant on May 16, 2018 that the Union had withdrawn Grievance 042S[4]. The Applicant filed this Application with the Board on September 28, 2018, seven months after receiving the arbitration decision and four and a half months after receiving notice of the withdrawal of Grievance 042S.

[17] On June 6, 2018 the Applicant provided an email to the Union and Government, among others, on a related matter, that stated: "Please be advised that legal representation will proceed all matters connected to this appeal going forward, and will establish contact with the group shortly"[5]. The Board does not consider this evidence that the Union knew or should have known the Applicant was planning to make this Application.

[18] Second, as the Union notes, labour relations prejudice is presumed in cases of delay. Evidence of actual prejudice was presented as it relates to the historical claims mentioned in the Application.

[19] The next issue to assess is the sophistication of the Applicant, that is, whether she was knowledgeable about labour relations matters generally. The Applicant is clearly unsophisticated in labour relations matters, which led to her conclusion that she needed to hire a lawyer to represent her in this Application. Her evidence indicated that she secured legal representation in June 2018.

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[3] Exhibit U-4.
[4] Exhibit U-5.
[5] Exhibit U-6.

[20] The nature of the claim is a difficult factor to assess in this matter. As will be discussed in further detail below, the first set of remedies claimed by the Applicant asked the Board to quash the arbitrator's decision and grant a new arbitration hearing, something that the Board has no power to do. In the Applicant's supplementary brief of law, the Applicant asked for leave to amend the remedy claimed in her Application to ask for a finding that the Union contravened its duty of fair representation.

[21] The final and most important factor is whether justice can still be achieved in this matter. Taking all of the factors set out above into account, the Board finds that justice can still be achieved in this matter. With the claim limited to the conduct of the arbitration, the delay is not inordinate and the Union is not prejudiced in its ability to defend the claim. The rationale for the delay is reasonable and the harm allegedly caused by the Union (loss of employment) is significant to the Applicant.

(b) No arguable case

[22] Next the Board was asked to dismiss the Application on the basis that the Applicant has not pled an arguable case.

Argument on behalf of the Union

[23] The Union referred to *Soles v CUPE, Local 4777*, 2006 CanLII 62947 (SK LRB) ["*Soles*"], where the Board made the following comment, at paragraph 27:

> *At this stage, we do not assess the strength or weakness of the Applicant's case but simply determine whether the application and/or written submission discloses facts that would form the basis of an unfair labour practice or violation of the Act that falls within the Board's jurisdiction to determine.*

[24] It then referred to *Kurtenbach v CUPE*, 2019 CanLII 10586 (SK LRB), a recent decision of the Board that described the onus that is on an applicant in a case such as this Application:

> *[15] The onus is on Ms. Kurtenbach to prove her claim. It is not enough for her to show that she disagreed with the Union's decisions. Section 6-59 of the Act requires Ms. Kurtenbach to provide the Board with evidence that the Union acted in a manner that is arbitrary, discriminatory or in bad faith. These terms have been consistently interpreted by the Board in the manner explained by the Board in Glynna Ward v Saskatchewan Union of Nurses, [1988] Winter Sask Labour Rep 44, at 47:*

> *Section 25.1 of The Trade Union Act obligates 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. So long as it does so, it will not violate Section 25.1 by making an honest mistake or an error in judgment.*

[16] The Board routinely relies on the explanations of the concepts of "arbitrary, discriminatory or in bad faith" that were established by the Ontario Labour Relations Board in Toronto Transit Commission, [1997] OLRD 3148, at paragraph 9:

. . . a complainant must demonstrate that the union's actions are:
(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.

[25] The Union submits that none of the allegations raised in the Application contain specific particulars to satisfy these criteria. Instead, all that the Application indicates is that the Applicant disagrees with the scope and strategy of the representation she received. This, the Union submits, is not sufficient to establish a breach of section 6-59 of the Act.

Argument on behalf of the Applicant

[26] The Applicant argues first that this ground should not be considered by the Board because its last minute introduction on March 6, 2019 was extremely prejudicial to her. The Board notes that when this concern was raised by Applicant's counsel, the Board, out of an abundance of caution, agreed to postpone the hearing of the preliminary issues from March 13, 2019 to March 25, 2019. This postponement provided Applicant's counsel with more than enough time to prepare an argument to address this issue. Therefore, this concern raised by the Applicant was addressed and will be considered no further.

[27] The Applicant argued that the Board should not consider this ground because the Union did not follow the Board's procedure for raising this issue, as set out in *Soles*:

> *If a respondent wants the Board to consider summary dismissal of an application without the holding of an oral hearing, the respondent must make application to the Board and provide a written submission concerning the grounds for such a motion. An in camera panel*

> *of the Board then considers whether summary dismissal is an option. If a panel so determines, the applicant is invited to file a written submission in reply. Both the respondent's and applicant's submissions are then considered by another panel of the Board to determine whether all or part of the application should be dismissed without an oral hearing. (para 40)*

[28] In the alternative, like the Union, the Applicant referred to paragraph 27 of *Soles* as establishing the test to be applied by the Board in assessing this issue. She argued that her pleadings disclose an arguable case. She relied on *Dishaw v Canadian Office & Professional Employees Union, Local 397*, 2009 CanLII 507 (SK LRB) ["*Dishaw*"], which made the following finding at paragraph 9:

> *Following the procedures set forth by this Board in Soles, supra, the Board's first task in the present case is to determine whether or not the Applicant has established an arguable case that the Union is in violation of either s. 25.1 or 36.1(1) of the Act. In doing so, the Board is mindful that, at this stage in the proceedings, its duty is not to assess the relative strength or weakness of the Applicant's case; rather, the Board's duty is merely to determine if the Applicant has demonstrated an "arguable case."*

[29] In *Hill v International Union of Operating Engineers Hoisting & Portable & Stationary, Local 870*, 2007 CanLII 68755 (SK LRB), the Board made the following statement, at paragraph 25:

> *In our opinion, these facts as alleged are fairly general without much detail. Nonetheless, assuming that the facts as stated are true, we cannot say that if proven it is "plain and obvious" that the unfair labour practice applications do not disclose a reasonable basis for an unfair labour practice.*

Analysis and Decision

[30] With respect to the Applicant's procedural argument, paragraph 40 of *Soles* is not relevant here because the Board held an oral hearing in this matter. The Union chose not to request the summary procedure that is referred to in *Soles*, to have their application considered without an oral hearing. This process is acceptable to the Board. A party may request to use the procedure described in *Soles* or it may request a hearing of preliminary issues including summary dismissal.

[31] In determining whether the Applicant has established an arguable case, the Board considered both the Application filed by the Applicant and the oral evidence provided at the hearing on her behalf. As the Applicant argues, the bar set for the Applicant to meet at this interim stage of the proceedings is quite low. As *Dishaw* set out, at this stage the Board does not assess the strength or weakness of the Applicant's case. The Board is to simply determine whether the Application discloses facts that, if established at the full hearing, would prove the claim.

[32] In *Soles*, the application was dismissed because:

> given that the application and written submission of the Applicant do not disclose an arguable case, holding an oral hearing concerning this application would be an ineffective use of the Board's resources. It would also be unfair to require the Union to spend time and resources defending a highly speculative claim, the basis of which is simply unknown to the Board or the Union. (para 42)

[33] The same comment cannot be made about the Application in this matter. The basis of the Applicant's claim that the Union acted in a manner that was arbitrary, discriminatory or in bad faith, in the conduct of the arbitration, is set out in the Application. While the case appears thin at this point, until a full hearing has been held on the allegations in the Application, the Board is not able to make a determination with respect to whether the Applicant can satisfy the onus on her.

(c) Lack of jurisdiction to grant the relief sought

[34] The third issue is whether the Board has jurisdiction to grant the remedy sought by the Applicant, namely:

1. *to have the arbitration heard on January 11, 2018 by sole arbitrator, Brian Kenny Q.C. quashed;*
2. *to be placed back in the position she was in prior to SGEU's representation of her in all matters connected to the arbitration given the gross negligence exhibited by the union during that process;*
3. *to be granted a hearing by an arbitrator who is provided all the evidence that was available but not provided in the January 11, 2018; and*
4. *costs in this matter.*

[35] As noted in more detail below, the Applicant is now asking for leave to amend her Application to seek the following remedies instead:

1. *a finding that SGEU contravened s. 6-59 of The Saskatchewan Employment Act by failing to represent Strohan fairly;*
2. *to be placed back in the position she was in prior to SGEU's representation of her in all matters connected to the arbitration given the gross negligence exhibited by the union during that process;*
3. *costs in this matter.*

Argument on behalf of the Union

[36] The Union argues that the Board has no jurisdiction to grant any of the substantive relief requested.

[37] With respect to the original remedy #1, the Union referred to *Owl v SGEU*, 2014 CanLII 42401 (SK LRB) ["*Owl*"], where the Board made the following finding, at paragraph 67:

> *This Board does not sit in appeal of decisions made by arbitrators. That supervisory responsibility rests with the Court of Queen's Bench.*

[38] With respect to remedy #2, the Union argues that it is unclear what is being requested here. It also relied on *Nistor* to argue that it is not possible to pursue Grievance 042S now since her resignation was upheld on arbitration and therefore she no longer has an employment status with the Government.

[39] With respect to the original remedy #3, the Union cites two problems. First the Board has no jurisdiction to order a hearing *de novo* at all and, even if it did, the Board has no jurisdiction to direct the Union regarding the manner in which it conducts grievances:

> *It is clear that a Union has carriage of grievances or, as has sometimes been stated, owns the grievance. It is also clear that the Board will not sit "on appeal" of a Union's decisions in how it conducts a grievance. At para [24] of Taylor v. SGEU the Board said:*
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> > *[24] With respect to the Applicant's complaint that the Union should have called more or different witnesses, this Board has previously stated that we will not, with the benefit of hindsight, sit "on appeal" of a trade union's decision on how it conducts its arbitrations, including which witnesses should have been called, and/or what evidence should have been tendered and/or what arguments should have been advanced or abandoned, as the case may be. See: Hildebaugh v. Saskatchewan Government and General Employees' Union and Saskatchewan Institute of Applied Science and Technology, [2003] Sask. L.R.B.R. 272, LRB File No. 097-02; Sheldon Mercer v. Communication, Energy and Paperworkers Union, Local 922 and PSC Mining LTD, [2003] Sask. L.R.B.R. 458, LRB File No. 007-02; and D.M. v. Canadian Union of Public Employees, supra.*[6]

Argument on behalf of the Government

[40] The Government argues that the Board has no jurisdiction to quash the arbitrator's decision or grant another hearing by an arbitrator (original remedies #1 and 3). In support of this

[6] *Owl*, at para 57.

argument it referred the Board to subsection 6-49(2) of the Act, and to a number of decisions including *Owl*.

[41] With respect to remedy #2, the Government states that it is unclear what this is intended to mean. However, it argues, given the arbitration decision, no interpretation of this phrase would be a remedy within the Board's jurisdiction.

Argument on behalf of the Applicant

[42] The Applicant did not address this issue in her Brief of Law or oral argument. Given the importance of the issue, at the conclusion of the hearing the Board granted leave to the Applicant to file further argument on this issue.

[43] In her supplementary brief of law, the Applicant appears to acknowledge that the Board has no jurisdiction to grant the original relief requested, and asks that the Board grant leave for her to amend her Application to seek alternate remedies.

[44] Her first argument in this regard is that since the Board has allowed the Union to amend its Reply it should, in the interests of procedural fairness, also grant her request.

[45] She argues that the essential character of her complaint and the real question in dispute is not affected by the proposed amendment. The real question in dispute is whether the Union breached the duty it owes to the Applicant pursuant to section 6-59 of the Act. The Applicant referred the Board to *Construction and General Workers' Union, Local 180 v Aecon Construction Group Inc.*, 2014 CanLII 42399 (SK LRB) as an example of the kind of extensive or material amendments that would cause the Board to dismiss an application to amend:

> *[38] The Employer has not filed an application for reconsideration; it has filed a series of amendment applications. While this Board has generous authority to permit a party to amend technical defects or errors in any proceeding for the purpose of determining the real question or issue raised by the proceedings, we are not satisfied that it would be possible for the Employer to merely "amend" its applications to cure the defects contained therein. The Employer has filed the wrong type of application. In our opinion, it would be very difficult to cure the defects in the Employer's application by amendment; the required amendments would be extensive and new supporting material would be required. For all intents and purposes, to cure the defects we have identified would require the Employer to file entirely new applications. While this Board may have generous authority to permit an applicant to cure defects in an application, we are not satisfied that permitting the Employer to amend its application in the extensive manner that would be necessary in the present applications would be an appropriate exercise of that discretion.*

Analysis and Decision

[46] The Board has no jurisdiction to quash the arbitrator's decision or to order a new arbitration hearing. The Applicant is no longer contesting the arbitrator's decision. What she is continuing to contest is the Union's representation of her that led to that decision.

[47] The Board agrees with the Applicant that this is an appropriate case in which to grant her leave to amend her Application. The requested amendment does not change the real question in dispute in this proceeding. The Board would note, however, that remedy #2 does not actually identify a remedy that the Board can grant. While the Applicant is correct that remedy #2 describes the goal of the Board when it is fashioning a remedy, it is not a remedy. The Board will expect her to elaborate on the requested remedy at the hearing, to establish a request that is not a collateral attack on the arbitrator's decision, and that is within the Board's jurisdiction. Otherwise, the only requested remedy is a declaration and costs.

[48] The Board notes that the fact that the Union was granted leave to amend its Reply is not a legal criterion that the Board considered in making a determination whether to grant the Applicant leave to amend her pleadings. With respect to the Union, their Reply was filed on October 26, 2018. When counsel for the Union realized that a clerical error had been made in her office, resulting in the wrong Schedule A being affixed to the Reply, she filed a corrected Reply on February 14, 2019. The Schedule A attached to the Reply when it was filed on October 26, 2018 was clearly a draft. The Union witness, Mr. Billingsley, who signed the Reply, testified that the final version of Schedule A was attached to the Reply when he signed it on October 15, 2018. The Board accepted Union counsel's assertion that the filing of the draft Schedule A in October 2018 was a clerical error in her office. The correct Schedule A was accepted pursuant to section 6-112 of the Act, in the interests of ensuring that the parties, particularly the Union, were not prejudiced in their conduct of the hearing. Applicant's counsel received the correct Schedule A more than a month before the hearing on the preliminary issues, resulting in no prejudice to her client.

Summary of Decision:

[49] The application to dismiss the entire Application on the basis of delay is dismissed. At the March 25, 2019 hearing, Applicant's counsel made an admission that her claim is only with

respect to the Union's conduct of the January 11, 2018 arbitration. All allegations in the Application respecting previous or undated matters are dismissed on the basis of undue delay.

[50] The application to dismiss the Application on the basis of no arguable case is dismissed. An arguable case was established.

[51] The application to dismiss the Application on the basis of the Board's lack of jurisdiction to grant the relief sought is dismissed. In the alternative, the Board allows the Applicant to amend the remedy sought in her Application, in the manner requested by the Applicant in her supplemental brief of law.

[52] The Board thanks counsel for the extensive briefs of law and books of authorities. All were read and considered even if not referred to in these Reasons.

DATED at Regina, Saskatchewan, this **15th** day of **April, 2019.**

LABOUR RELATIONS BOARD

Susan C. Amrud, Q.C.
Chairperson