Saskatchewan Labour Relations Board

SASKATCHEWAN POLYTECHNIC FACULTY ASSOCIATION, Applicant v CHAU HA, Respondent, and SASKATCHEWAN POLYTECHNIC, Respondent

LRB File Nos. 002-23 and 011-23; April 18, 2023
Chairperson, Michael J. Morris, K.C. (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*

Counsel for the Applicant, Saskatchewan Polytechnic Faculty Association:	Gordon D. Hamilton
The Respondent, Chau Ha:	Self-represented
Counsel for the Respondent, Saskatchewan Polytechnic:	Kit McGuinness

Application for summary dismissal – Clauses 6-111(1)(p) and (q) of *The Saskatchewan Employment Act* – Duty of fair representation – Application granted in part – Employee has no standing to assert breaches of employees' rights other than her own.

Allegation of lack of evidence – *Soles* considered – Employee not obliged to file evidence at this stage.

Allegation of abuse of process – *Metz* considered – criteria not met.

Allegation of delay – *Rosom* applied – Subsection 6-111(3) inapplicable to employee-union disputes – Employer not precluded from raising delay in a more fulsome hearing at a later date.

Allegation of no arguable case – Not plain and obvious that application will fail if employee's allegations are proven – Application not patently defective.

REASONS FOR DECISION

Background:

[1] Michael J. Morris, K.C., Chairperson: On January 6, 2023, Chau Ha [Ms. Ha] filed an application alleging breaches of the duty of fair representation by the Saskatchewan Polytechnic Faculty Association [Union] pursuant to s. 6-59 of *The Saskatchewan Employment Act* [Act]. The Union represents employees of Saskatchewan Polytechnic [Employer], including Ms. Ha. The Union and the Employer each filed replies to Ms. Ha's application. The Employer's reply states that Ms. Ha's application involves a dispute that is entirely between her and the Union.

[2] On January 20, 2023, the Union filed an application seeking summary dismissal of Ms. Ha's application, pursuant to clauses 6-111(1)(p) and (q) of the Act. On January 25, 2023, Ms. Ha filed her reply to the Union's application. The Board then set deadlines for further written submissions. The Union filed written submissions on February 21, 2023, and Ms. Ha filed written submissions on February 28, 2023. The Employer filed no reply or submissions in response to the Union's application.

[3] Ms. Ha's application is not a model for conciseness and clarity. That said, based on her application and the contemporaneously filed documents referred to in it, the Board understands the crux of Ms. Ha's allegations purporting to ground one or more breaches of s. 6-59 to be the following:

i. The Employer has an obligation to Ms. Ha, at least partially grounded in article 23.1.1 of the collective agreement, to ensure that both Ms. Ha and the Union are properly informed of the nature of the allegations against her prior to any investigative meeting with the Employer. Article 23.1.1 states: "Prior to an investigative meeting, the employee and [Union] will be advised of the nature of the issue to be discussed. The employee has the right to [Union] representation at the meeting." In addition, the Union has an obligation to Ms. Ha to ensure that the Employer meets its obligation, and to assist Ms. Ha in preparing for any investigative meeting.

ii. Ms. Ha participated in an investigative meeting at some point over 3 years ago [First Investigative Meeting], prior to which neither the Employer nor the Union met their above-described obligations. The Employer imposed a reprimand following this meeting [First Reprimand]. The Union grieved the First Reprimand, though not on the grounds that Ms. Ha had been denied procedural fairness by not being properly informed of the nature of the allegations against her. Ultimately, the Employer withdrew the First Reprimand shortly before the date set for the arbitration.

iii. Ms. Ha participated in a second investigative meeting on January 19, 2021 in relation to different allegations [Second Investigative Meeting]. The Union again failed to ensure that both she and the Union were properly informed of the allegations against her prior to the meeting. Ms. Ha received a reprimand on January 26, 2021 [Second Reprimand]. She requested the Second Reprimand be grieved. At that time, her grievance request was not based on the Employer not properly informing her of the allegations against her. Her

request was denied on February 10, 2021 by a Faculty Relations Officer [FRO]. Ms. Ha then unsuccessfully appealed the FRO's decision to the Union's Executive Council [EC].

iv. A third investigative meeting occurred [Third Investigative Meeting], apparently in October of 2021. After this meeting, Ms. Ha says the Employer "opted to do nothing." In other words, no disciplinary action was taken.

v. On or about December 1, 2021, after the Third Investigative Meeting, Ms. Ha apparently submitted a grievance request with respect to the procedural fairness she alleged she and others had been denied prior to investigative meetings. This grievance request was not included in the material filed with Ms. Ha's application, but the FRO's January 14, 2022 response denying the request was included, and it refers to the December 1, 2021 date. In part, the FRO's response stated "... the FRO's are of the belief that the employer has satisfied the requirements of the Article in both circumstances prior to your investigative meetings and also gone beyond the requirements of the article to provide you with information about how they will conduct their investigation."

vi. Ms. Ha appealed the FRO's January 14, 2022 decision to the EC. In the spring of 2022, the EC decided to overturn the FRO's decision. The EC then proceeded to develop a process to ensure the Union and employees were given appropriate information prior to investigative meetings. This was apparently mentioned in the Union newsletter in late 2022.

vii. Ms. Ha says she was not kept apprised of the status of her grievance request following the EC's decision to overturn the FRO's decision. Also, as of April of 2022, multiple FROs had filed harassment complaints against Ms. Ha for allegedly harassing them over the preceding two years. Ms. Ha says these complaints were unfounded and demonstrated the FROs' bias and bad faith toward her. According to Ms. Ha the FROs did not objectively and reasonably represent her at the time of the Second Investigative Meeting, or objectively and reasonably consider her grievance requests related to the Second Reprimand. In Ms. Ha's words, "FROs claimed I have been harassing them for two years yet never told their direct supervisor or me and remained "representing" me over various workplace issues and denying my grievance requests over the past years."

viii. On December 13, 2022, Ms. Ha filed a grievance request for the Second Reprimand to be grieved on the basis that she had been denied procedural fairness. On January 5, 2023,

the Union advised her that it would move forward with the grievance with respect to the Second Reprimand, as Ms. Ha was "not granted the right to natural justice".[1] Ultimately, the Second Reprimand was removed from Ms. Ha's file after the expiry of two years, in accordance with the provisions of the collective agreement (i.e., due to the passage of time, not as a result of the filing of a grievance).[2]

[4] Apart from her allegations with respect to herself, Ms. Ha also purports to apply to the Board with respect to the Union allegedly "potentially failing to represent other members who have undergone investigations" and "preventing other members from the same denial of natural justice thus violating article 23.1.1 "Investigations" of the Collective Bargaining Agreement (CBA)."

Argument on behalf of the Union:

[5] The Union submits that Ms. Ha's application ought to be summarily dismissed because she has alleged no arguable case. It also submits the application lacks evidence, is an abuse of process because it involves allegations which were touched on in previously withdrawn applications, and contains allegations with respect to matters which occurred more than 90 days before her application was filed. Finally, the Union submits that that Ms. Ha cannot advance claims for alleged breaches of other employees' rights in her application.

Argument on behalf of Ms. Ha:

[6] Ms. Ha argues that her application is based on the FROs' failure to ensure she was afforded procedural fairness prior to investigative meetings and failure to file grievances for the First Reprimand and Second Reprimand based on the lack of procedural fairness. She says she can establish by evidence that the FROs' conduct was arbitrary, discriminatory and in bad faith.

Applicable Statutory Provisions:

[7] The following provisions of the Act are relevant:

> ***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*

---

[1] The January 5, 2023 email relating to this was filed by Ms. Ha along with her written submissions on the summary dismissal application. Although this email was not mentioned in Ms. Ha's application, which was filed on January 6th, the Board considers it reasonable to consider it in the context of the Union's application for summary dismissal, given its potential relevance and the *Statement of Principles on Self-represented Litigants and Accused Persons* (2006) (online) established by the Canadian Judicial Council and endorsed by the Supreme Court of Canada in *Pintea v Johns*, 2017 SCC 23. See also *Saskatchewan Government and General Employees' Union, Local 1105 v Darryl Upper*, 2023 CanLII 10506 (SK LRB), at paras 29-36.

[2] This is mentioned in paragraph 35 of the Union's written submissions.

> *employee's bargaining agent with respect to the employee's or former employee's rights pursuant to a collective agreement or this Part.*
>
> *(2) Without restricting the generality of subsection (1), a union shall not act in a manner that is arbitrary, discriminatory or in bad faith in considering whether to represent or in representing an employee or former employee.*
>
> *. . .*
>
> ***6-111(1)** With respect to any matter before it, the board has the power:*
>
> *…*
>
> *(p) to summarily dismiss a matter if, in the opinion of the board, there is a lack of evidence or no arguable case;*
>
> *(q) to decide any matter before it without holding an oral hearing;*

Analysis and Decision:

[8] As noted in the Board's August 22, 2022 decision in *Saskatchewan Polytechnic Faculty Association v Chau Ha* [*Ha #1*], it is well established that the Board has authority to summarily dismiss an application pursuant to s. 6-111(1)(p), and that it may do so without holding an oral hearing pursuant to s. 6-111(1)(q).[3]

[9] The Union's primary argument is that Ms. Ha's application discloses no arguable case. The Union also requests that Ms. Ha's application be dismissed because it: (1) lacks evidence; (2) is an abuse of process; (3) contains allegations that relate to matters more than 90 days before the application was filed; and (4) attempts to advance claims for alleged breaches of other employees' rights. These latter arguments will be addressed first, before moving on to the "no arguable case" argument.

[10] First, with respect to the "lack of evidence" argument, the Board refers to its decision in *Soles*:

> ***[23]** … In our view, it is not appropriate to consider the specific ground of a "lack of evidence" because, by its very words, it infers a requirement to produce evidence at this stage of the proceedings. While we will examine below the requirements for the filing of an application, we note that, at the pleadings stage, a party is not specifically required to outline all the evidence it intends to adduce or all the documents it intends to introduce in evidence at a hearing. While it is possible that the Board may in the future utilize a process where the parties must file their evidence in written form rather than have an oral hearing (i.e. a "paper hearing"), a practice currently generally limited to the determination of interim applications, it would seem that the ground of a "lack of evidence" would more appropriately be used for dismissing an application following the introduction of evidence, whether or not an oral hearing is held.[4]*

---

[3] *Saskatchewan Polytechnic Faculty Association v Chau Ha*, 2022 CanLII 75556 (SK LRB) [*Ha #1*], at paras 21-23.
[4] *Soles v. Canadian Union of Public Employees, Local 4777*, 2006 CanLII 62947 (SK LRB) [*Soles*], at para 23.

[11] Here, as was the case in *Soles*, there is no requirement on Ms. Ha to produce evidence at this stage of the proceedings. Accordingly, the Board declines to dismiss any aspect of Ms. Ha's application on this basis.

[12] Second, with respect to the abuse of process argument, the Union relies on the Board's decision in *Metz*.[5] In *Metz*, the Board summarily refused to hear an application because the Board had previously ruled on the matters in issue, applying the doctrine of *res judicata*.[6] The Board also concluded that the application's attempt to re-litigate those matters was an abuse of process.[7] Here, Ms. Ha has only had one application adjudicated by the Board, in *Ha #1*, and that application did not involve the matters in issue in the current application. Rather, the Board described the essence of the allegations in *Ha #1* as "since 2016, the Union has not provided its members with the opportunity to evaluate its performance nor provided its members with the reports of any performance evaluations that have been performed."[8] Accordingly, it cannot be said that Ms. Ha is applying to re-litigate the matters adjudicated in *Ha #1*.

[13] The Union points out that Ms. Ha has withdrawn 7 applications prior to them being adjudicated by the Board, and suggests that the current application's allegations were raised in the applications that were withdrawn. The Board has not meticulously examined every single allegation in each withdrawn application referenced by the Union.[9] However, it does not appear that the current application is merely a rehash of allegations that underpinned the withdrawn applications. Notably, the current application includes allegations that post-date the filing and withdrawal of the earlier applications. Further, there is nothing necessarily improper about withdrawing an application and filing a new application its place. In *International Union of Operating Engineers Hoisting & Portable & Stationary, Local 870 v. Rural Municipality of Meota No. 468*, the Board permitted the applicant to withdraw a certification application and to file a subsequent application for the same bargaining unit, since the initial application had not been determined by the Board.[10]

[14] The Board notes that the Union has not applied pursuant to clause 6-111(1)(o) of the Act, the analogous provision to s. 18(o) of *The Trade Union Act* which was relied upon by the Board in *Metz*. Clause 6-111(1)(o) would generally be the provision engaged when applying for summary

---

[5] *Metz v. Saskatchewan Government and General Employees' Union*, 2007 CanLII 68747 [*Metz*].
[6] *Metz*, at para 83.
[7] *Metz*, at para 84.
[8] *Ha #1*, at para 46.
[9] LRB Nos. 146-21, 023-22, 062-22, 069-22, 082-22, 084-22 and 086-22.
[10] *International Union of Operating Engineers Hoisting & Portable & Stationary, Local 870 v. Rural Municipality of Meota No. 468*, 2002 CanLII 52905 (SK LRB).

dismissal based on the principles articulated in *Metz*. Regardless, the Union has not satisfied the Board that Ms. Ha's application amounts to an abuse of process.

[15] Third, the Union argues that "[t]he evidence and claims presented by Ms. Ha are all outside the 90 day period", which is a reference to s. 6-111(3) of the Act:

> ***Powers re hearings and proceedings***
>
> ***6-111*** *…*
>
> *(3) Subject to subsection (4), the board may refuse to hear any allegation of an unfair labour practice that is made more than 90 days after the complainant knew or, in the opinion of the board, ought to have known of the action or circumstances giving rise to the allegation.*

[16] In *Rosom*,[11] citing *Coppins*,[12] the Board recently confirmed that the 90 day time period does not apply to applications based on employee-union disputes.[13] Accordingly, s. 6-111(3) is inapplicable. Similar to *Rosom*, however, the fact that s. 6-111(3) is inapplicable does not necessarily preclude the Union from raising delay in a more fulsome hearing at a later date.[14] This is what occurred in *Hartmier*,[15] for example. The Board notes that the Union has raised the timeliness of Ms. Ha's application in its reply, and that a considerable amount of time has passed since many of the events in issue. Per *Hartmier*, the Board will typically consider the following factors when assessing whether an application should be dismissed for undue delay: (1) the length of the delay; (2) prejudice to a respondent; (3) sophistication of the applicant; (4) the nature of the claim; and (5) whether justice can be achieved despite the delay.[16]

[17] Finally, the Union notes that Ms. Ha's application attempts to put in issue the potential breach of other employees' rights, apart from her own. More particularly, Ms. Ha's application alleges (underlining added):

> *My complaint against the union is that they have failed to represent (1) me by ensuring procedural fairness (natural justice) when the employer investigated my conduct for violating the Code of Conduct on three occasions resulting me getting two reprimands, one remains on my file as of today, (2) potentially failing to represent other members who have undergone investigations, and (3) preventing other members from the same denial of natural justice thus violating article 23.1.1 "Investigations" of the Collective Bargaining Agreement (CBA).* …

---

[11] *Canadian Union of Public Employees v Reuben Rosom*, 2022 CanLII 100088 (SK LRB) [*Rosom*].
[12] *Coppins v. United Steelworkers, Local 7689*, 2016 CanLII 79633 (SK LRB) [*Coppins*], at paras 19-22.
[13] *Rosom*, at paras 13-14.
[14] *Rosom*, at para 37.
[15] *Hartmier v Saskatchewan Joint Board Retail Wholesale and Department Store Union and Retail, Wholesale and Department Store Union, Local 955*, 2017 CanLII 20060 (SK LRB) [*Hartmier*], at paras 93-136.
[16] *Hartmier*, at para 120.

[18] The Board agrees that Ms. Ha has no standing to advance the underlined complaints on behalf of "other members". She cannot litigate their rights, and for there to be an arguable case there must be a party with standing who can advance the argument and the case.[17] Accordingly, the aspect of Ms. Ha's application dealing with others' rights may be summarily dismissed.

[19] As previously mentioned, the Union primarily applies to dismiss Ms. Ha's application on the basis that it discloses no arguable case. The test for summary dismissal on this basis was summarized in *Roy v Workers United Canada Council* [*Roy*]:

> *1. In determining whether a claim should be struck as disclosing no arguable case, the test is whether, assuming the applicant is able to prove everything alleged in his/her claim, there is no reasonable chance of success. The Board should exercise its jurisdiction to strike on this ground only in plain and obvious cases and where the Board is satisfied that the case is beyond doubt.*
>
> *2. In making its determination, the Board may consider only the subject application, any particulars furnished pursuant to demand and any document referred to in the application upon which the applicant relies to establish his/her claim.*[18]

[20] As indicated in *Roy*, summary dismissal is a vehicle for the disposition of applications that are patently defective.[19] The defect(s) must be apparent without the need for weighing evidence, assessing credibility, or evaluating novel statutory interpretations.[20] It must be plain and obvious the application will fail even if the applicant proves everything they allege.

[21] Here, Ms. Ha must plead and rely on facts that, if proven, could establish conduct amounting to a breach of the duty of fair representation. As identified by the Supreme Court in *Gagnon*, "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."[21]

[22] Subsection 6-59(2) expressly prohibits a union from acting in a manner that is arbitrary, discriminatory or in bad faith in considering whether to represent or in representing an employee. In *Ward*, the Board described the meaning to attribute to these terms in the context of s. 25.1 of *The Trade Union Act*:

---

[17] *Saskatchewan Power Corporation v Joel Zand*, 2020 CanLII 36086 (SK LRB), at para 19.
[18] *Roy v Workers United Canada Council*, 2015 CanLII 885 (SK LRB) [*Roy*], at para 8.
[19] *Roy*, at para 9.
[20] *Roy*, at para 9.
[21] *Canadian Merchant Service Guild v. Gagnon et al*., 1984 CanLII 18 (SCC), [1984] 1 SCR 509 [*Gagnon*], at p 527.

> *Section 25.1 of The Trade Union Act obligates the union to act "in a manner that is not arbitrary, discriminatory, or in bad faith". The union's obligation to refrain from acting in bad faith means that it must act honestly and free from personal animosity towards the employee it represents. The requirement that it refrain from acting in a manner that is discriminatory means that it must not discriminate for or against particular employees based on factors such as race, sex or personal favoritism. The requirement that it avoid acting arbitrarily means that it must not act in a capricious or cursory manner or without reasonable care. In other words, the union must take a reasonable view of the problem and make a thoughtful decision about what to do. So long as it does so, it will not violate section 25.1 by making an honest mistake or an error in judgment.*[22]

[23] The Board also routinely relies on the following descriptions that were established by the Ontario Labour Relations Board:

> *. . . a complainant must demonstrate that the union's actions are:*
>
> *(1) "ARBITRARY" – that is, flagrant, capricious, totally unreasonable, or grossly negligent;*
>
> *(2) "DISCRIMINATORY" – that is, based on invidious distinctions without reasonable justification or labour relations rationale; or*
>
> *(3) "in BAD FAITH" – that is, motivated by ill-will, malice, hostility or dishonesty.*[23]

[24] The Union submits that Ms. Ha's application is not premised on facts which demonstrate arbitrary, discriminatory or bad faith conduct. Rather, the Union says the facts indicate that it reasonably considered Ms. Ha's requests for grievances.

[25] First, the Union notes that it filed a grievance with respect to the First Reprimand and set the grievance for arbitration. Ultimately, the Employer withdrew the First Reprimand shortly before the date set for the arbitration.

[26] Second, the Union notes that it did consider Ms. Ha's requests to grieve the Second Reprimand, including at the EC level.

[27] Third, the Union submits that Ms. Ha simply disagrees with the Union's thoughtful and reasonable consideration of her requests. In its view, Ms. Ha has not alleged conduct that is arbitrary, discriminatory or in bad faith. The Union notes, per *Gagnon*,[24] that employees do not have an absolute right to arbitration and that unions have considerable discretion.

[28] Fourth, the Union submits that the facts disclose no "serious or major negligence", per *Gagnon*,[25] and that perfection is not the standard against which to assess its actions.

---

[22] *Glynna Ward v Saskatchewan Union of Nurses*, [1988] Winter Sask Labour Rep 44 [*Ward*], at 47.
[23] *Tammy Kurtenbach v Canadian Union of Public Employees,* 2019 CanLII 10586 (SK LRB), at para 16.
[24] *Gagnon*, at p 527.
[25] *Gagnon*, at p 527.

[29] Fifth, the Union submits that Ms. Ha's allegations are mostly unrelated to article 23.1.1 of the collective agreement.

[30] In response, Ms. Ha argues that the Union failed to ensure the Employer provided reasonable notice of the issues to be discussed during each of her three investigative meetings, and failed to reasonably prepare her for them. Further, she notes the Union failed to grieve the First Reprimand and Second Reprimand on grounds of procedural fairness. Ms. Ha submits that the FROs did not act objectively and reasonably in representing her and considering her grievance requests with respect to the Second Reprimand, noting that the FROs considered her to be harassing them during the relevant period, while also representing her. Ms. Ha also alleges that the Union failed to inform her that her request to grieve her Second Reprimand was ultimately approved, and unreasonably failed to grieve the Second Reprimand for a lengthy period. This resulted in a grievance regarding the Second Reprimand not proceeding to arbitration; rather, it was simply removed from her file due to the passage of time.

[31] The Board finds it convenient to divide the allegations in Ms. Ha's application into two categories: (1) those relating to the First Reprimand; and (2) those relating to and following the Second Reprimand.

[32] Based on a review of Ms. Ha's application, she has alleged that the Union ought to have conducted itself differently with respect to all investigative meetings, including the First Investigative Meeting (which preceded the First Reprimand). On pages 4 and 5 of her detailed listing of her complaints Ms. Ha states:

> *7. The FROs have failed to represent me before, during, and after each of my three investigations by failing to do the following:*
>
> *Before the investigation, the FROs failed to do the following:*
>
> - *Not asking the employer give me a written complaint of the charge against me. The employer would email me and the FROs stating in one or two words the topic of the investigation but not the actual charge before, during, or after the investigation.*
>
> - *Not telling me what the investigative process or procedure is, my procedural rights, or their role in representing me before, during, or after these investigations.*
>
> - *Not telling me that I had the right to ask questions, present evidence, and defend myself during the investigation.*

- *Not asking me if I wanted to meet before the investigation so they can inform me of my rights, the investigative process or procedure, their role and to answer any questions that I may have.*

During the investigation, the FROS failed to do the following:

- *They failed to advocate that I be told what the charge against me was, be given time to ask questions, be given time to provide additional information, and have a follow up meeting to defend myself (because I was not told of the charge against me prior to the investigative meeting, I had no time to prepare my defense and even if I did prepare a defense, there was no time during the investigation for me to give a defense and I was unaware of what the investigative process or procedure is).*

After the investigation, the FROS failed to do the following:

- *They failed to file a grievance against my two reprimands for the reason that the employer did not allow me natural justice before or during the investigation as I was not told of the charge against me, was not given time to defend myself, and I was unaware of the investigative process or procedure as it was not documented or told to me.*

[33] Similarly, on page 2 of her detailed listing of her complaints, Ms. Ha states:

4. Before each of my investigations, I was told what the topic of the investigation was but not the actual complaint against me and the FROs were notified. During the investigations, I answered my manager's questions while the FROs sat there saying nothing. I was never told about the complaint, my rights, or what the investigative process or procedure was by my manager, HR, or by the FROs before, during or after each of my investigations.

[34] In the Board's view, it is not plain and obvious that these allegations regarding the Union's conduct with respect to the First Investigative Meeting and First Reprimand could not be characterized as arbitrary. Ms. Ha effectively alleges that the Union did absolutely nothing to assist her with respect to the First Investigative Meeting, and that she received the First Reprimand as a result. The Board notes that article 23.1.1 contemplates an employee's right to Union "representation" at an investigative meeting. This of course does not mean that Ms. Ha will ultimately prevail with respect to these allegations, only that the Board is unable to dismiss them at this time on the basis that they are "patently defective".[26]

[35] The allegations relating to and following the Second Reprimand are far more detailed than those with respect to the First Reprimand. In particular, Ms. Ha alleges that the FROs were biased against her prior to and following the Second Reprimand, and improperly continued to represent her in spite of this bias. According to Ms. Ha, their bias and bad faith influenced their February 10, 2021 and January 14, 2022 decisions to deny her grievance requests following the Second

[26] *Roy*, at para 9.

Reprimand. Ms. Ha also alleges that the EC failed to keep her apprised of the status of her grievance request following the EC's spring 2022 decision to overturn the FRO's January 14, 2022 decision denying it, and failed to reasonably advance her grievance.

[36] It is not plain and obvious that the allegations relating to and following the Second Reprimand could not amount to a breach of s. 6-59, if proven. Accordingly, the Union's application with respect to these allegations cannot succeed.

[37] The net result of these reasons is that the Union's summary dismissal application has been partially successful. The portion of Ms. Ha's application purporting to advance claims for breaches of other employees' rights will be summarily dismissed. For clarity, this portion includes the following allegations on the second page of the application:

> *"(2) potentially failing to represent other members who have undergone investigations" and "(3) preventing other members from the same denial of natural justice thus violating article 23.1.1 "Investigations" of the Collective Bargaining Agreement (CBA)."*

[38] An appropriate order will accompany these reasons.

[39] The parties should anticipate Ms. Ha's application being placed on the Board's next Motions Day, on May 2, 2023, and consider the potential utility of a pre-hearing settlement conference.

DATED at Regina, Saskatchewan, this **18th** day of **April, 2023.**

LABOUR RELATIONS BOARD

Michael J. Morris, K.C.
Chairperson