

SUSANNA PICHULA, Applicant v CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 5430, Respondent and SASKATCHEWAN HEALTH AUTHORITY, Respondent

LRB File No. 015-25; September 26, 2025

Chairperson, Kyle McCreary (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act*)

Citation: *Pichula v CUPE*, 2025 SKLRB 45

For the Applicant, Susanna Pichula:

Self-represented

Counsel for the Respondent, CUPE, Local 5430:

Andrew Restall

Counsel for the Respondent, Saskatchewan Health Authority:

Paul Clemens

**Duty of Fair Representation – Alleged Arbitrary Conduct – Breach not found
– Union not required to take specific action – Union considered issue and
provided advice – Advice does not reach the standard of arbitrary**

REASONS FOR DECISION

Background:

[1] Kyle McCreary, Chairperson: Susanna Pichula (the “Applicant”) has filed a duty of fair representation application under Section 6-59 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 (the “Act”) against CUPE, Local 5430 (the “Union”) in relation to how the Union addressed the Applicant’s issues with her employer, the Saskatchewan Health Authority (the “SHA”).

[2] This matter proceeded to pre-hearing with the Board. The parties were unable to resolve the matter at pre-hearing.

[3] On July 8, 2025, the Board directed this matter to be heard by written submissions.

[4] In addition to the application and reply, the Board has received:

- a. a sworn Statement of Facts from the Applicant;
- b. affidavits of Verna Friesen and Craig Thebaud from the Union;
- c. an affidavit of Shauna Janzen from the SHA; and
- d. briefs of law from the Union and the SHA.

[5] Based on the review of these materials, the Board finds the following facts.

[6] The Applicant is an employee of the SHA at the Parkland Integrated Health Centre. The Applicant is currently on leave from that position.

[7] Commencing sometime in 2024, the Applicant began having issues with management at SHA. There was a significant amount of dispute relating to certain leaves the Applicant sought in early 2024. The Union advised the Applicant that it may file a grievance in relation to the refusal to provide paid leave. The Union was able to reach a resolution with the SHA and did not see a need to file a grievance. The Applicant was eventually paid for the leave.

[8] The Applicant had interpersonal issues with her manager and some co-workers. Ms. Friesen engaged with the Applicant and the SHA on behalf of the Union regarding these issues.

[9] On August 22, 2024, the Applicant emailed her manager at the SHA raising various issues.

[10] On September 3, 2024, the Applicant resigned a part-time position with the SHA.

[11] On October 8, 2024, the SHA had a meeting with the Applicant. The Union was present. The Applicant takes issue with the questions the SHA asked the Applicant in the meeting and the veracity of the complaints raised by the SHA.

[12] October 9, 2024, the Applicant took a leave of absence from the SHA. The Applicant also sent an email raising her various workplace concerns to Ms. Friesen. Ms. Friesen had advised against filing a formal harassment complaint but provided it as an option as well as the message the Applicant sent. The Union subsequently shared the Applicant's concerns with the SHA.

[13] At some point in 2024, the Applicant began working for another employer.

[14] On November 12, 2024, the SHA advised the Union that when the Applicant returned to work, the SHA would issue a non-disciplinary letter of expectation.

[15] On January 2, 2025, Mr. Thebaud on behalf of the Union responded to the Applicant.

I have reviewed your letter.

Firstly, you seek to remove notes from a meeting from your file. There isn't a way for the union to require the employer to remove things from your file unless it violates the collective bargaining agreement. Under article 10 documents on your file are to be removed after 2 years. Therefore, on October 9th, 2026, you can ensure the notes from the meeting are removed. There is no language that governs what an employer is allowed to put into your

file and nothing in common law would suggest there are any limits. There would be common law limits to what the employer might say about you to other that would be libelous.

Secondly, you seek to be reinstated into a part-time position. At this point to are significantly outside the time limits stipulated in the grievance procedure. Is there a reason for the delay? Have you already made a complaint to the employer about your treatment? Do you still hold relief at the same location and if so, what is it about the part-time position that you were unable to continue in compared to the relief work?

Thirdly, you are seeking an apology. The Union can not force an employer or employee to apologize for something. The Union can grieve if an employee is unsafe at work, and require the employer to remedy the safety issue.

[16] The Applicant sent a reply to Mr. Thibaud on January 11, 2025. The substance of the reply was as follows:

Is it okay to keep a meeting on my file that was based on lies and wrong dates?? Did Verna not send my file to you?? She said she would report it off to the union and that this would be dealt with. Please look into this and look at my file. So it is okay for the union to allow managers to call meetings based on lies?? Verna Friesen asked me to write a letter wen we have a phone conversation after the labour relations meeting ended. The letter is one small piece of what actually happened. Please look at my file. This matter needs to be resolved before I return to work in May.

[17] Mr. Thibaud did not receive this email and was unable to locate it in a search of his email.

[18] The Union had subsequent exchanges with the Applicant with the Union having forwarded the letter of the Applicant on to the SHA and the SHA taking the position that it would address the issues when the Applicant returned to work, and the Applicant taking the position the issues needed to be addressed prior to the Applicant's return.

[19] The Union and the Applicant have had contact throughout the time period in issue. The Applicant complains that the Union did not respond to every message, but the Board finds that the Union was generally responsive and did raise issues with the SHA.

Relevant Statutory Provisions:

[20] The duty of fair representation is codified in s. 6-59 of the Act:

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.

[21] The Board has the power to determine this matter without an oral hearing pursuant to s. 6-111(1)(q) and to accept affidavit evidence pursuant to s. 6-111(1)(e):

Powers re hearings and proceedings

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;

...

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

...

Analysis and Decision:

Determination without an oral hearing

[22] The Board has determined to hear this matter on a written record. The Board has reviewed the materials filed and finds that each party had notice of the case to meet and an opportunity to meet it. The record before the Board is sufficient for the Board to determine the question of whether the Union has breached its duty of fair representation under s. 6-59 of the Act.

Duty of Fair Representation

[23] The duty of fair representation requires a union to represent a member in a manner that is not arbitrary, discriminatory or in bad faith as it relates to matters under Part VI of the Act and the applicable collective bargaining agreement.

[24] The duty of fair representation does not entitle the Board to sit in appeal or to apply a negligence standard to the Union's conduct, as discussed by the Board in *Livingston v CUPE*, 2025 SKLRB 18 (CanLII):

[60] Thus, the Board does not sit in appeal of the Union's decision in this case, nor does the Board consider whether the Union was negligent or made errors in considering, conducting, and settling the grievance. The Board only considers whether the Union acted in a manner that was arbitrary, discriminatory or in bad faith. As relates to whether gross negligence constitutes its own head of liability, the Board considers grossly negligent conduct to be inherently arbitrary and is considered under that heading. It is Mr. Livingston that bears that onus of establishing that the Union breached its duty.

[25] The Saskatchewan Court of King's Bench commented on the limited scope of the duty 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:

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.

[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:

- *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.*

[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.]

[26] There are no allegations or facts that could support a finding of bad faith or discriminatory conduct. The Board will consider whether the Union's conduct is arbitrary. In considering whether the conduct is arbitrary, the Board is concerned with whether the Union considered the issues raised by the Applicant fairly, the Board is not concerned with whether they were considered correctly or that the advice provided to the Applicant in response to issue was correct.

[27] On a review of the record filed, the Board finds that the Union has considered the issues raised by the Applicant fairly and has taken actions and provided advice in response. The Union is not required to take the specific action sought by the Applicant. The Applicant has not met the onus of demonstrating a breach of the duty of fair representation.

[28] The crux of the Applicant's complaint related to alleged harassment by the SHA. The Applicant has not filed a formal harassment complaint; the Board accepts that the Applicant has been advised that filing a formal harassment complaint is an option. The Board accepts that under the SHA's policy and the collective bargaining agreement, the filing of a formal complaint and the Employer taking or not taking action in response is a prerequisite to filing a grievance. The Union is not required to file a grievance when the Applicant has not taken the steps required to file one under the collective bargaining agreement.

[29] The Board finds the Union has communicated fairly with the applicant. It has represented its understanding of the applicable rights. The Applicant complains about the content of various advice. The Board declines to parse this advice at the level requested. Whether the Union suggested or told the Applicant to take leave is immaterial. It is a voluntary leave that the Applicant can return from. It is not arbitrary conduct to suggest protecting an individual's mental health by taking a short leave from a workplace.

[30] The Board does find that there has been miscommunications between the Applicant and the Union. The Applicant believes that the Union advised she would be paid for shifts while on leave. Ms. Friesen states she never would have provided this advice. The Board accepts both of these statements and finds that the Applicant has misunderstood the Union's advice. This misunderstanding or lack of clarity in the advice provided is not arbitrary conduct.

[31] The Board would also note that most of the relief requested is directed against the Employer, as stated in the Application:

The outcome that I am seeking from the board is to help resolve this issue. I want my job to be protected when I return to work in May 2025. I want the labour relations meeting that was held on October 8th, 2024 removed from my file as it was based on lies and false accusations. I also would like the harassment from Tayo to stop when I do return to work.

These are workplace issues related to the SHA's management of the workplace. The Union is not responsible for the SHA's management of the workplace. The Union is responsible for fairly representing the Applicant under the Collective Bargaining Agreement. The Union has

considered and responded to the Applicant's concerns in a fair manner, this discharges the Union's duty under s. 6-59 of the Act.

[32] As it relates to the Applicant's request that the Union force the SHA to remedy the situation prior to the Applicant's return from leave, the duty of fair representation also does not require the Union to prevent future employer action. The application relates to a meeting that the Employer has taken no action in relation to. The Employer states that they do not intend to take disciplinary action as the result of the meeting. However, even if the Employer did take disciplinary action, the Union can only assess and potentially grieve discipline after it has occurred, the Union is not expected to preemptively grieve potential actions of the Employer.

[33] As it relates to the issue of failure to grieve the harassment issue, the Board finds this application is premature. The Union has raised the issue with the Employer and taken actions. The Applicant must follow the process under the SHA's harassment policy if the demand is for the Union to take further action. Until the Applicant has fulfilled the prerequisites of filing a harassment grievance, an allegation that the Union had to consider filing the grievance is premature.

[34] The Board finds no basis for finding that the Union's response to the Applicant's complaints was arbitrary. Further, the Board would note most of the relief requested is more likely to be within the jurisdiction of an arbitrator under s. 6-45 of the Act.

[35] As a result, with these Reasons, an Order will issue that the Duty of Fair Representation Application in LRB File No. 015-25 is dismissed.

[36] 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 **26th** day of **September 2025**.

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson