**CHAU HA, Applicant v SASKATCHEWAN POLYTECHNIC FACULTY ASSOCIATION, Respondent and SASKATCHEWAN POLYTECHNIC, Respondent**

LRB File No. 154-23; July 22, 2025
Vice-Chairperson, Linda Zarzeczny, K.C. (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*
Citation: *Chau Ha v SPFA,* 2025 SKLRB 31

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| The Applicant, Chau Ha: | Self-Represented |
| Counsel for the Respondent, Saskatchewan Polytechnic Faculty Association: | Gordon Hamilton |
| Counsel for the Respondent, Saskatchewan Polytechnic: | Robert Affleck |

**Duty of Fair Representation – Failure to respond and communicate fairly and honestly – Breach Found**

**REASONS FOR DECISION**

**Introduction:**

**[1] Linda Zarzeczny, K.C., Vice-Chairperson:** This is the Board's decision with respect to an Application by Chau Ha filed on October 20, 2023. The Application was made under Section 6-59 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 (the "Act") against Saskatchewan Polytechnic Faculty Association ("the Union" or "SPFA"). It alleges that the Union breached the duty of fair representation it owed to her as an employee of Saskatchewan Polytechnic ("the Employer") with respect to Article 3.7.1 of the collective agreement ("CBA"), between the Union and the Employer which deals with whistleblower protection for members.

**[2]** For the reasons that follow, the Board has concluded that the Union breached the duty of fair representation, but that no remedy beyond a declaration, should be granted to Ms. Ha.

**Background:**

***Procedural Order***

**[3]** Section 6-111(1)(q) of the Act provides that the Board may determine any matter without an oral hearing. The Board has said that it may proceed in that way where it concludes that it has

sufficient information to fairly determine the matter and that it is procedurally fair to do so: *Stephen-McIntosh v SEIU-West*, 2025 SKLRB 2 (CanLII).

**[4]** In this case, the Board found that an oral hearing was not required. That decision was based on the Board's consideration of the Application, the Union's Reply, the written submissions and evidence filed by the parties in relation to the need for an oral hearing, and on the merits.

### *Ms. Ha's Request and the Union's Response*

**[5]** Ms. Ha's Application relates to a course of dealings that she initiated with the Union in relation to Article 3.7.1 of the CBA, which is as follows:

> *3.7.1 Whistleblower Protection*
>
> *No employee or Association representative may be disciplined for publicizing any alleged wrongdoings within Saskatchewan Polytechnic, if a wrongdoing has been brought through the formal Association structure and provided the employer has been informed of such instances and has been given a reasonable opportunity to remedy the problem.*

**[6]** More specifically, Ms. Ha sought the benefit of the protection against discipline provided by this Article, as she wanted to publicly disclose her concerns about three issues she identified in a September 20, 2023 email to the Union, as follows:

> *I would like to access this CBA article [3.7.1] and go public about the employer wasting taxpayer dollars on:*
>
> 1. *An employee engagement survey that does not measure EE for 7 years (no EE model and not a correlational study).*
>
> 2. *There are three OSS managers, a PH and 5 library supervisors for Library and Testing Services with a total of 75 employees. That's 9 supervisors: 75 employees (full-time, part-time and casual). That's 1 supervisor: 8 employees.*
>
> 3. *We have had two divisional meetings for the Division of Teaching and Learning, one right before COVID and one in April 2023. AVP Dr. Gillespie is committed to having one in April 2024. These are two days of meetings where it is mandatory that we engage in activities like: playing board games and paint by number. Approximately 230 employees drive, stay in hotels, gas, food, and two days of not working had (sic) a mandatory activity where we literally "paint by number" for 4 hours straight.*

**[7]** Ms. Ha's email then posed four questions:

> 1. *What is the documented procedure for this article?*
> 2. *What are my rights?*
> 3. *How will you ensure that union members don't get disciplined or fired by going public?*
> 4. *When can a member go public?*

**[8]** In response, the Union advised Ms. Ha that her email would be placed on the agenda of the "Union's EC" (Executive Committee). On October 4, 2023, the President of the Union, Bill Grosskleg, emailed Ms. Ha to advise that the EC had discussed her questions and had canvassed the union's FRO's (Faculty Relations Officers) for "insight as to how Article 3.7.1…is applied, and what steps need to take place before a member, or the Association could/should go public with an alleged wrong". Mr. Grosskleg then answered the four questions posed by Ms. Ha in her email, writing as follows:

> 1. *There is no documented procedure. The normal practice of the SPFA or an employee when they have a concern is for the employee to bring it to the employer for discussion to identify if the concern is in fact valid. If the concern is valid, we try to work with the employer or advocate to the employer for an appropriate change or remedy to the concern. Should that fail, SPFA has the right to enact the grievance process if it applies, make an application to the Sask LRB if applicable or if the Executive Council deems it prudent and if the alleged wrongdoing is so egregious that we feel the public should be dually informed, contact an appropriate media outlet…. No "Whistle Blowing" should ever occur unless all other avenues are exhausted.*
>
> 2. *As an employee, you have the right to raise concerns in a professional and articulated manner. The best avenue to do so is via your Association so as to preclude you from any direct criticism from the Employer. Your Association has a legislated responsibility to represent its members where concerns are identified and validated in the workplace…*
>
> 3. *The SPFA cannot guarantee a member will not be disciplined for whistle blowing. The best method for avoiding discipline that can be done is to vet concerns through the SPFA so we can determine with you if the concern is in fact valid. If it is valid, it will be brought to the employer for resolution. This requires levels of inquiry and discussion with the employer and the member.*
>
> 4. *…In the plainest language, a member of the Association should reserve from going public until a time that the concern is validated, all avenues to have the employer remedy the problem have been exhausted, and it is in the public interest to do so. In all cases, the SPFA would consult with its legal counsel to determine if it is in both the Association's and/or the members best interest to do so.*

**[9]** Having outlined the Union's view of the Article 3.7.1 procedure and Ms. Ha's rights, Mr. Grosskleg dealt with the three issues she had identified, as follows:

> *With regard to the examples you have provided, the SPFA Executive does not take issue with the employer's engagement survey as it is currently conducted. The employer has chosen the metrics for the evaluation and SPFA sees no wrongdoing by the employer.*
>
> *With regard to the supervisor to employee ratio, the SPFA is continuously made aware of the COS compliment via Appendix E of the CBA. We continue to monitor these numbers and if they become unjustifiable, we have an avenue to dispute as outlined in the Appendix (grievance).*

> *With regard to the PD event you mentioned, SPFA has heard from both sides of the argument. The majority of faculty we have discussed this with have indicated that they enjoy the events and see them as a pleasant release from their normal workday obligations. We do not see this as egregious or an exercise of wrongdoing by the employer.*

**[10]** Mr. Grosskleg's email concluded by inviting Ms. Ha to contact the Union if she needed further assistance. In response, Ms. Ha emailed Mr. Grosskleg on October 4, 2023 to advise that she had questions and concerns and to request a meeting on the record, to discuss what she described as complex issues. Ms. Ha states that her October 4th email was ignored. The Union did not take issue with that assertion, and there is no evidence that a meeting occurred.

### *The Application and Replies*

**[11]** Ms. Ha filed the Application a month later, alleging that the Union had contravened s. 6-59 of the *Act*, as follows:

> *6.59 Failure to represent by acting in an arbitrary and discriminatory manner with bad faith hostility in regards to article 3.7.1 (please see attached).*

**[12]** The Application seeks various forms of relief against the Union, the FRO's, and the EC, including a letter of apology to Ms. Ha for failing to represent her; reprimands of the FRO's and the EC; an organizational review of the Union by an outside consultant; and the imposition of a performance plan for the FRO's. It also asks for an order that the Union pay her $294,000 and $25,000 in moral damages.

**[13]** In Exhibit B, attached to the Application, Ms. Ha clarified the acts and omissions of the Union that she says constitute a breach of the duty of representation, including that the Union:

> a. *did not have a whistle blowing policy and procedure to implement her right to blow the whistle under Article 3.7.1;*
>
> b. *concluded that it had the right to decide if her concerns were valid;*
>
> c. *decided that her concerns were not valid and that she accordingly had no rights under s. 3.7.1; and*
>
> d. *ignored her request to meet to discuss her concerns, as it had in relation to other complaints she had made.*

**[14]** Ms. Ha also alleges that the Union had acted with a lack of integrity, accountability, ethics, competency and professionalism in relation to this Article 3.7.1 dispute and her other complaints. She provided further submissions in support of those allegations in a November 27, 2024 document titled "Facts and Disclosure Documents".

**[15]** The Union filed its reply to the Application (the "Reply") on November 3, 2023, seeking summary dismissal of the Application pursuant to ss. 111(1)(o) and (p) of the Act. Among other things, the Reply takes the following positions that are addressed in this decision:

> *a. Section 6-59 creates a duty for the Union to represent Ms. Ha with respect to her rights pursuant to the CBA or Part 6 of the Act. The only right created by Art. 3.7.1 of the CBA is protection from discipline for whistleblowing. As Ms. Ha has not been disciplined, there is no breach of the duty to represent her under this Article.*
>
> *b. The obligation to establish a procedure for whistleblowing is that of the employer, not the Union.*
>
> *c. The Union has no obligation to accept and promote a member's concerns about how the Employer is managed or mismanaged.*
>
> *d. The Union investigated and carefully considered the issues identified by Ms. Ha, as specified in Mr. Grosskleg's October 4, 2023 email.*
>
> *e. Ms. Ha has provided no factual basis for the allegation that her rights under the CBA have been ignored or dealt with in an arbitrary, discriminatory or bad faith manner.*

**[16]** The Employer filed its Reply on November 3, 2023, stating that this dispute is entirely between the Union and Ms. Ha. However, it also asserts that the complaint is frivolous, vexatious, and designed solely for the purpose of harassing and annoying the Union and Employer and accordingly constitutes an abuse of this Board's process.

### *The Grosskleg Affidavit*

**[17]** The Union filed a December 3, 2024 affidavit of Mr. Grosskleg (the "Affidavit") in support of its position. In the Affidavit, Mr. Grosskleg explains that when Ms. Ha first approached the Union seeking permission to speak to the media about financial mismanagement by the Employer, permission was denied. He notes that her concerns were identified in the Application and in Exhibit B, and describes those concerns as follows:

> *9. …[Ms. Ha's] concerns focused on how her employer, Saskatchewan Polytechnic, wasted taxpayer dollars. The examples she cited were threefold…*
>
> *10. The SPFA agrees with [Ms. Ha] that her observations of waste have some validity even though others did not and may not share the full extent of her concerns. However, the SPFA was unwilling to bring those forward on her behalf to…her employer for the reasons set out herein. (emphasis added)*
>
> *11. The relevant collective agreement provision is found in Article 3.7.1…*
>
> *12. To my knowledge, this is the first time the SPFA has been asked to bring up an alleged wrong doing through the SPFA formal Association structure.*

**[18]** Mr. Grosskleg notes that before Ms. Ha had identified her concerns, the Union had been involved in collective bargaining with the Employer. He deposes that "*[t]he SPFA has many other concerns about the financial mismanagement and waste that are a higher priority for the [SPFA] and its members*" that "are being expressed within the collective bargaining process". He states that these included an increase in the number of management positions, the $598,688 salary paid to the President of the Employer, and that certain managers have received salary increases that exceed inflation, while faculty members have not.

**[19]** Having identified the Union's concerns, Mr. Grosskleg explains how they determined its response to Ms. Ha's request for assistance pursuant to Article 3.7.1, as follows:

> *16. The Applicant's concerns about financial mismanagement are de minimus in comparison to the larger financial concerns of the SPFA that impact most if not all of its members.*
>
> *17. As the President of the SPFA, I supported the conclusion of the Faculty Relations Officer and others on the Executive Committee who determined that the more significant financial concerns were deserving of public comment at the appropriate time, and that the Applicant's concerns were relatively insignificant. On that basis, her concerns were not referred any further through the SPFA's formal Association structure and permission was not granted to her to speak publicly with the support of the SPFA.* (emphasis added)

**Written Submissions by the Parties:**

**[20]** Ms. Ha filed a document titled "List of Chau Ha's Fact and Disclosure Documents" on November 27, 2024, which identifies and responds to positions taken by the Union in relation to Article 3.7.1 and in response to her request to benefit from that provision. Ms. Ha asserts that the Union has lied, and has acted arbitrarily, in a biased and hostile manner, incompetently and unethically. The Board finds that, among other things, this "List" takes issue with the following positions taken by the Union that are of particular interest in the context of this Application:

a. *Article 3.7.1 only provides protection from discipline.*

b. *The procedure under Article 3.7.1 is the responsibility of the Employer;*

c. *The Union is only obliged by s. 6-59 to represent a member if there is a request to file a grievance, including as to discipline, not to accept or advance concerns raised by a member about mismanagement, which are to be dealt with through the CBA;*

d. *The Union reasonably turned its mind to and investigated the three instances of alleged wrongdoing that she raised; and*

e. *The Union reasonably concluded there was no wrongdoing.*

**[21]** On December 9, 2024, Ms. Ha filed a response to Mr. Grosskleg's Affidavit titled "Chau Ha Reply to Testimony from SPFA's President Bill Grosskleg" (Reply to Testimony) and a document titled "Written Argument". In the Reply to Testimony, Ms. Ha reiterates her point as to the lack of a structure to enable members to access Article 3.7.1. She disputes Mr. Grosskleg's evidence that concerns as to financial mismanagement such as those she has raised are to be dealt with through the CBA, submitting that Article 3.7.1 deals with this issue. She characterizes the dismissal of her concerns as biased and arbitrary, arguing that the Union did not ask her for evidence, interview her, or share their decision-making criteria. She states that there is no evidence that the Union turned its mind to her issues.

**[22]** In the Written Argument, Ms. Ha fleshes out her position as to the lack of a procedure to access Article 3.7.1, what she characterizes as a lack of procedural fairness by the Union in responding to and dismissing her request, resulting in her inability to rely on the protection granted by Article 3.7.1. She submits that the duty of fair representation imposed by s. 6-59 of the Act is not limited to discipline. She describes what she contends is evidence of bias and hostility in other dealings between her and the Union. She also claims that she is entitled to competent representation and lists what she views as evidence of incompetence.

**[23]** Finally, Ms. Ha requests that the Board order various forms of relief, including that the Union pay for a lawyer to represent her, reprimands, apologies, an external review to determine if the Union is "a functioning union", a performance improvement plan for FRO's and a harassment investigation. She also claims financial compensation for her prep time at her usual salary, expenses, moral damages, and damages for breach of contract in the amount of $56,950. She seeks $1,000,000 for pain and suffering.

**[24]** The Union filed Written Submissions on December 9, 2024 (Final Submission). It first affirms that it continues to rely on its October 29, 2024 Written Submission in relation to the question of whether an oral hearing was required (Procedural Submission). The Procedural Submission takes the following positions:

> *a. Ms. Ha must present evidence that the Union has acted in an arbitrary, discriminatory or bad faith manner in relation to her specific concern that is the subject of the Application.*
>
> *b. The Application should focus solely on whether the alleged wrongdoing "has been brought through the formal Association structure".*
>
> *c. The Union can explain in a sworn affidavit why it rejected Ms. Ha's concerns and disagreed that they justified the attention of the Union.*

> *d. The foundational question is "what degree of consideration and process is required by the collective agreement when an employee brings forward a concern about the employer to the Association? If the Association simply disagrees with the employee…what degree of due process or natural justice is the employee entitled to receive in light of the specific wording of Article 3.7.1?"*

**[25]** Having affirmed these submissions, the Union notes that Article 3.7.1 only provides protection from discipline if the conditions specified in that Article have been met. It then advances the following argument based on Mr. Grosskleg's Affidavit evidence as to why the Union did not pursue the alleged wrongdoing identified by Ms. Ha:

> *7. …*
>
> *d. The SPFA considered her concerns and did not disagree with her concerns. However, her concerns were substantially minor in comparison to other concerns under review by the SPFA, and on that basis they were not "brought forward through the formal Association structure".*
>
> *e. The evidence presented in the Affidavit of Bill Grosskleg illustrates the SPFA's serious concerns over how taxpayers dollars are being spent by Saskatchewan Polytechnic… The more significant concerns of the SPFA and its general membership have been raised "through the formal Association structure" and presented in collective bargaining as part of the SPFA's wage proposal…*
>
> *f. The SPFA is unaware of any provision in the collective agreement that would permit a grievance, which is a dispute arising from the collective agreement, regarding the manner in which Saskatchewan Polytechnic decides to spend taxpayer dollars, so long as it is not breaching the collective agreement when it spends those funds…*

**[26]** The Final Submission also asserts that the Grosskleg Affidavit confirms that, as explained in the October 4, 2023 email from Mr. Grosskleg, the Union "carefully considered (Ms. Ha's) concerns and consciously chose not to take them 'up the ladder' to Saskatchewan Polytechnic". Further, it asserts that the Union has "grave concerns with the objectives underlying (the Application)", which it characterizes as "an attempt by one union member to use a complaint to the Board to control the messages, the activities and the priorities of the Faculty Association without having to submit to the will of the majority of the union members". As the Union puts it:

> *In this instance, the Applicant has not been disciplined by her employer and there is no jeopardy to her. This is simply a situation where the Applicant thinks she knows better about what needs to be said and done than those elected or hired to deal with labour relations matters. The Board should not walk down the path of second-guessing a decision in these circumstances.*

**Analysis:**

***Did the Union have a duty of fair representation to Ms. Ha?***

**[27]** Ms. Ha's Application can succeed only if the Union had a duty of fair representation pursuant to s. 6-59 of the *Act* that was engaged by the request for access to the benefit provided by s. 3.7.1 of the CBA? Section 6-59 is as follows:

> *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.*

**[28]** In its Reply, the Union asserted that there could be no duty of fair representation in these circumstances, as Ms. Ha had not been disciplined. However, it took a different approach in the Procedural Submission and its Final Submission, taking guidance from the Strike Decision. Although the Union does not expressly concede that the duty of fair representation applied, it approaches the issue on that basis.

**[29]** Specifically, in the Procedural Submission, the Union submits that Ms. Ha "must present evidence that the Union acted in an arbitrary, discriminatory or bad faith manner in relation to the specific concern that is the subject of the Application". It says that the scope of the Application should focus on "whether the alleged wrongdoing has been brought through the formal Association structure". It also characterizes the issue to be decided by the Board as follows:

> *The foundational question underlying the scope of this Application is: what degree of consideration and process is required by the collective agreement when an employee brings forward a concern about the employer to the Association? If the Association simply disagrees with the employee bringing forward the concern, what degree of due process or natural justice is the employee entitled to receive in light of the specific wording in Article 3.7.1?*

**[30]** In the Board's view, this statement assumes that a duty was owed to Ms. Ha, and that the issue is whether it was discharged. However, and not only because the Union's position evolved in this way, it is necessary to explain both why there was a duty of fair representation in these circumstances, and what was required of the Union.

**[31]** In the *Saskatchewan Polytechnic Faulty Association v Chau Ha*, 2024 CanLII 13533 (SKLRB) or "the Strike Decision", the Board held that it is "arguable that the Union has a duty to

fairly represent the Employee when deciding whether to accept the Employee's concern as valid in the context of Article 3.7.1". It explained this conclusion as follows:

> ***[21]*** *Most complaints pursuant to section 6-59 arise in the context of an employee's request for or experience with a grievance or an arbitration or both. However, a grievance request is not necessarily a prerequisite to finding that a union owes a duty of fair representation. For example, a union has been found to owe a duty to an employee in disciplinary meetings and prior to discipline being imposed.[8] In Ferguson v CPAA[9], the Canada Labour Relations Board found that the union was required to prepare the employee so that she may be in the best position to demonstrate that no discipline was warranted.[10] Thus, given the right context, it is arguable that a union owes a duty to an employee in disciplinary meetings.*
>
> ***[22]*** *Relatedly, it is common for this Board to assess an alleged breach in context, which will include the union's conduct at any discipline meetings, before discipline is imposed.*
>
> ***[23]*** *If a union is required to represent an employee fairly in anticipation of potential discipline, then it is at least arguable that a union is required to represent an employee when making a decision that will impact whether that employee is protected from discipline later on, especially when the CBA establishes the Union as the first formal point of contact.*
>
> ***[24]*** *This puts the emphasis on the Union's conduct not after the discipline but before. The usual order of events is reversed but the Employee's right in relation to the Employer still flows from the CBA.*
>
> ***[25]*** *Labour boards in Canada have found a vast array of arenas in which a union does not have a duty of fair representation to an employee. Examples include criminal proceedings, human rights complaints, workers' compensation appeals, and employment insurance, among others.[11] What most of the examples share in common is that the rights in relation to the employer that are being claimed do not flow from the collective agreement. In this case, the Employee's right to protection from discipline is found in the CBA. Given the materials before the Board, the Union could arguably be described as the gatekeeper of those rights.*

**[32]** It is the Board's view that this line of reasoning – which was necessarily characterized only as "arguable" in deciding an application to strike – is the correct approach in the context of Article 3.7.1. That Article contemplates whistleblowing by an employee and by Association representatives. It provides protection to a whistleblower, but only "if a wrongdoing has been brought through the formal Association structure and provided the employer has been informed of such instances and has been given a reasonable opportunity to remedy the problem". This contemplates a process in which the Union takes the issue to the Employer.

**[33]** Thus, as the Board observed in the Strike Decision, the Union was the gatekeeper of Ms. Ha's rights under Article 3.7.1. It had to decide whether it was satisfied that the three issues she had identified constituted "wrongdoing" within the meaning of the provision. If it was, it had to determine whether and how it would advance Ms. Ha's concerns through the "formal Association

structure". If the Union did not pursue Ms. Ha's complaint in this way, the conditions necessary to engage her rights could never be met.

**[34]** In the Board's view, the Union was obliged to comply with the duty imposed by s. 6-59 in considering Ms. Ha's request. Ms. Ha submits that because s. 3.7.1 is in the CBA, the Union was obliged to establish a formal process relating to whistleblowing complaints. She also argues that the Union was required to act in accordance with the principles of natural justice in determining whether the issues she identified constituted wrongdoing, and to pursue those issues through that formal process if they did.

**[35]** In the Board's view, this overstates the Union's duty of fair representation in these circumstances. As the Board observed in the Strike Decision, a request by a member for a union to investigate a grievance is a useful comparator. As the Board there wrote, referring to the particulars of Ms. Ha's claim against the Union:

> ***[28]*** *Together, these allegations might be compared to an allegation that a union has failed to investigate a matter before deciding whether to file a grievance. The absence of a formal process for accepting and considering grievance requests may impair the union's decision-making function. The Board may consider whether a union has failed to properly investigate the matter. The Board's focus is on the conduct of the union, and specifically, on whether the union complied with its duty to fairly represent the employee. Its focus is not, generally, on whether the internal process is problematic, separate and distinct from whether, in following that process, the union has breached its duty. The process and how it was applied, however, may be relevant to the Board's determination.*

**[36]** The fact that the Board does not focus on a union's internal process in and of itself reflects the nature of the duty. It is also consistent with the well-established principle that the duty does not apply to the internal affairs of a union: *COPE, Local 397 v Kerr*, 2025 SKLRB 25 (CanLII). That is so because, as the Board observed in that case:

> ***[34]*** *The duty of fair representation is a duty owed by the Union in its representation of members in relation to collective bargaining and Part VI rights: Saskatchewan Government and General Employees' Union v Lapchuk, 2025 SKKB 53 (CanLII); Ha v Saskatchewan Polytechnic Faculty Association, 2024 CanLII 126796 (SK LRB); J.C. v Regina Police Association Inc., 2023 CanLII 99838 (SK LRB). For the duty to apply, the case must relate to the matters set out in s. 6-59. This case is not; it is about internal operations of the Union.*

**[37]** In *Saskatchewan Government and General Employees' Union v Lapchuk*, 2025 SKKB 53 (CanLII), Megaw J. reviewed the law relating to the duty of fair representation in relation to a grievance. He referred with approval to the following passage in *Canadian Merchant Service Guild*

*v Gagnon*, 1984 CanLII 18 (SCC), [1984] 1 SCR 509 at 527 [*Gagnon*], which has repeatedly been applied by the Board:

> *The following principles, concerning a union's duty of representation in respect of a grievance, emerge from the case law and academic opinion consulted.*
>
> > *1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.*
> >
> > *2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.*
> >
> > *3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.*
> >
> > *4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.*
>
> *5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.*

**[38]** In the Board's view, these principles apply equally to the Application of the duty of fair representation in this case. In the language of *Gagnon*, the Union had a duty to fairly represent Ms. Ha in considering her request that the Union pursue the three issues she identified pursuant to s. 3.7.1. However, the Union was not obliged to document a distinct process to deal with whistleblowing, including employee allegations of misconduct in general or Ms. Ha's Article 3.7.1 request in particular. Nor was it required to comply with the principles of natural justice; it was sufficient to deal with the request in a manner that would enable it to have sufficient information to make an informed decision, and to communicate fairly with Ms. Ha: *Zalopski v Canadian Union of Public Employees, Local 21, 2017 CanLII 68784* (Sask LRB) at para 40, citing *Mwemera v United Brotherhood of Carpenters and Joiners of America, Local Union No. 2010* [2016 CanLII 8866 (AB LRB), aff'd 2017 ABQB 286.

**[39]** Further, the Union was not required to pursue the three issues Ms. Ha identified merely because it agreed that they had some merit. Rather, the Union had the discretion to decide whether it considered these issues to be wrongdoing within the meaning of s. 3.7.1 and if it did, whether it would pursue these issues with the Employer as contemplated by that provision.

**[40]** The Union was required to exercise its discretion in good faith, objectively and honestly, taking account of the nature and significance of the alleged wrongdoing and its consequences for the legitimate interests of the Union and its members, including Ms. Ha. This could, for example, include competing demands on the Union resources and the potential impact on other dealings between the Union and the Employer. In making these decisions, the Union could not act in an arbitrary, capricious, or discriminatory fashion. It was also required to act competently, with integrity, without serious or major negligence, and without hostility toward Ms. Ha. These principles are reflected in the Board's summary of the law relating to arbitrary, discriminatory or bad faith conduct by a union in *Applicant v SEIU-WEST*, 2024 CanLII 64163 (SK LRB):

> ***[108]*** *In Ward, the Board explained the prohibition against conduct that is "arbitrary", "discriminatory", and "bad faith":[6]*
>
> > *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 favoritism. 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 must take a reasonable view of the problem and make a thoughtful decision about what to do.*
>
> ***[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.*
>
> ***[110]*** *In reviewing a union's actions for the presence of arbitrariness, the Board has often relied on Rousseau[8], in which it was said:*
>
> > *Through various decisions, labour boards, including this one, have defined the term "arbitrary." Arbitrary conduct has been described as a failure to direct one's mind to the merits of the matter; or to inquire into or to act on available evidence; or to conduct any meaningful investigation to obtain the data to justify a decision. It has also been described as acting on the basis of irrelevant factors or principles; or displaying an indifferent and summary attitude. Superficial, cursory, implausible, flagrant, capricious, non-caring or perfunctory are all terms that have also been used to define arbitrary conduct. It is important to note that intention is not a necessary ingredient for an arbitrary characterization.*

***Did the Union comply with the duty of fair representation?***

**[41]** As noted above, in its Final Submission the Union questions Ms. Ha's objectives in pursuing this Application. It suggests that this is an inappropriate and anti-majoritarian attempt to control the Union's agenda by a member "who thinks she knows better about what needs to be said and done than those elected or hired to deal with labour relations matters".

**[42]** The Board does not agree. Article 3.7.1 was negotiated by the Union and the Employer. It does not say that a member can whistle blow only if they first get permission from the Union. Rather, it provides that a member or a Union representative who blows the whistle about wrongdoing within the meaning of that Article cannot be disciplined, but only if that wrongdoing has first been taken through the "formal Association structure" and the employer has been informed of such instances and been given a reasonable opportunity to remedy the problem.

**[43]** Ms. Ha was entitled to approach the Union in an attempt to benefit from that provision, as she wanted to blow the whistle. She was also entitled to take issue with the Union's refusal to pursue the issues she identified. There is nothing inappropriate or anti-majoritarian in any of this. The Union, in turn, was obliged to deal with her request in a manner that complied with the duty imposed by s. 6-59, despite that the Union may have thought her to have been unduly persistent with her complaints. It is clear that the Union did not understand that this was the effect of Article 3.7.1.

**[44]** In the Board's view, it is entirely understandable why Ms. Ha took issue with the Union's response and has pressed on with this Application. Mr. Grosskleg's October 4, 2023 email offered her a cursory and, as Mr. Grosskleg later disclosed in his Affidavit, an incomplete explanation of its reasons for responding as it did. It invited her to ask further questions and then ignored her email requesting a meeting. Faced with this impoverished response, she launched the Application and was told by the Board in the Strike Decision that the duty of fair representation might have been engaged, despite the Union's assertion that no duty could arise because she had not been disciplined.

**[45]** Further, while Mr. Grosskleg advised Ms. Ha in his October 4, 2023 email that two of her three complaints did not constitute wrongdoing, his Affidavit disclosed different reasons for the Union's response. As noted above, he deposed that "[t]he SPFA agrees with [Ms. Ha] that her observations of waste have some validity" and that it did not pursue them with the Employer only

because it was pursuing more important financial issues through collective bargaining and they considered her concerns to be "*de minimus*".

**[46]** It is the Board's view that by acting in this way, the Union did not fully comply with the duty of fair representation. The Union responded promptly to her September 20, 2023 email. However, it should not have invited further enquiries from Ms. Ha and then ignored Ms. Ha's request for a meeting. Nor should it have explained its refusal to take her issues forward as it did in Mr. Grosskleg's October 4, 2023 response, if the reasons included the collective bargaining considerations first disclosed in the Grosskleg Affidavit. It would have been possible for the Union to refer to this consideration in a fashion that did not compromise the Union's position in those negotiations.

**[47]** These acts and omissions by the Union constituted breaches of the duty to communicate fairly and honestly with Ms. Ha. However, the Board is not persuaded that the Union otherwise breached its duty.

**[48]** In particular, having reviewed all of the relevant evidence and submissions from the parties bearing on Ms. Ha's allegation that the Union was guilty of arbitrary, discriminatory or bad faith conduct, the Board is not satisfied that the Union acted in any of these prohibited ways. The Board notes in this context that Mr. Grosskleg's October 4, 2023 email expressly states that the Union did not view the conduct described by Ms. Ha in relation to performance reviews and retreats as wrongdoing. It also says that it is continuously aware of the supervisor-employee ratios and that they are not unjustifiable. In substance, that too is a determination that there was no wrongdoing.

**[49]** The Board takes no issue with these conclusions, which are sufficient justification in and of themselves for the Union to have decided that it would not pursue Ms. Ha's complaints. Indeed, although it is not necessary for the Board to decide the point, it is arguable that these actions could not constitute "wrongdoing" within the meaning of Article 3.7.1, absent evidence of nepotism, breaches of Employee policies, or some other impropriety bearing on the Employer's decisions relating to these issues.

**[50]** Nor would it be appropriate for the Board to second guess the Union's decision that it was a better strategy to take different financial issues to the bargaining table. The Board notes the following observations by Megaw J. in *Lapchuk* in this context:

> *[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:*
>
> > *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.*

**[51]** Although both *Lapchuk* and *Haley* related to a grievance, the same basic principles constrain the Board in this case.

**[52]** All of this leads the Board to conclude that while the Union did not fully comply with its duty of fair representation, no remedy, beyond a declaration, should be granted to Ms. Ha. Many of the remedies sought by Ms. Ha ask that the Board intervene in an inappropriate manner in the priorities, affairs and governance of the Union. Further, the Board is satisfied, based on the nature of Ms. Ha's complaints and the Union's comprehensible conclusions that the issues identified by Ms. Ha did not constitute wrongdoing, and that they were *de minimus.* Further, the Board understands the Union's position that those issues should not be pursued due to the Union's strategy in the collective bargaining, that nothing turned on the Union's relatively minor breaches of its duty, which appear to have resulted from its misunderstanding of the meaning of Article 3.7.1. Simply put, the Union would have taken the same course regardless of whether it had met with Ms. Ha. Given the nature of the issues identified by Ms. Ha, the Board cannot say the Union did not have sufficient information to respond as it did on October 4, 2023. Further, there is nothing in the record to suggest that Ms. Ha had additional information or insights that she could have shared in a meeting that might reasonably have been expected to change the Union's initial position about the issues. Accordingly, no purpose would be served by ordering that the Union reconsider Ms. Ha's request.

**Conclusion:**

**[53]** For these reasons, the Board finds the Union committed minor breaches of the duty of fair representation that it owed to Ms. Ha pursuant to s. 6-59 relating to her request to access the protection provided by Article 3.7.1 of the CBA, but that no further remedy, beyond a declaration, should be granted. An appropriate Order will be issued with these Reasons.

**DATED** at Regina, Saskatchewan this **22nd** day of **July, 2025.**

**LABOUR RELATIONS BOARD**

Linda Zarzeczny, K.C.
Vice-Chairperson