

ALISON DECK, Applicant v SEIU-WEST, Respondent and SASKATCHEWAN HEALTH AUTHORITY, Respondent

LRB File Nos: 066-20 and 089-20; March 27, 2024

Vice-Chairperson, Barbara Mysko (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act*)

The Applicant, Alison Deck: Self-Represented

For the Respondent Union, SEIU-West: Shannon Whyley, Megan Lorenz

For the Respondent Employer,
Saskatchewan Health Authority: Paul Clemens

Applications for Leave to Amend – Original Employee-Union Dispute – Deadlines Set at Case Management Conference – Lengthy and Extensive Additions Proposed – Further Requests Made Following Deadline – Order Disallowing Majority of Proposed Amendments – Reasons to Follow.

Reasons for Decision – Section 6-112 of *The Saskatchewan Employment Act* – Rejected Amendments – Not Technical Irregularities – Not Necessary to Determine Real Questions in Dispute – Exercise of Discretion – Equities Weighed Against Allowing – Timing and Delay – In the Nature of Argument and Evidence – Jurisdiction – Board’s Discretion to Grant Remedies.

REASONS FOR DECISION

Background:

[1] Barbara Mysko, Vice-Chairperson: Alison Deck has filed two applications for leave to amend her existing applications, LRB File Nos. 066-20 and 089-20 [original applications].¹ On March 13, 2024, the Board issued an Order allowing certain amendments and refusing others, with Reasons for Decision to follow. These are those Reasons.

[2] The original applications are employee-union disputes. The applicant filed LRB File No. 066-20 on April 13, 2020 and LRB File No. 089-20 on June 1, 2020. A complicated procedural history ensued.² The Union filed an application for summary dismissal of the original applications. The Board denied that application, but made the following observations:

[18] The union’s assertion that the claims advanced in the original applications have already been brought to the Board and have been the subject of a ruling may have merit.

¹ LRB File Nos. 066-20 and 089-20.

² See, *SEIU-WEST v Alison Deck*, 2021 CanLII 23381 (SK LRB).

Even if the facts and issues underlying the Board's reasons and order in LRB Files No. 073-18 and 251-18 are not entirely the same as those raised by the original applications, there may be a sufficient degree of overlap to require the grievance and arbitration process to run its course before allowing a further application to the Board that would require the Board to re-till that same soil.

[3] After canvassing the parties' positions, the Board held the applications in abeyance, reviewing the status of the arbitration from time to time. An arbitration was subsequently held, and a decision issued on May 23, 2023.³ After the decision was issued, the applicant indicated her intention to proceed with the original applications.

[4] On February 5, 2024, the Board held a case management conference to assist in managing the process for the applications. During the conference, the applicant raised issues that flagged a potential expansion of the scope of the pleadings. The Board advised the applicant that if she intended to raise new issues, she would need to file an application or applications for leave to amend the original applications.

[5] The Board set a deadline of February 20, 2024 for the filing of same. Due to other issues raised by the Union, particularly in relation to the Board's jurisdiction, the Board also set a deadline for the Union's filing of an application for a preliminary hearing, a deadline for the filing of legal argument, and dates for the hearing of a preliminary application, if filed.

[6] On February 20, the applicant filed her applications for leave to amend in relation to both the original applications. The application relating to LRB File No. 066-20 included lengthy and extensive additions totaling approximately 11 pages. The application relating to LRB File No. 089-20 included a small number of mainly procedural amendments. In those applications, the applicant underlined the proposed additions and struck out the proposed deletions from the original applications, further to the direction provided. As is usual, the Board provided the respondents with a ten-business day deadline for the filing of replies, ending March 6. In the meantime, on Sunday, March 3, the applicant sent two emails with more proposed additions, contained in the body of the email with minimal indication as to the intended location of those additions.

[7] Overall, the majority of the proposed amendments were outside the scope of what was raised by the applicant at the case management conference.

³ *Service Employees International Union-West v Saskatchewan Health Authority*, 2023 CanLII 83418 (SK LA).

[8] In the Order dated March 13, the Board allowed a few of the amendments to LRB File No. 066-20 and allowed the amendments to LRB File No. 089-20. It did not allow the proposed amendments as per the emails dated March 3.

[9] The following statutory provision is applicable to the present applications:

6-112(1) *A technical irregularity does not invalidate a proceeding before or by the board.*

(2) At any stage of its proceedings, the board may allow a party to amend the party's application, reply, intervention or other process in any manner and on any terms that the board considers just, and all necessary amendments must be made for the purpose of determining the real questions in dispute in the proceedings.

(3) At any time and on any terms that the board considers just, the board may amend any defect or error in any proceedings, and all necessary amendments must be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

(4) Without limiting the generality of subsections (2) and (3), in any proceedings before it, the board may, on any terms that it considers just, order that the proceedings be amended:

(a) by adding as a party to the proceedings any person that is not, but in the opinion of the board ought to be, a party to the proceedings;

(b) by striking out the name of a person improperly made a party to the proceedings;

(c) by substituting the name of a person that in the opinion of the board ought to be a party to the proceedings for the name of a person improperly made a party to the proceedings; or

(d) by correcting the name of a person that is incorrectly set out in the proceedings.

[10] The Board has broad remedial powers with respect to the granting of amendments. Technical irregularities do not invalidate the proceedings. At any stage of its proceedings, the Board may allow a party to amend the party's application in any manner and on any terms that the Board considers just. All necessary amendments must be made for the purpose of determining the real questions in dispute in the proceedings.

[11] The proposed amendments in relation to LRB File No. 089-20 could be characterized as technical irregularities. The Board allowed those amendments. The Board allowed similar amendments, which could be characterized as technical irregularities, in relation to LRB File No. 066-20.

[12] With respect to the remaining proposed amendments (all in relation to LRB File No. 066-20), the primary question before the Board was whether to exercise its discretion to allow them. Upon review, the Board found that the equities weighed against allowing most of those amendments.

[13] To the extent that the applicant requested certain amendments with respect to alleged events that occurred prior to the filing of the application, the content of those proposed amendments was within her knowledge at the time of filing, and if not, was capable of being discovered through the exercise of due diligence long before the Board set deadlines for a preliminary hearing.⁴ Not only would allowing such amendments have the potential to cause further delay and expense, but they could not be justified given the passage of time.

[14] With some of the proposed amendments, including those in relation to recent events, the applicant attempted to introduce or add evidence by way of particulars and to make legal argument about the existing allegations. Depending on the outcome of any preliminary hearing, the applicant will have the opportunity to present relevant evidence and make arguments before the Board. It was therefore unnecessary to allow such amendments. Furthermore, such amendments would put the respondents to greater time and expense in having to respond and, as a result, would have the potential to cause more delay.

[15] With some of the proposed amendments, the applicant sought that the Board review the arbitrator's decision and review certain details related to the publication of that decision. The Board has no jurisdiction over either of these issues. The Board has the authority to summarily refuse to hear a matter that is not within its jurisdiction.⁵ Under the circumstances, it was not appropriate for the Board to exercise its discretion to allow these amendments.

[16] With other proposed amendments⁶, the applicant sought that the Board review a decision of the Saskatchewan Human Rights Commission with respect to alleged discrimination in the context of the Step 1 grievance process. The Board has no jurisdiction to review the Commission's decisions. It was not appropriate for the Board to exercise its discretion to allow these amendments.

⁴ For example, proposed amendments beginning at bottom of page 2 of proposed amended application.

⁵ *The Saskatchewan Employment Act*, s. 6-111(1)(o).

⁶ Consisting of most of the proposed amendments found at page 11 and the first paragraph at page 12 of the proposed amended application.

[17] Other proposed amendments⁷ represented the applicant's attempt to narrate events that did not have a direct connection to the underlying allegations.

[18] Finally, the proposed amendments, as per the emails dated March 3, were improperly filed. First, they were filed past the deadline. The applicant provided no rationale for the delay. Second, they were filed during the respondents' reply period, which had already been set. Third, the applicant did not use the application form, which meant that it was unclear where they were intended to fit within the pleadings.

[19] Furthermore, the Board found that none of the foregoing proposed amendments were necessary for the purpose of determining the real questions in dispute, pursuant to subsection 6-112(2) of Act.

[20] On the other hand, the Board did allow two amendments related to the Union's conduct of the grievance. The Board found that the amendments were not likely to cause delay and could pertain to the Union's representation of the applicant through the grievance process. The amendments were unlike those in relation to the Step 1 grievance process, in that there was no indication that the matters had already been directly addressed by another tribunal or that the applicant was seeking a review of another tribunal's decision.

[21] The Board also allowed the proposed amendments related to the use of personal health information. The applicant had advised of this amendment at the case management conference. Although it does not directly put in issue the Union's conduct, it raises an issue related to the conduct of the grievance in which the Union may have been involved. Under the circumstances, the Board has decided to grant the applicant some latitude in respect of this proposed amendment.

[22] Finally, the applicant sought an amendment that outlined various costs that she allegedly incurred as a result of remaining unemployed.⁸ To prevent unnecessary delay, the Board did not allow this amendment. However, the parties will be aware that the Board has broad discretion to grant an appropriate remedy should a breach be found. The applicant would be required to establish that any remedy would put the applicant in the position she would have been but for the respondent's conduct.

⁷ Such as that which described an interaction between the applicant and counsel for the SHA, on page 13 of the proposed amended application.

⁸ At page 9 of the proposed amended application.

[23] As explained, the Board has issued the Order outlining the proposed amendments as herein set out.

DATED at Regina, Saskatchewan, this **27th** day of **March, 2024**.

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson