AMALGAMATED TRANSIT UNION, LOCAL 588, Applicant v AHMADREZA NEZAMLOO, Respondent and CITY OF REGINA, Respondent

LRB File Nos. 003-25 and 011-25; May 14, 2025
Chairperson, Kyle McCreary (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*
Citation: *ATU, Local 588 v Nezamloo*, 2025 SKLRB 22

Counsel for the Applicant, Amalgamated Transit Union, Local 588:	Simon Blackstone
The Respondent, Ahmadreza Nezamloo:	Self-represented
For the City of Regina:	No one appearing

Summary Dismissal – Duty of Fair Representation – Granted in part – Application fails to plead facts to support allegations of bad faith or discriminatory conduct – Application pleads sufficient facts to permit arbitrary conduct allegation to proceed

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** Ahmadreza Nezamloo was employed by Transit Operations with the City of Regina ("the Employer"). Mr. Nezamloo was a member of the Amalgated Transit Union, Local 588 ("the Union").

[2] On September 6, 2024, Mr. Nezamloo was terminated from his employment with the Employer. The Union did not grieve Mr. Nezamloo's termination.

[3] On January 7, 2025, Mr. Nezamloo filed a duty of fair representation application pursuant to s. 6-59 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 ("the SEA"), in LRB File 003-25 in relation to the Union's representation of Mr. Nezamloo ("the DFR Application"). On January 21, 2025, the Union filed a reply in LRB File 003-25.

[4] On January 21, 2025, the Union filed an application for summary dismissal in LRB File 011-25 seeking to have LRB File 003-25 dismissed in its entirety ("the Summary Dismissal Application"). On February 4, 2025, Mr. Nezamloo filed a reply in LRB File 011-25.

[5] The Board subsequently set a timeline for written submissions on the Summary Dismissal Application and received written submissions from Mr. Nezamloo and the Union. The Employer has taken no part in the Summary Dismissal Application.

[6] The DFR Application sets out the primary factual allegations at paragraphs 4 and 7, which read:

> *4. The applicant alleges*
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> *I hereby allege that a contravention of the Saskatchewan Employment Act has occurred by the Amalgamated Transit Union (ATU) due to their failure to fulfill their duty of fair representation. This contravention is detailed as follows:*
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> *Failure to Represent to the Best of Their Capacity*
> *The union has failed to represent me effectively and to the best of their capacity in matters relating to my employment with the City of Regina. Specifically, the ATU has not taken reasonable steps to address my concerns or grievances, and their efforts lack the diligence and seriousness expected under their duty of fair representation.*
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> *Unfair Representation*
> *The union has acted in a manner that is unfair and potentially discriminatory. Their actions, or lack thereof, demonstrate an arbitrary and negligent approach to handling my case. Despite my attempts to seek assistance, the ATU failed to provide adequate support, advocacy, or representation. I was not afforded the fair and good-faith representation mandated by the Saskatchewan Employment Act.*
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> *Resultant Termination of Employment*
> *Due to the union's failure to adequately represent my interests, I was unable to effectively challenge or resolve the circumstances leading to my termination of employment with the City of Regina, effective September 6, 2024. This failure directly impacted my ability to maintain my employment and resulted in significant financial and emotional harm.*
>
> *…*
>
> *7. Describe any union appeal or complaint procedures available in the union's constitution, bylaws or regulations, as well as the results of your participating in those proceedings:*
>
> *The Amalgamated Transit Union's (ATU) constitution, bylaws, and regulations outline internal appeal and complaint procedures for addressing disputes or concerns raised by union members. These procedures are intended to ensure a fair review of grievances or issues related to the union's duty of representation.*
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> *My Efforts and the Results*
> *I followed the established process by contacting the union's new president multiple times, both before and after the termination of my employment on September 6, 2024. Despite these efforts, the president did not take my concerns seriously. After my termination, my attempts to communicate were ignored entirely, which caused significant frustration and a lack of faith in the union's commitment to their responsibilities. I formally presented my concerns regarding the union's failure to represent me effectively, including their inadequate handling of my grievance and their lack of advocacy for even a minimal resolution, such as amending my employment record from termination to resignation. However, the outcome of this process was unsatisfactory. The union failed to:*

1. *Conduct a thorough or impartial review of my complaint.*

2. *Adequately address my grievance or take meaningful steps to pursue a fair resolution.*

3. *Respond to my appeals with the seriousness and urgency the situation required.*

Deficiencies in the Process
The union's handling of my complaint demonstrated procedural deficiencies and a disregard for their duty of fair representation. Their actions – or lack thereof- highlighted a lack of transparency, accountability, and commitment to their obligations under the Saskatchewan Employment Act.

Conclusion
While I utilized the union's internal procedures as outlined in their constitution and bylaws, these efforts were ultimately futile. The union's failure to act left me without a resolution to my grievance, no advocacy for my employment record to be amended, and no remedy for the harm caused by their negligence. The experience reinforced my belief that the union did not act in good faith or fulfill its statutory obligations to fairly and adequately represent me.

Relevant Statutory Provisions:

[7] The DFR Application is brought pursuant to s. 6-59 of the SEA, 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.

[8] The Summary Dismissal Application is brought pursuant to s. 6-111 of the SEA, which reads in part:

6-111*(1) With respect to any matter before it, the board has the power:*

…

(h) to order preliminary hearings or procedures, including pre-hearing settlement conferences;

…

(p) to summarily dismiss a matter if, in the opinion of the board, there is a lack of evidence or no arguable case;

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

Analysis and Decision:

Test for Summary Dismissal

[9] The Board will only summarily dismiss a case when it is plain and obvious that the case has no reasonable chance of success. The Board does not determine evidential disputes or novel points of law on a motion for summary dismissal. This approach to summary dismissal is set out in the oft cited cased of *Roy v Workers United Canada Council*, 2015 CanLII 885 (SK LRB) ("*Roy*"):

> *[8] The Board recently adopted the following as the test to be applied by the Board in respect of its authority to summarily dismiss an application (with or without an oral hearing) as being:*
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> *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.*
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> *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.*
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> *[9] Generally speaking, summary dismissal is a vehicle for the disposition of applications that are patently defective. The defect(s) must be apparent without the need for weighing of evidence, assessment of credibility, or the evaluation of novel statutory interpretations. Simply put, in considering whether or not an impugned application ought to be summarily dismissed, the Board assumes that the facts alleged in the main application are true or, at least, provable. Having made this assumption, if the Board is not satisfied that the main application at least discloses an arguable case, and/or if there is a lack of evidence upon which an adverse finding could be made, then the main application is summarily dismissed in the interests of efficiency and the avoidance of wasted resource.*

[10] Recently, the Board noted in *SGEU v Morrisseau Dickson*, 2025 SKLRB 15 (CanLII), that while the test as articulated in *Roy* should still be followed, in light of developments in the law of motions to strike, the Board must be mindful to read pleadings generously and consider causes of action that may not be clearly pleaded.

[11] The Union has requested this matter be determined without an oral hearing pursuant to s. 6-111(1)(q) of the SEA. The Board frequently determines summary dismissal applications without oral hearing pursuant to that clause and will determine the Summary Dismissal Application without an oral hearing.

[12] However, the Union also appears, based on the quantity of evidence filed and the submissions filed, to be seeking for the Board to determine the DFR Application without an oral

hearing. The Board may be willing to do so as discussed in *Stephen-McIntosh v SEIU-West*, 2025 SKLRB 2; however, that request should be made to the Board either at Appearance Day or in the form of an application separate from a summary dismissal application. A responding party is entitled to clear notice of the Board potentially determining the DFR Application under s. 6-111(1)(q), an application or direction by the Board must be made specifically under that clause to ensure all parties have notice.

[13] As noted, the Union filed considerable evidence on the Summary Dismissal Application. In determining the Summary Dismissal Application of no arguable case, the Board will only consider the contents of the DFR Application and will not be considering the evidence filed by the Union. There are no clearly incorporated documents in the pleading itself, and Mr. Nezamloo has filed no further particulars with the Board.

Should Mr. Nezamloo's Application be dismissed for Delay?

[14] The Union asks for the Board to summarily dismiss the Application on the basis of delay. The Board has the authority under s. 6-103 to summarily dismiss a duty of fair representation application on the basis of delay: *Canadian Union of Public Employees, Local 5430 v Ruben G. Palao*, 2024 CanLII 121582 (SK LRB); *Coppins v. United Steelworkers, Local 7689*, 2016 CanLII 79633 (SK LRB). That power should only be exercised in the clearest of cases as the delay analysis applicable to duty of fair representation cases is not easily determined on summary dismissal, *Canadian Union of Public Employees v Reuben Rosom*, 2022 CanLII 100088 (SK LRB), and *SEIU-WEST v Alison Deck*, 2021 CanLII 23381 (SK LRB).

[15] The Union argues that the 90-day limit has been exceeded without explanation. The 90-day limit does not have application to this case. Delay on duty of fair representation applications is measured using the criteria as set out in *Hartmier v Saskatchewan Joint Board Retail Wholesale and Department Store Union and Retail, Wholesale and Department Store Union, Local 955*, 2017 CanLII 20060 (SK LRB)("*Hartmier*"), and is not determined in reference to the 90-day limit applicable to unfair labour practices. The criteria from *Hartmeir* are length of delay, prejudice, sophistication of the applicant, the nature of the claim, and the applicable standard. Of the criteria from *Hartmier*, the Board only considers it is necessary to consider the first criteria in this case, that is the length of delay.

[16] Mr. Nezamloo in the DFR Application states he was terminated on September 6, 2024. The DFR Application was filed on January 7, 2025. This represents a delay of approximately four months. Acceptable delay is measured in months and not years. The Board has never set a hard

timeline for the filing of duty of fair representation applications, and a four-month delay is not inordinate. The Board considers this delay not to be of the type that would warrant dismissal on a summary basis.

Does the Application Disclose an Arguable Case?

[17] The Union argues that the DFR Application does not disclose a *prima facie* case of a breach of the duty of fair representation. With respect, the test in Saskatchewan is whether assuming all facts stated in the DFR Application are true or provable, is there no reasonable chance of success.

[18] In considering whether Mr. Nezamloo has alleged in the DFR Application, the Board must consider the scope of the duty of fair representation. The Saskatchewan Court of King's Bench recently summarized the law of the duty of fair representation in *Saskatchewan Government and General Employees' Union v Lapchuk*, 2025 SKKB 53 (CanLII):

> *[102] The duty of fair representation does not compel a detailed evaluation of the actions of the union nor does it envision necessarily a second guessing of the decisions of the union. As well, that duty does not elevate the Union's actions to a requirement of achieving perfection or even of acting without negligence. As a result, the SLRB is not to merely sit in appeal of any decisions taken by SGEU. In Haley v C.A.L.E.A. (No. 1), 1981 CarswellNat 602 (WL) (Can LRB), this principle was put as follows:*
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> > *30 It is not the Board's task to reshape union priorities, allocate union resources, comment on leadership selection, second guess its decisions, or criticize the results of its bargaining. It is our task to ensure it does not exercise its exclusive majoritarian based authority unfairly or discriminatorily. Union decision makers must not act fraudulently or for improper motives such as those prohibited by human rights legislation or out of personal hostility, revenge or dishonesty. They must not act arbitrarily by making no or only a perfunctory or cursory inquiry into an employee's grievance. The union's duty of fair representation does not guarantee individual or group union decision makers will be mature, wise, sensitive, competent, effectual or suited for their job. It does not guarantee they will not make mistakes. The union election or selection process does not guarantee competence any more than the process does for those selected to act in other democratic institutions such as Parliament or appointees to administrative agencies.*
> >
> > *31 But the law does not condone all good faith action. Some action or inaction is such a total abdication of responsibility it is no longer mere incompetence — it is a total failure to represent (e.g. Forestell and Hall [41 di 179, [1980] 3 Can LRBR 491], supra. Some conduct is so arbitrary or seriously (or grossly) negligent it cannot be viewed as fair. This is especially so when a critical job interest of an individual is at stake.*
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> *[103] In Zalopski v Canadian Union of Public Employees, Local 21, 2017 CanLII 68784 (Sask LRB), a summary of the guiding principles for determining a fair representation case was provided, thereby developing the application of the principles set forth in the preceding citation and providing specific examples of limitations of the union's duty in this regard:*

[40] The Applicant in this case complains that the Union failed to represent him fairly in the prosecution of his promotional grievance. Many, if not most, duty of fair representation claims allege that a member's union failed to prosecute his or her grievance appropriately. It is not surprising, then, that a large body of jurisprudence has evolved about what principles should guide a labour relations board when assessing the merits of such claims. A helpful summary of these principles is found in Mwemera v United Brotherhood of Carpenters and Joiners of America, Local Union No. 2010 [2016 CanLII 8866 (AB LRB), aff'd 2017 ABQB 286]. There the Alberta Board stated as follows at para. 20:

> *This Board's decision in Reid v United Steelworkers of America Local Union No. 7226, [2000] Alta. L.R.B.R. LD-064 (at para. 3) summarizes some of the key principles underlying the duty of fair representation:*
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> > • *The Union need not take every grievance to arbitration. It need not take a grievance to arbitration just because the grievor asks the Union to do so. The Union is entitled to assess the merits of the grievance, the chances of success at arbitration, the costs of the arbitration process and other factors when deciding whether or not to advance a grievance to arbitration.*
> >
> > • *The Board focuses its examination on the Union's conduct and considerations while the Union represented the employee and in making its decision, rather than on the merits of the grievance, which is the question an arbitrator would answer.*
> >
> > • *The Union is entitled to make a wrong decision, as long as it fairly and reasonably investigates the grievance and comes to an informed decision.*
> >
> > • *The Union must give the employee a fair opportunity to present the employee's own case to the Union and to provide input on the result of the Union's investigation.*
> >
> > • *The Union should communicate fairly with the employee about all aspects of its representation. Communication with the employee can play a significant role in representation, but the union need not take direction from the employee or answer all questions to the employee's satisfaction nor must it act within the employee's time limits.*
> >
> > • *A Union does not breach its duty of fair representation just because it reaches a conclusion with which the employee does not agree.*
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> *[41] It is important to recall, as well, that the function of this Board in such matters is not to "second guess" or "sit on appeal" of a union's handling of a member's grievance. As Chairperson Love reminded us in Owl v Saskatchewan Government and General Employees' Union [:*

It is clear that a Union has carriage of grievances or, as has sometimes been stated, owns the grievance. It is also clear that the Board will not sit "on appeal" of a Union's decisions in how it conducts a grievance. At paragraph [24] of [Taylor v Saskatchewan Government and General Employees' Union 2011 CanLII 27606 (SK LRB)] the Board said:

> *With respect to the Applicant's complaint that the Union should have called more or different witnesses, this Board has previously stated that we will not, with the benefit of hindsight, sit "on appeal" of a trade union's decision on how it conducts its arbitrations, including which witnesses should been called, and/or what evidence should have been tendered and/or what arguments should have been advanced or abandoned, as the case may be. [Citations omitted.]*

[19] The Board recently in *Ha v Saskatchewan Polytechnic Faculty Association*, 2024 CanLII 126796 (SK LRB), and *Livingston v CUPE*, 2025 SKLRB 18 (CanLII) discussed the specifics of bad faith and discriminatory conduct. In general, bad faith conduct is conduct motivated by ill will and malice and discriminatory conduct is motivated by invidious and prohibited distinctions.

[20] The Board will consider whether Mr. Nezamloo has pleaded facts sufficient to establish a cause under each heading of the duty of fair representation.

Should the Board Dismissed the Allegation that the Union acted arbitrarily?

[21] The Union argues forcefully that the pleadings do not support a *prima facie* case of the duty of fair representation, and in particular that the pleadings do not disclose conduct that could be found as arbitrary as it relates to Mr. Nezamloo's termination.

[22] The Union puts particular emphasis on the issue that the Union is permitted to make errors, and errors without more do not constitute a breach of the duty. The Board agrees with this statement, however, the DFR Application goes beyond allegations of errors. The DFR Application alleges that the Union's has failed to exercise diligence or seriousness, failed to provide support to Mr. Nezamloo, and ignored communications from Mr. Nezamloo. These are allegations when read generously that could, if assumed to be true, have some chance of success in proving arbitrary conduct on behalf of the Union. If the Union failed to communicate and failed to conduct a proper review of Mr. Nezamloo's case, the facts could be found to constitute a breach of the duty of fair representation.

[23] These allegations would be comparable to the breach found in *Chad Eros v Saskatchewan Polytechnic Faculty Association (SPFA) and Saskatchewan Polytechnic*, 2021 CanLII 114229 (SK LRB). In that case the Board found the failure to investigate one issue and provide an explanation constituted a breach of the duty, as stated at paras 169-170:

> *[169] Mr. Eros insists that he was directed to attend the office for a 7.25-hour work day. There is no evidence that the Union investigated this allegation. If the hours of work provisions do address such a directive, then the Union should provide clear reasons explaining why it believes this is so. If not, then it is necessary for the Union to conduct a*

> *proper investigation and consider whether to bring a grievance with respect to this specific concern.*
>
> *[170] The failure to do any of these things is arbitrary conduct and a breach of the Union's duty of fair representation. Therefore, the Board will make an order directing the Union to address the issue of combining front-end loaded courses with a 7.25-hour work day by: providing clear reasons why the hours of work provisions address such a directive; or, conducting a proper investigation into the full details of the grievance, clearly turning its mind to the merits of the grievance, making a reasoned judgment about its success or failure, and if it decides not to proceed with the grievance, providing clear reasons for its decision.*

[24] The Board finds that if the facts pleaded in the DFR Application are proven, they have some chance of success and therefore the Board declines to dismiss the DFR Application as it relates to the claim that the Union acted arbitrarily. The DFR Application could and probably should plead further particulars, but this is not a reason to summarily dismiss the application. The DFR Application provides sufficient notice of the case to meet and has pleaded facts that if proven could establish a claim that the Union acted in an arbitrary manner.

Should the Allegations of discrimination and bad faith be summarily dismissed?

[25] Discriminatory conduct and bad faith conduct is more than simply arbitrary conduct. It requires specific facts to establish. Mr. Nezamloo has pleaded no facts that would support a finding of discriminatory or bad faith conduct.

[26] The main allegation relates to allegations of arbitrary and negligent review of the case, there are no facts pleaded that would support a finding of discrimination. Bare pleadings of the terms bad faith and discrimination are not sufficient without linking those pleadings to specific alleged facts. That link is not present in the pleadings, and even when read generously, there are no facts pleaded that would support an inference of discrimination or bad faith. The Board summarily dismisses the allegations in paragraphs of 4 and 7 of the Application that the Union acted discriminatorily or in bad faith.

Conclusion:

[27] As a result, with these Reasons, an Order will issue that the Application for Summary Dismissal in LRB File No. 011-25 is granted in part and the application in LRB File No. 003-25 is dismissed in part. The allegation that the Union's conduct was arbitrary is not summarily dismissed and can proceed.

[28] 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 **14th** day of **May, 2025.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson