Saskatchewan
Labour Relations Board

CONSTRUCTION AND GENERAL WORKERS' UNION, LOCAL 180, Applicant v RAY SOPKO, Respondent, and 2NATIONS BIRD, Respondent

LRB File Nos. 198-23 and 019-24; April 5, 2024
Chairperson, Michael J. Morris, K.C. (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*

Counsel for the Applicant, Construction and General Workers' Union, Local 180:	Gary Caroline
The Respondent, Ray Sopko:	Self-represented
Counsel for the Respondent, 2Nations Bird:	Steve Seiferling

Application for summary dismissal – Employee-union dispute – Duty of fair representation – Clause 6-111(1)(p) of *The Saskatchewan Employment Act* – Employee's application discloses no arguable case – Application for summary dismissal granted.

REASONS FOR DECISION

Background:

[1] Michael J. Morris, K.C., Chairperson: These are the Board's reasons regarding an application by Construction and General Workers' Union, Local 180 [Union] to summarily dismiss an application by Ray Sopko [Mr. Sopko] alleging an employee-union dispute.

[2] Mr. Sopko's application was filed on December 22, 2023.[1] Apart from filing his application Mr. Sopko has not participated in the proceedings before the Board. More particularly, he did not file a reply to the Union's application for summary dismissal.[2] In email correspondence to the Board on February 12, 2024, Mr. Sopko stated "Will not be going forward, Thanks anyway." The Board requested confirmation regarding whether Mr. Sopko intended to withdraw his application, but did not receive a response. 2Nations Bird [Employer] has not actively participated in the proceedings.

[1] LRB File No. 198-23.
[2] The Union's application for summary dismissal is LRB File No. 019-24.

[3] Mr. Sopko's application alleges that the Union has breached its duty of fair representation owed to him pursuant to s. 6-59 of *The Saskatchewan Employment Act* [Act].[3]

[4] His application includes the following:

> *4. The applicant alleges that a contravention of The Saskatchewan Employment Act has been and/or is being engaged in by the union by reason of the following facts:*
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> *Graduated 1983 Churchbridge, Sask. Worked 2 yrs labourer concrete, worked 3 yrs laborer metal fab, sandblasting, painting and grinding. Worked 8 yrs Carson Welding in oilfield. First couple as a welder's helper. Then went to crew truck as a helper, doing work on Batter sites, all types of making Pad's Dikes running uniloader, forklift etc. Last couple years had my own truck and helper. 1998 got on Ipsco worked there till 2002. No pipe lines were getting built. Joined Local 180, worked at Co-op upgrader expansion. Lori Sali was B.A. She took all my hr's from previous jobs I had, told me to challenge the Jorneyman test. I did and failed, Ipsco called me back after 7 months or so. Went back to Ipsco, kept paying dues at Local 180. Got a call in 2014 still working for Ipsco from local 180 if I would like to take classes at SIAST in Regina, then try Journeyman test again. I didn't want to loose a full weekend of pay from Ipsco. So went to SIAST then to Ipsco night's all weekend. Failed test. Thought I would retire at Ipsco or Evraz anyway. Come 2023 middle of Feb. Put my name in local 180 and early April got called my Bid was good. Start work April 11/2023 for 2 nations Bird at Jansen.*
>
> *. . .*
>
> *7. Describe any union appeal or complaint procedures available in the union's constitution, bylaws or regulations, as well as the results of your participation in those proceedings.*
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> *Early April put Bid in local 180. Got called back Bid was accepted. Told what job was about, length, drug test etc. I asked what I would get paid. Union said uncertified labourer $23.41. I asked if I could cancel my bid. They said would have to take my name off the Board for 30 days. So went to Jansen worked for Bird. After a while all forman as well as Bird superintendants Don't know why Local 180 would discharge me as uncertified. Bird themselves gave me a raise to 30.62 from 23.41. I talked to union many time's that experience has to count. All they would say quit if your not happy. Have to go through apprenticeship or write Journeyman test to get more money. It's supposedly the bylaw. Bird 2 nations are bringing in worker's from B.C. Alberta, Manitoba to a Saskatchewan project. Where they are not taking any test, giving them Journeymen wage's. Passing a test get's you 13$ more a hr. You do the same work. The appentiship and union have to get together and say experience coun'ts. It's totally Disgusting working By a young kid from B.C. at a Saskatchewan project making 13$ more a hr to take back to that Province. Local 180 has to give more to Sask. Workers without Journeyman test.*
>
> *. . .*
>
> *9. In the space provided below, clearly state the outcome or remedy you are seeking from the board.*
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> *- I want 35.02 a hr. that's a maintenance laborer just under jornyman with my experience, and hate test's would be fair. Especially when B.C., Alberta, Manitoba don't write tests and are getting top wage.*

[3] *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [Act].

> *- would like local 180 and apprenticeship work together to make experience not. Uncertified but 35.02 a hr. experience more important want Local 180 to pay all backpay from when I started at Jansen till I finished wages, pension adj, holliday pay etc everything adj that can be.*

[5] The Union filed a reply to Mr. Sopko's application. Amongst other things, its reply states that Construction Craft Labourer [CCL] is a designated Red Seal trade in the Province of Saskatchewan, and that Mr. Sopko's employment at the BHP Jansen site is being performed under the Provincial Labourers' Agreement for Industrial Construction [Provincial Agreement]. The Provincial Agreement provides for wage increases based on completion of the CCL Journeyperson program offered through the Saskatchewan Apprenticeship and Trade Certification Commission [SATCC]. Being neither an indentured apprentice nor holding a journeyperson certification in the CCL trade, Mr. Sopko is considered "uncertified" under the Provincial Agreement and is paid the uncertified rate of pay. The Union has explained to Mr. Sopko the process for moving to a higher classification under the Provincial Agreement – by either indenturing as an apprentice or by writing (challenging) the journeyperson exam as a "trade qualifier". Although Mr. Sopko has sufficient hours to challenge the SATCC journeyperson exam, he has been unable to pass it on two occasions, and he is required by the SATCC to take an upgrading course. The Union has provided Mr. Sopko with additional study material to aid him should he wish to challenge the journeyperson exam again. The Union has no authority to classify a member as a CCL journeyperson or apprentice under the Provincial Agreement. The Provincial Agreement relies on accreditation by the SATCC for its pay rates. At no time has Mr. Sopko indicated that he'd like to file a grievance against the Employer.

[6] For the purposes of the Union's summary dismissal application, the Board has considered Mr. Sopko's pleading and the arguments raised by the Union in its summary dismissal application. The Union requested that its application be determined without an oral hearing, and the Board has not found it necessary to convene one.

Argument on behalf of the Union for summary dismissal:

[7] The Union characterizes the essence of Mr. Sopko's complaint as being that he should be paid more based on his experience in spite of the rates in the Provincial Agreement being tied to a member's status in the SATCC system. Neither the Employer nor the Union are involved in determining whether someone is qualified to be classified with a particular status by the SATCC; this determination rests solely with the SATCC. Mr. Sopko has not asked the Union to file a grievance and, in any event, there is no violation of the Provincial Agreement to grieve.

[8] The rules and requirements established by the SATCC are welcomed by employers, unions and the purchasers of construction services. It is an important way to ensure that construction work that is performed in the province is of the highest quality. The rates in the Provincial Agreement, including for uncertified labourers, are minimum rates, and the Union has no objection (nor does Mr. Sopko) to the Employer paying Mr. Sopko more than the minimum rate, which Mr. Sopko states the Employer has done.

[9] To the extent Mr. Sopko is requesting a change to the SATCC's requirements to suit his personal circumstances this is beyond the Union's authority or any duty it owes to him under the Act.

Analysis and Decision:

[10] Mr. Sopko's application purports to rely upon s. 6-59 of the Act:

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

[11] However, Mr. Sopko has not alleged that his rights pursuant to a collective agreement have been violated, nor has he specified any rights pursuant to Part VI of the Act in which he has sought the Union's representation.

[12] The Union's application relies on clause 6-111(1)(p) of the Act:

> ***6-111(1)*** *With respect to any matter before it, the board has the power:*
>
> *…*
>
> *(p) to summarily dismiss a matter if, in the opinion of the board, there is a lack of evidence or no arguable case;*

[13] An application that pleads no arguable case may be summarily dismissed pursuant to clause 6-111(1)(p), in accordance with the principles articulated in *Roy*:

> *1. In determining whether a claim should be struck as disclosing no arguable case, the test is whether, assuming the applicant is able to prove everything alleged in his/her claim,*

> *there is no reasonable chance of success. The Board should exercise its jurisdiction to strike on this ground only in plain and obvious cases and where the Board is satisfied that the case is beyond doubt.*
>
> *2. In making its determination, the Board may consider only the subject application, any particulars furnished pursuant to demand and any document referred to in the application upon which the applicant relies to establish his/her claim.*[4]

[14] Simply put, if it is plain and obvious that the application will fail even if the applicant proves everything they allege, the application should be dismissed on the basis that it is patently defective.[5]

[15] Here, the Board is satisfied that Mr. Sopko's application pleads no arguable case against the Union.

[16] Section 6-59 is only engaged with respect to employee-union disputes involving a union's conduct in its representational role pursuant to a collective agreement or Part VI of the Act.[6]

[17] Mr. Sopko's application does not plead facts which could establish a breach of the Union's duty of fair representation under s. 6-59 of the Act. The Union is not alleged to have failed to represent Mr. Sopko with respect to his rights under a collective agreement or under Part VI of the Act, nor to have acted in in an arbitrary, discriminatory or bad faith manner in failing to do so.

[18] Mr. Sopko's complaint is with the SATCC's accreditation requirements, particularly with respect to testing. These requirements are set solely by the SATCC. The Act does not empower the Union to affect them. The Board has previously commented on the incongruity if a union has no statutory right to represent its members with respect to third parties but is statutorily required to provide such representation (as part of its duty of fair representation) if requested by a member.[7]

[19] The Board finds the following comments from *Roy* to be apposite with respect to Mr. Sopko's application (emphasis added):

> ***[14]** … As this Board has noted in many cases, while the exclusive right to represent a unit of employees imposes many obligations on a trade union, there is no obligation on a trade union to guarantee that a particular result will be achieved or undesirable consequence will be avoided in the workplace. To establish an arguable case of a contravention by the Union, the Applicant must allege some specific acts or omissions on the part of the Union*

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[4] *Roy v Workers United Canada Council*, 2015 CanLII 885 (SK LRB) [*Roy*], at para 8.
[5] *Saskatchewan Polytechnic Faculty Association v Ha*, 2023 CanLII 30423 (SK LRB), at para 20.
[6] *J.C. v Regina Police Association Inc.*, 2023 CanLII 99838 (SK LRB), at para 107.
[7] *McEwan v Canadian Union of Public Employees, Local 1975*, 2007 CanLII 68751 (SK LRB), at para 48.

> *(and/or its agents) that support the conclusion that it has failed to satisfy the obligations imposed upon it; something the Applicant has failed to do.*
>
> ***[15]*** *Furthermore, it is a common misconception that this Board is a governmental agency established to hear any and all complaints about or involving trade unions. However, a review of The Saskatchewan Employment Act quickly establishes that such is not the case. Numerous decisions of this Board have demonstrated that this Board's supervisory responsibility pursuant to now s. 6-59 of The Saskatchewan Employment Act (previously s. 25.1 of The Trade Union Act) is not to ensure that a particular member achieves a desired result or avoids an undesirable outcome; rather the purpose of the provision is to ensure that, in exercising its representative duty, a trade union does not act in a manner that is arbitrary, discriminatory or in bad faith. As a consequence, to sustain a violation of 6-59 of the Act, an applicant must allege and then satisfy this Board through evidence that his/her trade union has acted in a manner that is "arbitrary", "discriminatory" or in "bad faith". As this Board noted in Lorraine Prebushewski v. Canadian Union of Public Employees, Local 4777, (2010) 179 C.L.R.B.R. 2d) 104, 2010 CanLII 20515 (SK LRB), LRB File No. 108-09, these terms are not mere chalices into which applicants may pour their criticisms of their trade union for presentation to the Board. These terms have specific meanings that define the threshold for this Board to exercise its supervisory authority. Simply put, this Board does not sit on appeal of each and every decision made by a trade union; rather, very specific behavior/conduct on the part of a trade union is required to sustain a violation of the Act; that conduct being arbitrariness, discrimination or bad faith. See: Cathy Chabot v. Canadian Union of Public Employees, Local 4777, 2007 CanLII 68749 (SK LRB), [2007] Sask. L.R.B.R. 401, LRB File No. 158-06.*[8]

[20] Mr. Sopko's application pleads no arguable case. It is appropriate to dismiss it pursuant to clause 6-111(1)(p) of the Act. An appropriate order will be issued.

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

LABOUR RELATIONS BOARD

Michael J. Morris, K.C.
Chairperson

[8] *Roy*, at paras 14-15.