SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicant v JARIUS PATRICK, Respondent

LRB File Nos. 158-23 and 137-23; March 5, 2024
Vice-Chairperson, Barbara Mysko (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*

Counsel for the Applicant, Saskatchewan Government and General Employees' Union, Local 1105:	Samuel I. Schonhoffer Jacob D. Zuk
The Respondent, Jarius Patrick:	Self-Represented

Application for Summary Dismissal – Employee-Union Dispute – Sections 6-58 and 6-59 of *The Saskatchewan Employment Act* – Alleged Discriminatory Action.

Section 6-58 – Application for Summary Dismissal Granted – Not a Matter in the Constitution of the Union.

Section 6-59 – Original Application Allowed to Proceed – Arguable Case for Discrimination – Not Patently Defective – Board Not to Weigh Evidence.

Scope of Pleadings Raised – Case Management Conference to be Scheduled.

REASONS FOR DECISION

Introduction:

[1] Barbara Mysko, Vice-Chairperson: The Saskatchewan Government and General Employees' Union [Union] has filed an application for summary dismissal in relation to an employee-union dispute. The original application was filed by Jarius Patrick [Employee], an employee of the Government of Saskatchewan. In it, the Employee asserts that the Union breached sections 6-58 and 6-59 of *The Saskatchewan Employment Act* [Act].

[2] The Employer has advised that it will not be involved in these matters.

[3] For the reasons that follow, the Board has decided to dismiss the Union's application, in part. The Union has not established that it is plain and obvious that the claim pursuant to section 6-59 will fail. It has established that the claim pursuant to section 6-58 will fail. The Board will explain.

Procedural History:

[4] The Employee filed the original application on September 22, 2023. The Union filed a reply. The Board later granted leave to the Union to file an amended reply, which it did. Then, on November 6, 2023, the Union filed this application for summary dismissal. Included with its application were its written submissions in support of its application.

[5] The Employee did not file a reply to the application for summary dismissal.

[6] The Union seeks to have the summary dismissal matter considered without an oral hearing. Given this request, the Board set deadlines for written submissions from the parties. Instead of filing new submissions, the Union opted to rely on its existing submissions. The Employee then filed written submissions of their own. Upon receipt of those submissions, the Union argued that it was unnecessary to provide the Employee with an opportunity to provide written submissions given the absence of a reply. The Union acknowledged that it still had a short amount of time to file reply submissions, but asked for an unrestricted reply "as if it were the Reply that ought to have been filed in November".

[7] The Board granted the request for an extension but indicated that the Union's reply was restricted to submissions that it could not have anticipated given the whole of the circumstances, including the absence of a reply pleading.

Pleadings and Allegations:

[8] The pleadings contained in the original application are contained collectively in one large block paragraph. For ease of reference, the Board will use bullet points to summarize the allegations.

[9] The allegations are as follows:

- The Employee is a member of the 2SLGBTQ+ community.
- On October 13, 2022, the Labour Relations Office (LRO), Marie Amor, emailed them [the Employee] indicating that they were not being discriminated against.
- The only solution Amor offered to the Employee was medical. This solution was discriminatory and unnecessarily restricting.

- On October 17, 2022, Amor told the Employee verbally that they did not know what discrimination was. Despite the Employee reacting to this statement, Amor did not correct her behavior.

- On November 2, 2022, the Workers' Compensation Board (WCB) issued a written decision finding that the Employee had suffered an "acute psychological injury" and "the causal relationship between the employment and the injury was evident and undeniable and as such a diagnosis was not needed in order to accept this claim". The Employee had stated this was the case from the very beginning.

- Amor acted in a manner that was biased and unfair.

- Amor did not stay in contact with the Employee with the largest communication gap being 56 days.

- The Employee escalated their concerns to the Director of Labour Relations, Amanda Freistadt. Freistadt supported Amor. Freistadt also mentioned a possible remedy which, up until that point, had not been mentioned to the Employee.

- The Union has never taken the Employee seriously. Neither Amor nor Freistadt fully acknowledged or addressed the Employee's need to be removed from the unsafe work environment. Amor and Freistadt were dismissive of the Employee's experience and became part of the discriminatory system by failing to act on information given to them.

- Union employees acted in violation of their own statement which is, "All SGEU meetings and events will be held in an environment free of harassment and/or discrimination. SGEU has a zero tolerance for any harassing and/or discriminatory actions, behaviours and comments."

- On December 9, 2022, the situation was resolved with no help from the Union.

- The Union left the Employee in an unsafe work environment "experiencing discrimination which in itself could be considered an act of discrimination".

[10] Included with the original application are email exchanges with the Union representatives and the letter from WCB.

[11] For the purposes of the present application, the following facts are asserted in the materials.

[12] First, the Employee was concerned about safety in the workplace,[1] the concern was related to gender expression[2], the Employee had gone to the Union for assistance, the Employee had concerns about moving voluntarily (as the person being discriminated against)[3], and the Union was seeking and providing information to the Employee about an accommodation.[4]

[13] Next, the Employee believed that the only solution being offered was one that was discriminatory. The Employee provided some detail about this in an email to Amor: [5]

> *…I am concerned that going the medical accommodation route could limit me unnecessarily and also put me in a situation where the employer could say there is no accommodation at this time which would put me out of work. They could further claim that because of this that I am unfit for duty once again putting me out of work. Also I find it extremely unfair and even a bit discriminatory that I as the person being discriminated against am being the one that requires a note further singling me out. In what situation does a person [need] a doctors note because of how other people perceive them. Why is that being placed on me around how I get treated and perceived by others especially when gender expression is a protected human right. Please let me know what you think and what our further options are.*

[14] Amor replied to the Employee by email. Amor's email is a bit difficult to understand (perhaps without context), but it contains the statement, "You are not being discriminated against, no one is requiring you to provide any medical".

[15] According to Freistadt, the Employee did not make a formal request for an accommodation.[6]

[16] Later, Freistadt mentioned another accommodation option. The Employee insisted that the only option given up to that point was a "restrictive medical accommodation".

[17] The Union's reply, sworn by Freistadt, contains the following paragraphs:

> *9. Among other options in subsequent correspondence, Amor advised the Applicant that an option was available to pursue a medical accommodation. The Applicant, with Struthers'*

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[1] Employee email to Amor, dated October 6, 2022; Employee email to Freistadt, November 13, 2022; Struthers email to Amor, date cut off.
[2] Employee email to Amor, dated October 6, 2022, Employee email to Freistadt, dated November 13, 2022.
[3] Employee email to Amor, dated October 6, 2022.
[4] Amor email to Employee, dated November 18, 2022.
[5] Employee email to Freistadt, dated November 13, 2022.
[6] Freistadt email to Employee, dated November 23, 2022.

> *assistance, elected not to pursue that course of action. SGEU engaged with the Employer to determine which other options would be available.*
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> *10. In September 2022, the Applicant also applied for a position which addressed the requested accommodation, and advised Amor of that application. The application was not processed initially due to an error by the Employer. Amor contacted the Employer to determine what had happened, and the Applicant ultimately received the position applied for.*
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> *…*
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> *12. In the course of my oversight of Amor's handling of the file, I determined that she had provided incomplete information to the Applicant in implying that medical evidence would be required to secure an accommodation.*
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> *13. As confirmed by Exhibit "D" to the Application, I specifically advised the Applicant that either medical evidence or other evidence could be provided to seek an accommodation based on different prohibited grounds of discrimination, and that SGEU was engaged in determining what the Employer would require as verification.*

[18] In this reply, Freistadt acknowledges that Amor had mistakenly implied in her communications that medical evidence would be required to secure an accommodation. Freistadt suggests that she had corrected the error by advising the Employee that "either medical evidence or other evidence could be provided". In support of this assertion, Freistadt refers to exhibit D. The relevant sections of exhibit D[7] include: (1) a question, "how can we support you…?" and, (2) an example of an employee who had provided "confirmation from a medical professional" with respect to gender identity or gender expression.

[19] It is possible that the Employee was not concerned with this latter type of medical documentation. That is not entirely clear. Whether or not that is the case, the Employee states that Freistadt stepped in and presented an option that had not previously been presented up to that point. The Employee's argument (paraphrased) is that Freistadt's intervention was too little too late, and that by that point, their trust with the Union had been broken.

Analysis:

[20] In respect of the present application, 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;*

[7] Includes Freistadt email to Employee, dated November 23, 2022.

(q) to decide any matter before it without holding an oral hearing;

[21] 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.[8]

[22] The Board must dismiss only if it is plain and obvious that the original application will not succeed.[9] 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

[23] The Board will begin by considering the allegations made pursuant to section 6-59 of the Act. That provision 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.*
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> *(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.*

[24] The Board's decision in *Berry v SGEU*[10] provides guidance as to the meaning of the terms "arbitrary", "discriminatory" and "bad faith":

> *21 This Board has also commented on the distinctive meanings of these three concepts. In Glynna Ward v. Saskatchewan Union of Nurses, LRB File No. 031-88, they were described in these terms:*
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> > *Section 25.1 of The Trade Union Act obligated the union to act "in a manner that is not arbitrary, discriminatory, or in bad faith". The union's obligation to refrain from acting in bad faith means that it must act honestly and free from personal animosity towards the employee it represents. The requirement that it refrain from acting in a manner that is discriminatory means that it must not discriminate for or against particular employees based on factors such as race, sex or personal favouritism. The requirement that it avoid acting arbitrarily means that it must not act in a capricious or cursory manner or without reasonable care. In other words, the union*

[8] *Roy v Workers United Canada Council*, 2015 CanLII 885 (SK LRB) [*Roy*], at para 9.
[9] *Roy*, at para 9.
[10] *Berry v SGEU*, 1993 CarswellSask 518.

> *must take a reasonable view of the problem and make a thoughtful decision about what to do.*
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> *22 In the case of Gilbert Radke v. Canadian Paperworkers Union, LRB File No. 262-92, this Board observed that, unlike the question of whether there has been bad faith or discrimination, the concept of arbitrariness connotes an inquiry into the quality of union representation. The Board also alluded to a number of decisions from other jurisdictions which suggest that the expectations with respect to the quality of the representation which will be provided may vary with the seriousness of the interest of the employee which is at stake. They went on to make this comment:*
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> > *What is expected of trade union officials in their representation of employees is that they will act honestly, conscientiously and without prejudgment or favouritism. Within the scope of these criteria, they may be guilty of honest errors or even some laxity in the pursuit of the interests of those they represent. In making decisions about how or whether to pursue certain issues on behalf of employees, they should certainly be alert to the significance for those employees of the interests which may be at stake. Given the importance of the employee interests the union has the responsibility to pursue, they should also carry out their duties seriously and carefully. The ultimate decision made or strategy adopted, however, may take into account other factors than the personal preferences or views of an individual employee.*

[25] The Board also relies on the following descriptions from *Toronto Transit Commission*[11], at paragraph 9:

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

[26] In the present matter, the focus of the original application is discriminatory conduct.

[27] Authors MacNeil, Lynk, and Engelmann have described the law in this area:[12]

> *The prohibition on a union engaging in discriminatory behaviour enjoins unequal treatment of members on the basis of factors that are included in human rights legislation, such as race and sex, as well as simple personal favouritism even when it does not involve a protected human rights ground.*
> *…*
> *In assessing union actions, it is not necessarily a violation for a union representative to harbour adverse feelings against an applicant, so long as those feelings are not translated into conduct. Similarly, the fact that a union officer may have uttered an inappropriate discriminatory comment about a grievor in the past is not sufficient, in itself, to find that the union has acted discriminatorily in the handling of the grievance.*

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[11] *Toronto Transit Commission*, [1997] OLRD No 3148.
[12] Michael MacNeil, Michael Lynk, Peter Engelmann, *Trade Union Law in Canada*, loose-leaf (12/2023 – Rel 5) (Toronto: Thomson Reuters, 2023 [*Trade Union Law*], at 7-14, 7-15.

[28] According to this excerpt, the Board should focus on the union's conduct, not on a representative's "adverse feelings", and should consider the union's conduct in context.[13]

[29] In an application made pursuant to section 6-59, the issue is the union's representation of the employee, and whether, in the context of the union's duty to fairly represent the employee, the union treated the employee in a discriminatory fashion.

[30] Furthermore, it is well established that motive is not a legal prerequisite for a finding of discrimination. Discrimination may be intentional, or it may be unintentional. It is sufficient if the conduct has a discriminatory effect. This was made clear in *Andrews*:[14]

> *. . . discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed.*

[31] Here, the Union submits that the Employee has not alleged the necessary facts relevant to the protected ground of discrimination:

> *Further, the Application alleges that the workplace was "unsafe" but provides no facts with respect to the Applicant's actual protected ground, how it was engaged at this time, what was requested of the Employer, or what was communicated to the Union about the issues of accommodation or discrimination. The Application does not claim or provide particulars with respect to any claim that they were subject to discrimination by the Employer or that a claim of discrimination was communicated to the Union or what that claim was…*[15]

[32] Contrary to this submission, the materials assert that the Employee was a member of the 2SLGBTQ+ community, that the Employee felt unsafe in the workplace, that the Employee's experience in the workplace had to do with their gender expression, that the Employee had communicated their concerns to the Union representatives, and that the Union representatives were communicating with the Employee about how to resolve the unsafe workplace issue.

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[13] Where an "inappropriate discriminatory comment" is made by a union representative, the Board should consider it in context. The "inappropriate discriminatory comment" arose in *Wiebe v Unifor, Local 504*, 2019 CarswellOnt 18795 (Ont LRB) [*Wiebe*]. In *Wiebe*, the evidence overall did not establish a breach of the duty of fair representation. The Ontario Board determined the question after a full hearing on the merits – not on a summary dismissal application. The decision explicitly turns on a finding of "motive" but it is likely that the absence of medical documentation with no apparent justification was significant to the Board's finding.

[14] *Andrews v Law Society of British Columbia*, 1989 CanLII 2 (SCC), [1989] 1 SCR 143, at 174-75.
[15] *Union submission*, at paras 39, 46.

[33] In the Board's view, the Employee has established an arguable case of discriminatory treatment. Primarily, the Employee argues that the implied requirement for medical documentation (as communicated by the Union representative) was, in itself, discriminatory because it imposed a burden on the Employee that made their job more precarious.

[34] To be sure, the focus of any inquiry about this issue must be the Union's conduct in its representation of the employee.[16]

[35] Furthermore, the Employee makes an argument on the basis of "gender expression" but explicitly not on the basis of "gender identity". It is not yet clear whether the distinction drawn by the Employee aligns with the distinctions that are assigned to these terms in law.

[36] Given this, at a hearing on the merits, the Board may need to grapple with the scope of the protection on the basis of either ground[17] and/or the scope of the prohibition against discriminatory conduct under section 6-59 relative to the prohibited grounds under the human rights statute.[18] These are not matters that can be resolved on a summary basis.

[37] Next, the Union has made multiple arguments that rest on its interpretation of the evidence. When considering whether to summarily dismiss, the Board must be careful not to weigh the evidence that has come before it. The Union's arguments highlight the need for the Board to assess and weigh the evidence at a hearing on the merits and to determine whether the evidence establishes a breach.

[38] First, the Union makes submissions about the communications that took place between the Employee and the Union. The Union suggests that the email exchanges undermine the Employee's allegations of discrimination. The context around these interactions, including the later exchange with Freistadt, will be relevant information for the Board to assess in a hearing on the merits. The context is not, however, a basis for dismissing the original application for lacking an arguable case.

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[16] As opposed to the Employer's conduct.

[17] And, possibly on the basis of "sex". See the definition of "sex" at subsection 2(1):

> "sex" means gender, and, unless otherwise provided in this Act, discrimination on the basis of pregnancy or pregnancy-related illnesses is deemed to be discrimination on the basis of sex; (« sexe »)

[18] "Gender identity", and not "gender expression", is listed as a prohibited ground under subsection 2(1) of *The Saskatchewan Human Rights Code, 2018*.

[39] As well, the Union argues that Amor's comments, whether made in person or by email, were not discriminatory. In making this argument, the Union attempts to provide some context in relation to those comments. If a Union representative, in the course of representing the Employee, made discriminatory comments related to the Employee, the Board would consider those comments as part of the overall circumstances relevant to whether the Union breached its duty. The Board cannot make a determination about this issue at the summary dismissal stage.

[40] Similarly, the question of mootness cannot be decided without a full evidentiary record. It is not plain and obvious that the resolution of the file (with the assistance of the Union steward) necessarily resolves the alleged discriminatory treatment. The question remains whether, in the course of managing the file, one or more of the Union representatives treated the Employee in a discriminatory manner. This is a matter that needs to be decided following the presentation of evidence in a hearing on the merits. Furthermore, the Board is not persuaded that the current situation is a *de minimus* dispute in which no practical purpose could be achieved from a potential remedy.[19]

[41] Finally, the Union submits that the Employee's "claim" with respect to WCB is outside of the Board's jurisdiction. The reference to WCB provides context, not evidence of an independent breach. The Union's arguments with respect to the probative value of this context are more properly made at a hearing on the merits.

[42] For all of the foregoing reasons, the Board has decided to dismiss the Union's application as it relates to the allegations made under section 6-59. It is not plain and obvious that the original application should be dismissed as disclosing no arguable case of a breach of section 6-59.

[43] In arriving at these conclusions, the Board has considered only the original application and the documents attached to the application upon which the Employee relies.

Section 6-58 – Internal Affairs

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

[19] See, for example, *Bryan Fraser v Saskatchewan Public Safety Agency*, 2023 CanLII 70185 (SK LRB), at para 26.

> *(b) the employee's membership in the union; or*
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> *(c) the employee's discipline by the union.*
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> *(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.*

[45] The Board has summarized the meaning of section 6-58:[20]

> *[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.[9][3]*
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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.*

[46] The Employee does not allege an issue related to the Employee's membership in the Union or the Employee's discipline by the Union. Nor does the Employee suggest that they have been expelled, suspended or subject to a penalty.

[47] That leaves the question as to whether the Employee has alleged a dispute between the Employee and the Union relating to matters in the constitution of the Union. Here, the relevant allegation is that the Union representatives acted in violation of their own statement:

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

> *All SGEU meetings and events will be held in an environment free of harassment and/or discrimination. SGEU has a zero tolerance for any harassing and/or discriminatory actions, behaviours and comments.*

[48] The Employee is not putting in issue the Union's conduct at a Union meeting or event separate and apart from a meeting held for representational purposes. Outside of the representational dispute, there is no additional, independent dispute with the Union. The essential character of the dispute is a duty of fair representation claim. 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.

Delay

[49] Next, the Board will deal with the Union's submissions with respect to delay.

[50] The Board has made clear that where there is a need to assess the length of the delay in filing an original application, the prejudice to the respondents, and/or the applicant's reasons for the delay, the Board will refrain from summarily dismissing the original application for reasons of delay. Rather, it will consider the delay issue either in a hearing on the merits or in a preliminary hearing.

[51] In its application for summary dismissal, the Union raised the issue of delay as an alternative argument. The Union did not make a request for a preliminary hearing on delay.

[52] Only after the Union received the Employee's written submissions did the Union make a request for a preliminary hearing on delay. The Union explained that the Employee's submissions contained "[a] factually new explanation for the delay in bringing the underlying application, which could require a hearing to determine the factual and legal legitimacy".[21]

[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.

[54] As it currently stands, employees often provide an explanation for delay after it is raised. However, the Employee should have filed a reply and provided reasons for the delay in that reply.

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[21] *Union reply submission*, at 1 (5.(a)).

[55] Regardless, given the Union's original submissions (in its application), there is no logical relationship between the Union's new request and any additional information that might have been provided by the Employee through the written submissions. The Union could have requested a preliminary hearing on delay in its application (which might also have been flagged in its reply to the original application), but it did not.

[56] Furthermore, the Union describes the length of the delay as follows:

> *71. The length of the delay is substantial: this application was filed after nearly one year had elapsed between the correspondence between [the Employee] and the Union that forms the basis of the Complaint. It also comes nearly 10 months after the underlying accommodation issue was "solved" by [the Employee]. There is no explanation for the delay.*

[57] Depending on when the clock started to run, the delay was between 9.5 and 12 months.

[58] The preliminary hearing procedure has two primary functions: to allow for a more judicious use of the Board's resources, and those of the parties, and to promote a more expeditious proceeding. As the length of the potential delay decreases, it becomes less probable that the preliminary hearing will serve these functions. This is no indication of what the evidence will ultimately establish. It is, however, a reflection of the Board's need to manage its resources and to proceed in an expeditious manner.

[59] Given the confluence of circumstances, the Union's request for a preliminary hearing is denied.

Case Management Conference

[60] Lastly, the Board will deal with the Union's request for a case management conference. In its reply submissions, the Union states:

> *8. If the new facts alleged in [the Employee's] January 19 submission are deemed acceptable, the Union will be forced to reassess whether the underlying employee-union dispute application discloses a prima facie or "arguable" breach. In that case, it may be necessary to convene a hearing to determine whether a breach of s. 6-58 and/or 6-59 has occurred, based on the new allegations, which are much broader than those addressed in SGEU's summary dismissal application. It could also be necessary to hold a preliminary hearing on the specific issue of delay.*
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> *9. If the Board accepts the new allegations raised in [the Employee's] January 19 reply, SGEU requests that a mediation and/or case management conference be arranged between the parties, and that a separate hearing date be set for SGEU's argument that the application ought to be dismissed for delay.*

[61] The Union has not made clear which of the Employee's submissions are in the form of "new pleadings" as opposed to facts to support existing pleadings.

[62] Nonetheless, the Board finds that it will be helpful to schedule a case management conference to address any procedural matters that relate to the scope of the pleadings. The Board will reach out to the parties for the purpose of scheduling a case management conference.

[63] In summary, the Board has decided to dismiss the summary dismissal application as it relates to the allegations made pursuant to section 6-59 and to grant the application as it relates to the allegations made pursuant to section 6-58.

[64] An appropriate order will accompany these Reasons.

DATED at Regina, Saskatchewan, this **5th** day of **March, 2024.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson