JENNIFER STEPHEN-MCINTOSH, Applicant v SEIU-WEST, Respondent and SASKATCHEWAN HEALTH AUTHORITY, Respondent

LRB File No. 097-24; January 31, 2025
Chairperson, Kyle McCreary (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*
Citation: *Stephen-McIntosh v SEIU-West*, 2025 SKLRB 2

For the Applicant, Jennifer Stephen-McIntosh:	Self-represented
Counsel for the Respondent, SEIU-West:	Shannon Whyley
Counsel for the Respondent, Saskatchewan Health Authority:	Kevin Zimmerman

Duty of Fair Representation – No breach found – Union considered each issue raised and did not act in a manner that was offside of its duty of fair representation.

Decision without an oral hearing – The Board may decide any matter on its merits without an oral hearing – The Board must try to use most proportionate procedure to determine an application.

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** On May 17, 2024, Ms. Stephen-McIntosh filed the within application, LRB File No. 097-24, pursuant to s. 6-59 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 ("the Act") alleging that SEIU-West failed to represent her in relation to various issues with her Employer, the Saskatchewan Health Authority (the "SHA").

[2] On November 13, 2024, the Board determined it may be appropriate to determine this matter on the basis of written materials and provided timelines for parties to file affidavits or other evidence. Ms. McIntosh was to file by November 27, 2024, and the responding parties by December 11, 2024. Ms. McIntosh had until December 11, 2024 to file reply evidence. A timeline was also set for filing written submissions.

[3] Ms. Stephen-McIntosh did not file any affidavits in response to the Board's direction. SEIU-West filed affidavits from Elizabeth Tawpisin, Marj Markwart, and Rhonda Stewart. The SHA did not file any affidavits. Ms. Stephen-McIntosh did not file any evidence in reply to SEIU-West's evidence.

[4] SEIU-West and the SHA filed written submissions on December 18, 2024. Ms. Stephen-McIntosh filed written submissions on December 23, 2024.

[5] After reviewing the materials filed, the Board determined that the matter would be heard on the basis of the written record. The parties were advised of this on December 23, 2024, and given an opportunity to file reply submissions.

[6] SEIU-West filed reply submissions on January 13, 2025. Ms. Stephen-McIntosh and the SHA did not file reply submissions.

Evidence:

[7] The application of Ms. Stephen-McIntosh raises allegations in relation to numerous issues including the use of gloves as personal protection equipment, an allegation that Ms. Stephen-McIntosh was underpaid for hours worked, and issues related to accommodation. The application also alleges that the Union failed to proceed with four grievances and that that decision has been appealed.

[8] Ms. Stephen-McIntosh was employed by the SHA at the Saskatoon City Hospital in the Food Services Department from 2011 to March 30, 2022. Ms. Stephen-McIntosh was a member of SEIU-West.

[9] The application and enclosed materials show that Ms. Stephen-McIntosh had SIEU-West file four grievances on her behalf:

- 2020-G-04966 – unjustly disciplined with a six-day suspension for being away without leave;
- 2021-G-04978 – unjustly disciplined with a one-week suspension for filing unjust harassment complaint and making an anonymous 1600 call blaming her manager for the death of a co-worker;
- 2021-G-05186 – unjustly disciplined with a thirty-day suspension for actions following an investigation meeting, including leaving discipline meeting, not leaving employer's premises after the discipline meeting, and filing an untrue incident report; and
- 2022-G-05519 – unjustly terminated from employment with the SHA for vexatious complaints and false allegations.

[10] Also included in the materials is a January 18, 2024 letter from the SEIU-West Grievance Committee notifying Ms. Stephen-McIntosh of its decision to not proceed to arbitration on the four grievances. The letter set an appeal deadline of February 17, 2024.

[11] The materials also include a February 26, 2024 letter SEIU-West sent Ms. Stephen-McIntosh providing a new deadline of March 13, 2024 to file an appeal to the SEIU-West Executive Board.

[12] The last document in the materials is a March 6, 2024 email where Ms. Stephen-McIntosh appealed the Grievance Committee's decision to the Executive Board.

[13] In SEIU-West's reply sworn by Bob Laurie, the Union sets out its conduct in representing Ms. Stephen-McIntosh. The reply outlines what grievances were filed by the Union, the accommodations Ms. Stephen-McIntosh was provided with by the SHA, that the Union conducted a pay audit on the underpayment issue, and a timeline of interactions leading up to the suspensions and termination.

[14] SEIU-West also filed three affidavits. The Affidavit of Elizabeth Tawpisin, a union representative who assisted Ms. Stephen-McIntosh, addresses Ms. Tawpisin's work on the gloves and accommodation issues, and pay issues. Ms. Tawpisin filed the first two grievances and advanced the grievances through the steps set out in the collective bargaining agreement. The affidavit attaches exhibits supporting what Ms. Tawpisin avers to in the affidavit and excerpts from the collective bargaining agreement.

[15] The Affidavit of Ms. Markwart also addresses the pay issues. Ms. Markwart is a staff representative employed by SEIU-West. Ms. Markwart represented Ms. Stephen-McIntosh on the filing and proceeding through the steps of the third and fourth grievances. Ms. Markwart has exhibited to her affidavit communications related to the grievances and termination. Ms. Markwart was cc'd on the Grievance Committee letter and that is included with the affidavit.

[16] The third affidavit is of Ms. Stewart. Ms. Stewart is a members' resource office with SEIU-West. Ms. Stewart's affidavit relates to the SEIU-West's attempts to schedule the grievance appeal and Ms. Stewart's efforts to contact Ms. Stephen-McIntosh.

Analysis and Decision:

Should the Board Determine this Matter Without an Oral Hearing

[17] The Board gave notice that it was potentially going to consider this matter on the basis of written submissions on November 13, 2024. Ms. Stephen-McIntosh requested that the application proceed to a full hearing. SEIU-West argued that the matter could proceed in writing. SHA did not take a position. Ms. Stephen-McIntosh's basis for requesting a hearing is to put her grievance against the Union. Other than a desire to challenge the union in person, no further reason was provided for the need of an oral hearing.

[18] Ms. Stephen-McIntosh's opposition raises the issue of whether the Board has the authority to proceed to determine a matter on the merits without holding an oral hearing over the opposition of one of the parties. The Board finds that pursuant to ss. 6-103 and 6-111 of the Act, and for the reasons below, that it can determine the manner in which matters are heard, and that it should seek to hear matters in the most proportionate manner possible. In this case it is appropriate to hear the application on the basis of affidavit evidence, the sworn or affirmed pleadings, and written submissions.

[19] The Board's general powers are contained in s. 6-103 of the Act. Pursuant to s. 6-103(2)(a), the Board may conduct any investigation or hearing the Board considers appropriate. This general ability to control process is arguably sufficient to determine the issue of whether the Board can determine how to hear an application. Section 6-103 reads:

> ***General powers and duties of board***
> ***6-103****(1) Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed on it by this Act or that are incidental to the attainment of the purposes of this Act.*
>
> *(2) Without limiting the generality of subsection (1), the board may do all or any of the following:*
>
> > *(a) conduct any investigation, inquiry or hearing that the board considers appropriate;*
> >
> > *(b) make orders requiring compliance with:*
> > *(i) this Part;*
> > *(ii) any regulations made pursuant to this Part; or*
> > *(iii) any board decision respecting any matter before the board;*
> >
> > *(c) make any orders that are ancillary to the relief requested if the board considers that the orders are necessary or appropriate to attain the purposes of this Act;*

> *(d) make an interim order or decision pending the making of a final order or decision.*

[20] The general ability to control process in s. 6-103 is supplemented by specific powers related to hearings under s. 6-111. The powers under s. 6-111 make clear that the Board can determine the form of evidence acceptable on an application (s. 6-111(1)(e)), determine any preliminary procedures (s. 6-111(1)(h)), and determine any matter without an oral hearing (s. 6-111(1)(q)):

> ***6-111****(1) With respect to any matter before it, the board has the power:*
> …
> *(e) to receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the board considers appropriate, whether admissible in a court of law or not;*
> …
>
> *(h) to order preliminary hearings or procedures, including pre-hearing settlement conferences;*
> …
>
> *(q) to decide any matter before it without holding an oral hearing;*

The combined effect of s. 6-103 and the above clauses of s. 6-111 is that the Board can determine its own process and how an application is to be heard. The Board has the power to direct the parties to consider the issue of whether this matter could be determined on a written record. The Board can also determine the form of the hearing it considers appropriate, whether it is a hearing based on *viva voce* evidence, affidavit evidence, or the pleadings. The Board expressly has the power to determine any matter before it without an oral hearing, which includes not just preliminary questions and summary dismissal applications, but also the merits of this application or the merits of any other matter.

[21] *The Saskatchewan Employment (Labour Relations Board) Regulations*, RRS c S-15.1 Reg 11 ("the Regulations") require the Board Registrar to give notice of a hearing under s. 28, but do not prescribe the manner of hearing the Board must follow.

[22] In *UFCW, Local 1400 v ATCO Structures & Logistics Ltd. and ATCO Frontec Ltd.*, 2023 CanLII 115175 (SK LRB), the Board considered the question of whether it had to hold an oral hearing when requested by a party as a result of the wording to s. 28 of the Regulations. The Board found that s. 6-111(1)(q) of the Act empowered the Board to decide any matter without an oral hearing where it can be resolved in a fair manner regardless of if a party requests a hearing:

> *[14] Pursuant to clause 6-111(1)(q) of the Act, the Board may decide any matter before it without holding an oral hearing. Accordingly, s. 28 of the Regulations should not be interpreted as requiring the Board to grant an applicant an oral hearing if requested by the applicant. Rather, whether an oral hearing is required is a matter of procedural fairness. If an application can be resolved in a procedurally fair manner on the basis of written submissions alone, the Board may choose to do so.*

Section 28 of the Regulations does not require a holding of a hearing when requested. Section 28 requires the Board to provide notice of the date, place and time of a hearing. As it relates to a hearing on a written record without oral argument, this is notice of when all written materials must be filed prior to being considered by the Board. The Board Registrar provided the parties with the required notice by providing the dates when materials must be filed with the Board to be considered.

[23] The Board's finding that a request for an oral hearing does not prevent the Board from proceeding on a written record is consistent with the Federal jurisprudence. The Federal Court of Appeal has stated that a request for an oral hearing before the Canada Industrial Relations Board ("CIRB") does automatically entitle to a party to a hearing. As stated in *Paris v. Syndicat des employés de Transports R.M.T. (Unifor-Québec)*, 2022 FCA 173 (CanLII)["*Paris"*]:

> *[5] Section 16.1 of the Code provides that the Board may decide any matter before it without holding an oral hearing. This is a discretionary power to which the Court must show considerable deference. The fact that Mr. Paris requested an oral hearing on the basis of contradictory evidence and credibility issues does not automatically warrant an oral hearing, and neither does the wish to introduce a written witness statement or other evidence. Mr. Paris was required to set out in writing all the facts and arguments that he intended to submit to the Board (Ducharme v. Air Transat A.T. Inc., 2021 FCA 34 at paras. 19 and 21; Wsáneć School Board v. British Columbia, 2017 FCA 210 at para. 33; Madrigga v. Teamsters Canada Rail Conference, 2016 FCA 151 at paras. 26 to 28; Dumont v. Canadian Union of Postal Workers, Montréal Local, 2011 FCA 185 at paras. 8 and 9; Amalgamated Transit Union, Local 1624 v. Syndicat des travailleuses et travailleurs de Coach Canada – CSN, 2010 FCA 154 at paras. 17 and 18; Raymond v. Canadian Union of Postal Workers, 2003 FCA 418 at para. 4).*
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> *[6] Mr. Paris had the burden of proving to the Board that an oral hearing was necessary in the circumstances of his case. He did not raise any valid arguments in support of his requests for hearing, relying instead on vague and general assertions. But allegations of a breach of procedural fairness are not sufficient; the breach must also be demonstrated. Mr. Paris has not persuaded me that the Board breached its duty of procedural fairness by not holding an oral hearing to decide the complaint. He was able to file evidence in support of his complaint, submit his written representations to the Board, and respond to those of the Union and Transports R.M.T. inc., his former employer. I see no error there.*

[24] As the Board has the authority to determine any matter without an oral hearing, the Board must also address when a matter should proceed without an oral hearing. A matter should proceed without an oral hearing where it is the proportionate manner of determining an

application. The Board found that proportionality should guide what the Board considers to be the appropriate process in *Canadian Union of Public Employees, Local 5430 v Ruben G. Palao*, 2024 CanLII 121582 (SK LRB):

> *[12] Whether it is more appropriate to proceed via ss. 6-111(p), 6-111(q) or via an oral hearing will depend on the merits of each case. The Board must seek to achieve a fair and just result through the most proportionate procedure. As stated by the Supreme Court of Canada in Hryniak v. Mauldin, 2014 SCC 7 (CanLII), [2014] 1 SCR 87, in relation to determining when summary judgment is acceptable:*
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> > *[28] … A fair and just process must permit a judge to find the facts necessary to resolve the dispute and to apply the relevant legal principles to the facts as found. However, that process is illusory unless it is also accessible — proportionate, timely and affordable. The proportionality principle means that the best forum for resolving a dispute is not always that with the most painstaking procedure.*
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> *[13] Oral evidentiary hearings are not always necessary to achieve a just result, as noted by the British Columbia Board in Howie v Pulp, Paper and Woodworkers of Canada, Local No 16, 2014 CanLII 27503 (BC LRB):*
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> > *33 In our view, what the Supreme Court of Canada sets forth in Hryniak is, if anything, even more applicable and appropriate in the quasi-judicial context of an administrative tribunal like the Board and in fact we have been pursuing that sort of approach for some time. For instance, in 2005 the Board noted:*
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> > > *We add from a policy perspective that as a Board we are not inclined to proceed into evidentiary hearings without justification. There must be a proper basis established for the requirement of such a proceeding. In doing its job under the Code, the Board expends public funds. Evidentiary hearings incur expense and delay. Evidentiary hearings are an essential part of the quasi-judicial processes at the Board where warranted, but it would be irresponsible to engage in an evidentiary hearing where not warranted. …*
> >
> > > *We add that unless warranted, the expense and delay of evidentiary hearings are not consistent with the purposes of the Code (see Section 2 of the Code). It does not assist labour relations or the public interest under the Code to make the proper determination of labour relations matters more expensive and less timely. (ACFC West – The Association of Canadian Film Craftspeople, Local 2020 Communications, Energy and Paperworkers Union of Canada, BCLRB No. B191/2005 (Leave for Reconsideration of BCLRB No. B343/2004), paras. 11-12)*
>
> *What process is required for the Board to be able to determine a matter fairly will depend on the facts of each case. If the pleadings (including the consideration of applications and reply on delay issues) are sufficient to determine a matter, summary dismissal may be appropriate. If further documentary evidence including weighing the replies and affidavits is sufficient, the Board may be able to proceed without an oral hearing. A preliminary hearing may be necessary to determine certain factual allegations, or a full evidentiary hearing may be justified. The question in each case will be how the Board can achieve a just and proportionate result based on the issues and case before it.*

[25] The Board would reiterate these comments. A matter should proceed without an oral hearing when it is the proportionate method of determining a matter. The question of what is a proportionate hearing will depend on a consideration of the interests at stake, the issues raised, and the facts of a case. The Board must be guided by proportionality in how it manages its procedure, just as the civil Courts must be. As stated by the Supreme Court of Canada in *Hryniak v Mauldin*:

> *[32] This culture shift requires judges to actively manage the legal process in line with the principle of proportionality. While summary judgment motions can save time and resources, like most pre-trial procedures, they can also slow down the proceedings if used inappropriately. While judges can and should play a role in controlling such risks, counsel must, in accordance with the traditions of their profession, act in a way that facilitates rather than frustrates access to justice. Lawyers should consider their client's limited means and the nature of their case and fashion proportionate means to achieve a fair and just result.*

[26] This will arguably require a culture shift by this Board. This Board has a strong tradition of determining the merits of cases on the basis of oral hearings. However, as noted by the British Columbia Board in *Howie v Pulp, Paper and Woodworkers of Canada, Local No 16*, a Labour Board must be mindful of the expenditure of public resources and the expense to parties. Oral hearings are the most resource intensive hearings and should be reserved for cases that require those resources. There is also the opportunity cost of any hearing, time used for one hearing prevents the hearing of another application. Given the composition of this Board and only having two full-time members, this opportunity cost is especially acute.

[27] Oral hearings can be a barrier to access to justice. An oral hearing, especially one that lasts multiple days, imposes significant obligations on self-represented litigants, and potentially significant legal costs on litigants with representation.

[28] When weighing all of the above, in many cases, a written record will be a proportionate hearing. Oral hearings should only be the default for those cases where justice, fairness and proportionality require them.

[29] As noted in *Paris*, the CIRB's decisions to proceed without an oral hearing have been upheld by the Federal Court of Appeal in numerous cases: see also: *Kiame c. Syndicat des employées et employés nationaux (Alliance de la fonction publique du Canada)*, 2024 CAF 103 (CanLII); *Longo v. Association internationale des machinistes et des travailleurs et travailleuses de l'aérospatial, District des Transports 140*, 2024 CAF 154 (CanLII); and *Perrin v. Canadian Union of Public Employees*, 2023 FCA 104 (CanLII).

[30] Similarly, Courts have determined factually complicated cases on the basis of the Courts' summary judgment rules: *Seewalt v Saskatchewan*, 2024 SKCA 100 (CanLII); *Blue Hill Excavating Inc. v Canadian Western Bank Leasing Inc*., 2019 SKCA 22 (CanLII); and *Deren v SaskPower*, 2017 SKCA 104 (CanLII).

[31] While the Board has relied on summary judgment jurisprudence, parties should be aware that the summary judgment test will not be determinative of when the Board must hold an oral hearing. The Board is statutorily empowered to determine any matter without an oral hearing. The question for the Board to determine when deciding whether an oral hearing is necessary is not whether there is a genuine issue for trial, but whether it is procedurally fair to do so and does the Board have the evidence and information it needs to render a decision.

[32] The procedural fairness issue will be resolved on whether the Board has given parties an opportunity to present their case and notice of the need to file any further evidence.

[33] The evidence issue will depend on:

a. what sections of the *Act* are at issue;
b. what are the nature of the allegations; and
c. what is the evidence the parties filed with the Board when the process for a written hearing is initiated.

No one factor will be determinative, and it will be a question of whether the Board has the information necessary to fairly and justly determine the questions before it.

[34] In this case, the Board gave notice of its intention to potentially proceed with a written hearing and an opportunity to file affidavits and written submissions. The Board has reviewed the materials filed and finds that they are sufficient to resolve this case. The materials provide the necessary evidence to determine whether the Union breached its duty of fair representation on the allegations raised by Ms. Stephen-McIntosh. A full oral hearing may have allowed greater insight into the decision-making process, but the most painstaking process is not necessary considering the materials that have been filed and the test applicable to the duty of fair representation. This is the question the Board expects parties to address when scheduling matters going forward: is an oral hearing necessary for the Board to determine an application?

Did SEIU-West Breach the Duty of Fair Representation

[35] This is an application alleging a breach of the duty of fair representation pursuant to s. 6-59 of the Act, which reads:

> ***Fair representation***
> ***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.*

[36] The leading authorities on the duty of fair representation are the Supreme Court of Canada's decisions in *Canadian Merchant Service Guild v. Gagnon et al*., 1984 CanLII 18 (SCC), [1984] 1 SCR 509; and *Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057*, 1990 CanLII 110 (SCC), [1990] 1 SCR 1298. Pursuant to the Supreme Court of Canada's guidance, unions can only be held liable for a breach of the duty of fair representation where they have acted arbitrarily, discriminatorily, or in bad faith. As stated in *Applicant v SEIU-WEST*, 2024 CanLII 64163 (SK LRB):

> *[109] The Board has adopted the Ontario Board's explanation in Toronto Transit Commission that an applicant must demonstrate, to the satisfaction of the Board, that a union's actions were:[7]*
>
> > *(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.*

[37] It is unclear whether Ms. Stephen-McIntosh alleges the Union acted arbitrarily, discriminatory or in bad faith. The evidence filed by Ms. Stephen-McIntosh and the allegations in the written submissions do not support a finding of discriminatory or bad faith conduct. The Board's analysis will focus on arbitrary conduct as the allegations of failure to consider evidence and properly represent most clearly fall into that category.

[38] Arbitrary conduct was distinguished from non-actionable conduct in *Ha v Saskatchewan Polytechnic Faculty Association*, 2024 CanLII 126796 (SK LRB) at paras 25-27, relying on *Hargrave v. Canadian Union of Public Employees*, Local 3833, 2003 CanLII 62883 (SK LRB), and

Leduc v United Mine Workers of America, Local 2009, 2016 CanLII 156707 (AB LRB). These authorities stand for the principle that a union has the right to make mistakes and is not liable for mere negligence or errors in judgment. A union must commit gross negligence evidenced by flagrant errors and blatant or reckless disregard in order to be held liable for arbitrary representation.

Gloves and Accommodation Issues

[39] Ms. Stephen-McIntosh claims that SEIU-West failed to represent her in relation to gloves as personal protection equipment and accommodation issues. The specifics of when this failure occurred is somewhat unclear on Ms. Stephen-McIntosh's materials. The Affidavit of Ms. Tawpisin addresses dates when Ms. Stephen-McIntosh raised the issues with Ms. Tawpisin and Ms. Tawpisin's responses in attempting to address the issues with the SHA. Ms. Stephen-McIntosh did not file any evidence contradicting the affidavit.

[40] Ms. Stephen-McIntosh in written submissions argues about the adequacy of the representation on the accommodations but does not dispute that SEIU-West did attempt to address the issue with the SHA.

[41] SEIU-West responded to Ms. Stephen-McIntosh's concerns and attempted to get the SHA to address the concerns. The union's duty is to fairly represent the member with the employer. The union does not have a duty to achieve the specific result sought by a member. The Board finds that the representation on these issues was not arbitrary, discriminatory or in bad faith.

Payroll Issues

[42] Ms. Stephen-McIntosh claims to be owed approximately $5,000 for hours worked that have not been compensated. In support of this contention various documents were filed detailing claims related to hours. However, the Board's concern is the Union's response to this issue. The only allegation in this regard is that the Union did not have Ms. Stephen-McIntosh present during its review of the payroll records.

[43] SEIU-West's evidence establishes that Ms. Stephen-McIntosh's concerns related to pay records was considered and the records reviewed. As stated in Ms. Tawpisin's affidavit:

> *With respect to the Applicant's claim that she was not paid approximately $5,000 by the Employer, I was one of the SEIU-West representatives that reviewed her claim and did an internal review of her documents. I also did an initial review of the documents with Kim*

> *Deitner (another SEIU-West representative). I could find no merit to the Applicant's claims. I let the Applicant know that we could not find any outstanding pay.*

[44] Ms. Markwart's affidavit states similarly:

> *With respect to the Applicant's claim that she was not paid approximately $5,000 by the Employer, I was one of the SEIU-West representatives that reviewed her claim and did an internal review of her documents. I could find no merit to the Applicant's claims. The Applicant did not provide me with all the information I requested. I reached out to the Employer to request payroll records (including when the Applicant was scheduled to work and when she actually worked) in order to try and match it to the Applicant's pay records. I could not find the approximately $5,000 underpayment alleged by the Applicant.*

[45] The Board accepts this evidence. There is no requirement for a union member to be present while a union investigates an issue. The union does not have to reach the result requested by a member; it just has to fairly consider the issue. The evidence that multiple Union employees reviewed the records and reached the conclusion that the complaint lacked merit meets the Union's duty. The issue was considered and investigated; there is no evidence that the conclusion of the investigation was arbitrary, discriminatory or in bad faith.

Grievances

[46] SEIU-West initially filed four grievances on behalf of Ms. Stephen-McIntosh, three in relation to suspensions and one related to the termination of her employment. SEIU-West advanced all four grievances through the steps of the grievance process. All four grievances went to a Grievance Committee and on January 18, 2024, the Grievance Committee issued a written decision declining to proceed with all four grievances.

[47] Ms. Stephen-McIntosh disagrees with this decision and predominantly argues that the Union failed to properly consider the medical evidence. The decision letter states clearly what was considered by the committee in reaching its conclusion:

> *Based on the information we reviewed, the legal opinion we received, the relevant legislation, arbitral cases and precedent regarding the issues related to progressive discipline, vexatious complaints and being away from the workplace without leave, it is the view of the Grievance Committee that we would not be successful in the arbitration process in having your discipline and termination overturned or reduced. The grievance committee's investigation identified where the employer had evidence able to demonstrate repeated instances of complaints you submitted that were neither based in good faith or facts. You identified that you were aware of the process for requesting time away from work due to illness. The committee could not find any evidence as to why you did not follow the procedure of which you were aware. The Union attempted to negotiate a monetary settlement to resolve all these grievances, however you put forward an amount that had no reasonable chance of success and was rejected by the Employer.*

[48] The standard Ms. Stephen-McIntosh must meet is that this reasoning is arbitrary, discriminatory or in bad faith. The allegation that the Union failed to consider specific evidence does not meet this standard. The Union's reasoning is transparent and is not arbitrary. SEIU-West declined to proceed to arbitration on its assessment of the files when considering legal opinion and arbitral decisions. The Union clearly did an investigation, reviewed the merits of the files, and reached a decision without considering improper factors. The Union was not required to consider medical evidence that was arguably irrelevant to the merits of the grievances.

The Appeal Process

[49] On March 6, 2024, Ms. Stephen-McIntosh appealed the Grievance Committee's decision pursuant to SEIU-West's internal processes. As of the December 10, 2024, the appeal still had not proceeded.

[50] The affidavit of Ms. Stewart provides SEIU-West's explanation for not proceeding with the appeal to date. Ms. Stewart has been unable to reach Ms. Stephen-McIntosh by phone despite several attempts. Email contact has been attempted but no response has been received. Ms. Stephen-McIntosh filed no evidence on her efforts to proceed with the appeal, the evidence only includes the initiating documents of the appeal. Ms. Stephen-McIntosh claims she never spoke to Ms. Stewart, which confirms Ms. Stewart's affidavit evidence that SEIU-West has had difficulty contacting Ms. Stephen-McIntosh. Based on the record before the Board, the Union's attempts to schedule the appeal hearing are reasonable and provide a reasonable justification for not having proceeded yet with the appeal.

[51] To date, SEIU-West's handling of the appeal is not in breach of its duty. However, SEIU-West continues to have a duty to fairly process the appeal and fairly decide the appeal. Ms. Stephen-McIntosh is not precluded from returning to the Board if she has concerns about how the appeal is processed or decided after the date of this decision.

[52] SEIU-West's argument that this application is premature due to Ms. Stephen-McIntosh's failure to exhaust internal appeals before coming to the Board has considerable merit. The Board chose to exercise its discretion to proceed with this decision as several of the issues raised (accommodations, the use of gloves, and the pay allegation) are not subject to the appeal and the record is sufficient to fairly determine all of the allegations raised.

Conclusion:

[53] As a result, with these Reasons an Order will issue that the Application in LRB File No. 097-24 is dismissed.

[54] The Board thanks the parties for the helpful submissions they provided, all of which were reviewed and considered in making a determination in this matter.

DATED at Regina, Saskatchewan, this **31st** day of **January, 2024.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson