Saskatchewan
Labour Relations Board

CITY OF MELFORT, Applicant v KEITH HARTT, Respondent

LRB File No. 010-21, 172-20; June 7, 2021
Vice-Chairperson, Barbara Mysko; Board Members: Aina Kagis and Gary Mearns

Counsel for the Applicant, City of Melfort:	Adam R. Touet
For the Respondent, Keith Hartt:	Self-Represented

Application for Summary Dismissal – Underlying Unfair Labour Practice Application – Reliance on Section 6-60 of *The Saskatchewan Employment Act* – Underlying Application Dismissed – No Arguable Case – No Reasonable Chance of Success.

REASONS FOR DECISION

[1] Barbara Mysko, Vice-Chairperson: These are the Board's Reasons for Decision in relation to an application filed by the City of Melfort [City] requesting summary dismissal of an underlying unfair labour practice application filed by Keith Hartt [Hartt] against the City on November 13, 2020.[1] The City filed the application to summarily dismiss on January 22, 2021, asking for consideration by an *in camera* panel. After receiving the application from the City, the Board set deadlines for further submissions, with the final submissions due on May 25, 2021. The Board has received and reviewed the submissions filed by both Hartt and the City and, by *in camera* panel, has decided to grant the application for summary dismissal for the following reasons.

[2] In his application, Hartt relies on one provision of *The Saskatchewan Employment Act* [Act], section 6-60, which allows the Board to extend the time for the taking of a step in the grievance procedure under a collective agreement.

[3] Hartt claims that he was bullied, ridiculed, and mistreated by a particular manager, Gerald Gilmore [Gilmore]. Gilmore sabotaged his work performance and changed his work hours without proper notice and without consent or sufficient reason. Hartt believes that much of this is due to the fact that he was subpoenaed to testify, and did testify, with respect to issues involving overtime in the workplace. According to Hartt, Gilmore breached articles 18.5, 21.4, 27.3, and 27.5 of the

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collective agreement, which deal with stand-by work, proof of illness, termination of employment, referral of safety concerns, and right to refuse dangerous work, respectively.

[4] Hartt outlines in detail the concerns that he had with his work environment over the course of a number of years. The essence is that he fought a constant battle to get the support that he needed to be successful at his job. No matter what efforts he made, the workplace hostility persisted. Many individuals are named in this latter context, but the complaint focuses on Gilmore.

[5] At the end of the application, Hartt mentions that he was terminated from his employment after 14 years of loyal service.

[6] In one of the attachments to the application, Hartt states that a Union representative failed to call a key witness to an incident that resulted in his discipline despite Hartt having provided the representative with that individual's phone number. He also includes the letter of termination, which references correspondence from a Union representative.

[7] In Hartt's written materials, which were filed after the Board set deadlines for further submissions, and in response to the City's written submissions, Hartt provides additional detail, including that the workplace is unionized, and that he was asked but refused to sign a settlement agreement in relation to the termination. Hartt states that he had hoped to work with the City until he retired.

[8] In those submissions, Hartt also provides more information about his concerns with the Union. He states that the Union representatives have repeatedly informed him that Gilmore can do what he wants, including breaking city policies and collective agreements, and that nobody can stop him. He claims that his dismissal letter was a set up. He has never once had Union representation. He was fired on a day when he was not scheduled to work, and the Union knew about it. The Union came up with a settlement worth thousands of dollars designed to keep his mouth shut, he refused to sign, and then he never heard from them again. The Union was insistent that he should take the settlement and go away and advised him that the matter could not be taken to arbitration.

[9] According to Hartt, the Union should be made to pay back all of his money.

[10] The Board has authority to summarily dismiss the underlying application pursuant to section 6-111 of the Act:

> ***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;*

[11] At the time of filing, section 32 was the applicable provision of the Regulations:

> ***32****(1) In this section:*
>
> *(a) "application to summarily dismiss" means an application pursuant to subsection (2);*
>
> *(b) "original application" means, with respect to an application to summarily dismiss, the application filed with the board pursuant to the Act that is the subject of the application to summarily dismiss;*
>
> *(c) "party" means an employer, union or other person directly affected by an original application.*
>
> *…*
> *(4) In an application to summarily dismiss, a party shall specify whether the party requests the board to consider the application for summary dismissal by an in camera panel of the board or as a preliminary matter at the outset of the hearing of the matter that is the subject of the original application.*
> *…*

[12] To support its application, the City relies on the characterization of the test as set out in *International Brotherhood of Electrical Workers, Local 529, et. al. v KBR Wabi Ltd., et. al*., 2013 CanLII 73114 (SK LRB), and recently confirmed in *Saskatchewan Power Corporation v Joel Zand*, 2020 CanLII 36086 (SK LRB):

> *In International Brotherhood of Electrical Workers, Local 529, et. al. v. KBR Wabi Ltd., et. al., (2013) 226 C.L.R.B.R. (2d) 48, 2013 CanLII 73114 (SK LRB) ("KBR Wabi"), the Board considered the history of the summary dismissal power and set out a test for its application (at para. 79):*
>
> > *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.*

[13] The City argues that the Board does not have jurisdiction over the allegations made and, in this respect, compares this case to the circumstances in *Soles v Canadian Union of Public Employees, Local 4777*, 2006 CanLII 62947 (SK LRB), addressed at paragraph 18:

> *[18] Firstly, at the outset of these Reasons for Decision, we made reference to the fact that the Applicant alleged a violation by the Union of s. 74 of The Labour Standards Act. Although we note that the Applicant has failed to state grounds concerning the alleged violation of that provision by the Union, the Board has no jurisdiction to administer The Labour Standards Act or rule upon alleged violations. As such, we refuse to hear that portion of the application pursuant to s. 18 (o) of The Trade Union Act.*

[14] The City claims that the underlying application raises complaints related to occupational health and safety, and is therefore outside the jurisdiction of the Board. Part III of the Act outlines the process for raising and addressing such complaints; a complaint pursuant to Part III is made to an occupational health officer, whose decision can then be appealed to an adjudicator for a decision, which decision can then be appealed to this Board. The Board does not have jurisdiction over an occupational health and safety complaint, other than in the context of an appeal.

[15] The City also argues that Hartt does not have standing to bring an unfair labour practice application. According to the City, an employer commits an unfair labour practice when it restrains an employee from exercising a right to organize under Part VI. It is not an unfair labour practice for an employer to breach a collective agreement. Furthermore, the grievance procedure would apply in the event of an alleged breach and only the Union would have the right to refer the matter to adjudication. Finally, Hartt's claim is anchored in section 6-60, which does not have any bearing on the City. For these reasons, Hartt does not have standing to bring the unfair labour practice application.

[16] On the issue of standing, the City relies on *Metz v Saskatchewan Government and General Employees Union*, 2003 CarswellSask 1046 (SK LRB), LRB File No. 164-00 [*Metz*]. In *Metz*, the unfair labour practice application was dismissed because the employee lacked standing to bring an application against the employer for a failure to bargain in good faith pursuant to clause 11(1)(c) of *The Trade Union Act* (now clause 6-62(1)(d) of the Act). As the Board noted, at paragraph 66, "once employees select a union to represent them in collective bargaining, the City must negotiate work place disputes exclusively with the Union".

[17] The holding in *Metz* was recently affirmed in *Zand*:

> *[13] In dismissing the unfair labour practice application against the employer, the Board in Metz stated (at paras. 66 and 67):*
>
> *We find that the Applicant lacks standing to bring the [unfair labour practice] complaint against the Employer. The Employer owes a duty to bargain in good faith to the Union selected by the employees to be their exclusive representative. Once employees select a*

> *union to represent them in collective bargaining, the Employer must negotiate work place disputes exclusively with the Union.*
> *…*
> *For these reasons, the unfair labour practice application brought by the Applicant against the Employer is dismissed for lack of standing.*
>
> *[14] The Board in Wees reached the same conclusion, relying on the decision in Metz.*
>
> *[15] For those same reasons, the Board finds that Mr. Zand lacks standing to make the unfair labour practice application he filed with the Board on January 10, 2020. In these circumstances, the union has the exclusive authority to bring an application alleging an unfair labour practice based on an allegation of a breach of s. 6-7 of the Act.*

[18] In *Zand*, as with *Metz*, the application that the Board dismissed was based on the employer's obligation to bargain in good faith.

[19] In the alternative to the foregoing arguments, the City states that the application must be dismissed due to a lack of any arguable case.

[20] The Board agrees that this is an appropriate matter for summary dismissal. The underlying application contains a number of deficiencies which give rise to this conclusion. First, the Board does not adjudicate occupational health referrals. These are made to an occupational health officer pursuant to Part III of the Act. The Board acts as the appeal body for adjudicators' decisions. Therefore, to the extent that Hartt is raising an occupational health matter, this is not the appropriate forum for doing so.

[21] Furthermore, it is apparent that the workplace is unionized; the City and the Union are parties to a collective agreement which governs the matters raised by Hartt, such as the right to refuse dangerous work and the termination of employment. To the extent that the City has breached the collective agreement, this is, or was, a matter to be addressed in first instance between the City and the Union, the latter party acting in its capacity as Hartt's representative. To the extent that Hartt is dissatisfied with his representation by the Union the appropriate recourse was to bring an employee-union dispute. In fact, Hartt has done just that, and has alleged in that application that the Union has failed to represent him, has failed to act in good faith, and finally, has caused his financial loss and dismissal from his employment.[2]

[22] Hartt has brought an unfair labour practice application, in form, but there is no relationship between the allegations he has made and any potential unfair labour practice. There is no indication in the application or in the written submissions about what specific unfair labour practice

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he relies upon. There is no reference to any specific clause found at subsection 6-62(1), nor any reference to the language contained in those clauses. Hartt has made no allegations against the City that, for example, it has interfered with his exercise of a right to organize in a union.

[23] Hartt did make an oblique, passing suggestion that he suspects that the Union is being paid off by the City; he seems to believe that there is no other explanation for the inadequate representation he has experienced. Assuming that the Board could find that Hartt had standing to make this allegation, this vague suspicion of collusion or employer dominance, lacking any particulars or any reference to a specific unfair labour practice provision, is insufficient to establish an arguable case.

[24] The underlying application suffers from a series of fatal deficiencies. Assuming Hartt proves everything alleged in his claim, there is no reasonable chance of success. First, there is no apparent basis for an unfair labour practice application. Second, to the extent that Hartt makes allegations of deficient representation, these are raised in the context of an action with only one named respondent, the City. Even if the City is liable for any aspect of the Union's alleged breach of its duty of fair representation, it is not possible for the Board to draw any conclusions about a breach in the absence of the Union as a party. Finally, Hartt has already filed an employee-union dispute which appears to relate to the same set of circumstances. To the extent that there is duplication, the current application is not a good use of the Board's valuable resources.

[25] In *Pintea v Johns*, 2017 SCC 23, the Supreme Court of Canada endorsed the *Statement of Principles on Self-represented Litigants and Accused Persons (2006)* (online) established by the Canadian Judicial Council. According to this statement, courts have the responsibility to promote opportunities for all persons to understand and meaningfully present their case regardless of representation. In civil actions, self-represented persons should not be denied relief on the basis of a minor or easily rectified deficiency in a case. However, in this case, the deficiencies described are not minor and are not easily rectified within this proceeding, or capable of being rectified without causing prejudice to another party.

[26] For the foregoing reasons, the Board has decided to grant the application for summary dismissal in LRB File No. 010-21 and dismiss the application in LRB File No. 172-20. An appropriate order will accompany these Reasons.

[27] This is a unanimous decision of the Board.

DATED at Regina, Saskatchewan, this **7th** day of **June, 2021.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson