

CITY OF MOOSE JAW, Applicant v KATE-LYN WENARCHUK, Respondent and CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 9, Respondent

LRB File Nos. 233-25 & 154-25; February 20, 2026

Chairperson, Kyle McCreary; Board Members: Al Parenteau and Hugh Wagner

Citation: *City of Moose Jaw v Wenarchuk*, 2026 SKLRB 14

Counsel for the Applicant, City of Moose Jaw: Andrew Svenson

Counsel for the Respondent, CUPE, Local 9: Dawid Werminski

The Respondent, Kate-Lyn Wenarchuk: Self-represented

Standing – Applicant has standing to bring complaints under s. 3-36 and w. 6-59.

Jurisdiction – Essential Nature of dispute relates to Occupational Health and Safety – Jurisdiction either lies with an arbitrator or an Occupational Health and Safety Adjudicator – Board does not have original jurisdiction over Part III matters.

REASONS FOR DECISION

Background:

[1] Kyle McCreary, Chairperson: The City of Moose Jaw (“the City”) has filed for a preliminary determination of objections of Kate-lyn Wenarchuk’s standing to bring the application in LRB File No. 154-25 (“the ULP Application”) and the Board’s jurisdiction to hearing the same.

[2] The ULP Application is an application brought by Ms. Wenarchuk against the City and the Canadian Union of Public Employees, Local 9 (“CUPE”) pursuant to Sections 3-35 and 6-59 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 (“the Act”).

[3] The City has sought a dismissal of the ULP Application on the basis that Ms. Wenarchuk does not have standing to bring an unfair labour practice application, and that the essential nature of the dispute falls within the exclusive jurisdiction of an arbitrator pursuant to s. 6-45 of the Act.

[4] CUPE takes the position that the Board should consider the essential nature of the dispute and that no facts that relate to CUPE’s actions have been pled.

[5] Ms. Wenarchuk argues that the essential nature of the dispute is under s. 3-35 of the Act and this does not fall within the exclusive jurisdiction of an arbitrator.

[6] The ULP Application pleads out the following facts:

I am a permanent employee currently working the City's Waste Water Treatment department and have been an employee since April 2011. I am currently on a documented workplace accommodation for a psychological disability resulting from prolonged workplace stress and harassment. This injury and accommodation are supported by medical documentation and are in accordance with both the City's Workplace Accommodation Program and The Saskatchewan Human Rights Code.

On April 9, 2025, I filed a formal harassment complain against a supervisor. Within days, I was subject to a series of adverse actions orchestrated by HR Director Mr. TJ Karwandy, which I assert were retaliatory and procedurally improper.

Summary of Retaliatory Actions of April 14, 2025

1. *Accommodation Agreement Broken: I was blindsided with what was a scheduled as an "investigation findings meeting" with my supervisor. Andrew Westermann, but instead, was conducted by TJ Karwandy and turned into an accommodation meeting. During this meeting, Mr. Karwandy unilaterally broke the written accommodation agreement dated February 26, 2025, without medical justification or consultation.*
2. *Isolation and Humiliation via Work Reassignment: Immediate reassignment to City Manager's Office at City Hall scanning documents from 1930's to 1950's with no notice, reduced pay, shorter hours, no EDOs, and work tasks unrelated to my role.*
3. *Reintroduction of Stale Issues: Dormant issues from January and March 2025 revived resulting in threats of Letters of Expectations (LOEs).*
4. *Forced Psychological Assessment: Directed to undergo an independent psychological evaluation, without consent – through the Employee and Family Assistance Program (EFAP).*
5. *Confidentiality Breach: Harassment complaint discussed with unauthorized individuals, in breach of Anti-Harassment Policy.*
6. *Procedural Obstruction: Denied adequate time to review the preliminary harassment investigation report, to the extent that Mr. Karwandy's conducted triggered a panic attack, requiring me to leave work.*
7. *Additionally: My medical accommodation was improperly disclosed in the presence of two union representatives who were not involved in the accommodation process. This appears to violate the City's own Medical Privacy Policy, as well as Saskatchewan's LA FOIP s. 28(1) and HIPA s. 27(2)(a), s. 23(1), which prohibit unauthorized disclosure of personal and personal health information. This breach not only violated my privacy, but also contributed to a broader pattern of retaliation, constructive punishment, and employer inference, supporting my overall allegation under s. 3-35 of the Act.*

[7] The relief the Ms. Wenarchuk seeks on these facts is as follows:

Remedy Requested

These actions have not only caused economic loss and career disruption, but have exacerbated my mental health condition, interfered with my recovery, and stability and contributed to a psychologically unsafe work environment. The cumulative impact of these retaliatory actions and representational failures has significantly harmed my employment conditions, mental health and professional dignity.

I respectfully ask the Board to:

- 1. Investigate the City's actions for violation of s. 3-35 and assess CUPE Local 9's failure under s. 6-59;*
- 2. Order the withdrawal of all retaliatory LOEs;*
- 3. Issue a formal censure against the City for violating provincial law and internal policy;*
- 4. Direct the City to provide a formal written apology acknowledging the impact of retaliatory conduct on my mental health and professional standing;*
- 5. Consider compensation for financial losses and psychological harm stemming from this retaliation and procedural violations.*

[8] The City, in support of its application, has filed an affidavit which includes a copy of the applicable Collective Bargaining Agreement.

[9] It is undisputed that Ms. Wenarchuk was an in-scope employee and member of CUPE at the time of this application.

Relevant Statutory Provisions:

[10] Ms. Wenarchuk's primary complaint is an allegation that the City has breached s. 3-35 of the Act. Section 3-35 reads:

Discriminatory action prohibited

3-35 *No employer shall take discriminatory action against a worker because the worker:*

- (a) acts or has acted in compliance with:

 - (i) this Part or the regulations made pursuant to this Part;*
 - (ii) Part V or the regulations made pursuant to that Part;*
 - (iii) a code of practice issued pursuant to section 3-84; or*
 - (iv) a notice of contravention or a requirement or prohibition contained in a notice of contravention;**
- (b) seeks or has sought the enforcement of:

 - (i) this Part or the regulations made pursuant to this Part; or*
 - (ii) Part V or the regulations made pursuant to that Part;**
- (c) assists or has assisted with the activities of an occupational health committee or occupational health and safety representative;*
- (d) seeks or has sought the establishment of an occupational health committee or the designation of an occupational health and safety representative;*
- (e) performs or has performed the function of an occupational health committee member or occupational health and safety representative;*
- (f) refuses or has refused to perform an act or series of acts pursuant to section 3-31;*

- (g) *is about to testify or has testified in any proceeding or inquiry pursuant to:*
 - (i) *this Part or the regulations made pursuant to this Part; or*
 - (ii) *Part V or the regulations made pursuant to that Part;*
- (h) *gives or has given information to an occupational health committee, an occupational health and safety representative, an occupational health officer or other person responsible for the administration of this Part or the regulations made pursuant to this Part with respect to the health and safety of workers at a place of employment;*
- (i) *gives or has given information to a radiation health officer within the meaning of Part V or to any other person responsible for the administration of that Part or the regulations made pursuant to that Part;*
- (j) *is or has been prevented from working because a notice of contravention with respect to the worker's work has been served on the employer; or*
- (k) *has been prevented from working because an order has been served pursuant to Part V or the regulations made pursuant to that Part on an owner, vendor or operator within the meaning of that Part.*

[11] Ms. Wenarchuk has standing to file a discriminatory action complaint under s. 3-36:

Referral to occupational health officer

3-36(1) *A worker who, on reasonable grounds, believes that the employer has taken discriminatory action against him or her for a reason mentioned in section 3-35 may refer the matter to an occupational health officer.*

(2) If an occupational health officer decides that an employer has taken discriminatory action against a worker for a reason mentioned in section 3-35, the occupational health officer shall serve a notice of contravention requiring the employer to:

- (a) cease the discriminatory action;*
- (b) reinstate the worker to his or her former employment on the same terms and conditions under which the worker was formerly employed;*
- (c) pay to the worker any wages that the worker would have earned if the worker had not been wrongfully discriminated against; and*
- (d) remove any reprimand or other reference to the matter from any employment records maintained by the employer with respect to that worker.*

(3) If an occupational health officer decides that no discriminatory action has been taken against a worker for any of the reasons set out in section 3-35, the occupational health officer shall advise the worker of the reasons for that decision in writing.

(4) If discriminatory action has been taken against a worker who has acted or participated in an activity described in section 3-35:

- (a) in any prosecution or other proceeding taken pursuant to this Part, there is a presumption in favour of the worker that the discriminatory action was taken against the worker because the worker acted or participated in an activity described in section 3-35; and*
- (b) the onus is on the employer to establish that the discriminatory action was taken against the worker for good and sufficient other reason.*

[12] An occupational health officer's decision related to a discriminatory action can be appealed pursuant to ss. 6-53 and 6-54:

Appeal of occupational health officer decision

3-53(1) *A person who is directly affected by a decision of an occupational health officer may appeal the decision.*

(2) *An appeal pursuant to subsection (1) must be commenced by filing a written notice of appeal with the director of occupational health and safety within 15 business days after the date of service of the decision being appealed.*

(3) *The written notice of appeal must:*

- (a) *set out the names of all persons who are directly affected by the decision that is being appealed;*
- (b) *identify and state the decision being appealed;*
- (c) *set out the grounds of the appeal; and*
- (d) *set out the relief requested, including any request for the suspension of all or any portion of the decision being appealed.*

(4) *Subject to subsections (10) and (11) and section 3-54, an appeal pursuant to subsection (1) is to be conducted by the director of occupational health and safety.*

(5) *In conducting an appeal pursuant to subsection (1), the director of occupational health and safety shall:*

- (a) *provide notice of the appeal to persons who are directly affected by the decision; and*
- (b) *provide an opportunity to the persons who are directly affected by the decision to make written representations to the director as to whether the decision should be affirmed, amended or cancelled.*

(6) *The written representations by a person mentioned in clause (5)(b) must be made within:*

- (a) *30 days after notice of appeal is provided to that person; or*
- (b) *any further period permitted by the director of occupational health and safety.*

(7) *The director of occupational health and safety is not required to give an oral hearing with respect to an appeal pursuant to subsection (1).*

(8) *After conducting an appeal in accordance with this section, the director of occupational health and safety shall:*

- (a) *affirm, amend or cancel the decision being appealed; and*
- (b) *provide written reasons for the decision made pursuant to clause (a).*

(9) *The director of occupational health and safety shall serve a copy of a decision made pursuant to subsection (8) on all persons who are directly affected by the decision.*

(10) *Instead of hearing an appeal pursuant to this section, the director of occupational health and safety may refer the appeal to an adjudicator by forwarding to the adjudicator:*

- (a) *the notice of appeal;*
- (b) *all information in the director's possession that is related to the appeal; and*
- (c) *a list of all persons who are directly affected by the decision.*

(11) *The director of occupational health and safety may, at any time after an appeal is made, defer further action if another proceeding, in the opinion of the director, is more appropriate having regard to the nature of the allegations and the remedies available in the other proceeding.*

Appeals re harassment or discriminatory action

3-54(1) *An appeal mentioned in subsection 3-53(1) with respect to any matter involving harassment or discriminatory action is to be heard by an adjudicator in accordance with Part IV.*

(2) *The director of occupational health and safety shall provide notice of the appeal mentioned in subsection (1) to persons who are directly affected by the decision.*

[13] The adjudicator who hears an appeal referenced in ss. 3-53 and 3-54, determines that appeal pursuant to the authority set out in Part IV. The adjudicator's decision can be appealed to the Board pursuant to s.4-8:

Right to appeal adjudicator's decision to board

4-8(1) *A person who is directly affected by a decision of an adjudicator on an appeal or hearing pursuant to Part II may appeal the decision to the board on a question of law.*

(2) *A person who is directly affected by a decision of an adjudicator on an appeal pursuant to Part III or Part V may appeal the decision to the board on a question of law.*

(3) *A person who intends to appeal pursuant to this section shall:*

- (a) *file a notice of appeal with the board within 15 business days after the date of service of the decision of the adjudicator; and*
- (b) *serve the notice of appeal on all parties to the appeal.*

(4) *The record of an appeal is to consist of the following:*

- (a) *in the case of an appeal or hearing pursuant to Part II, the wage assessment or any written decision of a director of employment standards respecting the matter that is the subject of the appeal;*
- (b) *in the case of an appeal pursuant to Part III, any written decision of an occupational health officer or the director of occupational health and safety respecting the matter that is the subject of the appeal;*
- (b.1) *in the case of an appeal pursuant to Part V, any written decision of a radiation health officer or the director of occupational health and safety, respecting the matter that is the subject of the appeal;*
- (c) *the notice of appeal filed with the director of employment standards pursuant to Part II or with the director of occupational health and safety pursuant to Part III or Part V, as the case may be;*
- (d) *any exhibits filed before the adjudicator;*
- (e) *the written decision of the adjudicator;*
- (f) *the notice of appeal to the board;*
- (g) *any other material that the board may require to properly consider the appeal.*

(5) *The commencement of an appeal pursuant to this section does not stay the effect of the decision or order being appealed unless the board orders otherwise.*

(6) *The board may:*

- (a) *affirm, amend or cancel the decision or order of the adjudicator; or*
- (b) *remit the matter back to the adjudicator for amendment of the adjudicator's decision or order with any directions that the board considers appropriate.*

[14] The exclusive jurisdiction of labour arbitrators is set out in s. 6-45:

Arbitration to settle disputes

6-45(1) *Subject to subsections (2) and (3), all disputes between the parties to a collective agreement or persons bound by the collective agreement or on whose behalf the collective agreement was entered into respecting its meaning, application or alleged contravention, including a question as to whether a matter is arbitrable, are to be settled by arbitration after exhausting any grievance procedure established by the collective agreement.*

(2) *Subsection (1) does not prevent the director of employment standards as defined in Part II or the director of occupational health and safety as defined in Part III from exercising that director's powers pursuant to this Act.*

(3) *Without restricting the generality of subsection (2), the director of employment standards may issue wage assessments, issue hearing notices, take action to collect outstanding wages or take any other action authorized pursuant to Part II that the director of employment standards considers appropriate to enforce the claim of an employee who is bound by a collective agreement.*

[15] The duty of fair representation is set out in s. 6-59:

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.*

[16] The Board has the authority to determine this preliminary matter on the basis of the materials filed without an oral hearing pursuant to s. 6-111(e), (h) and (q):

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;*

...

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

...

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

Analysis and Decision:

Standing

[17] The City has argued that Ms. Wenarchuk does not have standing to bring this matter before the Board. The Board disagrees. The issue in this case is not one of standing but of jurisdiction. As will be discussed under jurisdiction, Ms. Wenarchuk does not have standing to file a grievance, but she does have standing to file a complaint under s. 3-36 of the Act, however it is not within the jurisdiction of the Board to hear a s. 3-36 complaint at first instance. Ms. Wenarchuk can only bring that matter before the Board on appeal of an adjudicator under Part IV.

[18] As it relates to s. 6-59 of the Act, Ms. Wenarchuk was a member of CUPE and has standing to file s. 6-59 application against CUPE in relation to events during the time Ms. Wenarchuk had membership in the union. However, the question again is one of jurisdiction, is the ULP Application as currently pled focused on CUPE's conduct or the City's?

Jurisdiction

[19] The City challenges Ms. Wenarchuk's application on the basis that it is outside of the Board's jurisdiction. The City asserts that the ULP Application falls within the exclusive jurisdiction of an arbitrator pursuant to s. 6-45 of the Act. In order to determine whether the matter is within an arbitrator's jurisdiction to the exclusion of the Board, the Board must determine the essential nature of the dispute and whether that essential nature falls within an arbitrator's jurisdiction or is a matter of concurrent jurisdiction.

[20] The majority of the Supreme Court of Canada stated the approach to resolve jurisdictional disputes between labour arbitrators and competing tribunals in *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 (CanLII), [2021] 3 SCR 107 at paras 39-40:

[39] To summarize, resolving jurisdictional contests between labour arbitrators and competing statutory tribunals entails a two-step analysis. First, the relevant legislation must be examined to determine whether it grants the arbitrator exclusive jurisdiction and, if so, over what matters (Morin, at para. 15). Where the legislation includes a mandatory dispute resolution clause, an arbitrator empowered under that clause has the exclusive jurisdiction to decide all disputes arising from the collective agreement, subject to clearly expressed legislative intent to the contrary.

[40] *If at the first step it is determined that the legislation grants the labour arbitrator exclusive jurisdiction, the next step is to determine whether the dispute falls within the scope of that jurisdiction (Morin, at paras. 15 and 20; Regina Police, at para. 27). The scope of an arbitrator's exclusive jurisdiction will depend on the precise language of the statute but, in general, it will extend to all disputes that arise, in their essential character, from the interpretation, application, or alleged violation of the collective agreement. This requires analysing the ambit of the collective agreement and accounting for the factual circumstances underpinning the dispute (Weber, at para. 51). The relevant inquiry is into the facts alleged, not the legal characterization of the matter (Weber, at para. 43; Regina Police, at para. 25; Quebec (Attorney General) v. Quebec (Human Rights Tribunal), 2004 SCC 40, [2004] 2 S.C.R. 223 ("Charette"), at para. 23).*

[21] The Board applied this approach in *OPTA Inc. v Dennis Ray Hagerty*, 2024 CanLII 77281 (SK LRB), to summarily dismiss an accommodation complaint as not being within the Board's unfair labour practice jurisdiction but falling either within the jurisdiction of the Human Rights Commission or a labour arbitrator under s. 6-45.

[22] The Act in s. 6-45 grants exclusive jurisdiction to arbitrators for disputes that arise expressly or inferentially from a collective bargaining agreement, *Livingston v Saskatchewan Human Rights Commission*, 2022 SKCA 127 (CanLII) at para 9, and *Lapchuk v Saskatchewan (Highways)*, 2017 SKCA 68 (CanLII) at paras 15-17. Section 6-45 contains express exemptions to the exclusive jurisdiction of arbitrators in subsection 6-45(2) for the Director of Employment Standards and the Director of Occupational Health and Safety to exercise their powers under the Act.

[23] Reviewing the Application and the materials filed in relation to this preliminary application, it is clear that the essential nature of the dispute relates to occupational health and safety issues. Considering the provisions of the collective bargaining agreement filed and in particular the anti-harassment provisions of article 19.2, this matter falls within the ambit of the alleged contravention of the collective agreement.

[24] Even without the specific article, pursuant to *Parry Sound (District) Social Services Administration Board v O.P.S.E.U., Local 324*, 2003 SCC 42, [2003] 2 SCR 157, the protections of employment standards legislation are implied terms of collective agreements and subject to arbitrator's jurisdiction.

[25] The concurrent nature of jurisdiction between Occupational Health and Safety and labour arbitrators was noted by Justice Ball in *Lapchuk v Saskatchewan*, 2015 SKQB 358 (CanLII). Regardless of whether it is an occupational health and safety complaint or an arbitration grievance, the dispute is not within the Board's unfair labour practice jurisdiction.

[26] The Board does have jurisdiction in relation to occupational health and safety, but that is only on appeal under s. 4-8, *Buchanan (Rural Municipality) v Veldman*, 2024 SKCA 111 (CanLII), the Board cannot hear this matter at first instance. The Part IV appellate jurisdiction does not permit hearing applications that are not appeals, as noted by the Board in *COPE, Local 397 v Kerr*, 2025 SKLRB 25 (CanLII)

[48] Ms. Kerr has raised various complaints under Part II of the SEA. These complaints fall outside the Board's jurisdiction. The Board is a creature of statute and only has the jurisdiction granted to it by statute. The Board is created under s. 6-92 and empowered under s. 6-103 to have the powers and duties that are conferred by the SEA. There is no section in Part II (or any section of the SEA) that confers on the Board with the power to determine disputes under Part II at first instance.

[49] Under Part IV, and in particular s. 4-8, the Board is granted appellate jurisdiction of Part II adjudications. This jurisdiction is clearly appellate, see: Buchanan (Rural Municipality) v Veldman, 2024 SKCA 111 (CanLII) at para 11, and this appellate jurisdiction cannot be expanded to grant the Board with the authority to determine Ms. Kerr's Part II complaints in the first instance.

[27] The jurisdiction to hear Ms. Wenarchuk's complaint lies either with an occupational health and safety adjudicator or with an arbitrator, however, it does not lie with the Board and the ULP Application is outside of the Board's jurisdiction.

[28] The Board finds the essential nature of the dispute to be outside of the Board's jurisdiction. This includes the claim against CUPE as there are no facts pled against CUPE distinct from the allegations against the City. The ULP Application will also be dismissed against CUPE, however, as this has not adjudicated the merits of any potential duty of fair representation complaint, this dismissal is without prejudice to Ms. Wernarchuk being able to file a duty of fair representation related to CUPE's representation for the issues raised in the ULP Application provided such application is filed within 30 days of the decision.

[29] As a result, with these Reasons an Order will issue that the Application for a Preliminary Determination in LRB File No. 233-25 is granted and the application in LRB File No. 154-25 is dismissed. The dismissal is without prejudice to Ms. Wenarchuk's right to file an application under s. 6-59 with supporting facts within 30 days.

[30] This is a unanimous decision of the Board.

[31] 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 **20th** day of **February, 2026**.

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson