



ARLEN NICKEL, Applicant and SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Respondent

LRB File No. 048-20; February 24, 2021

Vice-Chairperson, Gerald Tegart (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act*)

For the Applicant:

Arlen Nickel

Counsel for Saskatchewan Government and
General Employees' Union:

Crystal L. Norbeck

Employee-union dispute – Interim suspension pending investigation into complaint against employee – Employee's right to be heard – Alleged discrimination

REASONS FOR DECISION

Introduction:

[1] **Gerald Tegart, Vice-Chairperson:** This is an employee-union dispute application. The applicant, Arlen Nickel ("the applicant"), is a member of the Saskatchewan Government and General Employees' Union ("the union"). His application asks for an order determining whether a contravention of *The Saskatchewan Employment Act* ("the Act") is being or has been engaged in by the union and requiring the union to refrain from engaging in that contravention.

[2] The allegations forming the basis for the application arise from the union's suspension of the applicant's membership subsequent to ratification meetings held on October 16 to 18, 2019, ("the ratification meetings") at the union's office in Regina. The applicant and several other members were suspended on October 29, 2019, pending an investigation into a complaint related to their conduct during the ratification meetings ("the complaint").

[3] The applicant maintains the union denied him a right to be heard prior to the suspension, that it discriminated against him and that the decision to suspend him was tainted by bias.

[4] The hearing of this matter proceeded by Webex on October 5, 2020.

Evidence:

[5] The applicant gave evidence on his own behalf. The union called one witness, Lori Bossaer, who at the relevant time was the acting chair of the negotiating committee for the union's public service sector and who was present at the union office on the days of the ratification meetings. She also played a role in overseeing the complaint against the applicant and other members.

[6] The union is the certified bargaining agent for a large number of employees in the executive branch of the Saskatchewan government. The union is divided into sectors and locals. The public service sector includes members who are employed in government ministries and other agencies of the executive government. The sector is divided into several locals. Local 1101 ("Local 1101") represents members who work in Regina and the surrounding area. The union conducts its bargaining for the public service sector through the Public Service/Government Employment Negotiating Committee ("the PS/GE Negotiating Committee" or "the negotiating committee").

[7] The applicant is employed as a corrections worker at the Provincial Correctional Centre at Regina ("the correctional centre") and is a member of Local 1101. Employees at the correctional centre are part of the Ministry of Corrections, Policing and Public Safety. Until his suspension in October of 2019, he was the chief steward at the correctional centre, which is an elected position.

[8] In late August of 2019, the negotiating committee reached a tentative collective agreement ("the tentative agreement") with the government that included Local 1101 as well as other locals in the public service sector throughout the province.

[9] The union scheduled meetings throughout the province to seek ratification of the tentative agreement. The meetings and ratification votes were scheduled between October 7 and November 8, 2019. The meetings for Local 1101 were scheduled in the union's Regina office for October 16, 17 and 18. Members of Local 1101 were notified of and invited to attend these meetings to discuss the tentative agreement and vote on its ratification.

[10] The ratification meetings proceeded as scheduled and were attended by members of Local 1101, including a number of employees from the correctional centre. The applicant attended portions of each of the three days.

[11] Precisely what transpired in the meetings and at the union office during the three days is a matter of considerable disagreement among the applicant and other members and representatives of the union. From the union's perspective, the applicant and other corrections

workers who attended the meetings caused significant disruption. The applicant acknowledges other corrections workers may have engaged in disruptive activity, but maintains he did not.

[12] On October 24, 2019, Angi McGarry, who was the chair of Local 1101, sent a written complaint (“the complaint”) to the negotiating committee on behalf of the local’s table officers. The complaint named sixteen union members, all of whom were corrections workers, including the applicant. It was based on conduct during the three days of the ratification meetings. The following excerpts are taken from the complaint:

RE: Formal Complaint against SGEU Stewards and Members of Local 1101

On October 16th thru the 18th 2019 we hosted your ratification meeting in order for our local 1101 members to ask questions of the negotiating team and cast their ballot. The table Officers of Local 1101 previously and in consultation with the PS/GE Negotiating committee, discussed information we received regarding a group of people who may wish to interfere with the ratification meetings. We were aware that some members would be possibly demonstrating and wearing “Not My President” t-shirts. We expected they might aggressively and forcefully conduct a smear campaign against President Bob Bymoan, the PS/GE negotiating committee, SGEU as a union and anyone else who stood in their way.

The Local 1101 Table Officers believed the SGEU Constitution would be violated by a smear campaign with disparaging t-shirts. We were concerned this behaviour would be harassing to other members who wanted to come and ask the Negotiating Committee questions and believed this action would be offensive to SGEU. Due to this group’s behaviour and actions at our SGEU Convention we were concerned they would not adhere to the Statement of Equability rules laid out in the meetings, found in the SGEU Constitution and Policies, and concerned this group would not adhere to the principles found within The Saskatchewan Employment Act. We therefore hired an outside Ombudsman. After the egregious behaviour by some of this group on the first day we thank you for hiring a security guard for each of the remaining ratification meetings.

It was determined by Local 1101 Table Officers that we would not allow any SGEU members who were participating in any form of a smear campaign including wearing a “Not My President” t-shirt into the meeting rooms. We were equally clear that no SGEU member would be prevented from voting, they would be asked to remove or cover up their shirts before entering the meeting held downstairs. The respondents listed below are just a few who disregarded this direction over and over again. Their action and behaviours are in clear violation of numerous SGEU policies and procedures including The Saskatchewan Employment Act. To name only a few:

1. Violations of the SGEU Statement of Equality & Harassment – Appendix “B” Constitution and:

The Saskatchewan Employment Act (SEA) - all workers are covered by the provincial SEA. The respondents’ behaviour in these meetings could be in violation with The SEA and the associated regulations which set the minimum standards for health and safety in the workplace, including protection from violence and harassment in the workplace.

2. APPENDIX “B” SGEU STATEMENT OF EQUALITY and HARASSMENT: The respondents below behaved in a manner that constitutes harassment and/or discrimination at our ratification meetings held at the Union Hall in Regina

Saskatchewan on October 16 thru 18th, 2019. Every member in attendance witnessed their egregious behaviour and could provide a statement if required. The respondents' goal was to smear our President Bob Bymoer, SGEU as a Union, the PS/GE Negotiating Committee and the Local 1101 members from voting in favour of the MOA, in particular.

They refused to follow the simple rule of signing in. In some cases they bolted straight downstairs flying past and pushing the security guard. They harassed the Local member at the sign in desk. They physically and verbally refused to adhere to the Statement of Equality that was read out at each meeting. The respondents' refused to adhere to the numerous cautions issued by the Ombudsman Barb Byers. The Ombudsman was forced to cancel a few of the prescheduled meetings due to the actions of those listed below. On October 17th, 2019, in particular, the respondents' took part in hijacking the entire meeting and forcing the Ombudsman to cancel the 12:15 pre-scheduled meeting with the negotiating committee.

Some of the respondents even displayed their "Not my President" t-shirts proudly after being told to cover them up. Some refused to sign in, pushed their way into the basement against direct orders to cease and even more. As a result of their behaviour the Regina City Police had to be called on each day of the meeting.

The respondents' actions and behaviours were verbal and physically threatening. Their actions were repeated, they were intimidating, they were threatening, humiliating, insulting and degrades the integrity of this union.

Some members who arrived late left visibly upset, crying, scared, and angry because of how they were being treated by this group. Some of them said that their voice did not matter. Some said that they did not feel comfortable to ask questions. Some said they were scared to be in the room. Upon registration when we asked if they were staying for the meeting some members said "is corrections here?" When we said possibly, some replied "they would not be staying".

[13] The complaint lists sixteen respondents to the complaint, including the applicant, and continues:

3. Violation of the SGEU Code of Ethics for Elected Officials

Elected officials, including stewards, especially the Chief Steward, has a responsibility to protect the members' rights and promote solidarity by keeping the membership informed and united. Numerous SGEU members who wanted to exercise their right to hear the PSGE presentation, ask questions and vote unencumbered, were harassed, bullied and humiliated by the behavior employed by some of the elected SGEU stewards. We received complaints on a daily basis from members who felt scared, intimidated and/or not impressed with the aggressive and unwelcome behavior of these members. The elected officials did nothing to promote solidarity. Some were even talking over legitimate questions being asked by members not involved in their campaign. Some Local 1101 members were harassed as they were coming into the building and told to vote "NO". Some of those involved got into the members physical space, puffing up their chest and loudly demanding they vote NO.

SGEU expects a higher standard of conduct from its elected officials. We will not condone such behavior against the very members those members' have sworn to serve. Our Code of Ethics holds all elected officials, including stewards, accountable and "Failure to comply with these rules of conduct will be grounds for disciplinary action as provided for in the SGEU Constitution".

[14] The complaint then identifies six of the respondents as stewards, including identifying the applicant as a chief steward, and continues:

These stewards' behaviors are in violation of the following standards found within the SGEU Code of Ethics:

1. In accordance with Union Policy and in a manner which reflects well on SGEU and its membership.

6. Reflect the official Union policy at all times when dealing with management. Co-chairpersons of Occupational Health and Safety Committees, and the membership of any other committees sanctioned by the Union shall be elected.

8. Discharge their duties in the best interests of the membership, without consideration for personal gain, and shall refuse all gifts, gratuities, favors or other considerations, which might be perceived to influence decisions on union policy.

10. Shall work at all times within the Union structure when expressing disagreements or criticisms about the internal workings or policy of the Union, other Union members or the paid staff of the Union.

In order to ensure the above standards are met, WE, SGEU, is expected to:

11. Take swift action when they become aware of incidents of retaliation and harassment experienced by other elected officials and, if they themselves face harassment, report to designated union representative.

The Table Officers of Local 1101 are requesting that the PS/GE Negotiating Committee, under Article 12.1.4 of the SGEU Constitution, immediately suspend all those members identified above, elected or not, from access to any SGEU properties, buildings, meetings, events etc. for causing a disturbance and/or neglecting their duties by engaging in and/or leading a smear campaign against SGEU and interfering with local members' right to attend a meeting free of harassment and intimidation.

12.1.4 The Administration Committee and/or Provincial Council shall have the authority to suspend or terminate the Office of any member holding Elected Office in the Union for cause or for neglect of duties. Bargaining Unit Negotiating Committees shall have the authority to suspend the Office of any bargaining unit member within their unit holding elected office for cause or neglect of duties. This includes but is not limited to breaches of the Constitution, regulations or rules established by the Annual Convention or the Provincial Council.

[15] The union's Provincial Council considered the complaint at a meeting on October 29, 2019, and passed the following motion by the required 2/3 majority:

MOTION TO SUSPEND MEMBERS:

To protect SGEU members' rights and promote solidarity Provincial Council immediately suspends all those members identified as respondents access to any SGEU properties, buildings, meetings, events, etc. until such time as an investigation determines whether or not they violated the SGEU Constitution.

[16] A letter dated October 31, 2019, signed by union president Bob Bymoer, was sent to the applicant advising him of his suspension. It read in part:

A complaint has been raised against you with the SGEU Provincial Council in relation to your actions surrounding the ratification meetings that took place in Regina between October 16-18, 2019. To carry out SGEU's obligations and to protect other SGEU members' participatory rights under The Saskatchewan Employment Act, Provincial Council immediately suspends you as a member in good standing pursuant to Article 12.1.3 of the SGEU Constitution pending the outcome of an investigation.

As a result of the suspension, you may not access any SGEU properties, buildings, meetings, or other SGEU sponsored events until such time as the said investigation is complete. Further, as a suspended member, you may not participate in any union activities or act in an elected or appointed capacity which includes stewards and/or chief stewards. Your employer will be notified that you have been suspended from holding office as a steward and/or Chief Steward.

[17] Several of the suspended members made inquiries related to their suspensions after receiving notice of the suspensions. A letter dated November 25, 2019, from Ms. Bossaer to the applicant, and apparently with similar letters sent to the other suspended members as well, addressed some of the inquiries and provided some additional explanation related to the suspensions and the investigation of the complaint. It read in part:

Those of you who have received the formal complaint also had your status as a member in good standing suspended pursuant to a Motion that was passed by Provincial Council when they met on October 29, 2019, in Regina. To better understand the suspension and complaint process, I am setting out the relevant Constitutional provisions which relate to the circumstances at hand, a copy of which can be found on SGEU's website....

[18] The letter then recites Article 12.1.1 to 12.1.4.2 of the Constitution before continuing:

It is important to review each of the sections in order to understand the distinctions and powers of the Provincial Council, Administration Committee and the Membership/Constitution Committee as it relates to the disciplining and suspension of members. Only Provincial Council has the authority to implement disciplinary action pending investigation by an appropriate Investigation Committee in extenuating circumstances where it is deemed that a delay may cause excessive damages to SGEU. (Article 12.1.3). Article 12.1.4 provides authority to the Bargaining Unit Negotiating Committee (PS/GE Negotiating Committee to whom the complaint was made) to suspend the Office of any bargaining unit member within their unit holding elected office for cause or neglect of duties. In other words, the PS/GE Negotiating Committee has the constitutional authority to impose a suspension to a member holding elected office but not on a member who does not hold elected office. Only the Administration Committee and the Provincial Council have the authority to reprimand any member, as per Article 12.1.1.

Since the complaint...was received on October 24, 2019, and Provincial Council was meeting on October 29 & 30, 2019, Provincial Council granted permission to have an In-Camera discussion in relation to the allegations contained in the complaint and whether a decision should be made to vote on imposing an immediate suspension on those members to whom the complaint was directed against, pending an investigation.

[19] The letter sets out the motion suspending the respondents and continues:

Following on this meeting, letters from the President and the Chair of Provincial Council, Bob Bymoer, were sent to you advising ... that your status as a member in good standing was suspended and the resulting restrictions imposed, pending the investigation.

[20] The letter then addresses the question of Ms. Bossaer's alleged bias based on her role in managing the complaint, concluding with the following statement:

But as the Chair of the [negotiating] Committee, I have a duty to carry out the obligations imposed, which in this case means ensuring an independent third party investigator is put in place to investigate the complaints, facilitate the responses of the parties being provided to the investigator, and ensuring that the principles of natural justice are followed in establishing the procedures for this complaint process.

[21] The letter identifies Saskatoon lawyer Marcus Davies as the independent investigator who has been appointed to investigate the complaint and sets out his role and the process to be followed:

Investigator Davies will determine the appropriate time to schedule your interviews. If some of you preferred not to file a response, you should advise me of confirmation of this preference so that I, in turn, can provide that information to the investigator. While you have the option of having a support person present when you are interviewed by the Investigator, to ensure that each party responds independently in their interviews, you will need to request a support person who is not involved in this proceeding and has not been suspended pursuant to the actions of Provincial Council. You are responsible for any costs associated with having a support person present.

Following on the completion of the interviews, the Investigator will prepare a written summary of his interview notes and provide them to each interviewee for review and revision to ensure accuracy. The Investigator will explain the process of conducting his interviews, as the Investigator, to each person he is interviewing. The Investigator has the discretion to determine their process ensuring firstly that in carrying out their investigation they are complying with the principles of natural justice.

Following on the interviews, the Investigator will also prepare a final report and his conclusions as to whether a violation of SGEU's Constitution, SGEU Policy Manual and Anti-Harassment Policy, Code of Ethics for Elected Officials, and/or Oath of Office has occurred as it pertains to each of the Respondents to the complaint.

The final report will be provided to me in my capacity as Chair of the PS/GE Negotiating Committee. The Committee will then meet to review the Report and determine whether any complaints need to be advanced to a hearing body, either the PS/GE Hearing Committee or to the Administration Committee, depending on whether the complaint would involve an elected official or a member who has no elected status.

If complaints are brought forward, the respondents will then be afforded a further opportunity to prepare a response for the Hearing Body and hearings will be held for each complaint. As

per Article 12.1.4.2 of the Constitution, and as part of natural justice, there will be a right of appeal which would be conducted by the Provincial Council Appeal Committee.

[22] The letter concludes with an assurance that the union continues to represent the suspended members, as it is required to do under the Act. It states that the investigator will determine whether each respondent individually has breached the constitution, not whether the group as a whole has done so, and directs further questions regarding the investigation to the investigator. The letter indicates the investigator will receive a copy of the letter.

[23] The applicant filed an initial application with the Board on February 13, 2020, followed by an amended application, which is the application under consideration here, on March 10.

[24] The investigator conducted his investigation of the complaint and released a detailed report dated May 4, 2020. The report concluded that all of the suspensions should be lifted. In reaching this conclusion, the report states in part:

None of the parties involved in the events described in this report emerged from them unscathed. In seeking to gain notice, the Corrections Workers drowned out their own arguments against the collective agreement and drew the wrong kind of attention to themselves. On the other hand, Local 1101 Table Officers and the PS/GE Negotiating Committee, through a combination of hypervigilance and overreaction, have come across as heavy-handed and unresponsive.

...

It is apparent from the tone of their Messenger posts that by wearing the t-shirts and showing up en masse on October 17, many of the Corrections Workers intended to taunt and provoke those they identified as the SGEU establishment, particularly the Negotiating Committee. It is equally clear that by overestimating the threat, and then setting the t-shirts as a battle line from which they almost certainly knew the Corrections Workers would not back down, the Table Officers and Negotiating Committee prepared for confrontation and then ensured it would happen.

...

Following that up with a sweeping and indiscriminate swath of suspensions gave the appearance of a deliberate attempt to humiliate and intimidate Corrections Workers which completely eclipsed any legitimate frustrations on the part of Local 1101, the Negotiating Committee or Provincial Council. Under these circumstances, upholding the suspensions of the Corrections Workers would not accurately reflect the events that transpired, nor the context in which they took place.

[25] The union accepted the recommendation to lift the suspensions. A letter over Mr. Bymoen's signature dated May 14, 2020, was sent to the respondents to the complaint. The letter sent to the applicant stated in part:

SGEU has now received a Report from Investigator Marcus Davies. He concluded the respondents did not violate the SGEU Statement of Equality and Harassment or the SGEU Code of Ethics for Elected Officials, and thus recommended the suspensions be lifted.

Since the investigation has been concluded, the temporary suspensions have formally come to an end.

Relevant provisions in the Act:

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:

- (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.*

Relevant provisions in the Union Constitution:

12.1.1. The Administration Committee and/or Provincial Council shall have the right to reprimand any member, levy an assessment against any member, and/or suspend the status of member in good standing of any member, for cause or for neglect of duties. This includes but is not limited to, breaches of the Constitution, regulations or rules established by the Annual Convention or the Provincial Council, or for theft or deliberate damage to or destruction of Union property, or for fraud or misappropriation of Union funds.

...

12.1.3. The Provincial Council retains the right to implement disciplinary action pending investigation by the Membership/Constitution and Legislation Committee or other appropriate Investigation Committee in extenuating circumstances where it is deemed that a delay may cause excessive damages to SGEU. Any discipline levied prior to investigation shall require two-thirds (2/3) majority vote of Provincial Council.

12.1.4. The Administration Committee and/or Provincial Council shall have the authority to suspend or terminate the Office of any member holding Elected Office in the Union for cause or for neglect of duties. Bargaining Unit Negotiating Committees shall have the authority to suspend the Office of any bargaining unit member within their unit holding elected office for cause or neglect of duties. This includes but is not limited to breaches of the Constitution, regulations or rules established by the Annual Convention or the Provincial Council.

12.1.4.1. All union bodies who have authority to suspend or terminate the office of any member holding elected office in the union for cause or for neglect of duties shall follow the rules of natural justice and establish procedures for an investigative process (which is tasked

with investigating and reaching a conclusion regarding disciplinary action) and a hearing process (which is tasked with conducting a fair and impartial forum for members to present their position regarding the recommended disciplinary action).

12.1.4.2. As part of natural justice, the appeal process will be conducted by the Provincial Council Appeal Committee.

Analysis and reasons:

[26] The case the applicant has advanced can be considered in relation to three bases on which he argues his application should succeed:

1. He was denied natural justice in that he was not allowed to be informed of the allegations against him and meet those allegations prior to being suspended.
2. He was discriminated against in the imposition of the suspension based on his status as a corrections worker.
3. The union, through the role Ms. Bossaer played in the complaint overall, demonstrated bias.

Denial of natural justice

[27] The applicant's position is that he was denied natural justice because he wasn't allowed to argue his case before the Provincial Council before being suspended. In making this point in oral argument, he pointed out that Ms. Bossaer was present at the meeting with the Provincial Council and spoke to the motion leading to the suspensions.

[28] S. 6-58(1)(c) of the Act does give a member "a right to the application of the principles of natural justice with respect to all disputes between the [member] and the union...relating to...the [member's] discipline by the union". The right to be heard is a principle of natural justice.

[29] The union acknowledges that s. 6-58 exists to protect members against union abuses in the exercise of its powers in relation to disputes described in the section, but argues that the union's constitution must be considered when interpreting the rights established by the Act.

[30] Article 12.1.3 of the constitution speaks directly to the type of circumstances facing the Provincial Council when it made its decision to suspend the applicant and the other members who were the respondents in the complaint. Pending an investigation into a complaint, the Provincial Council may impose discipline "in extenuating circumstances where it is deemed that a delay may cause excessive damages to SGEU". As an additional procedural safeguard, a 2/3 majority of council is required to impose any interim discipline.

[31] The union argues that the Provincial Council met this requirement in imposing the suspensions, and that in turn meets the requirements in s. 6-58(1). The applicant says he should have been given a hearing before his suspension was imposed notwithstanding the authority given to the council.

[32] Based on the entirety of the evidence, I am satisfied the imposition of the suspensions was based on a genuine determination that the conduct of the respondents in the context of the union's ongoing obligations to carry out the ratification votes constituted the "extenuating circumstances" where it should be "deemed that a delay may cause excessive damages to SGEU". The fact there were ongoing ratification meetings that needed to be conducted in an orderly manner, the rights of other members related to the ratification process, as well as matters of safety, were legitimate factors in the conclusion reached by the Provincial Council.

[33] However, I am not called upon to make that determination, but rather to determine whether the applicant was denied a right to be heard that was guaranteed by the Act. I find that he was not. A right to be heard is not absolute. Its scope must be determined in the context in which it would be exercised. We need only consider more extreme issues of safety that would make it entirely unreasonable to delay the imposition of suspensions while hearings were scheduled and conducted.

[34] Determining whether any right to be heard was required in the circumstances facing the Provincial Council in late October of 2019 requires a consideration of several factors. First, any opportunity for a hearing given to the applicant would also have to be given to the other fifteen respondents, with the consequent additional delays that would arguably make the process untenable. Secondly, loss of union privileges for a limited period pending an investigation, while a serious matter, should not be equated with loss of employment status. Finally, I accept that the union leadership believed it was following the requirements established by the constitution.

[35] In these circumstances, it was not unreasonable for the Provincial Council to suspend the respondents without affording an opportunity to be heard. Therefore, I conclude that the applicant was not denied his right to the application of the principles of natural justice based on his not being given a hearing before the suspension was imposed.

Discrimination based on status as a corrections worker

[36] S. 6-58(2) of the Act prohibits a union from suspending a member if in doing so it acts in a discriminatory manner. The applicant's position is that he was suspended because he was a corrections worker.

[37] The union takes the position that the discrimination contemplated by this section is limited to discrimination based on commonly accepted prohibited grounds, such as those set out in human rights legislation or the *Charter of Rights*. Being a corrections worker isn't one of those grounds.

[38] While it may not be technically correct to place that specific limitation on the prohibition against discriminatory conduct, it is important to understand that a requirement to not discriminate should normally involve a value-based analysis. Apart from circumstances such as those engaged by this legislative provision, we normally consider it a good thing to conduct ourselves in a discriminating manner. It's where our discrimination runs counter to societal values that it comes under the type of scrutiny we can assume the Act contemplates.

[39] The evidence establishes that the Table Officers and other leadership officials in the union understood that a group of corrections workers had plans to participate in the ratification meetings in a manner the union officials considered disruptive. Their attention was focused on the activities of the corrections workers as a result of this understanding. In the days during and after the ratification vote they identified the union members they believed had engaged in conduct that warranted including them in the complaint. All of the members they identified were corrections workers. However, while the evidence presented during the hearing is not exhaustive on this point, there is no evidence to indicate the complaint was based on a decision to include corrections workers and to exclude members who weren't corrections workers who had engaged in similar conduct.

[40] Consequently, I find the applicant's suspension did not constitute an act of discrimination contemplated by s. 6-58(2).

Bias

[41] The applicant maintains that the complaint against him and his consequent suspension were affected in some way by what he maintains is bias on the part of Ms. Brossaer and her role in overseeing the complaint. The union says the allegations of bias are completely unfounded.

[42] Ms. Brossaer had a number of responsibilities based on the office she held at the union. As the chair of the negotiating committee, she had significant roles in the work leading to the tentative agreement, the decision to take it to the members for ratification and the management of the ratification vote. When the complaint was made, it was directed to the negotiating committee and Ms. Brossaer became responsible for overseeing the complaint. In that role, she referred the complaint to the Provincial Council and spoke to the motion at the meeting where the suspensions were imposed.

[43] She played no direct role in the investigator's investigation, but was involved in informing the respondents and other parties with respect to the role of the investigator.

[44] Ms. Brossaer was also the signatory on behalf of the union on an application for interim relief filed with the Board on October 24, 2019. That application named fifteen of the sixteen respondents named in the complaint and asked that they be prohibited from attending subsequent ratification meetings. The application was not successful.

[45] When Ms. Brossaer wrote to the applicant and the other respondents on the complaint on November 25, 2019, she addressed the issue of her alleged bias, pointing out to them that she had several mandated roles at the union and was carrying out those responsibilities.

[46] It is important to recognize that it was ultimately the Provincial Council, and not Ms. Brossaer who had and exercised the authority to suspend the applicant and the other respondents. The evidence does not establish that she demonstrated bias in taking the complaint she had received to the council for consideration. Even if this were the case, there is no evidence the decision of the Provincial Council was affected by that alleged bias on the part of Ms. Brossaer.

Closing comments

[47] As the investigator noted in his report, neither the union officials collectively, nor the applicant and other respondents collectively, conducted themselves in an exemplary manner during the events surrounding the ratification meetings and the suspensions that followed. However, the questions to be determined on this application are limited by the scope of s. 6-58 of the Act. Based on the evidence as a whole and for the reasons set out above, I find that the applicant's case is not made out.

Conclusion:

[48] The application is dismissed.

DATED at Regina, Saskatchewan, this 24th day of February, 2021.

LABOUR RELATIONS BOARD

“Gerald Tegart”

Gerald Tegart
Vice-Chairperson