CHAD EROS, Applicant v SASKATCHEWAN POLYTECHNIC FACULTY ASSOCIATION (SPFA) and SASKATCHEWAN POLYTECHNIC, Respondents

LRB File Nos. 287-19, 288-19 & 289-19; November 10, 2021
Vice-Chairperson, Barbara Mysko; Board Members: Aina Kagis and Don Ewart

Counsel for the Applicant, Chad Eros:	Scott E. Hopley
Counsel for the Respondent, Saskatchewan Polytechnic Faculty Association (SPFA):	Gordon D. Hamilton
Counsel for the Respondent, Saskatchewan Polytechnic:	No one Appearing

Unfair Labour Practice Application – S. 6-63(1)(a) of *The Saskatchewan Employment Act* – Alleged retaliation for pursuit of working conditions issues – Alleged malicious harassment investigation – Application Dismissed.

Employee-Union Dispute Application – Duty of Fair Representation – Complaint of Overtime Hours and Management Directive – Failure to investigate Underlying Issues – Union Ordered to Fulfill *Hartmier* Criteria.

Employee-Union Dispute Application – Duty of Fair Representation – Complaint of Failure to Bring a Grievance and Improper Settlement – Grievance was Filed and Settled – Act of Settlement Not Improper – Under Circumstances Absence of Reasons not a Breach.

REASONS FOR DECISION

Background:

[1] **Barbara Mysko, Vice-Chairperson:** These are the Board's Reasons for Decision in relation to three applications filed on December 31, 2019 by Chad Eros against Saskatchewan Polytechnic Faculty Association [Union]. Mr. Eros is an accountant and employee of Saskatchewan Polytechnic, School of Business, Moose Jaw Campus, and a member of the Union.

[2] The first of these applications, LRB File No. 287-19, is an unfair labour practice application brought pursuant to s. 6-63(1)(a), in which Mr. Eros makes the following allegations:

> *Coercion, threats, actions against employees for pursuing wage equity and parity, regardless of the CBA and the Saskatchewan Employment Act.*

> *Coercion, threats, actions against employee for pursuing reinstatement of job duties and job description.*
>
> *Collusion with management regarding lock out, and refusal to represent employee as a union representative when ejected from the work site.*
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> *Malicious accusation of harassment for condemning and question[ing] union actions against union members with end goal to depose union member of volunteer representative position which is contrary to the union constitution as well.*

[3] In reply, the Union states that it filed a grievance challenging a written reprimand given to Mr. Eros, and accompanied him to various meetings leading up to the investigation, during the investigation, and afterwards. Due to some interactions prior to the formal investigation, a Faculty Relations Officer [FRO] filed a harassment complaint. The Union retained an external investigator to investigate the allegations, and assigned a different FRO to deal with Mr. Eros's issues, and retained a former FRO to provide Mr. Eros with independent representation. Given the interpersonal conflict related to Mr. Eros, the Union asked him to temporarily step down from the school representative role. Instead of stepping down, Mr. Eros began a campaign to criticize and discredit the Union, which actions were inconsistent with his obligations as a school representative.

[4] In its reply, the Employer says that there has been no lock out at Saskatchewan Polytechnic and the Employer has never colluded with the Union to lock out any employee.

[5] The second application, LRB File No. 288-19, is an employee-union dispute in which Mr. Eros makes a number of complaints related to issues that he believes should have been taken into consideration in collective bargaining, but have not been resolved to his satisfaction. These issues include:

- *The assigning of semester workloads requiring excess hours worked over 40 hours per week ("heavy semester workloads");*
- *The demand for a 7.25-hour work day or 37.25-hour work week, regardless of hours worked before or after a heavy workload is issued or required;*

[6] These issues were brought to the attention of the Union executive on June 6, 2019 by the business faculty in a special meeting called for that purpose. Mr. Eros states that the Union has failed to represent the faculty on these important matters and demands that the requirement for minimum work coupled with the refusal to acknowledge overtime be resolved and that there be representation by the Union to settle the matter at the bargaining table in the new CBA. Finally,

he states that members of the faculty at Saskatchewan Polytechnic do not fit the definition of a teacher under *The Education Act, 1995*, and therefore should not be treated as such.

[7] In its reply, the Union says that it has examined the issue of overtime closely on several occasions. It sought and obtained legal advice on this issue. To date, it has not identified a legitimate basis upon which to pursue claims. The Union knows that *The Education Act, 1995* does not apply to its membership, and has never stated that it does.

[8] In its reply, the Employer says that it has no knowledge of the alleged discussions between the Union and its members. The CBA contains detailed provisions with respect to hours of work and pay. Faculty are not required to work overtime hours without compensation.

[9] In his written brief, Mr. Eros describes the issues raised by this application a little differently:

- *Failure to bring a grievance in relation to extra assigned hours and overtime; and*
- *Failure to bring a grievance in relation to the August 28 and 29, 2019 events and improper settlement of a grievance.*

[10] The third application, LRB File No. 289-19, is an employee-union dispute. The allegations contained in this application are many and varied. They relate primarily to three main themes: the Union attempted to remove Mr. Eros from the position of representative, or to have him resign, due to his complaints about the Union's handling of his wage parity grievance; the Union has an inappropriate relationship with management and failed to support him when management took retaliatory action against him; and, Union officials filed malicious charges of harassment and removed the power of the volunteer union representatives to file grievances.

[11] In its reply, the Union makes three primary points.

[12] First, it filed a timely grievance on November 12, 2019 in response to the written reprimand, and sent a strongly worded letter objecting to the Employer's actions. As a direct result of the letter, the Employer discontinued the investigation of Mr. Eros. The Union received assurances that management was willing to address its concerns outside of a formal hearing process, once collective bargaining was completed in early December.

[13] Second, the Union asked Mr. Eros to temporarily step aside in accordance with its constitutional obligation but he refused. The Union has not taken any permanent steps to remove him from his role.

[14] Third, all Union grievances must be approved by the Executive Council before they are filed with the Employer. A school representative has never had the authority to file a grievance without prior approval from the Executive Council.

[15] In its reply, the Employer focuses on the wage parity grievance, stating that it had been discovered that another faculty instructor had been placed incorrectly on the salary grid a few years prior. An agreement was made not to collect overpayment from that individual or overpay others. Mr. Eros emailed in February 2019 to indicate the matter was dropped.

[16] Mr. Eros has abandoned that portion of the applications that allege that the Union refused to engage Article 9.7 of the CBA to address the introduction of a new or substantially changed program, and in respect of LRB File No. 289-19, the allegation that the Employer has refused to negotiate the medical benefits plan.

Facts:

[17] At the hearing of this matter, the Board received a large amount of documentary evidence, and heard testimony by Mr. Eros on his own behalf and by Warren White for the Union. The Board has reviewed the evidence and made the following findings of fact. Given the volume of evidence presented, this is not intended to be an exhaustive list.

[18] In the Fall of 2017, Mr. Eros relocated his family from B.C. to begin a job as an Instructor of Accountancy with the Saskatchewan Polytechnic School of Business at the Moose Jaw campus. He soon became active in the business school, identifying and raising issues related to working conditions of concern to himself and to others.

[19] In July 2018, management made a request to FRO, Tracy Gall, for an extension of Mr. Eros's probation, citing performance issues that had arisen since his interim probationary review. The interim review had been performed by Graham Chute, program head. Mr. Gall agreed to the extension. Afterwards, Mr. Eros asked for a copy of the written request for an extension. His request was refused. Mr. White, who was then the Union President, explained to Mr. Eros that the Union approves extensions because the alternative is a dismissal. An extension offers an opportunity for improvement.

[20] Mr. Eros was concerned because he felt that he was performing well, as demonstrated in his interim review. It was only after the academic chair, Kristen Craig, took over his review that issues were raised. He complained of harassment by Ms. Craig. Mr. White provided Mr. Eros with

a high level of summary of some thoughts in relation to harassment allegations involving supervisors. He later offered to provide some assistance, provided more information about the complaint process, relevant contact information for further assistance, and encouragement to Mr. Eros, and then indicated that he felt that Mr. Eros had all of the information he needed to start that complaint process.

[21] In dramatic and lengthy correspondence to Mr. White, Mr. Eros complained that he had passed probation, but that everything changed when Ms. Craig took over. Due to the sacrifices he and his family had made in taking this job, he stated that he "will NEVER let this go. EVER." Mr. White proceeded to provide Mr. Eros with information and suggestions. Mr. White also recalled that Mr. Gall had had a conversation with Mr. Eros in which he had passed along some specific feedback from supervisors. He stated, "I hope that you found the information helpful and cause for reflection".

[22] After he completed his probationary period, on January 31, 2019, Mr. Eros wrote to Mr. Gall to make a complaint about his placement on the salary grid. In his email, he made a comparison with an instructor, still teaching, who had been placed at a higher level on the grid. Mr. Gall responded the same day, stating that he would look into the matter when he was back in the office. Mr. Gall later advised that Mr. Eros had been appropriately placed on the grid. He added:

> *As far as your comparison goes with [the other instructor] it has been determined he was incorrectly placed on Step 5. He should have been placed on Step 2. As of today, SP is reviewing [the other instructor's] situation and will determine an appropriate action to take. If SP decides to reduce [his] pay you may have an angry colleague at your door step.*

[23] This latter comment became known as the "angry colleague" comment.

[24] He also stated that there was no appetite from the membership for a master's level pay grid.

[25] In response, among many other comments, Mr. Eros observed that, "you are advocating for [the other instructor's] wages to be reduced. YOU have taken action to reduce [his] pay, not me. That is your doing, not mine." He communicated, emphatically, that he could not fathom how a new pay grid could possibly be unfair. Mr. White later weighed in, explaining that the CBA provides compensation for master's degrees. He described the process by which the Union collects membership proposals about items to raise in collective bargaining. He indicated that the

Union was not advocating for a reduction in a member's wage, and that management had various options available to resolve such a situation.

[26] Many months later, on March 26, 2020, Mr. Gall wrote a letter apologizing to Mr. Eros for his "angry colleague" comment, describing it as "inappropriate and unprofessional".

[27] On February 8, 2019, Mr. Eros sent an email to management advocating on behalf of a colleague who he believed was struggling. He composed the email from his office while his colleague was present. He believed that he had consent to send the email. An investigation was launched into the email. The Employer was concerned that Mr. Eros was breaching the colleague's privacy.

[28] On February 25, 2019, an investigation meeting was held. Mr. Eros was represented by FRO, Cristie Zyla. In the meeting, the colleague stated that he was okay with the letter that Mr. Eros had written. Mr. Eros received a coaching letter following the meeting. In the letter, the Employer identified that an interview had taken place and the colleague was not aware of the extent of the detail that was included in the email. The letter took into account that Mr. Eros was acting with good intentions, but identified areas where the Code of Conduct was not met (respect and privacy). The last substantive paragraph of the letter states:

> *As a result of the above situation, a copy of this Coaching Letter shall be placed in your personnel file to document this expectation. Any future breaches of policy will be handled in accordance with the progressive discipline model, up to and including termination.*

[29] Mr. Eros emailed Ms. Zyla asking if she had a hand in drafting the coaching letter. Ms. Zyla wrote to Mr. Eros and explained that the outcome of the investigation was consistent with similar matters and therefore the "discipline" was reasonable. She advised him that he had been given the opportunity to fill out a grievance form and had not done so within the time limit. She indicated that the accusation about collusion was offensive and a breach of the Code of Conduct, and the tone of the communication was accusatory and verbally abusive.

[30] In April 2019, Mr. Eros filed a request for a grievance in relation to the wage parity issue. The request raised issues of both a general and a specific nature. Mr. Gall responded in writing shortly after, indicating that policy grievances are to be filed by the bargaining unit and not the individual member, and advising that Mr. Eros's individual grievance was denied. Mr. Gall explained the FROs' reasoning process with respect to the CBA interpretation. He advised Mr. Eros of his right to appeal the decision.

[31] Mr. Eros advised of his wish to appeal - to the President and specifically not to the FROs. He continued to state that, as a result of what the Union was characterizing as a "mistake", the Employer must adjust all employees in that specialty upwards to the same step. The salary grid sets out the minimum. He could have pursued a higher salary pursuant to Article 10.5.9.1.

[32] There was a meeting between Mr. Eros and the Executive Council on May 8. Mr. Eros spoke for an hour and a half about his many concerns with the workplace. By this point, the parties were well underway with the current collective bargaining round. The meeting did not resolve the salary grid issue, but Mr. White was hopeful it had resolved other issues.

[33] Mr. Eros was acclaimed as the business school representative in May 2019. Prior to this, that position had been vacant for several years. Shortly after becoming the school representative, Mr. Eros organized a meeting to be held on June 6, 2019 between the business school faculty and the Union president and FROs. There were emails exchanged about the issues to be discussed at the meeting. The intention of the meeting was to identify for the Union the issues of importance to the faculty.

[34] Mr. White weighed in during the email exchange, advising the group that bargaining proposal collection had occurred through three open invitations to all members over an 18-month period, and indicating that a similar process would be used for the next round of bargaining. He also advised that preparing grievances is not a task that is assigned to school representatives. Mr. Eros responded that he was concerned about eliminating the input of faculty elected representatives in the grievance process.

[35] After the meeting, Mr. White sent an email thanking the faculty for the meeting and indicating that the Union would like to have a follow-up meeting in late September. Mr. Eros responded that the problem with post graduate certificate courses needed to be addressed before the new academic year. Mr. White replied stating that the details of the concern would be reviewed by the bargaining team. The collective bargaining process had been very prolonged and the only way to raise new issues was to link them to existing issues.

[36] In the Spring/Summer, Mr. Chute sent the workload out to the accountancy instructors. According to this workload, Mr. Eros was no longer the lead instructor for Intermediate Accounting

II. The workload was later revised again. Mr. Eros received it while he was on vacation. He had a front-end loaded course assignment for the coming Fall, and according to his calculations, his student contact hours were near the cap.

[37] In July 2019, Mr. Eros asked Mr. Farion for a form to submit a request to grieve an underpayment issue. At the same time, he indicated that Mr. Farion did not have permission to talk to management about the situation, but only to deal with the grievance once filed. Mr. Farion provided the grievance request form and stated that if Mr. Eros was taking the position that the Union could not contact the Employer then he would consider the matter closed. If he wished to proceed then he could fill out the grievance request form.

[38] Mr. Eros responded, pointing out that he had already spoken with management and Mr. Farion had all of the information necessary to address the matter. He asked what further efforts with management Mr. Farion felt should be made to address the situation. Mr. Farion's response was that it is the Union's job to discuss the matter with the Employer, and due process required a conversation with the Employer before the filing of a grievance. He also took offense to what he perceived as criticism directed at his performance as an FRO. Mr. Eros provided a lengthy reply raising concerns about Union and management collaboration and asking for understanding given the experiences he had had. He indicated that he would fill out the grievance form and asked Mr. Farion to collaborate with him before contacting management.

[39] On August 11, 2019, Mr. Eros sent another email to members, stating that he was volunteering to meet with a Dean to resolve the issue of "instructors' course deliveries increasing via management's justification via decreasing contact hours" as per Article 9.7, which sets out the hours of work appeal procedure. He asked members to consider being on the committee for that purpose.

[40] On August 26, 2019, Mr. Eros filed a request asserting that he was not teaching the classes he had been hired to teach (personal and corporate tax) and seeking that his instructional schedule be adjusted, and classes assigned to instructors with less seniority than him be reassigned. Mr. Eros's job description, which was actually the job posting, described the duties as follows: "This position will be instructing in the area of Personal and Corporate Income Tax with experience to also instruct in Cost Accounting and Financial Accounting when required." Peter Burke, FRO, replied, stating that he would find out why the assignments were distributed in the way that they were.

[41] Mr. Burke later advised Mr. Eros that he had looked into the matter and was told that faculty were given assignments based on their strengths. There had been no "reassignment" because Mr. Eros was still teaching classes within the four walls of the job description and there was no requirement to offer him tax courses before less senior members. He concluded that the CBA did not support the grievance. He stated that Mr. Eros's course assignment was consistent with his job description. He provided the usual information on the right to appeal.

[42] Mr. Eros responded, explaining why he disagreed and expressing his disappointment that Mr. Burke did not speak with him before denying the grievance. Mr. Burke replied that he had acted decisively on his understanding that the matter was time sensitive and that Mr. Eros had set out his request clearly. He had also wanted to deliver the decision promptly to provide him with time to appeal. Mr. Eros appealed the decision. Mr. Burke advised him that, in the event that he was successful, then the argument would amount to a lay-off. Mr. Eros took offense to this, pointing out that there is "an infinity of alternatives to lay off".

[43] Then, on August 28, 2019, Mr. Eros received an email from management requiring his attendance at an investigation meeting to be held on the following day: "The nature of this meeting is an investigation into an email that was sent by you and copied to the Business faculty. Peter Burke (SPFA) will be your faculty representative in the meeting and HR will be present." Mr. Eros asked for clarification about the nature of the meeting and inquired as to why the Employer was advising him who his Union representative would be. He also advised of his intention to record the meeting. It was explained that management had contacted the Union in advance of the meeting because travel would be involved.

[44] Mr. Eros was very concerned about this request, and in particular, the fact that the Employer was in possession of an email or emails that had been exchanged among union members. He promptly sent an email to the business faculty to inform them of the request and then organized a union meeting to be held at the end of the day to discuss the investigation meeting. There was some excited discussion about this among some of the instructors.

[45] Ms. Craig and Ms. Kilgour (from Human Resources) showed up at his office later that afternoon. Ms. Craig confirmed that the investigation meeting, scheduled for the following day, was being held to discuss an email or emails which had been forwarded to her and advised that Mr. Eros was being directed to leave campus. He resisted the direction. He did not want to leave because he had already organized a union meeting for later that day. There was some mention

of campus security and police. He finally left as directed. Mr. Eros was placed on administrative leave as of August 28.

[46] Mr. Eros attended the investigation meeting the following day. The meeting was contentious. In the course of the meeting, Mr. Eros told Ms. Craig that her conduct had been the subject of concern and discussion by other members. He used terms such as "harassment" to describe her behaviour. Mr. Burke, who attended as the Union representative, asked Mr. Eros to apologize to Ms. Craig for his conduct in the meeting. According to Mr. Eros, Mr. Burke did not assist him during the meeting. After the meeting, Mr. Eros wrote to the Union advising that at least ten members had asked for an investigation into how the Employer was coming into possession of correspondence between union members.

[47] On August 30, 2019, Mr. Burke sent an email to Mr. Eros explaining that some of what he was doing could be considered to fall outside the bounds of his role as school representative, and it was for that reason that management might be taking issue with his actions. He explained that the Union would not necessarily be successful in defending him if he issued communications as school representative and that he should contact the Union staff if he is made aware of an issue.

[48] On August 30 and 31, 2019, Mr. Eros sent emails to the membership providing information about the reporting process for harassment in the absence of an employee designated to assist with that process.

[49] He asked the Union to file a grievance in relation to these events. He also wanted the Union to file an unfair labour practice application with the Board due to what he perceived as interference into internal union affairs.

[50] On or around September 4, 2019, the Union published a return to school newsletter. It was distributed to the union membership. The newsletter included an article entitled "Sask. Polytechnic Workplace Investigations". The article described the workplace investigation process and the role of the Union, and noted that investigative interviews are confidential.

[51] Mr. Eros concluded that the article was about him and felt that he had become the subject of a deliberate public shaming. Mr. White denied having written the article; he believed it was prepared by the FROs. In a meeting, when Mr. Eros suggested that the article had been written about him, Mr. White looked down and did not speak up.

[52] On the same day, Mr. Eros took a personal leave. On September 5, there was an email exchange between Mr. Eros and the Union. Mr. Burke indicated that the Union was not pursuing an unfair labour practice and "will make a decision in light of any action that management decides to take, not before". He advised that Mr. Eros would be undertaking his application on his own behalf.

[53] On September 6, 2019, Mr. White wrote to Mr. Eros to initiate an impartial appeal process through Dr. Hamilton Greenwood. Mr. White had determined that, at this point, he should not be chairing the appeals for Mr. Eros.

[54] On or around September 9, 2019, Mr. Eros went on formal leave. The next day, he attended the Moose Jaw campus bargaining update. When he arrived he engaged in what became a heated conversation with Mr. Gall.

[55] After this meeting, Mr. White contacted the Employer seeking to have a workplace harassment investigation against Mr. Eros initiated. The Employer refused to entertain the request because Mr. Gall was not an employee of Saskatchewan Polytechnic. The Union then initiated its own workplace harassment investigation in relation to Mr. Eros's treatment of two of the FROs.

[56] On September 12, 2019, Ms. Craig advised Mr. Eros in writing that he was directed to remain off campus until he was cleared to return to work. On September 18, Gary Vieser informed Mr. Eros that he would be managing the school representative duties on a temporary basis. He emailed the faculty to advise that Mr. Eros while on leave had been informed not to conduct or engage in any school representative duties or direct any communication on behalf of the Union until his return to work.

[57] Mr. Eros was scheduled to return to work on October 11. On October 9, 2019, Mr. Eros filed another grievance request seeking apologies for the unfair labour practice, an inquiry into how management obtained the emails, an average workload, reinstatement of sick days, removal of documentation from his personnel file, among other more detailed requests. According to an excel spreadsheet he had prepared, Mr. Eros had the highest number of contact hours out of all of the instructors on the Moose Jaw campus. He says that he was given this high front-loaded workload after organizing the union meeting.

[58] On that same day, Mr. Eros was informed by the Employer that he was being placed on paid administrative leave, effective October 10, pending the investigation. Gary Nelson was hired on a contract basis to represent Mr. Eros in relation to his disputes with the Employer. At that

point, it seemed that all of the FROs were involved in some way with Mr. Eros. Mr. Eros was also permitted to communicate directly with the Union lawyer and obtain legal advice from him.

[59] An investigation meeting was held on October 17, 2019. On October 23, 2019, Mr. Eros received a written reprimand that expressed the following: he had communicated with members about the request to attend an investigation meeting and it was appropriate that he be requested to leave campus until the meeting the next day. When asked to leave campus several times he refused to comply. He questioned why he was being asked to leave and he was told that "it was related to your responses to the email you had received from HR regarding the investigation meeting". His administrative leave ended the following day. Sometime shortly after the reprimand, Mr. White went on leave.

[60] On November 12, 2019, Mr. Nelson filed a grievance in relation to the discipline letter, asking that it be cancelled, that the investigation in relation to any and all allegations in that letter or raised in relevant investigation meetings be ended, that individuals who were interviewed be notified that the allegations were unfounded, and that any concerns regarding communications between faculty members be directed to the Executive. Mr. Nelson also asked management for the emails they had presented to Mr. Eros in the investigation meeting, with a plan to forward them to the Union lawyer. In an email to Mr. Eros, the Union's lawyer stated that the Union was very much aware of the illegality of the Employer's actions.

[61] On November 20, 2019, there was a meeting between Mr. Eros, Mr. Chute and Ms. Craig about updates to an online course. Afterwards, Mr. Eros made another request for a grievance with respect to "covering up hiring problems", "covering up cheating scandals", "harassment for medical leave", and "demand to work free without extra contract". He asserted that he had received reprisals for raising issues. The request included a lengthy description of events that, in his view, led up to the November 20th meeting. Among the remedies sought were a "full third party investigation into truthfulness of ALL accusations Kristen has published about me", an exit interview with all accounting instructors who quit, were fired, or went semi-retired, and a court order for various correspondence, but no remedy in relation to workload issues.

[62] On November 26, 2019, following up from the meeting held on August 30, Doug Rempel (Interim Dean) wrote to Mr. Eros demanding "full disclosure of the names of the employees who came to you expressing their concerns with Kristen's behaviour". Mr. Eros was advised by counsel for the Union to not respond to the letter. On December 6, 2019, Mr. Farion wrote to Mr. Rempel to voice the concern with the "implied threat that, if a School Representative fails to disclose the

names of people who have spoken to him in confidence, as an SPFA office, that he will be disciplined". He indicated that such an approach would not be tolerated and would result in an immediate application to this Board.

[63] Mr. Eros met with the harassment investigator in mid-December. He was asked about the allegations made in relation to his conduct with the two FROs. He did not have a Union representative attend. Instead, his father attended the meeting.

[64] The three applications before the Board were filed on December 31, 2019. Both Mr. Eros and the Union relied on evidence related to post-application events.

[65] On January 2, 2020, there was an incident between Mr. Eros and Erin McMahon, who had come to his office to find out why he had not yet entered a final grade for a student. On January 9, 2020, Mr. Eros was again placed on paid administrative leave. An investigation meeting was held. In attendance were two FROs, one for each of Mr. Eros and Ms. McMahon. A coaching letter was provided, dated January 20, 2020, speaking to the requirements for entering grades and the topic of conflict escalation.

[66] On January 6, 2020, Mr. Rempel replied to the Union, indicating that he would accept Mr. Eros's explanation that he was acting in the role of representative as his reason for not providing additional details that "would allow us to investigate". He indicated that he had not contemplated additional disciplinary action in the matter and was withdrawing his request for additional details, and would not proceed with an investigation of his allegations. He did not admit that the Employer's request was out of line.

[67] On January 24, 2020, Mr. Eros filed another grievance request, referring to what he believed to be Mr. Rempel's failure to take responsibility, and complaining of the collaboration among the management staff against him in relation to the grading issue. Evidently, he perceived a link between the letter, dated January 6, and his latest administrative leave. He sought that the Union file an unfair labour practice application with this Board due to management's demand for names and subsequent events including the latest administrative leave. He also sought assistance from the Union respecting what he viewed to be "slander, libel, defamation of character, harassment, bullying and humiliation" against him by three members of the management team.

[68] On February 18, 2020, Mr. Eros requested a grievance with respect to the coaching letter issued on January 20, 2020.

[69] In February 2020, Mr. White met with Mr. Eros to discuss a number of concerns. Mr. Eros wrote to him after to express his gratitude for certain aspects of the discussion, including the discussion about the pay grid.

[70] In the meantime, the harassment investigations had continued. The investigator, Ms. Folk, completed the two investigation reports on February 21, 2020. The allegations of harassment were substantiated. The Union has decided not to act on the findings.

[71] In March 2020, Mr. Burke wrote to Mr. Eros about his grievance requests dated October 9, 2019, December 20, 2019, January 24, 2020, and February 18, 2020. He wrote that the work on the first request was ongoing. With respect to the second request, he indicated that it did not disclose a breach of the CBA. There were no grounds to grieve the reporting structure of the school. With respect to the third request, he noted some overlap with the first and fourth grievances, and advised that the Union found no evidence of bias on the part of the Employer in placing him on administrative leave. As for the last grievance, he indicated that the Union filed a grievance to maintain the timelines, and that the decision with respect to next steps was for the Executive Council to make. He also advised him of his right to appeal.

[72] With respect to the latest coaching letter, management ultimately agreed to remove a reference to progressive discipline upon the Union's request. By that point, Mr. Eros was represented by counsel.

[73] On May 1, 2020, Mr. Farion wrote to Mr. Eros to advise that the Union had made an offer of settlement with respect to the Nelson grievance. The settlement included the replacement of the written reprimand with a verbal warning and the removal of "investigative notes (if they exist)". The Employer had accepted the settlement. The settlement occurred without consultation with Mr. Eros. After Mr. Eros received this information he asked the Union not to communicate with him except through his lawyer. He later clarified that this request was limited to his personal matters.

[74] In 2020, Mr. White was asked by members to provide information about the process for removing a school representative. He was involved in preparing a document for that purpose. It included instructions to the effect that any member of the constituency can call a meeting to consider removal, the representative did not need to be invited, and it was not necessary to publicly post a meeting notice.

[75] Afterwards, a meeting was called. Mr. Eros was not in attendance. There was a vote but it was not successful. The vote was not on the agenda for the meeting.

[76] Around this time, members of the work unit identified that the program representative position was vacant. Mr. Eros attempted to set up an election for that position. Executive Council cancelled the election due to some controversies about "structure". Ms. McMahon was later acclaimed as the program representative.

Analysis:

Unfair Labour Practice Application (LRB File No. 287-19):

[77] The Board will begin by considering the unfair labour practice application. Mr. Eros alleges that since he became the school representative the Executive Council and the FROs have interfered with, restrained or intimidated him with a view to discouraging his continued activity in the Union. The Union's conduct has been motivated by malice and undertaken in bad faith.

[78] As the applicant, Mr. Eros bears the onus to prove the allegations contained in the application on a balance of probabilities.

[79] S. 6-63(1)(a) is the governing statutory provision:

> ***6-63****(1) It is an unfair labour practice for an employee, union or any other person to do any of the following:*
>
> > *(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten or coerce an employee with a view to encouraging or discouraging membership in or activity in or for a labour organization;*

[80] The Board is obliged to interpret its statute in accordance with the modern principle. This means that the words of the Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. To do this, the Board must begin by making an "initial impression as to the meaning of a legislative provision from its text", and then consider the purpose and relevant context: *Arslan v Sekerbank T.A.S.*, 2016 SKCA 77 (CanLII), at para 59. Context may include related provisions, drafting conventions, legislative presumptions and avoidance of absurdities: *Holt v Saskatchewan Government Insurance*, 2018 SKCA 7, at para 37.

[81] S. 6-63(1)(a) makes it an unfair labour practice for a union to interfere with, restrain, intimidate, threaten or coerce an employee with a view to encouraging or discouraging activity in or for a labour organization.

[82] For the applicable test to ascertain a breach of s. 6-63(1)(a), Mr. Eros relies on cases dealing with the parallel provision applicable to employers, s. 6-62(1)(a). These cases include *Saskatchewan Government and General Employees' Union v Saskatoon Downtown Youth Centre Inc*., 2021 CanLII 19681 (SK LRB) [*Egadz*] and *United Food and Commercial Workers, Local 1400 v Securitas Canada Limited*, 2015 CanLII 43778 (SK LRB) [*Securitas*]. The test to establish a contravention of s. 6-62(1)(a) is outlined in *Egadz*:

> *[23] The starting point in the analysis of this application is that the onus is on SGEU to satisfy the Board that EGADZ has contravened clause 6-62(1)(a). The evidence must be sufficiently clear, convincing and cogent. The test to establish the contravention is an objective test: that the probable effect of the memo, on employees of reasonable intelligence and fortitude, would have been to interfere with, restrain, intimidate, threaten and/or coerce them in the exercise of their rights under Part VI of the Act. This requires a contextual analysis.*

[83] Mr. Eros acknowledges the differences between s. 6-62(1)(a) and s. 6-63(1)(a), as noted by the Board in *United Food and Commercial Workers, Local 1400 v Saskatoon Co-operative Association Limited*, 2020 CanLII 10516 (SK LRB) [*Saskatoon Co-op*]:

> *[64] However, the clauses are not identical. For one, clause 6-63(1)(a) includes an element of intent as demonstrated by the phrase "with a view to", a phrase not included in clause 6-62(1)(a). Second, clause 6-63(1)(a) is restricted to actions that intersect with "membership in or activity in or for a labour organization", in contrast with the broader "exercise of any right conferred by" Part VI.*
>
> *[65] More to the point, both clauses must be understood within their proper context. The purpose of Part VI is to facilitate and promote collective bargaining rights. The interpretation of clause 6-63(1)(a) must take into account the unique character of the relationship between union members and the union. A union is a democratic organization that in the Canadian tradition depends, in large part, on the principle of majoritarianism. Union representatives are elected to represent employees on behalf of the majority. Members of the bargaining unit vote in a majority system to take action, including strike action, to pursue their collective interests.*
>
> *…*

[84] The Act has codified the Wagner model of collective bargaining. Within this model, a union is a democratic organization that depends on the principle of majoritarianism, and which adopts and operates the structures and internal dispute resolution mechanisms to ensure its efficient and effective operation. Understood within this context, it cannot be said that all activity performed by a union member which is related to the union is protected by s. 6-63(1)(a). A union must have some ability to maintain order so as to achieve its objectives and to treat its membership fairly.

[85] A similar view was expressed in *Lalonde v United Brotherhood of Carpenters and Joiners of America, Local 1985*, 2004 CanLII 65627 (SK LRB) [*Lalonde*]. There, the Board asserted, at

paragraph 87, that a "union's actions that constitute a denial of rights provided to employees under the Act may constitute coercion or intimidation within the meaning" of s. 11(2)(a) of *The Trade Union Act* (predecessor to s.6-63(1)(a)). However, not all activity is protected, as explained in *Alcorn and Detwiller v Grain Services Union*, [1995] 2nd Quarter Sask Labour Rep 141, LRB File No. 247-94, cited in *Lalonde* at para 134:

> *As these decisions indicate, Section 11(2)(a) must be understood in the context of the trade union as a democratic organization. In this respect, the interpretation of Section 11(2)(a) cannot be quite parallel to that of Section 11(1)(a), for the relationship of an employee to a trade union is somewhat different than the relationship with the employer. In the case of the relationship with the trade union, the statute seeks to protect the right of employees to challenge the actions or objectives of the trade union, to take part in union decision-making, and even to take the position that they do not wish to be represented any longer by the trade union or any trade union. It is not open to a trade union to punish dissidents for legitimately raising issues for debate, no matter how unpopular they are, for seeking to unseat the union leadership or attempting to overturn the union altogether.*
>
> *There is a distinction, however, between engaging in vigorous debate at an appropriate time, and defying a decision legitimately taken by the majority, such as the decision in this case to go on strike. In those circumstances, the fact that the Union took steps to discipline the employees is not in itself coercive, anymore than when an employer legitimately disciplines an employee.*

[86] In interpreting s. 6-63(1)(a), the Board must also take into account s. 6-58, which provides the Board with authority to decide disputes involving internal affairs of a union, but only within a narrowly defined scope of matters: *Stinson v Teamsters Local Union No. 395*, 2012 CanLII 101194 (SK LRB) [*Stinson*]. In *McNairn v United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 179*, 2004 SKCA 57 (CanLII), [2004] SJ No 249, the Court of Appeal provided the following description of the purpose of s. 36.1 of *The Trade Union Act* (predecessor to s. 6-58):

> *38 Thus subsection 36.1(1) imposes a duty upon a union (again correlative to the right thereby conferred upon an employee), to abide by the principles of natural justice in disputes between the union and the employee involving the constitution of the trade union and the employee's membership therein or discipline thereunder. As such, the subsection embraces what may be characterized as "internal disputes" between a union and an employee belonging to the union, but it does not embrace all manner of internal dispute. For the subsection to apply, the dispute must encompass the constitution of the union and employee's membership therein or discipline thereunder. And when it does apply, it requires that the principles of natural justice be brought to bear in the resolution of the dispute.*

[87] S. 36.1 of *The Trade Union Act* guaranteed the application of the principles of natural justice to "all disputes between the employee and the trade union certified to represent his bargaining unit relating to matters in the constitution of the trade union and the employee's membership therein or discipline thereunder". S. 6-58 goes further, by extending the protection

beyond membership or discipline-related disputes to all disputes between the employee and the union relating to matters in the constitution of the union.

[88] In summary, the Board must ensure that its interpretation of s. 6-63(1)(a) supports the overall harmony of the statutory scheme.

[89] Mr. Eros states that that the Union's actions were undertaken with a view to discouraging him from participation in union activity. These actions resulted, in part, from the growing number of complaints from faculty members about the post graduate certification programs and other international student programs. They were intended to suppress those complaints, and were motivated by malice and by personal animosity towards Mr. Eros. The harassment investigations were an attempt to exact punishment on Mr. Eros for having criticized the Union's handling of his concerns.

[90] According to the application, there are four primary issues: coercion and threats for pursuing wage parity, coercion and threats for pursuing the reinstatement of job duties, collusion with management on the "lock out", and malicious accusations of harassment. Mr. Eros urges the Board to consider these issues in context and as interrelated events which disclose a pattern of conduct on the part of the Union. The context includes Mr. Gall's handling of the probation extension, including his refusal to provide information about Mr. Eros's performance, and Ms. Zyla's handling of the alleged privacy breach incident. He says that his criticisms of the FROs were justified, and therefore the Union's reactions, conduct, and allegations were unreasonable.

[91] In chronological order, the first event of significance is the probation extension. Mr. Eros agrees that the extension of probation was practical but took issue with the fact that Mr. Gall had agreed to the extension without undertaking any inquiry or informing him. He also took issue with the refusal to provide him with a copy of the written request for an extension.

[92] Mr. White explained that extending probation upon request is routine, given that the alternative is dismissal. In this respect, the CBA language is not favorable to an employee. Article 6.2.3 of the CBA states that the Employer may request a probation extension from the Union within a specific timeframe. The Employer shall include written reasons for the request. The maximum length of an extension is 100 days.

[93] The Board does not understand why the Union claimed confidentiality over the written request for an extension. Mr. Eros was seeking clarification as to whether the proper process, as set out in the CBA, had been followed. A copy of the written request would have provided him

with that information. Although the Union owns a grievance, an employee cannot request a grievance in the absence of relevant information. Nor is it clear what became of Mr. Eros's complaint about the length of the extension. The emails disclose a misunderstanding on the part of one or another of the parties that may or may not have been resolved.

[94] In the email dated July 8, 2019, Mr. Farion reacted strongly to Mr. Eros's request that he work within the CBA. It appears that Mr. Farion had reached his limit with what he viewed as disrespectful communications from Mr. Eros.

[95] However, none of this evidence discloses the type of conduct contemplated by s. 6-63(1)(a) of the Act. To the contrary, Mr. White offered significant assistance and support to Mr. Eros in respect of his harassment allegations. Viewed within the context of the many preceding emails, Mr. Farion's email of July 8, 2019 does not disclose coercive, intimidating or threatening conduct. Mr. Eros may have had legitimate concerns about red tape, but these concerns did not justify his disrespectful approach. Mr. Farion's email was not directed at discouraging union activity; it was directed at discouraging disrespectful communications.

[96] With respect to the wage parity issue, the Union was, for the most part, quite professional in its dealings with Mr. Eros. However, Mr. Gall's reference to an angry colleague showing up on his doorstep was unnecessarily provocative. Mr. Eros's response escalated the dispute. Mr. White interjected to provide some background information, as well as the clarification that the Union was not advocating for a reduction in a member's wage, and that management had various options available to resolve such a situation. Mr. White acknowledged in his testimony that Mr. Gall was wrong. Mr. Gall apologized for his error much later.

[97] Mr. Eros lobbied the Union to act on his behalf in respect of the wage parity issue. He advanced various arguments in support of his position. The Union considered his submissions and reviewed the CBA. It made the determination that there was no breach. The Union provided an explanation. At some point, Mr. Eros relied on Article 10.5.9.1, which refers to original recruitment being authorized, to suggest that a grievance should have been filed on his behalf. According to Mr. White's testimony, that provision does not apply to situations where a mistake is made, but only to recruitment-based placements. According to Mr. White, Mr. Eros simply could not accept the Union's interpretation of that provision.

[98] Mr. Eros requested an appeal of the matter and on May 8, 2019, he met with Executive Council. Mr. White testified that Mr. Eros spoke on a number of different topics at the meeting but

did not raise the grievance appeal. The Union's appeals process at this point was relatively ad hoc, and it may not have been abundantly clear that this meeting had been convened for purposes of an appeal. However, the Board accepts Mr. White's evidence that Mr. Eros had an opportunity at that meeting to discuss an appeal and chose instead to focus on other things.

[99] Although the "angry colleague" comment raises a concern, it must be considered in context. Mr. White corrected the record, explaining that there were various options available for resolving the issue. He clarified that the Union was not advocating for the colleague's wage to be reduced. Given the context, the probable effect of the Union's communications with respect to this issue, on an employee of reasonable intelligence and fortitude, would not have been to interfere with, restrain, intimidate, threaten or coerce that employee with a view to discouraging activity in or for the Union. None of the other actions taken in relation to the wage parity issue disclose a breach of s. 6-63(1)(a).

[100] In February 2019, Ms. Zyla represented Mr. Eros at the investigation meeting relating to the alleged privacy breach. Mr. Eros received a coaching letter. The Union did not call Ms. Zyla, but the materials make clear that the Union relied on the Employer's investigation and concluded that the outcome was comparable to similar cases.

[101] Mr. Eros suggests that the events surrounding the alleged privacy breach justify his criticisms of the Union's conduct and support his allegations of a malicious attempt to remove him from office. Ms. Zyla was offended by Mr. Eros's criticisms of her performance and his suggestion that she was involved in the drafting of the letter. She cautioned Mr. Eros about making "unfounded allegations" against Union representatives, described his accusation as disrespectful, offensive, and a violation of the Code of Conduct, and described the tone of his correspondence as "accusatory" and "verbally abusive".

[102] None of Ms. Zyla's communications, nor the surrounding events, are indicative of coercive, intimidating, or threatening conduct. Mr. Eros's emails were becoming increasingly critical and accusatory. Ms. Zyla attempted to respond to his many questions and to provide an explanation for her actions on the file.

[103] To be sure, the repeated reference to "discipline" is obviously incorrect, but it is not indicative of coercion, intimidation or any other category of conduct required to establish a breach of s. 6-63(1)(a). It is simply a mistake consistent with the reference to discipline in the coaching letters.

[104] Shortly before the events of August 29 and 30, 2019, Mr. Eros and Mr. Burke corresponded about the request for "reinstatement" of job duties. Mr. Burke received Mr. Eros's request, reviewed the job description, spoke with management about the circumstances, and then denied Mr. Eros's request on the basis of his considered and reasoned view of the matter.

[105] Mr. Eros took issue with Mr. Burke's suggestion that Mr. Eros's argument, if successful, would amount to a lay-off. However, Mr. Burke was reviewing and interpreting the CBA in what appears to have been an attempt to protect Mr. Eros from further harm. Mr. Burke was fulfilling his role as a representative. He was not threatening Mr. Eros. The Union's actions were in no way a breach of s. 6-63(1)(a).

[106] Mr. Eros states that the Union colluded with management regarding the "lock out", and refused to represent him when he was ejected from the work site. There is no evidence that the Union asked the Employer to keep Mr. Eros off campus. While the Union's request for an investigation occurred shortly before management's direction to Mr. Eros, the Board accepts Mr. White's testimony on this point, in which he expressed genuine ignorance but a dawning suspicion of some connection. Even if the Employer had learned, through Mr. White's request, that Mr. Eros had attended the bargaining update, this does not signal willful conduct or amount to collusion.

[107] The Union advised Mr. Eros that it was waiting to decide whether to bring an unfair labour practice application. It later retained counsel and obtained advice. The Union reasonably chose not to interfere with the Employer's investigation. It did not ignore the situation. The Union had its own concerns about Mr. Eros's performance in the role. As time wore on, the Union identified which issues could be addressed and provided representation. It did not fail to support Mr. Eros.

[108] Next, Mr. Eros alleges malicious accusation of harassment "for condemning and [questioning] union actions against union members with end goal to depose union member of volunteer representative position which is contrary to the union constitution". Mr. Eros urges the Board to consider this issue within the context of the surrounding events. This includes the newsletter incident, Mr. Vieser's email to faculty, the Union's support (or lack thereof) of Mr. Eros after the events in late August, 2019, Mr. Nelson's withdrawal from the file, the handling of the harassment investigation, the preparation for his removal, and the cancellation of the election for the program representative.

[109] The Board is not persuaded that the harassment complaints were malicious or undertaken for the purpose of deposing Mr. Eros. The contents of his communications are self-evident. In his

submissions, counsel for Mr. Eros acknowledges that Mr. Eros at times uses "somewhat dramatic language" but suggests that "dramatic language is hardly foreign to advocacy". This description is generous. The power struggle between Mr. Eros, if not entirely of his own making, was often perpetuated by him. While he had some legitimate concerns with the Union, these concerns did not justify his continuous criticisms and personal attacks.

[110] Mr. Eros states that the bargaining update on September 11 was the beginning of a concerted effort to remove him from office. However, this meeting took place after months of this type of communication. The relationships became more strained over time, and the interactions increasingly tense. Interactions which presented opportunities for learning were interpreted as executive displays of power.

[111] Mr. White sought a harassment investigation to ensure the well-being of the FROs. FROs are informed that there is zero tolerance for harassment in the workplace. They are entitled to a harassment-free workplace. The allegations were substantiated. The Board does not accept that the Union was colluding with the Employer. The Union was uncertain as to the appropriate jurisdiction for the dispute with Mr. Eros, who was a volunteer rather than an employee of the Union. The Employer refused to perform the investigation. If the Union had not wanted to take responsibility for the investigation, it would not have initiated its own.

[112] Similarly, Mr. White's frustration with Mr. Eros, which grew with the passage of time, is not indicative of malice. Through everything, Mr. White remained determined to provide Mr. Eros with representation. The fact that Mr. White disagreed with Mr. Eros on issues that may bear multiple interpretations does not signal malice. Mr. White's actions, including by stepping in to provide clarification, setting up meetings, having genuine discussions about issues of importance, travelling to meet in person, and retaining Mr. Greenwood, demonstrate his many good faith efforts to assist Mr. Eros.

[113] Mr. Eros suggests that there should have been witness interviews to determine whether the harassment investigation was warranted. This would have been redundant. Similarly, the Board is not persuaded that there was anything sinister in the investigator's suggestion that the harassment findings would be passed on to the "employer". Although Mr. Eros was a volunteer, the investigation was being treated as a workplace investigation.

[114] Mr. Eros suggests that the FROs retaliated against him due to his criticisms of their performance, and that their retaliatory actions spilled over into an attempt to remove him from his

role as school representative. Again, this allegation has to be considered in context. Mr. Eros had identified many points of agreement with faculty members on various issues related to their working conditions. In this spirit of solidarity, he routinely mixed his personal advocacy with his school representative role.

[115] Mr. Eros argues that the publication of the newsletter article was a form of public shaming for his role in the investigation. The failure of the FROs to testify at the hearing should give rise to an adverse inference, pursuant to *Murray v Saskatoon (City)*, [1952] 2 DLR 499, 1951 CanLII 202 (SK CA).

[116] The Board declines to draw an adverse inference. It is more likely that the FROs did not testify because they viewed the article as a non-issue. In Mr. Eros's submissions, the article was described as an "an article on how members can avoid being put under workplace investigation for, among other things, misconduct or harassment". This is incorrect. It was not an instruction manual on avoiding workplace investigations. It contained information about what to expect of the process. Mr. White explained that, when he looked down in response to Mr. Eros's statement, he did so because he just didn't want to get into it with Mr. Eros. Given the dynamics at play, the Board accepts that explanation.

[117] Furthermore, the newsletter was not a rough piece of work. It likely took some time to prepare, to edit, and to publish. At the time that it was published, any number of subjects could have been found to have overlapped with a concern that Mr. Eros had raised with the Union's conduct. And, even if it were published in response to the events of August 28, it is useful information for all members and is presented in an objective way, fulfilling the purpose of the newsletter.

[118] Contrary to Mr. Eros's assertions, it is not accurate to assert that there was never an investigation into the August events. Mr. Eros was interviewed. He provided his version of the facts to the Union's lawyer. The Union representatives were copied on the emails that were in circulation in June 2019. The Union was aware of Mr. Eros's activities as a school representative at that time. The Union's lawyer reviewed the facts. There was no shortage of resources assigned to the matter.

[119] The Board believes that Mr. Nelson sought to be removed from this file. Both parties led some hearsay evidence on this point. Mr. White's testimony, while hearsay in relation to Mr. Nelson's actual wishes, provides a direct explanation for Mr. Nelson's removal from the file, and

was presented in a straightforward and credible manner. According to Mr. White, Mr. Nelson had explained to him that he did not think that he could provide Mr. Eros with what he was looking for.

[120] Next, Mr. Eros also argues that certain actions, which he characterizes as direct attempts to remove him from his position, contributed to a breach of s. 6-63(1)(a).

[121] First, the request to step aside is not indicative of a breach of s. 6-63(1)(a). The Union had its own concerns that Mr. Eros was acting contrary to or outside the bounds of the role of a school representative. He was asked to step aside given the many conflicts that needed to be resolved. He was not removed. In response to the request, he refused. The request to step aside was a reasonable one. It was made in response to what the Union viewed as conduct that "did not reflect the balance" of the role.

[122] Nor are the emails from Mr. Vieser indicative of a breach of s. 6-63(1)(a). At the material times, Mr. Eros was not at work. Mr. Vieser was stepping in to take over Mr. Eros's duties while he was away, and in the midst of increasing conflict between Mr. Eros and the Union. He instructed Mr. Eros to rest, recover and get well. Mr. Eros's continued functioning in the representative role would have been in conflict with his leave from work. The wording of Mr. Vieser's email to the faculty suggests that he had concluded, reasonably, that Mr. Eros would not be likely to follow the direction of the Union.

[123] The next issue is the allegation related to the informational document and the conduct of the vote. The document suggested that the representative did not need to be notified of the meeting; consistent with this, Mr. Eros was not notified. There was clearly no coercion, restraint, intimidation or threatening conduct.

[124] The Board must be cautious about inquiring too closely into the process of an internal union vote. If it does, it risks wandering outside the bounds of its jurisdiction. The Board does not have inherent or general jurisdiction to adjudicate disputes about the interpretation, application, and breach of a union constitution, or to supervise the internal affairs of a union. In particular, it must exercise some restraint in classifying as protected any union activity that falls within internal union affairs.

[125] On these facts, there could only be interference with Mr. Eros if there was a right with which the Union was interfering. In the application, the only allusion to such a right is the allegation that the "end goal to depose" Mr. Eros was contrary to the Union Constitution. On the face of it,

there was no breach of the Constitution. As such, there is no evidence of interference with protected union activity.

[126] A similar issue arises with Mr. Eros's allegation about the cancellation of the election of the program representative. This issue raises a question about whether the Union breached Article VI(2) of its Constitution. Article VI(2) deals with the election of the program representative. It states that the election shall be arranged by the school representative. That election was arranged and then cancelled. Mr. White explained that the Executive Council had decided that it needed to decide on "structure" before an election could be called.

[127] Again, the jurisdiction to supervise and regulate an internal union election lies with the courts. The Board must exercise some restraint in classifying as protected any union activity that takes place in the context of an internal union election. Furthermore, the evidence on the issue was rather cursory. The relevance of clause VI(2)(c) of the Constitution was not explained. And, the authority of the Executive Council, if any, to intervene in an election was not addressed.

[128] Furthermore, Mr. White explained that Mr. Eros had an obligation, not a right. The obligation was to the constituency, and the Executive Council stands by the wishes of the constituency.

[129] The Board is not persuaded that the obligation to arrange an election was a protected activity, and therefore, it is not persuaded that there was interference on the part of the Union with a view to discouraging protected union activity.

[130] At the end of the hearing, Mr. Eros applied to amend the application in LRB File No. 287-19 so as to rely on s. 6-58(1)(a) in respect of the Union's alleged effort to remove him from his position as school representative through the meeting to vote for removal.

[131] In response, the Union objected to what it characterized as a scatter-shot approach to the applications, stating that such applications for amendments should be made prior to the evidence being presented. It did, however, acknowledge that it had anticipated some tangential link with this provision and had addressed it in argument.

[132] S. 6-112(2) instructs this Board that "all necessary amendments must be made for the purpose of determining the real questions in dispute in the proceedings". If the timing and nature of the request does not permit a fair opportunity to present evidence and argument, then the purpose of determining the real questions cannot be fulfilled.

[133] The Board has decided not to allow the amendment for the following reasons. LRB File No. 287-19 alleges the removal of Mr. Eros from the representative position, contrary to the Union Constitution. The related application, LRB File No. 289-19, makes mention of the "contravention of the Union constitution and democratic process to remove" Mr. Eros from the position of school representative. It also states that Mr. Eros informed Mr. White that he believed that his actions in "unilaterally declaring" him "to not be the union rep" were "contrary to natural justice".

[134] None of these references invokes the application of the principles of natural justice to the vote for removal. There was no attempt to amend the application until after all of the evidence was presented to the Board. As a result, the opportunity to present adequate evidence and argument on the application of s. 6-58 to these facts was severely limited. Not only would granting an amendment be unfair to the Union; neither party would be well served.

[135] Had the Board decided to allow the amendment, there would still be the issue of whether the guarantee pursuant to s. 6-58 extends to the circumstances in issue. S. 6-58 provides the Board with authority to consider whether the Union has complied with the principles of natural justice in relation to a narrowly defined scope of matters. It does not give the Board jurisdiction to adjudicate a dispute whose essential character is whether there has been a breach of the Constitution. Nor does it give the Board jurisdiction to consider the application of the principles of natural justice to a matter that is not a *dispute* between the employee and the union.

[136] Finally, Mr. Eros asks the Board to make connections between the many events that have occurred close in time. This includes the following findings: the Employer's investigation in late August occurred shortly after Mr. Eros's exchange with Mr. Burke about his job duties; the newsletter was published shortly after the investigation was launched; Mr. Eros was directed to remain off campus shortly after he attended a bargaining update and engaged in a heated discussion with Mr. Gall; he was placed on administrative leave in October after requesting another grievance; Mr. White went on leave around the time that Mr. Nelson was retained; and the investigation with Ms. McMahon occurred close in time with the Employer's communications on the August investigation.

[137] The Board has reviewed these incidents, on their own and in sequence. Mr. Eros presents as an active and prolific school representative and union member. This has resulted in the convergence of many related events within a short period of time. Furthermore, the fact that the Union and the Employer share some points of agreement with respect to the ingredients

necessary for the success of Saskatchewan Polytechnic does not persuade this Board that there is collusion between them. It is not necessary for the Union to act in an adversarial manner with the Employer on all issues in order to represent its members' interests effectively.

[138] Lastly, Mr. Eros asks the Board to rely on evidence that overlaps with a lawsuit in the Court of Queen's Bench relating to issues of alleged defamation. That lawsuit puts in issue communications issued by the Union which Mr. Eros says are directed at him. The communications took place in June and October, 2020. The evidence came in the form of responses to cross-examination questions of Mr. White. The Union had entered into evidence a related email from Mr. Eros, dated October 23, 2020. The full communications are not in evidence.

[139] There are some problems with the Board relying on this evidence in support of the allegations made in this application. First, the full communications are not in evidence, and so any conclusions drawn would lack the full foundation. Second, the allegations arising from these statements relate to the proper conduct of union officials in the course of an election campaign. Again, the Board must exercise restraint in classifying as protected conduct that takes place within an internal union election. In our view, interference within the meaning of s. 6-63(1)(a) does not include opinions expressed by union officials about the constituents' election choices.

[140] In conclusion, the Board has not found that the probable effect of the Union's actions, on an employee of reasonable intelligence and fortitude, would have been to interfere with, restrain, intimidate, threaten or coerce that employee with a view to discouraging activity in or for the Union. For all of these reasons, LRB File No. 287-19 is dismissed.

Employee-Union Disputes:

[141] Mr. Eros has the onus to prove, on a balance of probabilities, that the Union has breached its duty pursuant to s. 6-59 of the Act. S. 6-59 provides:

> ***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.*

[142] Mr. Eros relies on the principles set out in *Hartmier v SJRWDSU, Local 955*, 2017 CanLII 20060 (SK LRB) [*Hartmier*] and *Rattray v Unifor National*, 2020 CanLII 6405 (SK LRB) [*Rattray*].

In *Hartmier*, the Board referred to the description of the applicable principles as outlined in *Canadian Merchant Service Guild v Gagnon et al*., [1984] 1 SCR 332, at paragraph 142:

> *The following principles, concerning a union's duty of representation in respect of a grievance, emerge from the case law and academic opinion consulted.*
>
> > *1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.*
> >
> > *2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.*
> >
> > *3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.*
> >
> > *4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.*
> >
> > *5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence and without hostility towards the employee.*

[143] The Board in *Hartmier* acknowledged that unions are given latitude to make decisions affecting their members but "these decisions must be exercised judiciously especially when critical interests" are at issue (para 142). It proceeded to describe the criteria that a union must satisfy in making decisions about its members, as summarized in *Rattray*:

> *[90] Hartmier set out four criteria that a union must fulfill to meet its duty of fair representation:*
>
> - *conduct a proper investigation into the full details of the grievance;*
> - *clearly turn its mind to the merits of the grievance;*
> - *make a reasoned judgment about its success or failure; and*
> - *if it decides not to proceed with the member's grievance, provide clear reasons for its decision.*

[144] In its case law, the Board has engaged in extensive analysis of the meaning of arbitrariness, discrimination, and bad faith in the context of duty of fair representation complaints. Mr. Eros's application makes allegations related to all three categories. The descriptions of these concepts, as outlined in *Toronto Transit Commission*, [1997] OLRD No 3148, at paragraph 9, remain applicable:

> *(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.

[145] The Board in *Glynna Ward v Saskatchewan Union of Nurses*, LRB File No. 031-88 described the concepts in this way:

> *Section 25.1 of The Trade Union Act obligated 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 favouritism. 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.*

[146] In duty of fair representation cases, the relevant factual matrix is important. Relevant to the Board's determination are the nature and seriousness of the interests at stake and the resources or expertise of the union.

[147] Having summarized these general principles, the Board will proceed to consider the issues raised by the two employee-union disputes.

Employee-Union Dispute (LRB File No. 288-19):

[148] The first employee-union dispute is LRB File No. 288-19. It raises the following issues:

1. *The assigning of semester workloads requiring excess hours worked over 40 hours per week ("heavy semester workloads");*
2. *The demand for a 7.25-hour work day or 37.25-hour work week, regardless of hours worked before or after a heavy workload is issued or required;*

[149] In essence, Mr. Eros's application alleges that the Union failed in its duty of fair representation in relation to collective bargaining matters.

[150] The issues evolved throughout the course of the hearing. Mr. Eros's brief raises two main themes:

1. *Failure to bring a grievance in relation to extra assigned hours and overtime;*
2. *Failure to bring a grievance in relation to the August 28 and 29 events and improper settlement of a grievance.*

[151] As mentioned, Mr. Eros has withdrawn the issue pertaining to the Union's alleged failure to engage Article 9.7 of the CBA to address the introduction of a new or substantially changed program. That issue has been referred to an Article 9.7 committee. The Board will consider each of the remaining issues, in turn.

The Union failed in its duty of fair representation in relation to collective bargaining matters:

[152] While this issue was not pursued in Mr. Eros's final submissions, the Board will address it briefly.

[153] Although the duty of fair representation applies to collective bargaining, this aspect of the duty attracts special consideration: *Johnston v Service Employees' International Union, Local 333*, 2003 CanLII 62879 (SK LRB) [*Johnston*]. The Board in *Johnston* explained:

> *[20] The duty of fair representation requires the Union to act in a manner that does not demonstrate bad faith, arbitrary treatment or discrimination. The general requirements were set out by the Supreme Court of Canada in Canadian Merchant Services Guild v. Gagnon, 1984 CanLII 18 (SCC), [1984] 1 S.C.R. 509. In particular, the Court held that "the representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employees."*
>
> *[21] In Radke v. Canadian Union of Paperworkers, [1993] 2nd Quarter Sask. Labour Rep. 57, LRB File No. 262-92, the Board expanded on the requirement to avoid "arbitrary" treatment as follows:*
>
>> *What is expected of trade union officials in their representation of employees is that they will act honestly, conscientiously and without prejudgment or favourtism. Within the scope of these criteria, they may be guilty of honest errors or even some laxity in the pursuit of the interests of those they represent. In making decisions about how or whether to pursue certain issues on behalf of employees, they should certainly be alert to the significance for those employees of the interests which may be at stake. Given the importance of the employee interests the union has the responsibility to pursue, they should also carry out their duties seriously and carefully. The ultimate decision made or strategy adopted, however, may take into account other factors than the personal preferences or views of an individual employee.*

[154] In *Johnston*, at para 22, the Board relied on the reasoning of *United Steelworkers of America v Six Seasons Catering Ltd.,* [1994] 3rd Quarter Sask Labour Rep 311, at 318:

> *In the case of the negotiation of provisions for a collective agreement, however, there are obvious difficulties of determining what constitutes a breach of the duty of fair representation. Unlike the situation which obtains in the case of decisions made in relation to grievances, the range of considerations of policy, practicality, strategy and resources which are legitimately taken into account are virtually limitless. Although labour relations tribunals and courts have acknowledged that this aspect of the duty exists, they have shown themselves reluctant to contemplate the chastisement of trade unions for a breach of the duty to negotiate fairly.*

> *The difficulty of determining how the principles of the duty of fair representation would apply where the issue arises in the context of the bargaining process is particularly acute in the case of an allegation that the conduct of the union is "discriminatory," which is the sort of charge the Union fears here. Collective bargaining is by nature a discriminatory process, in which the interests of one group may be traded off against those of other groups for various reasons - to redress historic imbalances, for example, or to reach agreement within a reasonable time, or to compensate for the achievement of some other pressing bargaining objective. The role of the union is to think carefully about the implications of the choices which are made, and no employee or group of employees can be assured that their interests will never be sacrificed in favour of legitimate bargaining goals or strategies.*

[155] The duty of fair representation requires that the Union be alert to the significance of the interests at stake. It should carry out its duties seriously and carefully. It is expected to carefully consider the implications of the choices it makes. The ultimate decision made or strategy adopted, however, may take into account factors other than personal preference. Trade-offs are a necessary aspect of the collective bargaining process.

[156] The Board is not persuaded that the Union has breached its duty of fair representation in relation to collective bargaining. For much of the timeframe in question, the Union was engaged in bargaining a renewal of the CBA. Prior to this timeframe, the Union had sought proposals of interest to members on three occasions. After this, in June 2019, the Union representatives met and discussed issues of concern with members of the faculty. Many concerns were raised. Mr. White reminded members that they would have another opportunity to raise new issues in new rounds.

[157] It was explained that raising new issues after proposals have been exchanged was not advisable. Such “new issues” needed to be linked to existing issues. Despite this, Mr. Eros insisted that the Union address the issue of post-graduate instructor pay and workload prior to the next academic year. Given the stage of collective bargaining at the time, this demand was not reasonable. The Union was concerned about straining the relationship with the Employer. This was an entirely legitimate concern.

[158] Even prior to this timeframe, there is no evidence that the Union did anything other than carry out its duties seriously and carefully, including by prudently considering the implications of the choices it had made. It described how it had reflected on the various perspectives on multiple issues of concern to the faculty, and how it had chosen to proceed to negotiate certain issues and not others.

Failure to bring a grievance in relation to extra assigned hours and overtime:

[159] Mr. Eros says that the Employer "front-end loaded" his courses in the first semester in 2018 and 2019, resulting in his having to work in excess of 40 or even 50 hours per week. He was then required to attend the office for a minimum of 7.25 hours per day and was therefore substantially underpaid. He was also scheduled to teach courses which were notoriously difficult to instruct.

[160] Mr. Eros sought to pursue a grievance related to the requirement to attend campus and be in his office for a minimum of 7.25 hours per day. According to Mr. Eros, the Union has failed to articulate its reasons for failing to bring a grievance in relation to this concern. From Mr. Eros's perspective, he would raise his concerns with the Union and the result would be, not a genuine discussion, but, instead, a power struggle and a series of personal attacks.

[161] The Union suggests that Article 9 is a full answer to this issue. It says that there is no role for the Union other than in the appointment to the Hours of Work Advisory Committee. Article 9.7.4 provides that the purpose of the committee is to resolve "all disputes in regard to hours of work as quickly as possible". If the dispute is not resolved by the committee, it is referred to an arbitrator. The findings are sent to the employee and are binding on the employee. The Union is involved in jointly selecting the arbitrator.

[162] The Union also states that category caps are set out at Article 9.2.3. These are the maximum assigned instructional student contact hours constituting the equivalent of a full instructional student contact assignment. The Union states that it would have a role to play if the Employer sought to change the category cap for the School of Business programs because of the broader impact. There is no evidence that the Employer attempted to change the category cap.

[163] Lastly, Article 9.3.2 provides for a specific formula that deals with compensation for extra time worked.

[164] Mr. White testified that the Union does not support any demand made by management to require a 7.25-hour work day. Mr. Eros argues that this testimony confirms the validity of his complaint.

[165] Mr. Eros relies on a grievance request filed on October 9, 2019, in which he sought various remedies, including "a workload that is representative of the average instructor's workload effective immediately". Attached to the grievance was his analysis of instructor workloads.

[166] The Union suggests that it had two options for resolving the issue – through Article 9 and through collective bargaining.

[167] The Board agrees with the Union that the quality of its representation should be considered on the backdrop of the number and nature of the requests made. Frankly, it is difficult to imagine how the Union representatives were able to manage all of the demands on their time. However, Mr. Eros repeatedly made it clear that he was concerned about what he viewed as overtime work in the context of the requirement to work a 7.25-hour day. The compensation he received for days in excess does not respond to this issue, and it is not apparent that the Union turned its mind to the merits.

[168] Upon review of the CBA, it is not obvious whether the hours of work provisions, contained in Article 9, are intended to address this type of concern. Besides, it is the Union's role to interpret the CBA. However, Mr. White has acknowledged that a directive from management to attend at the office for a 7.25-hour work day is a breach of the CBA. The Union's argument that the employees could have ignored management's directive with no consequences contradicts its other maxim, which is to "work now, grieve later".

[169] Mr. Eros insists that he was directed to attend the office for a 7.25-hour work day. There is no evidence that the Union investigated this allegation. If the hours of work provisions do address such a directive, then the Union should provide clear reasons explaining why it believes this is so. If not, then it is necessary for the Union to conduct a proper investigation and consider whether to bring a grievance with respect to this specific concern.

[170] The failure to do any of these things is arbitrary conduct and a breach of the Union's duty of fair representation. Therefore, the Board will make an order directing the Union to address the issue of combining front-end loaded courses with a 7.25-hour work day by: providing clear reasons why the hours of work provisions address such a directive; or, conducting a proper investigation into the full details of the grievance, clearly turning its mind to the merits of the grievance, making a reasoned judgment about its success or failure, and if it decides not to proceed with the grievance, providing clear reasons for its decision.

Failure to bring a grievance in relation to the August 28 and 29 events and improper settlement of a grievance:

[171] Mr. Eros had asked that a grievance be launched in relation the events of August 28 and 29 and his subsequent treatment. A grievance was filed but he says that the Union failed when it

settled that grievance to his detriment and without consultation. Overall, the lack of Union support was devastating to him, and it should be considered on the backdrop of the preceding events, which suggests a pattern of retaliation on the part of the Employer as a result of Mr. Eros's various union activities.

[172] After the harassment complaints were launched, Mr. Nelson assumed carriage of Mr. Eros's disputes with the Employer. He filed a grievance seeking the cancellation of the letter of reprimand, the end to the investigation of the issues raised in the letter, the notification of those individuals who were interviewed, and a new process for directing concerns about communications, among other details related to each of these headings.

[173] On December 6, 2019, the Union wrote a strongly worded letter to the Employer demanding that it revise and/or withdraw its letter to Mr. Eros. The Employer decided to withdraw the request for additional details on the allegations made in Mr. Eros's statement and to not proceed with an investigation of those allegations.

[174] Mr. Eros made a further request for a grievance based, in part, on Mr. Rempel's letter, dated January 6, 2020, which Mr. Eros perceived as a failure to take responsibility. Mr. Eros says, as well, that the settlement of the grievance was detrimental to him and was reached without consultation with him.

[175] Mr. Burke tried to explain to Mr. Eros that his conduct could be interpreted as extending beyond the bounds of his role as school representative. Mr. White testified that the school representative is intended to operate in a communications role, and is not equivalent to a labour relations officer. Given this context, there were some limits on what the Union was able or willing to do. The fact that the Union's lawyer, in brief and informal correspondence, described some aspect of the Employer's conduct as wrongful does not preclude what might have been another more nuanced consideration of the entire set of circumstances.

[176] The evidence suggests that, as a result of his union representation, much of what Mr. Eros sought through the Nelson grievance was either accomplished or deemed irrelevant. The discipline was reduced, the revived investigation was ended, and the Union demanded a change in the manner in which the Employer would deal with communications. That approach, even if it has not been consistently followed, addresses much of the conflict which arose in this case. Ultimately, Mr. Eros was subject to the lowest form of discipline, a verbal warning.

[177] However, Mr. Eros also states that the settlement, which resulted in an amendment to the verbal warning actually placed him in a worse light than the original reprimand. To be fair, the settlement resulted in lesser discipline, so this statement cannot be entirely accurate. On the other hand, the removal of the two paragraphs from the disciplinary letter amounted to the removal of context from the disciplinary action. Mr. Eros fears that he will have less ability to rely on that context in future instances of progressive discipline.

[178] The Union did not provide a clear explanation for its decision to settle without consulting Mr. Eros, nor for its decision to remove the two paragraphs from the letter. Although the absence of a clear explanation is contrary to the fourth *Hartmier* criteria, this absence should be considered in relation to the low level of discipline for insubordination and the many demands placed on the Union. Mr. White spoke of the exhaustion that he had experienced in dealing with the requests. He also spoke of the need to bring value to every member. Each of the FROs was operating within the same constraints. Mr. Eros still does not take responsibility for his refusal to comply with an Employer's request, no matter the context.

[179] The Board recognizes these challenges. The *Hartmier* criteria, while important, must be applied contextually. Under the circumstances, the absence of a clear explanation does not give rise to a breach. Relatedly, although it is unclear why the two paragraphs were removed, their removal, even if in error, is not indicative of totally unreasonable, that is, arbitrary conduct. It certainly does not justify re-opening a settlement that was otherwise entirely reasonable.

[180] In other respects, the Board acknowledges that the Union did not achieve the exact result that Mr. Eros was seeking. For example, even if there were interviews conducted, the settlement precludes notifying individuals that the "allegations were unfounded". However, the Union is not held to a standard of perfection. It is not expected to achieve the exact result sought by the grievor.

[181] Mr. Eros also alleges a refusal by the Union to support an unfair labour practice complaint after the Union's lawyer "gave his recommendation to do so". The Union is entitled to weigh the advantages and disadvantages of pursuing available avenues for relief. Its decision to pursue the matter through a less formal avenue is not a breach of its duty of fair representation. The Union has negotiated with the Employer an agreement to address in a different fashion its concerns about communications to faculty members by an elected representative. Whether the Employer consistently abides by this agreement will be an issue for the Union to deal with in the future.

[182] Finally, the Union has not demonstrated discriminatory or bad faith action.

[183] A finding of discriminatory action requires invidious distinctions without reasonable justification. The Union did not make invidious distinctions. It maintained its commitment to representing Mr. Eros. It provided him with more continuous service than could be expected for most individual union members. In most circumstances, Mr. White is the first point of contact for members, only, but in this case he remained very directly involved in Mr. Eros's matters over a period of almost two years. And, to the extent that the Board has found that the representatives failed in fulfilling their duties, it must also take into account their considerable efforts to satisfy Mr. Eros's many concerns, his high standards, and the existing provocations.

[184] Bad faith requires an element of intention. There is no evidence that any of the missteps in representing Mr. Eros were motivated by ill-will. Whenever possible, the representatives made efforts to set aside Mr. Eros's criticisms to focus on the task at hand. Even where they did not succeed in doing this, there is no evidence that they intended to deny Mr. Eros the benefits under the CBA. While individual representatives expressed some frustration towards Mr. Eros at various times, other representatives intervened to continue to provide Mr. Eros with service. On the whole, the Board does not agree that the Union was motivated by ill-will or hostility in its representation of Mr. Eros.

[185] Therefore, the Board dismisses the allegation that the Union failed to bring a grievance and improperly settled a grievance related to the August events.

Employee-Union Dispute (LRB File No. 289-19):

[186] The allegations contained in this application relate primarily to three themes:

1. The Union attempted to remove Mr. Eros from the position of representative, or to have him resign, related to his complaints about the Union's handling of his wage parity grievance;

2. The Union failed to support him when management took action in response to his performing the duties of his position and the Union maintains an inappropriate relationship with management; and,

3. Union officials filed malicious charges of harassment and the Union has removed the power of the volunteer union representatives to file grievances.

[187] There is significant overlap between these allegations and those that are contained in the other two applications. To the extent that they have not already been addressed, the Board will address these allegations in the context of the Union's duty of fair representation, in turn.

The Union attempted to remove Mr. Eros from the position of representative, or to have him resign, related to his complaints about the Union's handling of his wage parity grievance:

[188] This heading does not disclose a breach of s. 6-59 of the Act.

[189] This issue has already been addressed in its entirety, and as is more appropriate, pursuant to s. 6-63(1)(a).

[190] As well, in the application, Mr. Eros includes a statement that his wage parity grievance request was denied, and that the Union's rationale for the denial was not supported by the CBA. In argument, Mr. Eros did not pursue the issue of whether the Union failed in its duty of fair representation in its handling of the wage parity grievance. However, given the many overlapping issues and the statement in the application, the Board finds that it is appropriate to comment on this aspect of the Union's discharge of its duty.

[191] The evidence discloses that the Union reviewed Mr. Eros's request, made the appropriate inquiries, and turned its mind to the merits of the grievance in reference to the operation of the CBA. The Union made a reasoned judgment about its success or failure and decided not to proceed. In addition to this, the Union considered and responded to multiple follow-up emails and requests in which Mr. Eros demonstrated that he did not accept their conclusions. At the meeting held on May 8, Mr. Eros had an opportunity to discuss an appeal and chose instead to focus on other things. In the final result, the Union discharged its duty but Mr. Eros did not accept the result.

The Union failed to support him when management took action in response to his performing the duties of his position and the Union maintains an inappropriate relationship with management:

[192] This issue has been fully addressed within the first and second applications. It does not disclose a breach of s. 6-59.

The Union officials filed malicious charges of harassment and the Union has removed the power of the volunteer union representatives to file grievances:

[193] The first aspect of this complaint has been addressed.

[194] The second aspect is whether the Union has removed the power of the union representatives to file grievances. There are two problems with this allegation. First, this is a matter of internal union affairs. Even if s. 6-58 were invoked, there is no clear connection with a dispute that attracts the application of the principles of natural justice. Second, there is no evidence supporting this allegation.

[195] The school representative acts as a communication link. The position is not equivalent to an FRO. The role is defined in a document provided to all school representatives. The school representative is to refer members to the appropriate Union executive or staff member. With respect to collective bargaining, the school representative is expected to encourage the process of proposal development and "receive the proposal suggestions during the identified timeframe." The role does not involve interpreting complex provisions of the CBA. Nor does it involve representing a member during an investigation or engaging with HR on behalf of a member.

[196] Filing grievances is a high level activity within the role of the FROs. The FROs receive training in this area.

[197] This Board's proceedings are not the appropriate avenue for seeking the structural changes that Mr. Eros wishes to effect.

[198] Lastly, there are a number of miscellaneous complaints contained in this application, none of which disclose a breach of the duty of fair representation. In particular, Mr. Eros suggests that Mr. Burke threatened him with a lay-off. The Board has determined that Mr. Burke was fulfilling his role as a representative. He was not threatening Mr. Eros. He did not breach his duty to Mr. Eros.

[199] The application, LRB File No. 289-19, is dismissed.

Remedy:

[200] The Board has not addressed the issue of monetary damages. It will do that now.

[201] As is well established, in fashioning an appropriate remedy, the Board has significant discretion. The goal is to place the applicant in the same position as he would have been in had it not been for the breach. A remedy is to be compensatory, not punitive.

[202] In this case, the Board has declined to make a finding of bad faith. The requests for damages in response to bad faith conduct and punitive damages are denied.

[203] On the issue of "costs", this case is similar to another file involving the same Union, *John Karmazyn v Saskatchewan Polytechnic Faculty Association*, 2021 CanLII 52074 (SK LRB), in which the Board found as follows:

> *[123] The Board notes that such orders are exceedingly rare. The Board is not persuaded that this is one of those rare circumstances in which damages of this kind should be ordered. This is not an egregious case of arbitrary conduct on the part of the Union, as in Hartmier. This is not a case in which the Union utterly failed to investigate the circumstances giving rise to Karmazyn's complaints, nor was it entirely the fault of the Union that aspects of the grievance request were not fully investigated or that the grievance request was filed late. Therefore, the request for these costs is denied.*

[204] This is not one of those rare circumstances in which damages of this kind should be ordered. The Union did not utterly fail in its duty of fair representation; nor was any breach of the duty entirely the Union's fault. On the contrary, the Union maintained its commitment to repeatedly and continuously providing Mr. Eros with representation under difficult circumstances.

[205] For similar reasons, the Board does not find that an order for an apology is appropriate.

[206] The Board wishes to express its appreciation for the excellent advocacy, including by way of written briefs, by counsel for the Union and Mr. Eros. Even if not referred to in these Reasons, all of the authorities presented were considered in the Board's deliberations.

[207] An appropriate order will accompany these Reasons.

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

DATED at Regina, Saskatchewan, this **10th** day of **November, 2021.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson