Saskatchewan
Labour Relations Board

BRYAN FRASER, Applicant v SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, LOCAL 1105 and SASKATCHEWAN PUBLIC SAFETY AGENCY, Respondents

LRB File No. 040-22; April 18, 2023
Chairperson, Susan C. Amrud, K.C. (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*

For Bryan Fraser:	Self-represented
For Saskatchewan Government and General Employees' Union, Local 1105:	Patrick Sander Bonnie McRae
For Saskatchewan Public Safety Agency:	Kyle McCreary

Duty of fair representation – Applicant asked union to file grievance – Union expressed concerns, asked to meet with applicant before making decision – Applicant refused to meet, filed application.

Onus of proof on applicant – Applicant did not prove union breached duty of fair representation – When application filed, union representatives were undertaking thoughtful process to determine how to proceed.

No evidence of arbitrary or grossly negligent conduct – Application dismissed.

REASONS FOR DECISION

Background:

[1] Susan C. Amrud, K.C., Chairperson: On March 7, 2022, Bryan Fraser filed an application with the Board claiming that Saskatchewan Government and General Employees' Union, Local 1105 ["Union"] had breached the duty of fair representation it owed to him with respect to certain disputes he was having with his employer, Saskatchewan Public Safety Agency ["Employer"]. In particular, he stated that on March 1, 2022 he sent a request to the Union that they file a grievance on his behalf respecting a February 24, 2022 letter he received from the Employer, and they failed or refused to file a grievance. The remedy he seeks is that the Union be ordered to file the requested grievance.

[2] In their Reply, filed March 14, 2022, the Union stated that they did not refuse to file the grievance. They stated that Fraser was sent an email on March 4, 2022 inviting him to set up a

meeting, before March 24, 2022, the deadline for filing the grievance, to discuss next steps. Fraser did not contact the Union to set up a meeting, but instead filed this application.

[3] The Employer did not file a Reply. Two Employer representatives were present during the hearing of this matter, but made no submissions.

Evidence:

[4] Fraser is a senior policy analyst. He was employed by the Government of Saskatchewan, Ministry of Environment, Wildfire Management Branch, from May 1, 2013 until December 2019, when his position was transferred to the Policy and Legislation Branch of the Employer. Following his transfer, numerous issues arose between Fraser and his new supervisors respecting his role with the Employer.[1]

[5] On February 24, 2022, Fraser attended a meeting with Employer representatives, accompanied by Bonnie McRae and Patrick Sander, two Union labour relations officers. Following the meeting, the Employer provided a letter dated February 24, 2022 to Fraser. It confirmed the agreement reached at the meeting that they would provide Fraser a "fresh start/clean slate" through one-on-one discussions with his supervisor. It further stated:

> *The Employer's agreement to your proposal is conditional. You stated that you would comply with the principle of "work now; grieve later". Also, you stated you would cease your importuning and willful campaign of disputes including, but not limited to, the following unsubstantiated and / or demonstrably false assertions:*
>
> 1. *That you were unaware of, and did not actively request, reclassification to the Senior Policy Analyst position as represented in your current job description.*
> 2. *That you do not possess the baseline qualifications for your SPSA Senior Policy Analyst position.*
> 3. *That the Employer has not repeatedly requested from you your meaningful input into your work plan.*
> 4. *That the Employer has not repeatedly requested from you your meaningful input into the planning of your training and development.*
> 5. *That you are "isolated" in the workplace.*
> 6. *That your work assignments are not encompassed with your current job description.*
> 7. *That this Employer has not communicated to you your role within the SPSA.*
> 8. *That this Employer's valid work direction is insufficient for you to understand the scope of decision-making in our assigned duties.*
> 9. *That your assigned duties are in conflict with the guiding documents of the Association of Saskatchewan Forestry Professionals.*
>
> *In the event the Employer becomes aware of continued communications regarding the above (or related) items, the investigation will resume. If disciplinary consequences arise,*

---

[1] In 2022, Fraser filed four unfair labour practice applications against the Employer, that were all upheld: *Fraser v Saskatchewan Public Safety Agency*, 2022 CanLII 121639 (SK LRB).

> *the consequences will be progressive upon the February 24, 2022 discipline on your personnel file.*[2]

[6] By email dated March 1, 2022, Fraser requested that the Union file a grievance on his behalf to address the "ongoing discrepancy between my current job description and my work assignments"[3]. Further in that email, Fraser requested "that the SGEU file a grievance alleging that the employer has failed to provide adequate and appropriate orientation to new assignments (Article 3.3 B) and has failed to inform me how changes in duties and responsibilities affect my job (Letter of Understanding #98-12 para. C. 2.)."

[7] In response, by email dated March 4, 2022, McRae encouraged Fraser to try to work out this issue with his supervisor:

> *Bryan, you are the one that asked the employer for a fresh start and to meet with Luanne in Regina to discuss the issues and come to an understanding. They reduced your discipline in good faith on their part to show they want to work with you. They read out the letter to you at the February 24, 2022, meeting and gave you copy. It was at that time you requested a fresh start to move forward and deal the issues with Luanne in a one-on-one meeting. At this point filing a grievance may be unproductive and potentially frustrate the employer as to your real intent, as you have not given the employer the opportunity to meet with you and see if you can come to a resolve as per your request.*
>
> *You have agreed to meet with Luanne to discuss what you need from her and what she needs from you. Do you not think that item #6 in the February 24, 2022, meeting is something you two can work out when you meet? You keep going back to your current job description and your work assignments remains unresolved. My suggestion is when you meet with Luanne work through this issue. . . .*

The email continues: "Pat and I would like to meet with you to discuss next steps before March 24th. I will be away from March 7th-16th. Please contact Pat to set a meeting and we will meet upon my return".

[8] Fraser responded by email at 8:49 am on March 7, 2022.[4] He explained why it was his opinion that he would not be able to work through the job description issue with his supervisor. He did not set up a meeting with Sander and McRae. Instead, at 8:50 am the same day he emailed this application to the Board.[5]

---

[2] Exhibit A30.
[3] Exhibit A31.
[4] Exhibit U1.
[5] In that email Fraser filed two employee-union dispute applications. The other one, LRB File No. 039-22, was withdrawn on April 28, 2022, after the Union filed the grievance he requested in that application.

Relevant Statutory Provisions:

[9] Fraser filed his application pursuant to section 6-59 of *The Saskatchewan Employment Act* ["Act"]:

> *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.*

Argument on behalf of Fraser:

[10] In Fraser's written argument he outlined the issues he had encountered in addressing what he considered the divergence between his job description and the duties the Employer was asking him to perform, and the Employer's failure to provide adequate and appropriate orientation to his new assignments.

[11] He then turned to a description of the Union's conduct that he considered to be arbitrary and grossly negligent. He referred to *Deck v SEIU-West*[6] ["*Deck*"], which relied on the following description of arbitrariness:

> *Through various decisions, labour boards, including this one, have defined the term "arbitrary." Arbitrary conduct has been described as a failure to direct one's mind to the merits of the matter; or to inquire into or to act on available evidence; or to conduct any meaningful investigation to obtain the data to justify a decision. It has also been described as acting on the basis of irrelevant factors or principles; or displaying an indifferent and summary attitude. Superficial, cursory, implausible, flagrant, capricious, non-caring or perfunctory are all terms that have also been used to define arbitrary conduct. It is important to note that intention is not a necessary ingredient for an arbitrary characterization.*

[12] Fraser argues that the Union's conduct was arbitrary because Sander and McRae did not direct their minds to the issues he raised with them, including the following:

- Whether the wildfire management duties the Employer was assigning to him were outside the scope of his job description;
- Whether the assignment of some duties constituted new assignments within the meaning of Article 3.3B of the collective agreement;

---

[6] 2018 CanLII 127658 (SK LRB) at para 33, quoting from *Rousseau v International Brotherhood of Locomotive Engineers et al.*, 95 CLLC 220-064 at 143, 558-9 (CLRB).

- His supervisor's statements, made two days apart, that his previous job description was irrelevant, but the duties in it continued;

- The Employer's contradictory positions respecting whether his duties required him to be a member of the Association of Saskatchewan Forestry Professionals ["ASFP"].

[13] He argued that his situation was analogous to the conduct found by the Board in *Deck* to be arbitrary:

> *[53] At no time did the Union turn its mind to the possibility of the Applicant being able to bump into the IT Analyst position and did not make any inquiry as to her skills and ability to perform that work. This is not a case of an error having been made, or a deadline having been missed. It is a case where the Union failed to make any inquiry into the situation and seemingly, they just accepted what they were told by the Employer to the detriment of their member. To have made no inquiry to inform themselves with respect to the Applicant's situation, given their level of experience and knowledge of the CBA shows that their decision making process was totally arbitrary and not based upon any factual basis.*

[14] Fraser argued that the Union simply accepted the Employer's position that his assigned duties were within the scope of his new job description, and failed to make any inquiry into the situation. They simply accepted the Employer's view that his former and current job descriptions are substantially similar.

[15] He also referred to the following additional description of arbitrariness:

> *A union is not required to be correct in every step it takes on behalf of an employee. Moreover, mere negligence on the part of a union official does not ordinarily constitute a breach of section 68. See Ford Motor Company of Canada Limited, [1973] OLRB Rep. Oct. 519; Walter Princesdomu [sic] and The Canadian Union of Public Employees, Local 1000, [1975] OLRB Rep. May 444. There comes a point, however, when "mere negligence" becomes "gross negligence" and when gross negligence reflects a complete disregard for critical consequences to an employee then that action may be viewed as arbitrary for the purposes of section 68 of the Act. In Princesdomu [sic], supra, the Board said at pp 464-465:*
>
>> *Accordingly at least flagrant errors in processing grievances--errors consistent with a "not caring" attitude--must be inconsistent with the duty of fair representation. An approach to a grievance may be wrong or a provision inadvertently overlooked and section 60 has no application. The duty is not designed to remedy these kinds of errors. But when the importance of the grievance is taken into account and the experience and identity of the decision-maker ascertained the Board may decide that a course of conduct is so, implausible, so summary or so reckless to be unworthy of protection. Such circumstances cannot and should not be distinguished from a blind refusal to consider the complaint.*[7]

[7] *Deck*, at para 33, quoting from *North York General Hospital*, [1982] OLRB Rep. Aug. 1190 (OLRB).

[16] In Fraser's view, the Union was grossly negligent when it suggested that he discuss the job description issue with his supervisor. In his view, at the February 24, 2022 meeting he committed to cease to do that and his supervisor's letter confirmed that doing so would expose him to discipline. The Union's advice to the contrary exhibited reckless disregard for the critical consequences to him sufficient to fall within the scope of gross negligence. It was also gross negligence for them to disregard the ASFP bylaw that expressly prohibits one member from assuming professional responsibility for the work of another member.

[17] He defended his refusal to meet with the Union representatives in March 2022 on the basis that they had already said everything there was to say. He had had many meetings and emails with the Union over three years on this issue. Another meeting would not resolve anything.

Argument on behalf of Union:

[18] The Union argues that they have complied with their duty to fairly represent Fraser. They have filed grievances on his behalf and attended meetings with him.

[19] Fraser contacted them on March 1st requesting a grievance respecting what he saw as the ongoing discrepancy between his job description and the work the Employer was assigning to him. McRae responded with her opinion cautioning against a grievance when he had just requested a fresh start. The Union did not say they would not file a grievance. They invited him to meet with them to discuss the issue further. Under the collective agreement, they had until March 24th to file a grievance. Their reference to that date showed that a grievance was not out of the question. They were willing to listen. It was not unreasonable to take time to discuss, look at all sides, explain the other side and get more information.

Analysis and Decision:

[20] The Board has on numerous occasions considered the duty of fair representation required pursuant to section 6-59 of the Act. In a recent decision[8] the Board confirmed, first, that the onus is on the applicant to prove, on a balance of probabilities, that the union has breached its duty of fair representation. The Board then went on to summarize that duty:

> *[125] The nature of the Union's duty of fair representation is well established. The starting point is section 6-59, which 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 or former employee. The Board in Berry v SGEU, 1993 CarswellSask 518 provided helpful guidance on the meaning of the terms "arbitrary", "discriminatory" and "bad faith". The Board continues to rely on this guidance:*

---

[8] *Fraser v Saskatchewan Government and General Employees' Union*, 2023 CanLII 8378 (SK LRB).

21 This Board has also commented on the distinctive meanings of these three concepts. In Glynna Ward v. Saskatchewan Union of Nurses, LRB File No. 031-88, they were described in these terms:

> *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.*

22 In the case of Gilbert Radke v. Canadian Paperworkers Union, LRB File No. 262-92, this Board observed that, unlike the question of whether there has been bad faith or discrimination, the concept of arbitrariness connotes an inquiry into the quality of union representation. The Board also alluded to a number of decisions from other jurisdictions which suggest that the expectations with respect to the quality of the representation which will be provided may vary with the seriousness of the interest of the employee which is at stake. They went on to make this comment:

> *What is expected of trade union officials in their representation of employees is that they will act honestly, conscientiously and without prejudgment or favouritism. 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.*

[126] The Board also relies on the following succinct descriptions cited by the Ontario Board in Toronto Transit Commission, [1997] OLRD No 3148, at paragraph 9:

. . . a complainant must demonstrate that the union's actions were:

> *(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.*

[127] A union assumes carriage of a grievance as the exclusive bargaining agent on behalf of its employees. As the exclusive bargaining agent, it is afforded a certain latitude in its handling of a grievance: Hargrave v Canadian Union of Public Employees, Local 3833, 2003 CanLII 62883 (SK LRB) [Hargrave], at paragraph 42. This latitude allows the union

to make difficult decisions about the allocation of its resources in line with its priorities and its assessment of its chances of success. The union is entitled to make a wrong decision as long as it fairly and reasonably investigates the grievance and comes to an informed decision.

[128] There is no free-standing duty to take direction from a grievor. A union will not be found to have breached the duty just because it has come to a conclusion with which the grievor did not agree.

[129] In assessing an alleged breach of the duty, it is not the role of the Board to sit on appeal of the Union's decisions: Prebushewski at paragraph 55. Similarly, it is not the role of the Board to rule on the merits of the grievance, but instead to assess the Union's decision-making process and the Union's conduct in handling the grievance.

[130] In representing an employee, a union is expected to act honestly, conscientiously and without prejudgment or favoritism. Arbitrary conduct may be found to have occurred if a union representative has failed to direct one's mind to the merits of the matter, to inquire into or to act on available evidence, or to conduct any meaningful investigation, or if a union representative has acted based on irrelevant factors or displayed an indifferent attitude.

[21] The evidence before the Board in this matter is clear and uncontroverted. Fraser asked the Union to file a grievance on his behalf. The Union representatives requested that he meet with them one more time to discuss the issue before they decided whether they would file that grievance. Fraser decided there was no point in meeting, and instead filed this application.

[22] On the basis of these facts the Board finds that Fraser has not proven that the Union breached the duty of fair representation that they owed to him. The Board finds that the Union did not act in an arbitrary manner. They did not act in a cursory manner or without reasonable care. They were taking a reasonable view of the problem and gathering the necessary information to make a thoughtful decision about what to do. There is no evidence before the Board that they acted in a manner that could be described as flagrant, capricious, totally unreasonable or grossly negligent.

[23] In making a decision respecting whether to file a grievance, the Union is required to fairly and reasonably investigate the issues and come to an informed decision. When this application was filed, the Union had not yet made a decision about whether to file the requested grievance. They were fairly and reasonably investigating the circumstances so that they could make an informed decision. The Board is satisfied that McRae and Sander were acting honestly, conscientiously and without prejudgment. The evidence indicates that they were carrying out their duties seriously and carefully. McRae's email to Fraser of March 4th set out the issues they were considering in making a decision whether to file a grievance. It also clearly stated that they wanted Fraser's input into their decision-making process. The Union was not required to take direction

from Fraser. They did not breach their duty of fair representation just because they were considering a conclusion with which Fraser would disagree.

[24] It is not the role of the Board to rule on the merits of the grievance, but instead to assess the Union's decision-making process. Arbitrary conduct may have been found to have occurred if the Union representatives failed to direct their minds to the merits of the issues Fraser raised with them, failed to inquire into or act on available evidence, or failed to conduct any meaningful investigation, or if they acted on the basis of irrelevant factors or displayed an indifferent attitude. There is no evidence of any such conduct or attitude before the Board in this matter.

[25] Accordingly, the application is dismissed.

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

LABOUR RELATIONS BOARD

Susan C. Amrud, K.C.
Chairperson