



**SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicant v ALISON DECK, Respondent, SEIU-WEST and CANADIAN UNION OF PUBLIC EMPLOYEES, Respondent Unions, and GOVERNMENT OF SASKATCHEWAN, SASKATCHEWAN HEALTH AUTHORITY and SASKATCHEWAN ASSOCIATION OF HEALTH ORGANIZATIONS, Respondent Employers**

LRB File No. 133-20; March 24, 2021

Vice-Chairperson, Gerald Tegart; Board Members: Joan White and Maurice Werezak

For the Applicant: Andrea C. Johnson and Rick A. Engel, Q.C.

For the Respondent: Alison Deck

**Application for summary dismissal – Duty of fair representation – Employee not a member of the applicant union - Union owes no duty of fair representation to non-member employee – Summary dismissal granted.**

## **REASONS FOR DECISION**

### **Introduction**

**[1] Gerald Tegart, Vice-Chairperson:** This is an application for summary dismissal by the Saskatchewan Government and General Employees' Union ("SGEU" or "the union") in relation to an employee-union dispute application numbered LRB File No. 089-20 ("the original application") filed by Alison Deck.

**[2]** This application is factually connected to LRB File No. 110-20, which is an application for summary dismissal brought by SEIU-West against Ms. Deck. That application relates to the original application in the within matter as well as an earlier underlying application brought by Ms. Deck in LRB File No. 066-20. The Board's decision with respect to the application of SEIU-West is issued separately from the decision in the within matter.

**[3]** The original application listed SGEU, SEIU-West and the Canadian Union of Public Employees ("CUPE") as respondent unions, and the Government of Saskatchewan, the Saskatchewan Health Authority and the Saskatchewan Association of Health Organizations as the employers concerned. In that application Ms. Deck sought an order from the Board determining whether a contravention of the *Saskatchewan Employment Act* ("the Act") was being, or had been, engaged in by the unions (plural) and employer respondents and requiring the union (singular) to refrain from engaging in the contravention.

[4] This matter was considered by the Board *in camera* based on written submissions.

### **Background**

[5] The original application arises from Ms. Deck's employment with the Saskatoon Health Region, which, through an amalgamation with other health regions in 2017, became the Saskatchewan Health Authority (collectively "the employer"). She worked in the area of information technology from 2001 until her departure in August of 2017. She was a member of SEIU-West, which was the bargaining agent for Ms. Deck's work unit. She was at no time a member of SGEU.

[6] According to the facts set out in the original application, the origins of the circumstances giving rise to the original application are the establishment of a joint job evaluation mechanism in the late 1990s. This initiative was a joint endeavour by the Saskatchewan Association of Health Organizations, on behalf of employers, and three unions – SEIU-West, SGEU and CUPE. Its goal was to reduce the number of employee classifications and to ensure employees working in the health care sector were receiving equal pay for work of equal value.

[7] Ms. Deck became dissatisfied with the employer's application of the joint job evaluation to her circumstances and with other actions of the employer. In due course, she sought support from her union, SEIU-West. She was dissatisfied with her union's response to her requests and maintains that SEIU-West has not met its fair representation duties. However, the original application also makes allegations against SGEU and CUPE, as well as the respondent employers.

### **Relevant legislation**

[8] Ms. Deck's original application alleged SGEU, as well as the other two unions, had contravened s. 6-59 or 6-60 of the Act, which deal with a union member's right to fair representation by its union:

*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.*

6-60(1) Subject to subsection (2), on an application by an employee or former employee to the board alleging that the union has breached its duty of fair representation, in addition to any other remedies the board may grant, the board may extend the time for the taking of any step in the grievance procedure under a collective agreement, notwithstanding the expiration of that time, if the board is satisfied that:

(a) the denial of fair representation has resulted in loss of employment or substantial amounts of work by the employee or former employee;

(b) there are reasonable grounds for the extension; and

(c) the employer will not be substantially prejudiced by the extension, either as a result of an order that the union compensate the employer for any financial loss or otherwise.

(2) The board may impose any conditions that it considers necessary on an order made pursuant to subsection (1).

[9] The Board has the authority, pursuant to s. 6-111(1)(o) and (p) of the Act:

...

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

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

[10] S. 13 of *The Saskatchewan Employment (Labour Relations Board) Regulations* (“the regulations”) provides for applications related to the duty of fair representation:

13 An employee who intends to apply to the board for an order determining whether or not a union has contravened section 6-4, 6-58 or 6-59 of the Act shall file an application in Form 10 (*Employee-Union Disputes*).

[11] S. 32 of the regulations addresses applications for summary dismissal, and provides in part:

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 a n original application.

(2) A party may apply to the board to summarily dismiss 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.*

### **Analytical framework for summary dismissal applications**

**[12]** The authority to summarily refuse to hear a matter pursuant to s. 6-111(o) depends on the Board determining that the matter is not within the jurisdiction of the Board. In order to summarily dismiss a matter under s. 6-111(p), the Board must form the opinion there is a lack of evidence or no arguable case.

**[13]** 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), 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.*

**[14]** In reaching this characterization of the test, the Board considered the approach taken by Saskatchewan courts in exercising the courts' inherent authority to strike out a claim for disclosing no reasonable cause of action. The Court of Appeal was called upon to consider this in *Sagon v. Royal Bank of Canada*, 1992 CanLII 8287, [1992] S.J. No. 197, 105 Sask. R. 133. Sherstobitoff, J.A. set out a test in these terms (at para. 16):

*In determining whether a claim should be struck as disclosing no reasonable cause of action, the test is whether, assuming the plaintiff proves everything alleged in his claim, there is nevertheless no reasonable chance of success, or to put it another way, no arguable case.*

### **Analysis and reasons**

**[15]** The original application alleges a contravention of s. 6-59 or 6-60 of the Act.

**[16]** The union's application for summary dismissal advances the primary argument that the board has no jurisdiction to entertain Ms. Deck's application as against SGEU because Ms. Deck

was not at any material time a member of SGEU. She was a member of SEIU-West. The union says any allegations against it fall outside the scope of s. 6-59 and the Board therefore lacks jurisdiction to deal with them.

**[17]** We accept the union's submission. In order for the original application to be successful against SGEU, it must allege conduct on the part of SGEU that is caught by s. 6-59. Since SGEU was not the bargaining agent for Ms. Deck's work unit, it owed no duty to represent her and consequentially there could be no breach of any duty.

**[18]** The union advanced other bases on which the Board was asked to grant its application. However, having made the determination outlined above, the Board finds no need to consider the remaining submissions.

### **Conclusion**

**[19]** The application of SGEU for summary dismissal is granted. The original application in LRB File No. 089-20, insofar as it applies to SGEU, is dismissed.

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

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

### **LABOUR RELATIONS BOARD**

"Gerald Tegart"  
Gerald Tegart  
Vice-Chairperson