Saskatchewan
Labour Relations Board

NORMAN BLUNT, Applicant v INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ALLIED WORKERS, Respondent

LRB File No. 097-22; April 26, 2023
Vice-Chairperson, Barbara Mysko (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*

Counsel for the Applicant, Norman Blunt: Daniel S. LeBlanc

Counsel for the Respondent, International Association of Heat and Frost Insulators and Allied Workers: Greg D. Fingas

Internal Union Affairs – Sections 6-4 and 6-58 of *The Saskatchewan Employment Act* – Natural Justice – Charges Filed – Hearing Held – Penalty Imposed on Member – No Appeal Taken.

Jurisdiction – Section 6-58 – Definition of Bargaining Agent – Application to International Body – Voluntary Assumption of Duty – Board has Jurisdiction Over Dispute.

Principles of Natural Justice – Right to Counsel – Right to Hearing – Right to Particulars – Failure to Consider Central Issue – Rights Were Breached – Breach of Subsection 6-58(1).

Dual Union Membership – Right to Join a Union - Duty to Inform Business Manager – Actions not Legitimately Defensive – Retaliation for Taking Job and Joining Union – Decision and Discipline Set Aside – Membership Restored.

REASONS FOR DECISION

Background:

[1] **Barbara Mysko, Vice-Chairperson:** These are the Board's Reasons for Decision in relation to an employee-union dispute brought by Norman Blunt against the International Association of Heat and Frost Insulators and Allied Workers [International]. Blunt alleges that the International breached sections 6-4 and 6-58 of *The Saskatchewan Employment Act* [Act] in relation to inter-local charges that were brought against him.

[2] During the material times, Blunt was an Insulators member through Local 110, which is chartered to the International and exercises jurisdiction in Alberta. The International's chartered

Local within the jurisdiction of Saskatchewan is Local 119. Blunt is also a member of the British Columbia Regional Council of Carpenters [B.C. Carpenters].

[3] Local 119 has a certification order with Brock Canada West Ltd., issued by this Board on September 12, 2017. The current certification order represents an amendment of a previous certification order made pursuant to sections 5(a), (b), and (c) of the since-repealed *Trade Union Act*. Local 119 also has a certification order from this Board with Steeplejack Industrial Insulation Ltd., dated October 16, 1997.

[4] In mid-June 2020, Blunt received an offer for a turnaround job at the Regina-based Co-op Refinery Complex. The job was managed by Brock Oilfield Services Ltd. [Brock Oilfield]. Brock Canada Industrial Ltd. had in the previous years relied on Local 119 to provide insulators for the annual turnaround. When Blunt and the other insulators arrived on site they became members of the United Brotherhood of Carpenters and Joiners of America, Local Union No. 1999 [Local 1999]. Local 1999 is associated with the National Construction Council (NCC).

[5] Blunt's first day of work was on or about June 29, 2020. Local 119's Business Manager, Chuck Rudder, became aware that Blunt and other Local 110 members were performing insulation work within what he believed to be Local 119's jurisdiction. He initiated an investigation and prepared an investigation report. After Rudder presented the report's findings, the executive board of Local 119 preferred charges against Blunt for violating three provisions of the International's Constitution.

[6] The charges alleged that Blunt was doing work for Brock Oilfield at the Co-op Refinery in Regina within the Insulators' jurisdiction, pursuant to a dispatch through the Carpenters and that Blunt had therefore participated in assisting the Carpenters with stealing the work of the Insulators' trade. On May 9, 2022, a hearing was held by the International's General Executive Board [GEB], consisting of the General President, the Recording Secretary, and all of the International Vice-Presidents. Blunt was found guilty of violating two provisions of the International's Constitution. The GEB imposed a $15,000 penalty on him.

[7] Blunt brought an application for interim relief in relation to this matter which application was dismissed with Reasons as outlined in *Norman Blunt v International Association of Heat and Frost Insulators and Allied Workers*, 2022 CanLII 70227 (SK LRB).

Evidence:

[8] At the hearing of the present matter, the Board heard from five witnesses – three on behalf of Blunt (William Grant Pappe, Richard Lambert, and Blunt) and two on behalf of the International (Chuck Rudder and Robert Kurnick). The parties also submitted an agreed statement of facts inclusive of appendices, the entirety of which was entered into evidence. The following is a summary of the oral and written evidence at the hearing.

[9] Rudder explained that Local 119 had an agreement with Brock Canada Industrial to perform the Refinery's turnaround work. Earlier in the year he had been asked by Brian Dawyd, the Senior General Manager at Brock Canada Industrial, to dispatch workers to camp conditions on the work site. In the agreement used for the turnaround work there was an explicit prohibition against camps. Rudder opposed the camp because of the safety concerns associated with Covid-19. In the course of an email exchange, Dawyd stated, "[u]nless we have your agreement by COB May 22nd, we will not be bidding on this work."

[10] The executive board of Local 119 (consisting of five members) voted not to enable a deviation from the terms of the collective agreement. On May 21, Rudder wrote to Dawyd to inform him of the results of the board meeting, explained the significant concern with Covid-19 given the respiratory health-related impacts of particular concern to the insulator trade, and suggested that Brock should attempt to accommodate the members using busses or vans. Dawyd stated that they would have to sub-contract the work to another entity. After the lock-out ended, Rudder advised that the camp was no longer an issue and that the work should be given to the members.

[11] Blunt has been working in the Insulator trade, with at least one break, since 1979. According to Blunt, many of the jobs are short-term and so it is necessary to have a travel card to make ends meet. Over the years, he has stitched together many different jobs, often juggling at least two jobs at the same time.

[12] He was a member of Local 119 from 1998 until 2016. He was very active in the Local until 2007. In the early 2000s, he was elected as an executive board member. He has been an organizer both at the local and international levels. In 2002 he was voted to serve as a delegate at the quinquennial convention. He served on the grievance and appeals committee.

[13] Blunt testified that he stopped organizing after Rudder took over. Rudder was his Business Manager from 2003 to 2016. In 2016, due to a longer-term job he had in Alberta, Blunt transferred

his membership to Local 110. He was laid off in 2019. He has not worked on a dispatch from the Insulators since 2019.

[14] After this, he took a job with a large company outside of Chilliwack, B.C. and, as a result of taking the job, became a member of the B.C. Carpenters. He has been employed with this company off and on since then. He also took a job with a Brock entity from 2018 to 2020, at which time the job was shut down because of the pandemic. He was working for a second company around the same time. He received CERB benefits for April, May, and June.

[15] Since his move to B.C. there has been no work for travelling insulators. The last time he checked he was #380 on the Alberta dispatch list.

[16] The call for the Co-op job came from a manager at a Brock entity. The job would require a 37-day camp stay to "maintain the risk of Covid". He and the other workers were told that Local 119 had refused to provide workers for the job. He did not reach out to Local 119 to confirm.

[17] On the Co-op job, he initially worked ten hours per day, seven days per week, followed by six days per week. He made approximately $1,600 per week plus overtime for 6.5 weeks. He suggested that he made over $5,000 but it appears that he made over $10,000, plus overtime.

[18] The investigation report is dated "between" June 28 and September 15, 2020. Rudder testified that, by July 2, he knew that there may have been a breach of the Constitution – he just didn't know who had committed it. The entry from the investigation report, dated July 7, states:

> *Received a text from my member onsite (Craig), that former member Norman Blunt was working on site. He said didn't see him yet, but one of our members sons who was working there knows who Norman Blunt is. I told him to try and confirm visually that it was Norman Blunt that was on site. He said he would. He later confirmed that he saw Norman Blunt and that he indeed was working on site as an Insulator.*

[19] Rudder testified that, at this point, he had no information about Blunt's membership status.

[20] According to the report, between July 7 and July 16, names of insulators on site were submitted to be run against the International's database. The notes do not indicate whether Blunt's name was processed at that time. Rudder testified that the names were submitted in a piecemeal fashion. Instead, the notes indicate that, on August 28, Rudder submitted a list of workers to an International VP to conduct a name search. That search showed that Blunt was a member of the International.

[21] On August 5, Local 119 filed with this Board a common employer application naming Brock Oilfield, Brock Canada West, Brock Canada Industrial, Brock Canada Inc, and Steeplejack as respondents. On September 14, 2020, Local 1999 applied to intervene in that application, filing a project labour agreement it had entered into with Brock Oilfield, dated June 18, 2020. Local 1999 made the following statement in its application:

> *It is common for UBCJA Local 1999 to enter into project labour agreements with contractors and to proceed under voluntary recognition for short term projects rather than file an application to acquire bargaining rights. It was, and is, UBCJA Local 1999's hope that an ongoing relationship with Brock Canada Oilfield Services Ltd. will arise and if that occurs, UBCJA Local 1999 would explore applying to acquire bargaining rights should the requisite support exist.*

[22] On October 8, Rudder presented his findings to Local 119's executive board. The board directed Rudder to proceed to file inter-local charges. Rudder had no decision-making role in that meeting. Nine members, including all of the workers who were members of Local 110 and who allegedly did not comply with the notification requirements, were charged. By the time they were charged all of the members were off site.

[23] On October 15, 2020, Rudder wrote to the International to advise that the executive board had voted in favor of proceeding with charges against Blunt, and advising that Blunt was charged with the following violations of the International's Constitution and Bylaws:

> 1. *Violating Article XIX, Section 9 by failing to notify the business managers of either Local 110 or Local 119 that they were working in Saskatchewan;*
>
> 2. *Violating Article XXIV, Section 1(g) by performing mechanical insulation work for an employer in signed agreement with the UBC; and*
>
> 3. *Violating Article XXIV, Section 1(n) by engaging in acts contrary to their responsibility to the International Association.*

[24] On October 23, 2020, the International wrote to Blunt enclosing a copy of the charges, indicating that, "[y]ou are herein given the opportunity to answer these charges and present any evidence or correspondence on your behalf at the next scheduled General Executive Board meeting." He was directed to submit supporting material by mail or courier as early as possible and to advise the office if he planned to appear before the GEB so that he would be notified of the day and time of the appearance.

[25] Blunt retained counsel. His counsel sent a letter to the International, dated December 18, 2020, seeking further particulars of the charges against Blunt and a full opportunity to defend.

[26] On June 2, 2021, another lawyer wrote to the International on Blunt's behalf, advising that he had been retained, indicating that Blunt planned to defend against the charges and advising that Blunt planned to appear before the GEB. The lawyer sought "all particulars, information, and documents relied on by Local 119 in bringing these charges" which would then allow Blunt to provide the material and arguments he intended to rely upon.

[27] In or around January 10, 2022, Local 119 and Brock Oilfield entered into a voluntary recognition agreement in which Brock Oilfield recognized Local 119 as the "sole and exclusive bargaining agent for all insulators in its employ" and agreeing that "the collective agreement applicable to the work of its insulators shall be the applicable collective agreement governing the insulator trade division pursuant to Part VI, Division 13 of the SEA, unless another collective agreement is agreed to by the parties."

[28] On March 21, 2022, the International wrote to Blunt advising of the hearing dates (May 9 to May 10, as necessary) and the location of the hearing (Windsor, Ontario). In the letter, the International wrote that "if you do not plan to appear, it shall, in accordance with Article XXV, Section 9 be considered a waiver of appearance, not a waiver of your defense, and the Board will hear your case as though you were present". The International provided a deadline for submissions by mail, being April 14, 2022.

[29] On April 8, 2022, Kevin Lecht, the Business Manager for Local 110, wrote to the International on behalf of two members describing the "extremely prohibitive" nature of the meeting due to the location, pandemic-related travel restrictions, and the cost of accommodations. He requested:

> …
> *Both Members have indicated that they wish to attend the meeting in person, but due to the costs will not be able. In hopes of attending in person via Zoom they have requested if it would be possible to attend the trial through Zoom from the Local 110 Office in Edmonton Alberta? The Board Room in our office is separated from the main office and could be made available for the trials and appeals.*
>
> *I am aware that this could be viewed as a significant change in process, however the Alberta Labour Relations Board has approved the use of Zoom for hearings with the Board and allows attendance without restriction to the individuals location. As well if Members can attend while still being in their home location there will be increase participation not only from those on trial, but from the Local Officers as well.*
>
> …

[30] On April 11, 2022, the General Secretary-Treasurer of the International replied in writing, stating:

…

As an initial matter, I note that, as far as I know, you have not been authorized to represent either member. If you have, please let me know. If you have not, you should advise them to submit their questions directly to me.

To avoid an unnecessary delay, I will answer the question asked. They cannot participate in their hearings from Edmonton. Hearings before the General Executive Board have always taken place before the General Executive Board. In this instance – because it may be difficult or impossible for some members to travel from Canada to Detroit, where the GEB is meeting – the GEB is requiring Canadian members to participate by Zoom from nearby Windsor, where both Canadian International Vice Presidents will also be present.

I understand that it may be inconvenient to travel from Edmonton to Windsor. But that inconvenience is no greater than it was before the pandemic, when all members with cases before the GEB were required to travel to wherever the GEB was meeting to participate in their hearings. If your members were to participate from Edmonton, the GEB would be unable to control, or even know, who else might be present. Because these hearings, unlike hearings before the Alberta Labour Relations Board, are private and union business is necessarily confidential, the GEB is not willing to permit members to participate from other locations.

[31] On April 11, yet another lawyer (who appeared before this Board as Blunt's representative) wrote to the International to advise that he was representing Blunt in relation to the charges. He stated that Blunt had not been provided with particulars and therefore did not know the case he had to meet and could not prepare his defense, requested an adjournment, and advised that if the adjournment was not granted he would attend on Blunt's behalf.

[32] On April 15, counsel for the International wrote to counsel for Blunt, denying the request for an adjournment, and making the observation that Blunt had responded to the charges with a detailed description of the circumstances that would suggest that he was aware of the circumstances that led to them.

[33] Then, on or around April 24, Blunt received a letter enclosing the investigation report. Of note, this letter was received after the deadline (April 14) for the receipt of "additional comments or correspondence you wish to have included in your case file".

[34] Blunt admitted that, based on the correspondence from the International, he had understood that he had the ability to present his defense at his hearing before the GEB. However, he had wanted the GEB to know that he had been under the assumption that Local 119 had refused the work. At the time, he was dealing with some personal circumstances at home, and so he sent his lawyer to attend in his place.

[35] The hearing was held on May 9. Blunt's counsel attempted to attend the hearing but he was not permitted to appear because of what the GEB described as its "consistent policy of limiting representation at such hearings to good standing members". Blunt testified that he had a good idea of how the GEB operates, but that he had assumed that he had a right to be represented by a lawyer. He also testified that he was aware of what was happening with the other members and that, prior to his hearing date, he had been made aware of the letter that was sent on April 8, 2022 and the response to it.

[36] Rudder presented the findings (the contents of the investigation report) at the hearing. He had no decision-making role.

[37] The hearings for all nine of the members were complete by the end of the first day. Rudder acknowledged that, as far as he could recall, no one asked questions about the 90-day limitations period.

[38] On June 1, the International wrote to Blunt to inform him of the GEB's decision on the charges against him, as follows:

> *After deliberating, the General Executive Board found you guilty of violating Article XIX, Section 9 and Article XXIV, Section 1(n) by failing to report to Local 119 that you would be working in its jurisdiction. Your defense was considered but deemed non-meritorious. Local union 110's ability to provide you with work had no effect on your obligation to notify Local 119 that you would be working in its jurisdiction. The GEB did not address the claim that you violated the Constitution and Bylaws by working for a nonunion company.*
>
> *For the violation found, the GEB imposed a penalty of $15,000 (Canadian).*
>
> *Failure to pay the fine, or any required portion thereof, within thirty (30) days after its due date shall result in automatic lapsing which will not relieve the responsibility of paying any financial obligation incurred while a member, including but not limited to dues, assessments, and fines.*
>
> *Please note that this decision may be appealed to the next convention, but that, pursuant to Article XXV, Section 10 of the Constitution and Bylaws, any such appeal must be filed with my office within 30 days of the date of this decision, and full payment of the fine imposed is a condition of any such appeal.*

[39] Blunt did not pay the fine or appeal the decision. The quinquennial convention was held on August 22-24, 2022.

[40] Both Pappe and Lambert were also charged with offences under the Constitution. They testified about their experiences with the process of being charged, engaging in correspondence with the International, receiving notice of the hearing, and receiving the penalty. Pappe was fined

$15,000. Lambert was fined $20,000. After they did not pay the penalty, their memberships were suspended.

Arguments:

Blunt/Applicant:

[41] The Board has jurisdiction to hear this application. Although the International has an internal appeal mechanism, the requirement to pay the entire fine prior to the hearing of the appeal is not reasonable or realistic. It is also unreasonable to require Blunt to travel to another country in order to pursue the internal appeal. The Board should not require the Applicant to exhaust the internal appeal process before seeking redress pursuant to the Act, in particular, where the International's actions are in conflict with the legislation. Instead, the Board should focus on whether the process met the basic requirements of procedural fairness.

[42] The International's arguments suggest that while the prosecution owes a duty of fairness to the accused the judge does not. The current case is distinct from *Rattray v Unifor National*, 2020 CanLII 6405 (SK LRB) [*Rattray*]. *Rattray* involved a DFR and the local was in a position to provide the full remedy to the applicant member. Here, Blunt was disciplined pursuant to the International's Constitution and his membership was threatened and possibly terminated as a result of the International's decision.

[43] The source of the procedural protections to be afforded to members are the International's Constitution and any additional protections implied into the Constitution to ensure compliance with the principles of natural justice. In a case such as this, the Board should imply into the Constitution all of the procedural protections that are outlined in *Coleman v OTEU, Local 378*, 1995 CarswellBC 4089, [1995] BCLRBD No 282 [*Coleman*]. *Coleman* holds that, in cases involving serious matters, "such as a suspension, expulsion or removal from office, there is a right to counsel". Blunt has been represented by counsel since being made aware of the charges. His counsel advised the International that he intended to appear on Blunt's behalf. Yet at no point did the International mention the "long-established" policy that counsel are not permitted to attend the hearing. As a result, Blunt had no representation at the hearing and there were no representations made on his behalf.

[44] Next, the International failed to provide particulars in two ways: first, it refused to provide particulars; second, when it did provide particulars, it was too late. *Coleman* establishes that members have the right to know the accusations or charges against them. In this case, where the

potential consequences of non-disclosure are high, a higher level of disclosure is required. Blunt did not receive sufficient particulars when advised of the charges in October 2020 or when he requested further particulars in December 2020 or on June 2, 2021. He made a further request in April 2022 which was refused on April 15, 2022; he was then provided additional particulars on or about April 24, 2022. This was only two weeks prior to the hearing and approximately 10 days after the deadline for reply materials had passed.

[45] Next, the International's decision also violated Blunt's procedural rights.

[46] First, it did not address whether the charges were laid within the required timeframe. Pursuant to the Constitution, inter-local charges are to be filed not later than ninety days after those preferring them had knowledge of the facts alleged. Excluding July 2, 2020, the 90-day timeframe means that the charges were to be laid by October 1, 2020. Instead, they were laid over two weeks after this deadline, meaning that the International did not have authority under its Constitution to proceed.

[47] Second, the decision did not address the issue of Local 119 having refused the work, and therefore failed to grapple with a central issue. The International frames Blunt's work as aggressive but this characterization is inaccurate. The evidence is that Local 119 was not interested in the work; they turned it down.

[48] Third, the decision did not attempt to justify the exorbitant fine. Blunt was found guilty only of failing to report to the Local that he would be working in its jurisdiction. The minimum requested penalty for each of the charges was $3,500. The penalty imposed was significantly higher than the requested minimums, was not contemplated by the Constitution, and was inconsistent with penalties issued in recent decisions. The International gave no explanation for these irregularities.

[49] Relatedly, there is precedent for the principle that, when an exorbitant fine is imposed in circumstances involving dual unionism, the fine is punishment for joining another union. Penalizing a member for belonging to multiple unions is coercive, intimidating, discriminatory, and inconsistent with section 6-4 of the Act. Unions have a right to only defensive, not aggressive, action to protect themselves.

[50] In this case, the most appropriate remedy is to set aside the conviction and withdraw the penalty imposed. If Blunt's membership has been withdrawn, then it should be restored with no loss of seniority.

The International:

[51] Blunt was found to have violated the International's Constitution by failing to report to the Local, not a party to this application, that he would be working in its jurisdiction in Saskatchewan. He elected not to pursue an appeal at the convention in August 2022 but instead seeks a remedy through this Board by way of a substantive determination in relation to the charges.

[52] The International requests that this application be dismissed for the following reasons:

1. The only duty that applies is that of non-discrimination pursuant to subsection 6-58(2) of the Act, which duty was satisfied;
2. The International's role in respect of the charges was carried out in compliance with any applicable duty of natural justice;
3. The Applicant had an avenue of appeal and did not exercise that avenue.

[53] The International is not a "bargaining agent" as that term is used in section 6-58 of the Act. That term refers to the level of union that holds the bargaining rights on a member's behalf within a jurisdiction, not to an International that lacks direct association with the units. In *Rattray*, the Board held that the National owed no duty to the Applicant on the basis that section 6-59 set out a duty of a bargaining agent, which the National was not. The Act does not define "bargaining agent" but the term is properly limited to an organization that is engaged in representational activity in Saskatchewan. In limited circumstances, an international organization may assume the obligations of a bargaining agent but there is no evidence in the current case that the International has assumed those obligations.

[54] Subsection 6-58(2) of the Act refers to a "union", as opposed to "the union that is his or her bargaining agent". This provision prohibits actions that are undertaken in a discriminatory manner or that constitute punishment for refusing or failing to participate in activity prohibited by the Act. These prohibitions are not relevant to the circumstances before the Board.

[55] Alternatively, there has been no breach of natural justice in the present case. The rights that are engaged do not come within the serious category of matters that attract a right to counsel. The asserted right to counsel is expressly precluded by the Constitution. Moreover, there is no evidence that justifies the Applicant's failure to proceed with the avenue of appeal available under the Constitution.

[56] As for dual union membership, there is no dispute with the proposition that membership in one union does not alone justify expulsion from another. However, the decision of the GEB was based on the Applicant's choosing to work in the Local's jurisdiction without notifying the Local's Business Manager. He was subjected to a lesser penalty for comparably damaging conduct to that which was considered in *Hasson v H.F.I.A., Local 131*, 1993 CarswellNB 655 [*Hasson*].

[57] The Local did not turn down the work. Brock had sought to have the Local's members agree to abandon certain rights. When the Local refused, Brock subcontracted the work to a non-union entity and arranged for other workers to perform the work on a non-union basis. The fact that those workers took on the job meant that Brock was able to perform the work without complying with the collective agreement. Their failure to notify the Business Managers of what they were doing prevented Rudder from seeking to certify the employees or from gathering information for the common employer application that was ultimately filed with the Board.

[58] As for the assertion of discriminatory conduct, the charges were determined in a manner that is consistent with comparable circumstances. The requirements to attend the hearing in person and to be represented only by a member in good standing were applied to each of the members whose charges were heard on the same day. Each member was found guilty of working without reporting and fined in the range of $15,000 to $20,000.

Applicable Statutory Provisions:

[59] The following statutory provisions are applicable:

> ***6-1****(1) In this Part:*
> *. . .*
> *(b)* ***"certification order"*** *means a board order issued pursuant to section 6-13 or clause 6-18(4)(e) that certifies a union as the bargaining agent for a bargaining unit;*
> *. . .*
> *(p)* ***"union"*** *means a labour organization or association of employees that:*
> *(i) has as one of its purposes collective bargaining; and*
> *(ii) is not dominated by an employer;*
>
> ***6-4****(1) Employees have the right to organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing.*
>
> *(2) No employee shall unreasonably be denied membership in a union.*
>
> ***6-5*** *No person shall use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue to be or to cease to be a member of a union.*

6-6*(1) No person shall do any of the things mentioned in subsection (2) against another person:*

(a) because of a belief that the other person may testify in a proceeding pursuant to this Part;

(b) because the person has made or is about to make a disclosure that may be required of the person in a proceeding pursuant to this Part;

(c) because the person has made an application, filed a complaint or otherwise exercised a right conferred pursuant to this Part; or

(d) because the person has participated or is about to participate in a proceeding pursuant to this Part.

(2) In the circumstances mentioned in subsection (1), no person shall do any of the following:

(a) refuse to employ or refuse to continue to employ a person;

(b) threaten termination of employment or otherwise threaten a person;

(c) discriminate against or threaten to discriminate against a person with respect to employment or a term or condition of employment or membership in a union;

(d) intimidate or coerce or impose a pecuniary or other penalty on a person.

6-58*(1) Every employee who is a member of a union has a right to the application of the principles of natural justice with respect to all disputes between the employee and the union that is his or her bargaining agent relating to:*

(a) matters in the constitution of the union;

(b) the employee's membership in the union; or

(c) the employee's discipline by the union.

(2) A union shall not expel, suspend or impose a penalty on a member or refuse membership in the union to a person, or impose any penalty or make any special levy on a person as a condition of admission to membership in the union if:

(a) in doing so the union acts in a discriminatory manner; or

(b) the grounds the union proposes to act on are that the member or person has refused or failed to participate in activity prohibited by this Act.

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;

Analysis and Decision:

[60] The following are the issues before the Board:

1. Does the Board have jurisdiction over this matter?
2. Did the International breach the Applicant's right to the application of the principles of natural justice pursuant to section 6-58 of the Act?
3. Did the International breach the Applicant's right to dual union membership?
4. If there was a violation, what is the appropriate remedy?

1. Does the Board have jurisdiction over this matter?

[61] The first issue is whether the Board has jurisdiction over this matter.

[62] The Board sought submissions from the parties on the jurisdictional issues addressed in *Otis Canada Inc. v I.U.E.C., Locals 82 & 130*, 1997 CarswellAlta 1275, [1997] Alta LRBR 486 [*Otis*]. Further to that request, the International confirmed that it is not raising jurisdictional issues of the type addressed in *Otis*:

> *…The International does not argue that there is any absence of a real and substantial connection between the underlying factual matrix and the Province of Saskatchewan, nor that the Board should defer to some other labour relations tribunal based on the application of a forum non conveniens analysis. In turn, factors such as submission to jurisdiction – which would be relevant to that analysis – are similarly inapplicable.*

[63] Instead, the International suggests that the term "bargaining agent" does not apply to the International because that term is limited to circumstances in which an organization is "engaged in representational activity in Saskatchewan". In support of its argument, the International relies on the following cases: *Rattray*; *Certain Employees of Stearns Catalytic Ltd. and UBCJA, Local 2736, Re*, 1985 CarswellBC 4313; *B.A.C.U. v Ontario Power Generation Inc*., 2001 CarswellOnt 5440; *Limo Jet Gold Express Ltd. and PSAC, Re*, 2007 CarswellBC 4255 [*Limo Jet*]; and *Jacobs Industrial Services Ltd. and UA, Local 740, Re*, 2012 CarswellNfld 389.

[64] As a statutory tribunal, the Board's jurisdiction arises from the Act. Blunt has filed his application pursuant to sections 6-58 and 6-4 of the Act.

[65] The predecessor provision to section 6-58 is section 36.1 of the now-repealed *Trade Union Act*. The purpose of section 36.1 was considered in *McNairn v United Association of*

Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 179, 2004 SKCA 57 (CanLII) [*McNairn*]:

> *37 In significant part, the purpose of [s. 36.1] lies in protecting a member of a union from abuse in the exercise of the power conferred on unions by the preceeding section – section 36 – and in particular subsections (4) and (5) thereof. These subsections empower a union to fine any of its members who has worked for a struck employer during a strike, provided the constitution of the union made allowance for this before the strike occurred. The purpose also lies in protecting an employee, employed in a unionized shop and required to maintain union membership as a condition of employment, not to be deprived of membership by the union except, according to subsection (3), for failure to pay the dues, assessments, and initiation fees uniformly required of all members.*
>
> *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.*

[66] The Board in *Lalonde v C.J.A., Local 1985*, 2004 CarswellSask 963, [2004] Sask LRBR 244, [2004] SLRBD No 25 (SK LRB) [*Lalonde*] also summarized the purpose of section 36.1, observing that there is a necessary balancing exercise between the competing interests of individual union members' rights and the necessity for member discipline to achieve collective bargaining goals. The Board concluded that "the maintenance of solidarity among a union's members is crucial to ensuring effective collective bargaining and collective agreement administration".

[67] Section 6-59, which is not in issue in the application before the Board, also uses the term "bargaining agent".

[68] The International relies on the various uses of the term "bargaining agent" within the Act, which it characterizes in the following manner:[1]

- *S. 6-1 (1)(b), defining a certification order as "a board order ... that certifies a union as the bargaining agent for a bargaining unit";*
- *Ss. 6-9(2)(a), 6-10(1)-(2), 6-11(1), 6-12(1), 6-13(1)-(2), 6-17(1)-(2) and 6-18(3)(a), all using the term in the context of formal applications for certification, replacement or cancellation, and 6-18(3)(a), making the automatic transfer of rights applicable*

[1] *International's Brief*, at para 17.

only to circumstances where "a union was determined by a board order to be the bargaining agent";

- *S. 6-59 (the provision considered in Rattray), applying the duty of fair representation to "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";*

- *S. 6-63(1)(g), establishing an unfair labour practice which applies only in the event of a replacement or cancellation of a certification;*

- *S. 6-64(2)(6) and 6-66(3)(a)(ii), governing the rights of the bargaining agents in the construction industry who are determined by the minister;*

- *S. 6-65(d)(ii), allowing for a representative employers' organization to be a bargaining agent for the purposes of a project agreement;*

- *S. 6-81(2), allowing unions to apply to be certified as a bargaining agent for different configurations of health care workers; and*

- *S. 6-82, allowing for regulations to designate a designated employers' organization as the bargaining agent for health sector employers; and*

- *S. 6-87, defining the application of Division 15 only to the union certified as the bargaining agent for certain types of firefighters' bargaining units.*

[69] Although the Act does not define “bargaining agent”, it does define “certification order”, at clause 6-1(1)(b):

> *(b) **“certification order”** means a board order issued pursuant to section 6-13 or clause 6-18(4)(e) that certifies a union as the bargaining agent for a bargaining unit;*

[70] In the present case, the certification order from this Board, dated September 12, 2017, lists Local 119 as a bargaining agent for insulators, insulator apprentices and insulator foremen employed by Brock Canada West Ltd.

[71] The Act also defines “bargaining unit” and “union”, at clauses 6-1(1)(a) and (p):

> *(a) “**bargaining unit**” means:*
>
> *(i) a unit that is determined by the board as a unit appropriate for collective bargaining; or*
>
> *(ii) if authorized pursuant to this Part, a unit comprised of employees of two or more employers that is determined by the board as a unit appropriate for collective bargaining;*
>
> *…*
>
> *(p) “**union**” means a labour organization or association of employees that:*
>
> *(i) has as one of its purposes collective bargaining; and*

(ii) is not dominated by an employer;

[72] In *Rattray*, the Board stated at paragraph 79:

> *[79] Rattray's Applications rely on both sections 6-58 and 6-59 of the Act. Most of the hearing focused on section 6-59 and whether Local 481 and Unifor National had breached their duty of fair representation. Turning first to Unifor National, the Board finds that Unifor National has no duty under section 6-59. It applies only to an employee's bargaining agent. In this case the bargaining agent was Local 481. Pursuant to the Certification Order issued by the Board and the agreement entered into by Local 481 and Local 9841, Local 481's duties and obligations have been assumed by Local 9841.*

[73] In *Rattray*, it was relevant to the Board's determination that the applicant, who had the onus, had not provided evidence or argument to support the assertion that the National owed him a duty pursuant to section 6-59 and had admitted that the National and the Local were separate entities. The Board explained at paragraph 81:

> *[81] Local 9841 provided no evidence to support its assertion that Unifor's Constitution gives its locals an independent legal status. However, the onus of proof is on Rattray, and he submitted no evidence or argument to support his assertion that Unifor National owed him a duty pursuant to section 6-59. In his Reply to the Application for Summary Dismissal of his first Application (LRB File No 012-17), he admitted that Unifor National and Local 481 were separate entities.*

[74] The Board in *Rattray* relied on *Fullowka v Pinkerton's of Canada Ltd*., 2010 SCC 5 (CanLII), [2010] 1 SCR 132 [*Pinkerton's*], in which it was stated:

> *[119] There is no doubt that union locals may have an independent legal status and obligations separate from those of their parent national unions. Whether they do depends on the relevant statutory framework, the union's constitutional documents and the provisions of collective agreements. For example, it has been consistently held that where, as in this case, the local union is a certified bargaining agent, it and not the national union assumes the statutory and contractual duties of a bargaining agent. The reasoning of the Court in International Brotherhood of Teamsters v. Therien, 1960 CanLII 33 (SCC), [1960] S.C.R. 265, is based on the fact that the local union, certified as a bargaining agent, was a legal entity that could be sued because it had statutory powers and responsibilities in relation to collective bargaining: Locke J., at pp. 275-76. In New Brunswick Electric Power Commission v. International Brotherhood of Electrical Workers AFL-CIO-CLC, Local 1733 (1976), 1976 CanLII 1610 (NB CA), 16 N.B.R. (2d) 361 (S.C., App. Div.), the union local was found in contempt of a court order. The court noted at para. 17 that "[i]t is well established that a union certified as a bargaining agent for employees is a legal entity" and that it is "persona juridica and may be punished for contempt . . . and like a corporation may be made liable for the conduct of its officials even where they act in breach of their duty to their superiors".*

[75] In *Pinkerton's*, the Court observed that the certification of the Local was granted pursuant to the *Canada Labour Code*, which defined "bargaining agent" as, in part, a "trade union that has

been certified by the Board as the bargaining agent for the employees in a bargaining unit". The definition of "trade union" included "any branch or local" of a larger organization. The National was neither a party to the collective agreement and had no status as a bargaining agent pursuant to the Code.

[76] In *Limo Jet*, the B.C. Board found that the Local and the employer could not sidestep the Local's status as the exclusive bargaining agent by agreeing to add the national organization to the collective agreement.

[77] The International contrasts the present case with *CB v CUPE, Local 21*, 2017 CarswellSask 510, 298 CLRBR (2d) 14 [*CB*]. In *CB*, the Board found that the national organization was implicated in an application raising a breach of the union's duty of fair representation and decided to add the national organization as a respondent to the proceedings. The Board explained:

> *165 CUPE National's involvement in these matters crystallized, at the very least when Ms. Posyniak was tasked to represent the Applicants in the prosecution of their joint grievance. It might also be contended that CUPE National had actual knowledge of these matters long before that, as a consequence of HK's telephone conversation with Mr. Marsden in March 2014. It would seem artificial, then, to disregard CUPE National's participation in these events on the basis that it was not formally named in the applications.*
>
> *…*
>
> *232 It must be said that after Ms. Posyniak became responsible for this grievance, she made efforts to communicate with the Applicants and to address their concerns as they arose. This was a decided improvement over what had occurred prior to her involvement. Unfortunately, by that time what little confidence the Applicants had in the ability of CUPE National to represent their interests had completed eroded as a result of CUPE Local 21's inaction. As a consequence, the relationship between CUPE National and the Applicants was tense, to say the least.*

[78] Blunt is a member of the International through a chartered Local based in Alberta. The International says that in limited circumstances, a national or international organization may voluntarily assume the obligations associated with bargaining agent status but there is no assertion made or evidence presented that suggests that this has happened. The International says that there is nothing "to suggest that the International has voluntarily assumed any role either bargaining with Saskatchewan employers, or representing the Applicant in any grievance".

[79] The Board is not persuaded by this argument. Once filed, charges of an inter-local nature are the responsibility of the International. The complainant Local is limited to investigating,

preferring, and filing the charges and receiving credit for penalties. The "home" Local does not play an active role.

[80] Sections 4, 5, and 6 of Article XXIV of the Constitution deal with charges of an inter-local nature:

> ***Section 4.*** *Charges of an inter-local nature shall be disposed of in accordance with Article X, Sections 1, 2, and 3, provided that said charges are filed not later than ninety (90) days after those preferring them had knowledge of the facts alleged.*
>
> ***Section 5.*** *Charges of an inter-local nature can be preferred against members only after the business manager or business agent has visited the job site and made a thorough investigation. The officer will then report findings to a regular meeting of the local, at which the members present can, on recommendation of the business manager or business agent and by majority vote, prefer charges against the accused. The corresponding secretary shall then draft and submit the charges against the accused to the General Office. Such charges may not be submitted by electronic mail.*
>
> ***Section 6.*** *In all inter-local charges, all monetary penalties imposed by the General Executive Board shall be credited to the complainant local union. The member penalized will make payment of said penalty in full to the General Office where the full amount of this penalty will be credited to the account of the complainant local union.*

[81] The GEB is required to deal with inter-local charges, in accordance with sections 1, 2, and 3 of Article X, which state:

> ***Section 1.*** *The International Association Executive Board, known and mentioned as the "General Executive Board," shall be composed of the General President, the International Vice-Presidents and the General Secretary-Treasurer. It shall, from its numbers, by majority vote, fill the office of General President, should that office become vacant. It shall decide all cases and appeals referred to it in accordance with the Constitution, in session or through a Board member or International Organizer deputized by the General President. Its rulings or decisions shall stand unless reversed by convention on appeal. All powers, duties and authority over all Association matters between conventions, not otherwise vested in the General President or General Secretary-Treasurer of the International Association, shall be exercised by the General Executive Board.*
>
> ***Section 2.*** *The General Executive Board or any of its authorized members shall hold trial or appeal hearings at the General Office or at any other place which they shall designate, in the manner provided in this Constitution.*
>
> ***Section 3.*** *A charged member or appellant who fails to appear at the designated time and place of hearing shall be deemed to have waived their right to appear and the proceeding shall continue as if the member were present.*

[82] Blunt's complaints relate to the International's enforcement of the Constitution against him. The International has assumed the responsibility for enforcing the Constitution on behalf of the bargaining agent. Section 4 of Article XXIV states that inter-local charges "shall be disposed of in accordance with Article X, Sections 1, 2, and 3". Section 1 of Article X requires the GEB to decide

all cases that are referred to it. Consistent with these provisions, Local 119 filed the charges with the International. The International was responsible for hearing the charges and issuing a decision.

[83] The Constitution provides no other avenue to determine inter-local charges than through the International's processes. As between the original Local, the charging Local, and the International, it is logical that the International has jurisdiction over inter-local disputes. Only the International has the broader perspective necessary to resolve such disputes. Moreover, one of the charges (of which Blunt was found guilty) alleged that Blunt had violated the Constitution by "engaging in acts contrary to [his] responsibility to the International Association".

[84] The International's jurisdictional argument would remove proceedings on inter-local charges from the Board's oversight pursuant to section 6-58. No matter the dispute, the penalty or the impact on the employee's bargaining rights through the home Local, the Board would have no jurisdiction to determine whether the principles of natural justice had been followed in relation to said dispute. This is an untenable result.

[85] In this case, the International has voluntarily assumed the obligations associated with bargaining agent status. Unlike in *Rattray*, the Local is not capable of bearing the consequences of a breach because the Constitution requires that inter-local charges be determined by the International.

[86] Moreover, subsection 6-58(1) covers disputes relating to matters in the constitution of the union; the employee's membership in the union; or the employee's discipline by the union. In this case, the governing Constitution is that of the International and both Local 110 and 119 are subject to it. Under the Constitution the International has assumed the role of disciplining the member for the benefit of itself and the Locals and in lieu of Local 110. The dispute raised in the current case falls squarely within the category of disputes contemplated by the provision.

[87] In summary, the Board has jurisdiction over this matter.

2. Did the International breach the Applicant's right to the application of the principles of natural justice, pursuant to section 6-58 of the Act?

[88] The next question is whether the International breached Blunt's right to the application of the principles of natural justice, pursuant to section 6-58 of the Act.

[89] The meaning of natural justice was explained in *Knight v Indian Head School Division No. 19*, 1990 CanLII 138 (SCC), [1990] 1 SCR 653 at 682 [*Knight*]:

> *Like the principles of natural justice, the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case. In [Nicholson], Laskin C.J. adopts the following passage from the decision of the Privy Council in [Furnell]…:*
>
> > *Natural justice is but fairness writ large and juridically. It has been described as "fair play in action". Nor is it a leaven to be associated only with judicial or quasi-judicial occasions. But as was pointed out by Tucker L.J. in Russell v. Duke of Norfolk [1949] 1 All E.R. 109, 118, the requirements of natural justice must depend on the circumstances of each particular case and the subject matter under consideration.*
>
> *[full citations removed]*

[90] Since *Knight*, there has been an evolution away from what was once a distinct category for each of the duty of fairness and the principles of natural justice towards a spectrum on which fairness is assessed. The authors, Donald J.M. Brown, K.C. and the Honourable John M. Evans, explain this evolution:[2]

> *…However, the Supreme Court subsequently stated that decision-making powers should be conceived as occupying a spectrum that ranged from those that were functionally indistinguishable from the powers exercised by judges, to those of a policy or non-final nature. In the result, and while the older dichotomy may still be referred to, no meaningful distinction now exists between the rules of natural justice and the duty of fairness. Rather, the precise procedural content of the duty of fairness will depend upon the particular administrative and legal context in which it is being applied.*

[91] It is well established that the principles of natural justice are variable, and their content is to be decided based on the specific context of each case. Internal union hearings tend not to be conducted by persons with legal training; the strict rules of evidence are not binding. Taking into account these characteristics, the B.C. Board in *Coleman* established a list of requirements specific to such hearings. This list was adopted by this Board in *Lalonde,* at paragraph 102, and *Pidmen v Canadian Union of Public Employees, Local 1975-01*, 2005 CanLII 63108 (SK LRB) [*Pidmen*]:

> *(1) Individual members have the right to know the accusations or charges against them and to have particulars of those charges.*
>
> *(2) Individual members must be given reasonable notice of the charges prior to any hearing.*

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[2] Donald J.M. Brown, Q.C. and the Honourable John M. Evans, *Judicial Review of Administrative Action in Canada*, loose-leaf (Rel 3, Oct 2021) Vol 1 (Toronto: Thomson Reuters, 2021) at 7:9.

> *(3) The charges must be specified in the constitution and there must be constitutional authority for the ability to discipline.*
>
> *(4) The entire trial procedure must be conducted in accordance with the requirements of the constitution; this does not involve a strict reading of the constitution but there must be substantial compliance with intent and purpose of the constitutional provisions.*
>
> *(5) There is a right to a hearing, the ability to call evidence and introduce documents, the right to cross-examine and to make submissions.*
>
> *(6) The trial procedures must be conducted in good faith and without actual bias; no person can be both witness and judge.*
>
> *(7) The union is not bound by the strict rules of evidence; however, any verdict reached must be based on the actual evidence adduced and not influenced by any matters outside the scope of the evidence.*
>
> *(8) In regard to serious matters, such as a suspension, expulsion or removal from office, there is a right to counsel.*

[92] The *Coleman* requirements are not intended to be comprehensive or exhaustive; nor will all of these requirements apply to every internal union hearing.[3] The nature and extent of the requirements may depend on the nature or severity of the consequences for the individual.

[93] In the present case, Blunt suggests that the following principles of natural justice were violated:

i. Right to Counsel;
ii. Right to Particulars of Charges;
iii. Failure to Articulate Reasons or Address Significant Issues.

Right to Counsel:

[94] Blunt relies on Section 2 of Article XXV of the Constitution which he says does not explicitly indicate that lawyers are permitted to attend or prohibited from attending a hearing. Section 2 states that a charged member “shall appear” on the date set and “may appear in person” to answer the charges and “may select a member in good standing” to represent him or her in the presentation of the defense. It also states that if the accused fails to appear the “trial board shall proceed to hear and determine the case”.

[95] Article XXV deals with trials and appeals that are heard by a Local union executive board which acts as a trial board. The language and structure of the Constitution suggests that Section 2 of Article XXV does not apply to a hearing on inter-local charges.

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[3] *Lalonde*, at para 102; *Graham*, at para 111.

[96] Section 3 of Article X does apply to a hearing on inter-local charges. It states:

> ***Section 3.*** *A charged member or appellant who fails to appear at the designated time and place of hearing shall be deemed to have waived their right to appear and the proceeding shall continue as if the member were present.*

[97] Section 3 does not prohibit a representative from appearing on the member's behalf in the member's absence.

[98] The International suggests that the accused is permitted to be represented by a member in good-standing only. Of the provisions that directly apply to hearings on inter-local charges, there is no mention of representation by either a member in good-standing or by counsel. The Constitution is silent as to whether and who may represent an accused at a hearing of inter-local charges. Even if Section 2 of Article XXV did apply to inter-local charges, the Board in *Pidmen* found that "[w]hile the constitution provides for representation by a union member in good standing, that is not the same as expressly excluding representation by legal counsel."

[99] Therefore, a question before the Board is whether a right to counsel is implied by the principles of natural justice. On the one hand, *Coleman* suggests that a right to counsel is reserved for serious matters, such as a "suspension, expulsion or removal from office". However, in *Lightfoot v Gerecke*, 1983 CarswellSask 389, 18 ACWS (2d) 184, 27 Sask R 305 (SK QB) [*Lightfoot*], the Court found that charges involving a fine the non-payment of which could result in suspension or expulsion was a severe threat that supported the argument for an interim injunction. In *Graham*, the B.C. Board stated that had "suspension, expulsion or the exorbitant fine imposed been available as legitimate responses to charges levied" against the accused then it would have been appropriate to require the union to fully comply with each relevant term of its Constitution.

[100] Whether a natural justice right is implied depends on the jeopardy faced by the accused. This fact distinguishes the inquiry from the interim application in this matter. There, the Board found that the failure to adduce evidence on the Applicant's ability to pay precluded an assessment of whether the Applicant faced irreparable harm given that any harm could be eased on appeal. By contrast, the question in the current case is whether Blunt was owed a specific natural justice right during the proceedings to which he was subject, given the jeopardy that he faced.

[101] In his case, Blunt was informed only that he faced a fine of at least $10,500, in total, if found guilty on all three charges. No reasoning was provided to support the minimum amount.

There was no notice of any maximum, whether through correspondence or in the Constitution. Given the absence of any ceiling, Blunt could not have known what specific jeopardy he faced if found guilty. In the absence of this knowledge, he could not have known whether he was reasonably capable of paying the fine. The failure to pay the fine, which fine was not communicated to him until the decision was issued, would result in automatic lapsing. The member was required to pay the entire fine prior to an appeal.

[102] In the Board's view, the combination of these facts supports a right to counsel.

[103] However, the circumstances of the present case do not raise only an issue as to whether Blunt has a right to counsel and whether said right was violated; they raise an issue as to whether Blunt was denied a hearing overall. Blunt's matters were heard and decided at a hearing in the absence of either Blunt or his chosen representative. The deficiencies in the International's communications meant that Blunt did not have a reasonable opportunity to be heard. He was effectively denied the right to a hearing.

[104] On April 11, 2022, Blunt's counsel wrote to the International requesting an adjournment, advising that if the hearing was not adjourned, "I will attend the scheduled hearing on Mr. Blunt's behalf." However, on the question of whether counsel would appear, Kurnick testified that the letter from counsel was unclear. That is not objectively so. Moreover, Kurnick's explanations about how he came to that conclusion are not reasonably supported by the surrounding language of the letter. On April 15, 2022, Kurnick then advised that the request for an adjournment would not be granted but said nothing about counsel's expressed intention to appear at the hearing on Blunt's behalf.

[105] On April 28, 2022, counsel for Blunt wrote to Kurnick asking in which room the hearing would be held. The following day, Kurnick provided him with that information and indicated that all participants were required to provide further information by May 4. Kurnick acknowledged that counsel had provided that information, which was specific to being allowed to participate, prior to the hearing. At the hearing before this Board, Kurnick acknowledged that the receipt of this information meant there was a potential or a possibility that counsel would appear. Moreover, he had not received that information from Blunt. When asked what conclusion he drew from that absence, Kurnick suggested, "if he appeared he might not be admitted".

[106] After a few attempts by counsel in cross examination, Kurnick finally admitted that he had understood prior to the hearing that it was "more likely than not" that counsel would appear at the

hearing. He later minimized this by suggesting that counsel should have sent him an email indicating that he planned to appear (despite the letter of April 11). In short, Kurnick's testimony on this issue was not helpful to the International's case.

[107] The International's hearing was held on May 9, 2022. On that date, Blunt's counsel wrote to Kurnick, signaling that he did not know at what time the hearing would begin. The response from Kurnick was: "the hearings are about to start. You should get there as soon as possible." Counsel responded that he was at the hearing location but that the doors were closed. He then requested admission.

[108] As it turned out, at the start of the hearing on May 9, the GEB "voted to adhere to its consistent policy of limiting representation at such hearings to good standing members." As a result of that decision, counsel was not permitted to participate. Kurnick acknowledged in his testimony that counsel's participation had not been resolved prior to the vote having been taken, despite the purportedly consistent past practice of prohibiting lawyers. No option was provided to adjourn the hearing so that Blunt or another individual, who was a good-standing member, could attend. At no time prior to the vote did anyone from the International mention to counsel that it had a policy prohibiting lawyers from attending the hearing or that Blunt's counsel may not be permitted. This is in marked contrast to the letter of April 11, stating in no uncertain terms that the Business Manager of Local 110 was not authorized to represent the members.

[109] In fairness, the International relies on the evidence that other members, with whom Blunt was in contact, understood that lawyers were not allowed or their attendance was frowned upon. This should be taken together with the understanding that Blunt was a long-time member with significant experience at various levels of the organization who, despite his suggestions to the contrary, likely had been exposed to this policy.

[110] On the other hand, even if Blunt knew that lawyers were not allowed or "frowned upon", it was not appropriate for the International to lay in the weeds, assuming that Blunt was aware of the policy, and passively observe as the chaos ensued. A seemingly unwritten policy or a written policy that is not provided, no matter how consistently applied, is no guarantee, especially given the right to counsel that arises in certain cases.[4] Moreover, no matter what Blunt knew or did not know, he should have been able to rely on the implied permission to attend that arose from the International's communications with his counsel.

[4] As mentioned, some cases have found a right to counsel where there is a potential for an exorbitant fine.

[111] Therefore, even if there were no right to counsel, when it became apparent that Blunt's counsel was likely planning to attend in his absence, the International should have, at least, informed counsel of its policy and provided him with a reasonable opportunity to adjust. The International's suggestion that it should have been able to rely on a letter advising of Blunt's intention to appear, written a year before the hearing, prior to the aforementioned, multiple exchanges, is very weak.

[112] Furthermore, the notion that Blunt should have been aware of the existence of a policy is inconsistent with the evidence that the GEB made its decision to comply with that policy only at the eleventh hour, after counsel had travelled to Windsor to attend the hearing on Blunt's behalf (without Blunt), and on the morning that the hearing was scheduled to begin.

[113] Blunt relied on the International's conduct to send counsel to represent him at the hearing in his place. The International effectively denied Blunt the right to a hearing by indirectly leading counsel to believe that the GEB would hear from him and then refusing to allow him to attend the hearing.

[114] Finally, given the conduct of the International in leading counsel to believe that he could attend in his client's absence, any argument to the effect that Blunt "failed to appear" contrary to section 3 of Article X must fail.

[115] As a result of the foregoing, the International breached Blunt's right to a hearing and section 6-58 of the Act.

Right to Particulars of Charges:

[116] Next, Blunt complains that the particulars of the charges were provided only two weeks before the date of the hearing and approximately ten days after the deadline for reply materials. He asserts that the International's conduct violated his right to know the accusations or charges against him.

[117] On this issue, the question before the Board is whether the International provided sufficient information to permit Blunt to know his conduct that is the subject of the charge and how that conduct contravenes the relevant provision of the Constitution.[5] A related question is whether the International provided sufficient information to permit Blunt to know the jeopardy that he faced.

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[5] *North Battleford Community Safety Officers Association v City of North Battleford*, 2019 CanLII 43221 (SK LRB) at para 9.

[118] Counsel provided the Board with case law that provides guidance in respect of this question.

[119] First, in *Lemieux and Partaik, Re*, 2022 CarswellBC 2696, 2022 BCLRB 112 [*Lemieux*], the B.C. Board found that the Local breached the principles of natural justice by failing to provide sufficient particulars to the applicant.[6] In the communications in question, the Local had referred only to the provisions of the Constitution and Bylaws and then made an allegation that the applicant had misrepresented their employment status. The Board found that this information was deficient.

[120] In *Lalonde*, this Board found that the union failed to provide sufficient particulars, noting the following deficiencies:[7]

a. The union provided verbatim a provision of the Constitution without any express indication that the applicant was in violation of that provision or any other, or any direction as to which part of the provision the applicant had allegedly breached, and;

b. It did not set out an essential element of the union's case against the applicant, that is, that the jurisdiction of the two unions was overlapping.

[121] The consequences of a guilty finding – loss of membership and ability to earn a livelihood – were deemed too severe to characterize these deficiencies as mere technical defects.

[122] In *Lightfoot*, the union had provided the applicant with a notice to appear, listing the provisions of the Constitution which were alleged to have been violated, but with no additional information about the allegations. The Court found that the union's notice "neither specified or made clear the consequences which might flow from a guilty finding".[8] The notice was found to be inadequate, especially given the "grave consequences that could flow from the charges", that is, a fine in the amount of $8,294.40, which if not paid would place the applicant in "jeopardy of suspension or expulsion".[9]

[123] In this case, on October 23, 2020, the International provided Blunt with a copy of charges that had been preferred against him by Local 119. According to that document, he was charged

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[6] *Lemieux*, at para 41.
[7] *Lalonde*, at para 105.
[8] *Lightfoot*, at para 7.
[9] *Ibid*, at paras 7-9.

with violating three provisions of the Constitution, including Article XIX, Section 9 by "failing to notify the Business Managers of either Local 110 or Local 119 that they were working in Saskatchewan" and Article XXIV, Section 1(n) "by engaging in acts contrary to their responsibility to the International Association".

[124] Article XIX, Section 9 makes clear that members must notify the Business Manager of a Local in whose jurisdiction they will be working "before work has started".

[125] In respect of this charge, it is clear from the letters of October 15 and October 23, 2020 that the International provided Blunt with basic particulars. That is, it was clear on what basis it was alleged that Blunt had failed to comply with a duty, which arose from the Constitution. What were not clear were the specific reasons for the concern in this case (for example, the history with the Carpenters) that would influence the range of penalties beyond the imposition of the minimum fine. Nor did the International communicate what range of penalties it could consider or impose.

[126] To be sure, although the lawyer's letter of December 18, 2020 stated that he looked "forward to further particulars" he proceeded to outline the details of Blunt's defense, making clear that he was aware of the basic facts supporting the charge pursuant to Article XIX, Section 9. Another request for further particulars was made on June 2, 2021 and then again on April 11, 2022. On April 15, 2022, the International wrote in response to the latest request confirming that, based on the detailed description in the December 18 letter, it was clear that the accused parties "understand the particulars of the charges against them". Again, however, the letter of December 18 did not disclose details about the larger context.

[127] It is the International's obligation to provide particulars. It should not assume that the member understands the nature or consequences of the charges if it has not communicated them to him.

[128] Next, the phrasing of Article XXIV, Section 1(n) is decidedly more general. What is unclear from the letters provided to Blunt is the meaning of the "member's responsibility" toward the International or any Local unions or acts that "interfere with the performance" by the International or a Local of its "legal or contractual obligations". This, again, should have been clarified by the International by providing information about the context.

[129] As disclosed by the December 18 letter, counsel deduced that the "charges … appear to allege that Mr. Blunt has been disloyal to the HFIAW by taking active steps to oppose or undercut its institutional interests." The letter goes on to describe the acts that Blunt had taken that he

perceived as opposed to this proposition, including his understanding about key aspects of the foundation for the dispute, such as the nature of his relationship with the NCC. Counsel also asked for specifics:

> *If Local 119 or the HFIAW has reason to believe that Mr. Blunt has somehow acted in a disloyal manner contrary to the interests of the HFIAW, we look forward to receiving those particulars without delay. Similarly, we ask for further particulars as to what Mr. Blunt has done to deprive Local 119 members of job opportunities, or otherwise act contrary to his "responsibility" toward HFIAW, Local 119 or Local 110. After over 40 years of loyal membership, one would expect it to take compelling evidence of efforts on the part of Mr. Blunt to cause substantial harm to the HFIAW to justify charges that could deprive him of the ability to earn a living.*

[130] There was no response to this request. In the circumstances, it was not appropriate for the International to sit back and assess counsel's submissions to determine whether Blunt had appropriately understood the allegations, which had not been sufficiently particularized. Nor was it appropriate for the International to assume, based on Blunt's purported relationship with the employer, that he would have been privy to all of the relevant facts.

[131] Then, on or around April 24, Blunt received a letter enclosing the investigation report. According to Blunt, the investigation report discloses the alleged facts which purportedly led to the obligation to notify the Business Managers but does not disclose what it was about this work that required Blunt to notify the Business Managers. In the Board's view, the investigation report provides sufficient particulars such that Blunt ought to have known the case that he had to meet, including the larger context.

[132] Blunt, however, also takes issue with the International's timing in providing the investigation report. First, he says that the International provided too little time to prepare for the hearing. In the Board's view, taking all of the circumstances into account, Blunt was given sufficient time to prepare from the date of the finalized particulars to the date of the hearing (April 24 to May 9).

[133] Second, Blunt says that if he was allowed to rely on counsel only for written submissions then his counsel should have been afforded the opportunity to respond to the report prior to the hearing. On this point, Kurnick made excuses for the timing, testifying that the International has no power to compel the Local to provide information, and suggesting that the timing of disclosure was out of his control. If this is the case, then this is a deficient process, especially if the International is assuming responsibility for ensuring the fairness of the proceeding.

[134] Kurnick also characterized the investigation report as document production and suggested that there is no right to pre-hearing disclosure. However, the investigation report filled the gaps in the particulars. Therefore, it should have been provided before the reply deadline.

[135] Relatedly, the existence of a reply deadline undercuts the International's assertion that Blunt's arguments had been spent through the provision of earlier materials.

[136] Finally, Kurnick testified that the GEB could have exercised its discretion to consider anything that was filed at another date; he then acknowledged that this option was not expressly communicated to Blunt. In fairness, there is no evidence that counsel attempted to file anything after the reply deadline. However, at this point, counsel was unaware that he was not going to be admitted to the hearing to provide any argument at all.

[137] Therefore, the late provision of the investigation report aggravated the breach of natural justice, in that it interfered with Blunt's ability to defend himself against the charges. Furthermore, Blunt was not provided with sufficient information to know the potential penalty and therefore the jeopardy that he faced. He was not advised that there was or was not a maximum, what the maximum might be, or even whether there was some basis upon which the penalties were calculated.

[138] Lastly, Blunt also requested particulars relating to the limitations period. The Board will deal with the limitation period, and the information provided in relation to that timeline, separately.

Failure to Articulate Reasons or Address Significant Issues:

[139] Blunt alleges that the International's decision failed to: articulate whether Local 119 filed the charge within the relevant limitations period; address the fact that Local 119 refused the work before Blunt accepted it; and, justify the exorbitant fine that was imposed.

90-Day Limitations Period:

[140] The first issue relates to the 90-day limitations period set out at section 4 of Article XXIV as follows:

> ***Section 4.*** *Charges of an inter-local nature shall be disposed of in accordance with Article X, Sections 1, 2, and 3, provided that said charges are filed not later than ninety (90) days after those preferring them had knowledge of the facts alleged.*

[141] Section 5 indicates that the filing of the charges has been effected when the corresponding secretary has submitted the charges to the General Office.

[142] The charges were preferred on October 8, 2020 and filed on October 15, 2020. According to the investigation report, the Business Manager learned that Blunt was working on the job on July 7, 2020. Taking July 7 as the start date, the deadline for filing the charges was on or about October 5, 2020.

[143] However, Rudder suggested that the limitations period began to run after July 7. He pointed to the investigation report, which indicates that as of July 7, Local 119 had not visually confirmed Blunt's presence on the work site. Rudder was initially vague as to when Blunt's presence was confirmed but then acknowledged that between July 7 and July 16, he knew that Blunt was working on site. He also admitted that as of July 2 he knew that there might have been a breach of the Constitution by the members of Local 110.

[144] Before charges could be preferred, the next question for the Local was whether Blunt was still a member. Rudder had heard that Blunt had moved to B.C. and was working non-union. In similar situations, workers have often been found to have allowed their memberships to lapse.

[145] An entry in the investigation report suggests that it was not until August 28 (or later) that Rudder initiated a search of the International's database. According to Rudder, due to a delay in receiving the search results it would have been after August 28 that he became aware that Blunt was still a member. Rudder provided no explanation for why he waited until August 28 (or later) to run Blunt's name.

[146] Blunt argues that, even if it could be believed that Blunt's name was first run on August 28, Rudder had a duty to investigate matters to determine whether a claim had arisen, and he failed to do so in a timely manner.[10]

[147] If Blunt's name were run at any point between July 7 and July 16 and the results came back on the same day, then the filing of the charges occurred after the expiry of the 90-day limitations period. If the charges were filed outside of the 90-day limitations period, then there was no apparent constitutional authority for the proceedings undertaken pursuant to the charges.

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[10] *A.S. v Arslan*, 2019 SKQB 94 (CanLII), at para 85.

[148] If Blunt's name were run during that time period and it took more than one day for the results to be returned, then the effect of the limitations period is uncertain. And, if his name was run later, then a satisfactory explanation would have to have been provided for the delay.

[149] The GEB did not address any of these issues. As such, there is no question as to whether the International addressed a central issue before it. It did not. Despite the matter having been raised at an early stage of the proceedings, there is no evidence that any member of the GEB or other representative of the International articulated the International's jurisdiction in reference to the limitations period, whether before or during the hearing. There is no evidence that the GEB turned its collective "mind" to whether the charges were filed within the limitations period and therefore, whether it had jurisdiction.

[150] Instead, the International attempted to explain the basis for its jurisdiction at the hearing before this Board. That *post facto* explanation does not remedy the deficiency, that is, that the International did not address the source of its jurisdiction at any point during the proceedings which resulted in the guilty findings against Blunt.

[151] To be clear, the *Coleman* requirements do not explicitly require that a union or bargaining agent give or articulate reasons for its decision. However, in the circumstances of this case, the International's failure to demonstrate that it gave any consideration to a central issue relating to its jurisdiction, one that was raised by Blunt's counsel early on, was a clear violation of the principles of natural justice and a breach of section 6-58.

Refusal of Work:

[152] Blunt argues that Local 119 refused the work, that its refusal is relevant to whether Blunt was participating in "aggressive action", and that the GEB failed when it did not consider this issue in its deliberations.

[153] However, there is no evidence that Local 119 turned down the work. The logical and straightforward inference from the evidence is that Local 119 attempted to obtain work while holding the employer to the applicable terms and conditions. Local 119 refused to accept the terms that it believed were a contravention of the collective agreement. This does not amount to a refusal to perform work *writ large*, as suggested by Blunt.

[154] The International treated the alleged "work refusal" as straightforward, that is, that it was obvious that Local 119 did not refuse the work because the employer did not have the authority

to unilaterally change the terms of the parties' agreement. Under the circumstances, this was an acceptable approach.

[155] Therefore, the summary dismissal of this argument is not evidence of a breach of natural justice.

Exorbitant Fine:

[156] This issue is related to the appropriateness of the disciplinary action taken by the International, and therefore, the Board will address it last.

Appeal:

[157] Finally, the International has suggested that Blunt's complaint should fail based solely on the fact that he did not exhaust his internal appeal. The Board is not persuaded by this argument. There are fundamental issues of fairness in the process followed by the International in the first instance. The Board has jurisdiction to determine whether the International acted in accordance with the principles of natural justice. To require Blunt to proceed to exhaust his internal appeal would lead only to more delay and uncertainty, and unnecessarily so, given the vindication of his fairness concerns.[11]

[158] Additionally, while not necessary for the Board's determination, the requirement to pay the entire $15,000 prior to filing an appeal seems designed to deter the filing of appeals, which raises additional concerns with the suggestion that Blunt should have exhausted that process. Contrary to the International's argument, this case is simply not comparable to *Macmillan v Plumbers and Pipefitters, Local 179*, 2021 CanLII 114230 (SK LRB).

3. Did the International breach the Applicant's right to dual union membership?

[159] The International argues that its decision was not based on "bare dual membership" but was taken to defend its work jurisdiction. It says that it charged Blunt with working within Local 119's jurisdiction without first notifying the Business Managers. According to the International, the background to this dispute involved a "certified" employer who sought to have Local 119's members agree to abandon collective bargaining rights so as to retain the work with the employer. When that avenue was unsuccessful, the employer subcontracted the work to another entity and arranged for Blunt and other members of Local 110 to perform it.

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[11] *Hasson*, at para 1.

[160] It is well established that dual union membership is a right protected by the Act. This was explained by the Board in *Lalonde*:

> *127 Nonetheless, the more detailed approach and analysis made in Graham, supra, recommends itself to us. In our opinion, the acquisition of membership in more than one union involves the exercise of a right recognized under s. 3 of the Act and protected under s. 11(2)(a). This is not to say that an employee has a guaranteed and unrestricted right to acquire membership in a particular trade union, but merely that an employee has the right to acquire membership in more than one union if they should choose to do so. As explained in Graham, expulsion from one union for the sole reason of concurrent membership in another is prima facie coercive and intimidating. However, such action will be defensible when it is undertaken objectively and reasonably for the purposes of defending and protecting the existence of the union — for example, a union may legitimately enforce solidarity during a strike or a raid.*

[161] The principle that "an employee has the right to acquire membership in more than one union if they should choose to do so" is recognized by subsection 6-4(1) of the Act, which states that "employees have the right to organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing." The right that is recognized in subsection 6-4(1) is the same as that which was recognized in section 3 of *The Trade Union Act* and relied upon by the Board in *Lalonde*, and is protected through sections 6-5, 6-6, and/or clause 6-63(1)(a).

[162] The Board in *Lalonde* adopted the B.C. Board's analysis of dual membership rights as outlined in *Graham and IUOE, Local 882, Re*, 1998 CarswellBC 4127, [1998] BCLRBD No 302, 44 CLRBR (2d) 161 (B.C. LRB) [*Graham*]. In *Graham*, the B.C. Board found that the relevant statutory provision conferred broad protections on employees who hold membership in one union but who wish to exercise their statutory rights to substitute a different union as their bargaining agent.[12] Specifically, "a retaliatory act designed to curtail the exercise of rights under the Code and restrict access to the Board" is not permitted.[13] The Board accepted, however, that unions enjoy an implicit but not unqualified right to suspend or expel members for exercising dual unionism rights.

[163] The B.C. Board relied on *Coleman* for the proposition that all the Canadian jurisdictions permit union discipline of a member who seeks to displace the union with another union as the certified bargaining agent. The Board went on to clarify that the word "discipline" did not contemplate "chastisement, correction and punishment" but instead was "used as a generic descriptor of the class of acts into which suspension and expulsion normally fall in the world of

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[12] *Graham*, at para 85.
[13] *Ibid*, at para 97.

labour relations".[14] Ultimately, discipline of a member is permitted if it can objectively and reasonably be found to be a "legitimate defensive" action on the part of the union. Or, as explained in *Labey*, it should be "measured and defensive" rather than "punitive and retaliatory".[15]

[164] In the cases that have been put before the Board, circumstances that have been found to be legitimately defensive have included: an ongoing raid (*Graham* and *Ollesch*); attempts to unseat the present union as the bargaining agent (*Labey*); and a rival union "siphoning" its members (*Hasson*).

[165] The International argues that the present case is comparable to the circumstances in *Hasson*. There, the union rivalry involved a complete overlap in jurisdiction.

[166] In *Hasson*, the New Brunswick Board compared the circumstances of the rival unions to a raid because "both trade unions claim the same work jurisdiction and are vying with each other for members in order to satisfy demand for their skills".[16] However, it stressed the right of a union to insist on compliance by its members with its Constitution and by-laws[17] and refrained from assessing whether the union's actions could be characterized as defensive. Although it acknowledged that the union's Constitution cannot be contrary to the Act, it found that it was not up to the Board to decide whether the union's members were in fact being "siphoned" as the union had contended. The Board deferred to the union to determine whether it was in the union's interest to maintain exclusivity.

[167] In *Lalonde*, the Board stated that it preferred the "more detailed approach and analysis" in *Graham* (as compared to *Hasson*).[18]

[168] The Board is required to assess whether the International's acts are accurately characterized as legitimately defensive and, in that respect, it concurs with *Lalonde* and is guided by the more detailed approach in *Graham*.

[169] According to the B.C. cases, to find that a union has acted in a manner that was "legitimately defensive" the Board must consider the motivations and actions of the member whom the union has disciplined. It is not sufficient for the member to have acted in a manner that was

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[14] *Ibid*, at para 91.
[15] *Labey*, at para 55.
[16] *Hasson*, at para 9.
[17] *Ibid*, at para 9.
[18] The Board in *Lalonde* also distinguished from *Hasson* on another basis, asserting that the relevant statutory provisions were different. To be sure, it is unclear how significant that distinction was to the Board's determination. See, *Lalonde*, at para 128.

merely detrimental to the union's interests.[19] It is necessary that the member, in taking those actions, was motivated "to unseat or otherwise act disloyally or contrary to the interests of the union".[20]

[170] The Board must also consider the extent to which the member's actions "directly" damage the union, as per *Ollesch v C.J.A., Locals 452 & 1251*, 1990 CarswellBC 3305, [1990] BCLRBD No 72 (B.C.I.R.C.) [*Ollesch*]:[21]

> *…Unless a union member engages in action which directly damages the union's position as a bargaining agent, or takes action which directly offends the union as an institution, it will be difficult for the union to justify disciplinary action against the member as a defensive measure designed to protect its interests….*

[171] In *Ollesch*, the rival union, GWU, represented all-employee bargaining units and was viewed by the applicant as facilitating employers' wishes and negotiating inferior collective agreements (in comparison to those of the building trades). GWU had successfully raided five of the applicant's bargaining units. The applicant had previously requested voluntary recognition from the employer, was denied, and later learned that GWU had successfully secured voluntary recognition from the same employer.

[172] The B.C. Council stated that the "right to belong to more than one trade union necessarily includes a rival union"[22]. Rather than sole membership "*per se*", the Council required "concrete evidence of support and sabotage which would alert a danger to the union's institutional interests".[23] Despite the intense rivalry between the unions in that case, the Council found that the revocation of memberships (and even explaining the consequences to a member) was a coercive tactic intended to make the members cease their membership in the rival union.

[173] In *Tardif v McGrath*, 2002 CarswellNS 164, 2002 NSCA 56, [2002] NSJ No 188 (N.S. CA) [*Tardif*], an appeal from an injunction, the Nova Scotia Court of Appeal found that a trial court could be persuaded that it was a statutory violation (coercion or intimidation) to discipline members who accepted work under a collective agreement with less favourable terms (which collective agreement applied to another trade) than the collective agreement that would have attached to a subcontracting arrangement. The Local's actions were designed to prevent work

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[19] *Nielson*, at para 24.
[20] *Labey v U.A.*, Local 170, 2008 CarswellBC 2728, [2009] BCWLD 1018 (B.C. LRB) [*Labey*], at para 46; *Nielsen and IUEC, Local 82, Re*, 2016 CarswellBC 3215, [2016] BCWLD 8174 (B.C. LRB) [*Nielson*], at para 23.
[21] *Ollesch*, at para 103.
[22] *Ibid*, at para 89.
[23] *Ibid*, at para 94.

from being carried out under the terms of a collective bargaining arrangement and instead to force an employer to subcontract the work so that the Local's collective agreement could be engaged.

[174] In *Labey v U.A., Local 170*, 2008 CarswellBC 2728, [2009] BCWLD 1018 (B.C. LRB) [*Labey*], the B.C. Board differentiated between a member who joins another union with the "avowed purpose of unseating the present as the bargaining agent" and a member who joins another union "merely in order to work".[24] The Board, relying on *Ramirez v O.P.C.M.I.A., Local 919*, 2006 CarswellBC 3201, [2007] BCWLD 976 (B.C. LRB), asserted that "[a]bsent evidence to the contrary, the Board assumes that when union members take work through another union their motivation is not to damage the union but to obtain work".[25] The Board confirmed that members should not be subject to expulsion "merely because they chose to become a member of another union in order to obtain work".[26]

[175] In *Nielsen and IUEC, Local 82, Re*, 2016 CarswellBC 3215, [2016] BCWLD 8174 (B.C. LRB) [*Nielson*], the B.C. Board confirmed that it will assume, in the absence of evidence to the contrary, that "individual members' motivation for taking work is to support themselves".[27] There, the employees withdrew their membership in the union to obtain work with a non-signatory employer. The Board found that it was insufficient that there were institutional consequences for the union; the fact that performing work for a non-signatory was detrimental to the union's interest was not enough to establish that the union's actions were legitimately defensive.

[176] The presumption that members take work to support themselves is entirely consistent with the precarious nature of the construction industry, as explained in *Ollesch*, at paragraph 92:

> *92 Carpenters and other tradespeople who work in the construction industry do not enjoy the relative security of employment that workers in other industries generally expect. The construction industry is a bell-weather of British Columbia's economic health, with good times signalling a boom and poor times, such as the mid-eighties, bringing massive unemployment. Even in good economic times, construction projects are typically of limited duration. Work in the industry can be inconstant because of the vagaries of weather and the flow of capital. The unique characteristics of the construction industry mean that contractors hire workers on an "as-needed" basis, and in the Unionized sector, through the Union's hiring halls. Carpenters must often move from job to job. So have Ollesch and Campagnolo. If they had found jobs building a new sawmill and thus been required to join the IWA, or if they had found relative employment security in carpentry maintenance work at a school board as CUPE members or at a hospital as HEU members, or if they had worked in the non-union sector of the industry, the Union would not have revoked their membership. Their "mistake" was to work for Micron, bound by a GWU collective*

[24] *Labey*, at para 46.
[25] *Ibid*, at para 50.
[26] *Ibid*.
[27] *Nielson*, at para 25.

> *agreement requiring their membership in the GWU as a condition of employment. In doing so, are they being disloyal to the Union?*

[177] Taking into account the foregoing case law, the Board will now assess the circumstances before it. The first question is whether Blunt was exercising a right protected by the Act. Given the foregoing reasoning, there is no question that Blunt has a statutory right to join a union that does not presently act as his bargaining agent. When Blunt joined Local 1999 he was exercising a right protected by the Act.

[178] However, the Act does not protect a stand-alone right to work without notifying the union. The question is whether, in the present circumstances, the discipline for failing to notify the Business Managers can be isolated from the right to join a union. As will be explained, the Board has found that it cannot.

[179] Next, the Board will consider whether the International's actions in disciplining Blunt were legitimately defensive. Consistent with *Ramirez*, *Nielson* and *Labey*, the Board begins with the premise that Blunt's motivation in accepting the job offer was to work, not to damage the union. The Board must then decide whether there is "evidence to the contrary", that is, evidence that Blunt was motivated not merely to work but by disloyalty or to cause harm to the union.

[180] In the present case, the Local had what it believed was a voluntary recognition agreement with a company to perform the annual turnaround work. That company fits into a larger corporate structure which, although not explored in detail in the present matter, is the corporate structure in which the unionized employers are found. When the Local and the company were unable to reach an agreement on the company's proposal for a deviation from terms, another entity, which the Local believed was "in common", bid on the work and entered into an agreement with a rival union. That union used insulators to perform insulator work. One of those insulators was Blunt.

[181] The voluntary recognition agreement was the basis of the collective bargaining relationship. When the job was supplied, Local 119 was not in a position to assert the existing terms and conditions. The relationship was restored through another voluntary recognition agreement, entered into after the filing of a common employer application.

[182] The Board's inquiry must focus not on the International's actions in response to the employer's alleged conduct but on the International's discipline of the member for the member's conduct. Blunt's conduct, in short, consisted of accepting work with an employer in circumstances that were purported to circumvent an obligation the employer had with the Local.

[183] The primary question is whether Blunt was motivated to unseat or otherwise act disloyally or contrary to the interests of the International (or Local 119). And, while Blunt disregarded his duty in failing to notify the Business Managers, the evidence does not establish that the reason underlying Blunt's decision to join Local 1999 was to unseat Local 119 as the bargaining agent or otherwise act disloyally or contrary to the Local or International's interests. It is not sufficient for Blunt to have acted in a manner that was detrimental to the union's interests.[28] He must also have the requisite motivation.

[184] Furthermore, Blunt's conduct was not "an act of aggression designed to damage" the international's interests.[29] Although there was some implied, past tension between Blunt and Rudder, the evidence about their relationship was vague and does not establish that Blunt was acting out of ill-will towards Local 119 or the International. Nor is there any evidence that he is currently involved in the internal politics of the Locals or the International. There is no evidence that he had joined with the employer to deliberately harm Local 119. Evidence that the employer offered to "help him out" after the fact is not evidence that they colluded to orchestrate the events.

[185] Moreover, the evidence persuades the Board that, in accepting the job and becoming a member of the union, Blunt was motivated to obtain work. The facts which led to the disciplinary charges include the start of the Covid-19 pandemic, a national economic shutdown, and widespread unemployment in multiple sectors. Layered on these circumstances were the precarious nature of the construction industry and the resultant lack in employment security. Blunt had been laid off and was receiving CERB for a period of three months prior to the offer of a job in Saskatchewan in June 2020. He needed the work. To obtain the work he had to become a member of the union. The evidence that Blunt's motivation was to obtain work is not overcome by any other evidence.

[186] In this case, the discipline for failing to notify the Business Managers cannot be isolated from the right to join a union. To be sure, the International attempted to characterize the guilty finding as limited to the failure to notify, despite explicitly finding him guilty of breaching Article XXIV, Section 1(n), in addition to Article XIX, Section 9.[30] However, the three charges were

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[28] *Nielson*, at para 24.
[29] *Ollesch*, at para 103.
[30] See, for example, the wording of the decision: "After deliberating, the General Executive Board found you guilty of violating Article XIX, Section 9 and Article XXIV, Section 1(n) by failing to report to Local 119 that you would be working in its jurisdiction. Your defense was considered but deemed non-meritorious. Local union 110's ability to provide you with work had no effect on your obligation to notify Local 119 that you would be working in its jurisdiction.

preferred at the same time in relation to the same set of events. They were preferred after Blunt and the other workers were already off the site. Blunt was found guilty of two charges. The International made clear that one of its primary concerns was that the Local 110 members had accepted the job offer and had performed the work under the Local 1999 banner.

[187] Moreover, the penalty imposed was significantly higher than the minimum penalty proposed for the charge of failing to notify the Business Managers. The penalty was not consistent with a guilty finding for failure to notify only. Nor was it "measured and defensive"; instead, it was punitive and retaliatory.

[188] The International was penalizing Blunt not only for failing to notify the Business Managers, but also for not "obtaining permission" to work under the arrangements that required that he join another union. Given the voluntary recognition arrangement, it is not believable that permission would have been granted. In essence, Blunt was penalized for participating in the arrangements at all. As such, the charges, proceedings, and penalty for failing to notify were inextricably interrelated with Blunt's decision to accept a job and to join another union to do so.

[189] For the foregoing reasons, the Board has concluded that the International's actions were not legitimately defensive and were therefore contrary to the Act.

[190] Blunt also asks the Board to consider the precedents that suggest that fines are not properly characterized as defensive.[31] Given the foregoing conclusions, it is not necessary for the Board to determine whether fines may or may not be characterized as defensive.

[191] Lastly, there is no persuasive evidence that the fine was discriminatory in the sense of differential treatment, contrary to subsection 6-58(2) of the Act.

Section 6-59:

[192] Blunt made minimal argument with respect to section 6-59 and has not established a breach pursuant to that provision.

The GEB did not address the claim that you violated the Constitution and Bylaws by working for a nonunion company."

[31] See, *Graham*, at para 102. The B.C. Board in *Graham* found that the imposition of a fine was "an impermissible response to dual unionism for the reason that a fine serves no defensive purpose." It explained: "Imposed poverty does not induce loyalty; nor does a realistically payable fine insulate union ranks against internal dissidents". In other words, a fine is not defensive but is instead considered "punishment, correction and chastisement". Note that the Board distinguishes from fines imposed on members who offend the requirement for solidarity during strike action.

Remedy:

[193] Given the foregoing findings, it would be inappropriate to remit the matter to the International. Any additional proceedings related to the failure to notify would be artificial and unfair. As such, the Board orders that the guilty findings and the penalty be set aside, that Blunt's membership status be restored with no loss of seniority or benefits, and that he be restored to the work referral list. Blunt shall not be required to pay union dues for the period during which his membership status was suspended or revoked.[32]

[194] An appropriate order will be issued with these Reasons.

DATED at Regina, Saskatchewan, this **26th** day of **April, 2023.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson

[32] *Lalonde*, at para 140.