Saskatchewan
Labour Relations Board

REGINA CIVIC MIDDLE MANAGEMENT ASSOCIATION, Applicant v ADAM BARAGAR, Respondent

LRB File Nos. 004-24 and 167-23; April 19, 2024
Vice-Chairperson, Barbara Mysko (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*

Counsel for the Applicant, Regina Civic Middle Management Association:	Jacob D. Zuk
The Respondent, Adam Baragar:	Self-Represented

Application for Summary Dismissal – Employee-Union Dispute – Sections 6-58 and 6-59 of *The Saskatchewan Employment Act* – Delay – Failure to Represent before Saskatchewan Human Rights Commission – Failure to File Second Grievance – Natural Justice.

Application for Summary Dismissal Granted in Part – No Duty to Represent Employee before Commission – No Jurisdiction for Arbitrator to Hear Second Grievance – Not a Matter in Constitution of Union.

Delay – Reasons Provided – Not a Matter for Summary Dismissal – Leave to Request Preliminary Hearing.

REASONS FOR DECISION

Introduction:

[1] **Barbara Mysko, Vice-Chairperson:** The Regina Civic Middle Management Association [Union] has filed an application for summary dismissal in relation to an employee-union dispute. The original application was filed by Adam Baragar [Employee], an employee of the City of Regina and a member of the Union. In it, the Employee asserts that the Union breached sections 6-58 and 6-59 of *The Saskatchewan Employment Act* [Act].

[2] For the reasons that follow, the Board has decided to allow the Union's application, in part. The Union has established that some of the Employee's allegations pursuant to section 6-59 and the Employee's allegation pursuant to section 6-58 are destined to fail. The Board will explain.

Procedural History:

[3] The Employee filed the original application on November 24, 2023. The Union and the Employer each filed a reply. Then, on January 11, 2024, the Union filed this application for summary dismissal.

[4] The Union seeks to have the summary dismissal application considered without an oral hearing. Both the Union and the Employee have provided the Board with written submissions, which the Board has reviewed and found helpful.

Pleadings and Allegations:

[5] The Employee's allegations, as set out in the original application, may be summarized as follows:

a) On June 25, 2020, the Employee was the subject of a workplace harassment complaint.

b) The complaint was investigated. Through the investigation, certain allegations were found to be unsubstantiated.

c) On July 23, 2020, following the conclusion of the investigation, the Employer disciplined the Employee. The discipline consisted of a one-day suspension and a letter.

d) The Employee asked the Union to file a grievance, which it did. The Employee did not agree with the wording of the grievance.

e) The complainant, who had made the workplace harassment complaint, later filed a complaint with the Saskatchewan Human Rights Commission (SHRC).

f) The Employee asked for the Union's representation before the SHRC. The Union advised the Employee that it would not represent him in that matter. The Employee retained private counsel.

g) Following an investigation, the SHRC concluded that the human rights complaint was not substantiated.

h) After the SHRC file was concluded, the Employee sought compensation for the costs of defending the human rights complaint and sought that the Union file another grievance.

[6] Although the original application is unclear, the remaining pleadings make clear that the Union settled the initial grievance, and the Employee was dissatisfied with the settlement. The Union refused to file a second grievance.

Analysis:

[7] There are four general issues raised by the Employee's allegations:

i. The Union breached its duty of fair representation in relation to the 2020 discipline grievance;

ii. The Union breached its duty of fair representation when it refused to represent the Employee in relation to the human rights complaint [the SHRC Allegation];

iii. The Union breached its duty of fair representation when it refused to file a second grievance on the Employee's behalf [the Second Grievance Allegation];

iv. The Union failed to comply with the principles of natural justice, contrary to section 6-58, when it refused to represent him and when it refused to file a grievance [the Section 6-58 Allegation].

[8] The Union has filed the application for summary dismissal on the following grounds:

> *i. Mr. Baragar acknowledges that the Union filed and settled a grievance on his behalf in September of 2020. He also acknowledges that he was informed by the Union that it would not represent him before the Human Rights Commission in February of 2021. There is no explanation for the three-year delay in filing the within Complaint.*
>
> *ii. Alternatively, Mr. Baragar's complaint that the Union ought to have represented him before the Human Rights Commission discloses no arguable case. It is well-established that a union's statutory duty of fair representation does not extend beyond the ambit of the collective agreement.*
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> *iii. Mr. Baragar's complaint that the Union ought to have filed a second grievance on his behalf in 2023 also discloses no arguable case. A grievance on Mr. Baragar's behalf had already been filed and subsequently withdrawn in 2020, and it was not available to the Union to grieve the same discipline again in 2023.*
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> *iv. The Complaint discloses no factual basis for arguing that the Union had breached a duty contained under s. 6-58.*[1]

[1] *Union's Brief of Law*, January 11, 2024, at 1.

Dismissal Based on Delay:

[9] In *Brady*, the Board recently described its power to dismiss an employee-union dispute for undue delay in filing:[2]

> *[27] Absent reliance on s. 6-111(3), pursuant to s. 6-103 the Board may decline to hear an employee-union dispute if a hearing would be unable to achieve justice because of undue delay. Perhaps unsurprisingly, the factors the Board considers when determining whether to hear a late-filed unfair labour practice allegation under s. 6-111(3) are not entirely dissimilar from those it considers when determining whether to dismiss an employee-union dispute for undue delay. For example, in both circumstances the Board will consider the length of the delay, the sophistication of the applicant, the prejudice to the responding party, and the nature of the claim/importance of the right asserted by the applicant.*
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> *[28] In addition to s. 6-103, referenced above, the Board has express powers to decide any matter before it without holding an oral hearing (clause 6-111(1)(q)), or through a preliminary hearing or procedure (clause 6-111(1)(h)). These provisions provide the Board with sufficient authority to adjudicate allegations of undue delay before proceeding to a hearing on the merits of an application, where appropriate.*
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> *[29] It bears emphasizing that section 6-103 and clauses 6-111(1)(q) and 6-111(1)(h) each empower the Board separate and apart from clause 6-111(1)(p), which is often cited by applicants seeking summary dismissal for undue delay. Clause 6-111(1)(p) empowers the Board to summarily dismiss a matter where there is "a lack of evidence or no arguable case". As identified in Deck, summary dismissal based on delay "does not fit neatly" into the provision's wording. Accordingly, it makes little sense to try to force a square peg into a round hole when there are square holes which can serve the purpose.*
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> *[30] In applying for an employee-union dispute to be dismissed through a preliminary procedure pursuant to the Board's authority referenced in paragraph 28, above, a union may, as occurred here, request as primary relief that the Board dismiss the application on the basis of the pleadings and written argument alone, and request as alternate relief that the Board order the issue of delay be adjudicated through a preliminary oral hearing. Ultimately, the Board may grant either form of relief, or neither. If it grants neither, the Board may defer the issue of delay to be adjudicated at the hearing into the merits of the underlying application.*
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> *[31] Although it may seem obvious, a party requesting that an application be dismissed for undue delay before it is heard on its merits should bring their application requesting this remedy promptly (i.e., before the Board schedules the underlying application's hearing on its merits). This is consistent with what is required for summary dismissal applications.*
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> *[citations removed]*

[10] In *Hartmier*, the Board set out the factors to consider when deciding whether an employee-union dispute should be dismissed for undue delay, as follows:[3]

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[2] *United Steelworkers, Local 5917 v Lyle Brady*, 2023 CanLII 68839 (SK LRB) [*Brady*].
[3] *Hartmier v Saskatchewan Joint Board Retail Wholesale and Department Store Union and Retail, Wholesale and Department Store Union, Local 955*, 2017 CanLII 20060 (SK LRB).

> *[120] This survey of relevant Board Decisions reveals that while each decision turned on the particular facts of the case, nevertheless a number of factors figure prominently in the Board's analysis of undue delay applications in duty of fair representation claims. The more prominent factors include:*
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> - ***Length of Delay**: The length of delay is critical. An applicant will bear the burden to explain the reasons for any delay and the longer the delay, the more compelling must be the reasons for the delay in filing the application. Now that the Legislature has mandated a statutorily prescribed time limit for the filing of unfair labour practice applications, the Board's tolerance for exceptionally long delays has decreased significantly.*
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> - ***Prejudice**: Labour relations prejudice is presumed in cases of delay; however, if the delay is extensive or inordinate this factor will weigh more heavily in the analysis. The longer the delay, the greater the prejudice to a respondent. Evidence of actual prejudice to a respondent likely will result in the main application being dismissed.*
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> - ***Sophistication of Applicant**: An applicant's knowledge of labour law and labour relations matters, generally is an important consideration when assessing the veracity of the reasons for the delay.*
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> - ***The Nature of the Claim**: The issues at stake for an applicant will be weighed in the balance. If the consequences of dismissing an application for reasons of delay are significant to an applicant, this will weigh in favour of permitting the application to proceed despite a lengthy delay in its initiation.*
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> - ***The Applicable Standard**: When adjudicating delay applications, the standard which has been applied consistently is: can justice be achieved in the matter despite a lengthy delay in commencing it?*

[11] In considering an application to dismiss for undue delay, the Board will determine whether there is a need to hold a hearing to assess any of the foregoing factors. If so, it may hold a preliminary hearing specific to the delay issue, pursuant to clause 6-111(1)(h) or, if a preliminary hearing is not sought or not appropriate, consider the delay issue in the hearing on the merits.

[12] In exceptional cases, it will not be necessary for the Board to hold a hearing and the Board will instead dismiss the original application pursuant to clause 6-111(1)(q)[4].

[13] In either case, the question before the Board is whether a substantive hearing would be able to achieve justice despite a lengthy delay in commencing it.

[14] In the present case, the settlement of the original grievance occurred in or around September of 2020. The original application was filed on November 24, 2023. This amounts to a delay of approximately three years. This is an excessive delay that attracts the scrutiny of the Board.

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[4] The power to decide any matter before it without holding an oral hearing.

[15] Prejudice to the Union is presumed. However, similar to *Brady*, at this point "the Board is unable to ascertain whether any potential prejudice may be mitigated".[5] Any additional prejudice would have to be assessed in a hearing.

[16] The Union states that the Employee has offered no explanation for the delay and, therefore, the original application should be dismissed. However, in the original application, the Employee did provide an explanation - he indicated that he did not file an application earlier because the human rights complaint was outstanding with the SHRC.

[17] In his reply to the application for summary dismissal, the Employee provided additional reasons, including:

i. Serious health complications from 2020 to 2022/23;
ii. On March 13, 2020, he was sent home from work due to the pandemic lockdown;
iii. He has attempted to discuss and reach a resolution of the matter since 2020;
iv. He is self-represented and lacks knowledge related to labour relations matters.

[18] In the reply, the Employee also reiterated that he "needed to know the [SHRC] ruling to determine the next steps" and "the full costs of my responses to the SHRC and application details to the Labour Relations Board".[6]

[19] In *Patrick*, the Board acknowledged that "employees often provide an explanation for delay after it is raised":[7]

> *[53] The Employee did not provide a "new" explanation in written submissions different from a previous explanation in the original application. In the original application, the Employee provided no explanation. This is not uncommon. Form 10 does not require an applicant to provide an explanation for any delay, nor does it refer to a deadline for the filing of employee-union disputes.*
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> *[54] As it currently stands, employees often provide an explanation for delay after it is raised….*

[20] Given the foregoing, it is not appropriate for the Board to dismiss the original application on the basis that the Employee has offered no explanation for the delay.[8]

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[5] *Brady*, *supra*, at para 38.
[6] *Reply to Application for Summary Dismissal*, at 3.
[7] *Saskatchewan Government and General Employees' Union v Jarius Patrick*, 2024 CanLII 19824 (SK LRB), at para 20.
[8] Contrary to the finding that the applicant had provided no explanation for the delay in *United Food and Commercial Workers Union, Local 248-P v Stamper*, 2023 CanLII 39149 (SK LRB), at para 11.

[21] The next question is whether it is appropriate for the Board to dismiss the original application, at this stage, due to inadequate reasons.

[22] As mentioned, where there is a need to hold a hearing to assess the applicant's reasons for the delay, the Board will defer a determination to a preliminary hearing or a hearing on the merits.

[23] In *Hall*[9], the Board found that it was not necessary to hold a hearing to assess the applicant's reasons given that the application had been dormant for over 15 years. The Board found that not only could justice not be achieved in the matter, but an injustice would be caused by proceeding with the matter. The Board explained:

> *[28] The Board's assessment of the Hartmier factors leads to the following conclusions. First, the length of the delay is inordinate. In fact, it is among the lengthiest delay on the Board's record of summary dismissal matters. The length of the delay, alone, provides a very compelling reason to dismiss the underlying application. It is well established that prejudice to a respondent is presumed in labour relations matters involving delay. Due to the length of the delay, the presumed prejudice weighs very heavily against proceeding with the application and no evidence of actual prejudice is necessary. The likely corrosion of evidence, both oral and documentary, is glaringly obvious.*
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> *[29] Hall has described his personal circumstances during the intervening years and relied on these circumstances to justify the inordinate delay. Frankly, it is difficult to imagine personal circumstances that would overcome the prejudice that is presumed as a result of the inordinate delay in this case. Hall's circumstances do not. While the Board recognizes that Hall has experienced challenges since filing his application, proceeding with the application would be procedurally unfair to the Union.*

[24] In *Hall*, the duration of the delay was extreme. When comparing *Hall* to the present case, the question is whether the existing delay of three years should be treated in a similar fashion, that is, whether it is unnecessary to hold a hearing to assess the evidence with respect to the delay.

[25] Relevant to this inquiry is this Board's approach to delay, which is grounded in the specific circumstances of the matter before the Board. In *Fraser*[10], the Board indicated that it has not imposed specific time limits on the filing of employee-union applications:

> *…Instead, this Board's approach is to determine whether justice can be achieved in hearing the dispute with consideration given to the five factors that are outlined in Hartmier. There is no specific timeline that will result in a rebuttable presumption or that will result in the Board refusing to hear the application. The consequence is some variability in the*

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[9] *Moose Jaw Firefighters Association, IAFF Local 553 v Hall*, 2023 CanLII 88136 (SK LRB).
[10] *Fraser v Saskatchewan Government and General Employees' Union*, 2023 CanLII 8378 (SK LRB) [*Fraser*].

> *timelines that will be found to be acceptable, depending on the facts as presented to the Board.*[11]

[26] In coming to this determination, the Board reviewed the delay cases considered by the Board in *Hartmier*. Most of those cases involved a delay of approximately two years or less. An exception was *Kinaschuk* in which the delay amounted to approximately three years.[12] There, the reasons for the delay were described as follows:

> *30 Mr. Birchard, counsel for Mr. Kinaschuk, argued that the delay was not prejudicial to the ability of the Union to prosecute the case. He said that the delay itself was not the fault of Mr. Kinaschuk and was attributable to problems that arise "from time to time between law firms and clients." As well, he said that Mr. Kinaschuk had relocated to Edmonton, was busy establishing a new life and had understandably lost some desire to press the matter.*

[27] In *Kinaschuk*, the Board held a hearing in which evidence was called with respect to the delay issue and with respect to the merits of the case. After hearing the evidence, the Board dismissed the underlying application for undue delay.

[28] Although some of the Employee's reasons may be stronger than others, he has presented sufficient justification to the Board to warrant a hearing to assess his reasons for the delay. Therefore, the Board will not dismiss the application for undue delay at the current stage.

[29] In this case, however, there has been no request for a preliminary hearing.[13] If the Union wishes to have a preliminary hearing, it has leave to request one from the Board.

[30] It is unnecessary for the Board to specifically address whether it will dismiss the SHRC Allegation for undue delay. As explained in the reasons that follow, the Board has found that this allegation discloses no arguable case.

Arguable Case: Section 6-59 – Duty of Fair Representation

[31] Next, the Board will consider the Union's arguments alleging that the original application discloses no arguable case.

[32] These arguments are three-fold.

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[11] *Fraser*, at para 103.
[12] *Kinaschuk v Saskatchewan Insurance Office and Professional Employees' Union, Local 397 and Saskatchewan Government Insurance*, [1998] Sask LRBR 528 [*Kinaschuk*].
[13] Rather, the Union has indicated that an oral hearing is not necessary to make a determination: *Union's Brief of Law*, January 11, 2024, at 1.

[33] The first is that a union's statutory duty of fair representation does not extend beyond the ambit of the collective agreement, and that therefore, there is no arguable case of a breach of section 6-59 disclosed by the SHRC Allegation.

[34] The second is that there is no arguable case of a breach of section 6-59 disclosed by the Second Grievance Allegation.

[35] The third is that there is a lack of evidence for, or no arguable case of, a breach disclosed by the Section 6-58 Allegation.

[36] In respect of these arguments, the Board's authority can be found in clauses 6-111(1)(p) and (q) of the Act:

> ***6-111****(1) With respect to any matter before it, the board has the power:*
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> *. . .*
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> *(p) to summarily dismiss a matter if, in the opinion of the board, there is a lack of evidence or no arguable case;*
>
> *(q) to decide any matter before it without holding an oral hearing;*

[37] The question for the Board to consider is whether, assuming the Employee proves the allegations, the claim has no reasonable chance of success, that is, whether it is plain and obvious that the application should be dismissed as disclosing no arguable case. In deciding whether to dismiss, the Board may consider the subject application, any particulars provided, and the documents (referred to within the application) upon which the Employee relies. The Board assumes that the facts alleged in the original application can be proven.[14]

[38] The Board must dismiss only if it is plain and obvious that the original application will not succeed.[15] The Board must avoid weighing evidence, assessing credibility, or evaluating novel statutory interpretations. The Union, as the party seeking summary dismissal, has the onus to demonstrate that the application is patently defective.

Section 6-59 – Duty of Fair Representation:

[39] With respect to section 6-59, the Board has found that there is no arguable case disclosed by either the allegation that the Union refused to represent the Employee before the SHRC or the allegation that the Union ought to have filed a second grievance in 2023.

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[14] *Roy v Workers United Canada Council*, 2015 CanLII 885 (SK LRB) [*Roy*], at para 9.
[15] *Ibid*.

[40] Section 6-59 states:

> ***6-59****(1) An employee who is or a former employee who was a member of the union has a right to be fairly represented by the union that is or was the employee's or former employee's bargaining agent with respect to the employee's or former employee's rights pursuant to a collective agreement or this Part.*
>
> *(2) Without restricting the generality of subsection (1), a union shall not act in a manner that is arbitrary, discriminatory or in bad faith in considering whether to represent or in representing an employee or former employee.*

[41] Section 6-59 states that an employee has a right to be fairly represented by the bargaining agent with respect to the employee's rights pursuant to a collective agreement or Part VI of the Act.

[42] The Board has recently described the limits to section 6-59:[16]

> *[25] Labour boards in Canada have found a vast array of arenas in which a union does not have a duty of fair representation to an employee. Examples include criminal proceedings, human rights complaints, workers' compensation appeals, and employment insurance, among others. What most of the examples share in common is that the rights in relation to the employer that are being claimed do not flow from the collective agreement.*
> *…*

[43] In *McEwan*[17], the Board considered whether the duty of fair representation extended to disputes between the Union and a third party, such as an insurer under a long-term disability plan:

> *48 … As a general rule, it is not arbitrary for a union to decline to assist with and pursue employees' claims against third parties using legal procedures or processes other than the grievance procedure contained in the collective agreement, given the limited scope of a union's statutory duty under s. 25.1 as explained above. In the Board's view, there is no legal duty upon a union to bring claims against third parties - whether that third party is, for example, the Workers' Compensation Board, the Labour Standards Branch, a professional licensing body, or a disability insurer (such as the one before us), to name but a few third parties which might have an impact on or involvement with an employee concerning his or her terms and conditions of work or employment relationship but are outside the collective bargaining relationship between the union and the employer and deal with matters that are not specifically contained the collective agreement or claims that are not enforceable by the union against the employer. Indeed, it is arguable that a union has no legal status to bring such claims against third parties on behalf of a member. Under the Act, the representative status of a union flows from the certification order which designates the union as the exclusive representative of employees and which obligates the employer to negotiate terms and conditions of work with the union. Under the Act, a union has no right to represent employees outside the union/employer relationship and the specific terms in the collective agreement. It would be unusual if a union had no statutory right to represent its members against third parties such as an insurer yet was statutorily required to provide such representation if a member so requested.*

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[16] *Saskatchewan Polytechnic Faculty Association v Chau Ha*, 2024 CanLII 13533 (SK LRB).
[17] *McEwan v C.U.P.E., Local 1975*, 2007 CarswellSask 821.

[44] Although the Employee filed a CBA with his reply to the application for summary dismissal, that CBA is dated January 1 2022 to December 31, 2024, which does not cover the date when the SHRC complaint was filed or when the Union refused to represent him in relation to the complaint. Even so, that CBA incorporates no prohibition against discrimination or harassment. Nor does the original application indicate that the applicable CBA contains such a prohibition. Instead, the application refers to provisions providing for grievances and disputes and for arbitration.

[45] The Union has no duty to represent employees outside the ambit of the CBA (or rights pursuant to Part VI). With respect to the SHRC Allegation, the Employee has not put in issue any rights pursuant to the CBA or Part VI of the Act.

[46] Furthermore, where a complaints process falls outside of the union's control, the union has been found not to have a duty to represent.

[47] According to the original application, the City's harassment policy "specifically allows complainants to concurrently file an internal complaint and a complaint under the Code".[18]

[48] However, a human rights complaint, such as that which is engaged in the present case, does not necessarily or directly involve the union as party. Relatedly, the Alberta Board has found that the human rights complaint process is outside the control of a union:[19]

> *19 Of the Union's handling of the Complainant's request to provide legal counsel or otherwise assist in his human rights complaint to the Alberta Human Rights Commission, that aspect of the Complaint is also without foundation. The duty of fair representation is a duty to represent the member with respect to rights under the collective agreement. An employee who files a complaint with the AHRC rather than a grievance, or in addition to a grievance, steps outside the collective agreement and asserts statutory rights instead. A union has no control over that process, and so has no obligation either to hire legal counsel that it has no ability to instruct, or to otherwise assist the employee.*

[49] It is no different if an employee is on the receiving end of a complaint. The Union has no control over the SHRC process, and has no obligation to hire legal counsel, who it cannot instruct, or to assist the employee.

[50] In summary, the SHRC Allegation does not fall within the parameters of section 6-59. It is plain and obvious that this allegation will fail.

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[18] *Original application*, at 2.
[19] *Boyer and Unifor, Local 551, Re*, 2020 CarswellAlta 754.

[51] The next issue is whether there is an arguable case of a breach of section 6-59 disclosed by the Second Grievance Allegation. The Union argues that there is no arguable case because the original grievance was settled, and the Union was not able to file a second grievance based on the same set of facts.

[52] As explained by authors Brown and Beatty,[20]

> *The clear purpose of the rule that a settled, withdrawn or abandoned dispute cannot be the subject of a subsequent submission to arbitration is to provide finality. As one arbitrator has stated:*
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> > *The grievance procedure is designed to provide members of the bargaining unit and the union with a method of orderly processing their respective grievances. In order to avoid the expense inherent in the arbitration process the procedure provides for bona fide efforts to be made by both the grievor and management to settle the dispute at various stages and at various levels. It follows, therefore, that if the grievor and/or the union actually or impliedly accept the decision of management they should not be allowed to have second thoughts on the matter and re-process essentially the same grievance at a later date. If this were to be allowed, management would never know whether, in fact, its decision had [been] accepted by the individual grievor or the union representing him, and management could be plagued and harassed in what would be a plain abuse of the grievance procedure.*[21]
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> > *[insertion added by Board]*

[53] Where a new grievance is in substance the same as an old grievance that has already been resolved, a union is not allowed to circumvent the settlement of the first grievance by bringing a second grievance to arbitration. This is true even where, had it been possessed of more information at the time, the Union might not have agreed to the settlement. As explained in *Cuddy Food Products*:[22]

> *13 The general principles concerning the non arbitrability of a second grievance which is identical in substance to an earlier grievance that was resolved by settlement of the parties are well known and consistently applied in the arbitral jurisprudence. An often cited statement of those principles is found in C.U.P.E., Local 207 v. Sudbury (City) (1965), 15 L.A.C. 403 (Ont. Arb.) (Reville):*
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> > *[…]*
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> *15 These principles were reaffirmed more recently in Apex Metals Inc. v. C.A.W.-Canada, Local 1524 (1997), 64 L.A.C. (4th) 289 (Ont. Arb.) (Palmer) and Canada Post Corp. v. C.U.P.W. (1993), 36 L.A.C. (4th) 216 (Can. Arb.) (Joliffe). Both of these more recent cases also confirm that as long as the settlement of the first grievance was reached by persons with actual or apparent authority, it is immaterial that the settlement might not have*

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[20] Donald J. M. Brown and David M. Beatty, in *Canadian Labour Arbitration*, looseleaf (12/2023 – Rel 9) 5th ed. (Toronto: Thomson Reuters, 2017), at 2-224.
[21] Citing *C.U.P.E., Local 207 v Sudbury (City)*, 1965 CarswellOnt 626.
[22] *U.F.C.W., Locals 175 & 633 v Cuddy Food Products*, 2003 CarswellOnt 5805.

> *been entered into if one of the parties was possessed of more information at the time of the settlement. In short, a mistake by one party as to the circumstances underlying the settlement will not vitiate the prior settlement where there has been no attempt to mislead, misrepresent, or conceal the facts by the other party. …*

[54] Even a mistake by a party "as to the circumstances underlying the settlement", unless caused by deceptive conduct, does not vitiate the settlement.

[55] According to the allegations, the Employee was aware at the material times that there were concerns with the harassment investigation. These concerns might have provided a basis for an arguable case of a breach of section 6-59, however, they are not indicative of the Employer intentionally attempting to mislead, mispresent, or conceal the facts, so as to vitiate the settlement and to justify a second grievance. Based on the allegations, both the Union and the Employer were aware of the circumstances of the investigation.[23]

[56] At the heart of the Second Grievance Allegation is the Employee's dissatisfaction with the outcome of the first grievance for a variety of reasons, including the quality of the investigation, his disagreement with the investigator's conclusions, and his assertion that the City did not follow its own policies. When the SHRC investigation was concluded, he believed that the Union should file a second grievance due to the mistakes that he believes were made. None of these issues vitiate the resolution of the initial grievance.

[57] An arbitrator would not have had jurisdiction to hear a second grievance in this case. The Union cannot be found to have breached its duty when it refused to file a second grievance. It is plain and obvious that the Second Grievance Allegation does not disclose an arguable case of a breach of section 6-59 of the Act and is destined to fail.

Section 6-58 – Internal Affairs

[58] The Board has decided to grant the Union's application to summarily dismiss as it relates to section 6-58 of the Act.

[59] According to the original application, the Union failed to comply with the principles of natural justice, contrary to section 6-58, when it refused to represent the Employee and when it refused to file a grievance.

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[23] See, for example, original application, appendix, at 1 and 4, which suggests that Union representation was present for the investigation meeting with the Employee and that the Employee took issue with the investigator's credentials, of which the Union was aware.

[60] Section 6-58 states:

> ***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:*
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> > *(a) matters in the constitution of the union;*
> >
> > *(b) the employee's membership in the union; or*
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> > *(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:*
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> > *(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.*

[61] The Board has summarized the meaning of section 6-58:[24]

> *[41] Section 6-58 imposes a duty on a union to abide by the principles of natural justice in disputes between the employee and the union relating to matters in the constitution of the union, the employee's membership in the union, or the employee's discipline by the union.*
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> *[42] In University of Saskatchewan Faculty Association v R.J., 2020 CanLII 57443 (SK LRB), the Board described the nature of the principles of natural justice, generally:*
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> > *[98] The principles of natural justice govern individuals' participatory rights with respect to decision-making processes that may adversely affect their privileges, rights, or interests. Given the breadth of circumstances in which these rights may arise, their content is variable depending on the context, including the applicable statutory scheme. However, the principles of natural justice are generally concerned with ensuring that a person has a fair opportunity to be heard before being adversely affected by a decision, and with ensuring that the decision-maker is free from bias and the appearance of bias.*
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> *[43] In summary, the purpose of section 6-58 is to protect an employee from abuse in the union's exercise of its power. It affords an employee the right to natural justice (procedural fairness) with respect to the union's decision-making process in relevant disputes between the employee and the union. It means that, depending on the circumstances, the employee will have the appropriate degree of participatory rights in relation to that process. The employee will have a fair opportunity to be heard prior to being adversely affected by a decision.*

[24] *Saskatchewan Polytechnic Faculty Association v Chau Ha*, 2022 CanLII 75556 (SK LRB).

[62] The original application does not allege an issue related to the Employee's membership in the Union or the Employee's discipline by the Union. Nor does it suggest that the Employee has been expelled, suspended or subjected to a penalty.

[63] That leaves the question as to whether the original application alleges a dispute between the Employee and the Union relating to matters in the constitution of the Union. The constitution is the Union's primary constating document which sets out how the internal affairs of the Union are to be conducted.

[64] The original application makes no mention of the Union's constitution.

[65] In his reply to the application for summary dismissal, the Employee described the claim made pursuant to section 6-58, as follows:

> ***Comment 79.1*** *– RCMMA acted against the Act 6-58 and 6-59, the collective bargaining agreement and the City of Regina policies and procedures that build the foundation of our organization and how we behave at our workplace as I explain in this Application and Reply.*
>
> ***Additional documents for the Board to consider in my Application and Reply that I will go into detail in a hearing or as requested are briefly noted below:***

[66] The listed documents are:

> *a. The City of Regina Harassment Policy;*
> *b. The City of Regina Respectful Workplace Policy;*
> *c. The Manager Guide for Managing Harassment in the Workplace;*
> *d. A document from the City of Regina entitled, "Psychological Safety Talk";*
> *e. A document from the Saskatchewan Human Rights Commission about harassment; and*
> *f. The City of Regina Corrective Discipline Policy.*

[67] The Board has previously found that an employee's reply to a summary dismissal application may be treated as the equivalent of particulars.[25] However, none of these documents relates to the Union's constitution.

[68] The essence of the Employee's claim is that the Union breached its obligations when it refused to represent him and when it refused to file a grievance. Neither of these allegations pertains to the constitution of the Union. Rather, they relate the Union's representation of the Employee.

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[25] *Saskatchewan Government and General Employees' Union v Rodney Wilchuck*, 2023 CanLII 50900 (SK LRB), at para 33.

[69] Outside of the representational dispute, there is no additional, independent dispute with the Union. The allegations do not disclose a breach of section 6-58 of the Act. The claim pursuant to section 6-58 is patently defective and shall be dismissed.

Conclusion:

[70] In summary, the Board has decided to grant the application for summary dismissal, in part, in relation to the following allegations:

a) The Union breached its duty of fair representation when it refused to represent the Employee in relation to the human rights complaint [the SHRC Allegation];

b) The Union breached its duty of fair representation when it refused to file a second grievance on the Employee's behalf [the Second Grievance Allegation];

c) The Union failed to comply with the principles of natural justice, contrary to section 6-58, when it refused to represent him and when it refused to file a grievance [the Section 6-58 Allegation].

[71] The allegation that the Union breached its duty of fair representation in relation to the 2020 discipline grievance may proceed. The Union has leave to request a preliminary hearing on delay or to argue the issue of delay at the hearing on the merits.

[72] An appropriate order will accompany these Reasons.

DATED at Regina, Saskatchewan, this **19th** day of **April, 2024.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson