HEALTH SCIENCES ASSOCIATION OF SASKATCHEWAN, Applicant v SHANNON ORELL-BAST, Respondent and SASKATCHEWAN HEALTH AUTHORITY, Respondent

LRB File Nos.: 171-25 & 159-25; March 9, 2026
Chairperson, Kyle McCreary; Board Members: Al Parenteau and Hugh Wagner
Citation: *HSAS v Orell-Bast*, 2026 SKLRB 17

Counsel for the Applicant, Health Sciences Association of Saskatchewan:	Gary L. Bainbridge, KC
The Respondent, Shannon Orell-Bast:	Self-represented
Counsel for the Respondent, Saskatchewan Health Authority:	Jocelyn Putland Wiebe

Summary Dismissal – Granted – Application discloses no reasonable cause of action – Union member disagrees with the Union's interpretation of a decision received in a policy grievance – Union controls the grievance and it is not arbitrary to decline to re-litigate an issue that was arguably decided in a final and binding arbitration

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** In LRB File No. 171-25, the Health Sciences Association of Saskatchewan ("the Union") has filed for summary dismissal of Shannon Orell-Bast's application in LRB File No. 159-25 ("the DFR Application") on the basis of delay and that it discloses no arguable case.

[2] The DFR Application is a duty of fair representation application pursuant to Section 6-59 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15 ("the Act"), alleging that the Union failed to fairly represent Ms. Orell-Bast in relation to job postings and the Employer's practice of using expressions of interest to fill job postings.

[3] The DFR Application within the application form pleads the following facts:

> *… I have not been fairly represented by the union. The first issue stated in October 2018 which took them until 2023 to give me answer. They (Kim) responded with incorrect circumstances. This followed by another issue in Feb 2025.*

> *I was advised 5 years after the initial complaint the Union would not advance my grievance to arbitration. This after advising me they were "working" on things. Pretty sure my specific concern was never "worked on".*
>
> *5 years after the fact the HSAS executive director sent a letter after sending an incorrect summary of the events stating I could appeal to grievance committee. At this point and while still undergoing cancer treatment I felt I did not have capacity to explain a concern that the new ED could not even reference correctly referring to some other job posting in 2020 which was my coworkers.*

[4] The relief the Member seeks on these facts is as follows:

> *I want the practice of expression of interest not in our collective agreement for job posting and hiring criteria to stop*
> *Backpay from the time I should have been award the position in 2018*
> *Seniority adjusted*
> *Long term disability adjusted*
> *Apology to all staff in the department for the use of unethical practices (EOI)*
> *Both managers removed*
> *The Union to stop saying yes to the employer and start representing employees*
> *I want to be placed in the full time ER job immediately*
> *Human Resources to take over hiring practices in this department versus managers*
> *All scheduling to go to central to stop unethical practices*
> *Requesting damages for pain and suffering*
> *Thorough investigation into union practices*
> *Survey all the staff about the impact of the EOI and unethical behaviour by managers and their feeling of not being fairly represented by the Union.*

[5] Based on the relief section of the application and written submissions of the parties, the issue raised by the DFR Application appears to be that Ms. Orell-Bast takes issue with the Employer's use of an "expression of interest" policy to fill certain job vacancies and the Union's refusal to take Ms. Orell-Bast's dispute with the policy to grievance arbitration.

[6] The Union advanced a policy grievance to arbitration in relation to the Employer's expression of interest policy in *Saskatchewan Health Authority v Health Sciences Association of Saskatchewan*, 2020 CanLII 25717 (SK LA) ("*the Policy Arbitration*"). In *the Policy Arbitration*, the majority of the arbitration panel dismissed the grievance against the expression of interest policy.

Relevant Statutory Provisions:

[7] The exclusive jurisdiction of grievance arbitration in relation to application and interpretation of a collective bargaining agreement is pursuant to 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) Subjection (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.

[8] Grievance arbitration is final and binding pursuant to s. 6-49(2):

Rules of arbitration
6-49*(1) Subsections (2) to (4) apply to all arbitrations required to be conducted in accordance with sections 6-45 to 6-48.*
(2) The finding of an arbitrator or arbitration board:
(a) is final and conclusive;
(b) is binding on the parties with respect to all matters within the legislative jurisdiction of Saskatchewan; and
(c) is enforceable in the same manner as a board order made pursuant to this Part.

[9] The duty of fair representation is pursuant to 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.

[10] The Board's authority to summarily dismiss for no arguable case is pursuant to s. 6-111(p):

Powers re hearings and proceedings
6-111*(1) With respect to any matter before it, the board has the power:*
. . .
(p) to summarily dismiss a matter if, in the opinion of the board, there is a lack of evidence or no arguable case;

Analysis and Decision:

Test for Summary Dismissal

[11] The Board has relied on a plain and obvious test for summary dismissal: *Roy v Workers United Canada Council,* 2015 CanLII 885 (SK LRB). Under the Board's approach to summary dismissal, the facts in an application are assumed to be true, and when those facts are read generously, a claim is only summarily dismissed where it is plain and obvious that a claim discloses no reasonable cause of action. The Board does not weigh evidence in determining whether it is plain and obvious, nor does the Board generally consider novel points of law.

Should this case be dismissed for delay?

[12] The Board does dismiss cases for delay where it is plain and obvious that there is no arguable case due to inordinate delay, *Canadian Union of Public Employees, Local 5430 v Ruben G. Palao*, 2024 CanLII 121582 (SK LRB). However, the Board has expressed reservations about the use of the summary dismissal test for inordinate delay in *United Steelworkers, Local 5917 v Lyle Brady,* 2023 CanLII 68839 (SK LRB) ("*Brady*"). This is because the multi-factor test for dismissing a case for delay does not lend itself well to summary dismissal if the Board might require evidence to assess the factors. Put another way, to summarily dismiss on the basis of delay in a duty of fair representation case, it must be plain and obvious on the application itself that the test from *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), supports dismissal. If the Board needs further evidence to weigh one or more of the factors, it is not plain and obvious and summary dismissal is not appropriate.

[13] This case is a case where consideration of delay would require further evidence. Considering the issues raised in the DFR Application related to Ms. Orell-Bast's health and its impact on Ms. Orell-Bast's ability to proceed with a duty of fair representation complaint, the Board does not find this to be an appropriate case to summarily dismiss on the basis of delay. That issue requires further evidence for the Board to make a determination, similar to the Board's direction in *Brady* where the Board declined to summarily dismiss and ordered a preliminary hearing on delay.

Should this case be Summarily Dismissed?

[14] The DFR Application is based on an allegation that the Union failed to comply with its duty under s. 6-59 of the Act. The Board finds that there is no arguable case that the Union breached its duty and that Ms. Orell-Bast's application must be summarily dismissed.

[15] The Court of King's Bench in *Saskatchewan Government and General Employees' Union v Lapchuk*, 2025 SKKB 53 (CanLII), discussed the history and scope of the duty of fair representation at paras 98-104:

> *[98] To put the decisions made by the SLRB in context, it is necessary to review the nature of the union's duty of fair representation. With this area too, there is no dispute on the law to be applied nor that was applied by the SLRB. The Saskatchewan Employment Act, SS 2013, c S-15.1 sets forth the requirement of a union's duty of fair representation together with the manner in which that duty is to be carried out:*
>
> > *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.*
>
> *[99] In Hartmier v Saskatchewan Joint Board Retail Wholesale and Department Store Union and Retail, Wholesale and Department Store Union. Local 955, 2017 CanLII 20060 (Sask LRB) [Hartmier] Mitchell, Vice-Chairperson (as he then was) provided a helpful historical review of the duty of fair representation:*
>
> > *1. Brief Historical Review of Duty of Fair Representation*
> >
> > *[138] Section 6-59 of the SEA [The Saskatchewan Employment Act] is the successor to section 25.1 of the TUA [The Trade Union Act, RSS 1978, c T-17 (rep)], the provision interpreted and applied in much of the Board's large body of jurisprudence respecting the duty of fair representation. Section 25.1 obliged a trade union to represent its members "in grievance or rights arbitration proceedings…in a manner which is not arbitrary, discriminatory, or in bad faith". In Gilbert Radke v Canadian Paperworkers Union, [1993] 2nd Quarter, Sask. Labour Rep. 57, LRB File No. 262-92, for example, the Board explained the rationale for imposing such a duty on a union in respect of employees for whom they enjoy bargaining rights. The Board stated at page 61:*
> >
> > *The notion that a union owes a duty to those it represents to represent them fairly arose relatively early in the history of the interpretation of collective bargaining legislation in North America. As the legislation conferred the exclusive right to represent all employees in a group delineated as an appropriate bargaining unit, once a majority of those employees had selected a trade union, it was considered logical to impose on that trade union an obligation to be even-handed in its representation of all employees in the bargaining unit, including those who had opposed the selection of that union, had not become members of the union, or who were, for some reason in a minority within the bargaining unit. The union*

> *acquired exclusive status as a legal representative of all employees in a bargaining unit; in recognition of the degree of influence this gave the union over interests important to all employees, labour relations boards and courts imposed on it a duty to represent all employees fairly and without discrimination.*
>
> *[Emphasis in original]*

[100] As indicated in the above quote, these historical origins actually begin almost 100 years ago in the United States of America. Morgana Kellythorne in her article "Toward a Theory of the Duty of Fair Representation" (2003) 9 Appeal: Review of Current Law and Law Reform 32, 2003 CanLIIDocs 59 at 33 sets out further detail which assists in understanding the nature of the union's duty in this regard:

> *Historical Origins of the DFR [duty of fair representation]*
>
> *The DFR originated in the 1940s in the American case, Steele v. Louisville & Nashville Railroad [323 US 192 (1944) [Steele]]. The U.S. Supreme Court stated that the DFR is an obligation inherent in the statutory grant of exclusive representation status to a trade union, because "the exercise of a granted power to act on behalf of others involves the assumption toward them of a duty to exercise the power in their interest and behalf." [Steele at 202] The trade union in question excluded black members of the bargaining unit and denied them seniority rights. The Supreme Court was faced with a dilemma, as it sought to combat this blatant racism without the assistance of anti-discrimination legislation, which did not yet exist.' Thus, the identification of an inherent statutory DFR was outcome-driven in the face of a concrete legal problem, and drew on elements of trust law.*
>
> *In the U.S., the DFR then expanded beyond providing protection from racial discrimination in negotiation of collective agreements, and was applied to unions' processing of grievances and application of terms of existing collective agreements. By 1962, the National Labor Relations Board decided that a violation of the duty constituted an unfair labour practice. Finally, in 1967, the U.S. Supreme Court expressed the duty in a positive test in Vaca v. Sipes [386 US 171 (1967)]: "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith [emphasis added]." The Vaca v. Sipes test remained a cornerstone of the DFR after its importation to Canada.*
>
> *[Footnotes omitted]*
>
> *[Emphasis in original]*

[101] This rich history then led to the development of the principles of the duty of fair representation as set forth by the Supreme Court of Canada in the oft-cited decision of Canadian Merchant Service Guild v Gagnon, 1984 CanLII 18 (SCC), [1984] 1 SCR 509 at 527 [Gagnon]:

> *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.*

[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.]

[Emphasis in original]

[104] In Hartmier, Mitchell, Vice-Chairperson, cites the following comments in Hargrave v Canadian Union of Public Employees, Local 3833, 2003 CanLII 62883 (Sask LRB) describing what is meant by the use of the word "arbitrary" with respect to the duty of fair representation:

[28] …

> *The concept of arbitrariness, which is usually more difficult to identify than discrimination or bad faith, is not equivalent to simple errors in judgment, negligence, laxity or dilatoriness. In Walter Prinesdomu v. Canadian Union of Public Employees, [1975] 2 CLRBR 310, the Ontario Labour Relations Board stated, at 315:*
>
> *It could be said that this description of the duty requires the exclusive bargaining agent to "put its mind" to the merits of a grievance and attempt to engage in a process of rational decision making that cannot be branded as implausible or capricious.*
>
> *This approach gives the word arbitrary some independent meaning beyond subjective ill will, but, at the same time, it lacks any precise parameters and thus is extremely difficult to apply. Moreover, attempts at a more precise adumbration have to reconcile the apparent consensus that it is necessary to distinguish arbitrariness (whatever it means) from mere errors in judgment, mistakes, negligence and unbecoming laxness.*

[16] The Board has also discussed the duty in several recent cases including *Livingston v CUPE*, 2025 SKLRB 18 (CanLII), *ATU, Local 588 v Nezamloo*, 2025 SKLRB 22 (CanLII), *COPE, Local 397 v Kerr*, 2025 SKLRB 25 (CanLII), and *Christiaens v IBEW*, 2026 SKLRB 1 (CanLII).

[17] There are no facts in the DFR Application that would support a claim for a breach of the duty of fair representation as the duty is articulated in the above cases. The DFR Application claims that the Union responded to a claim and made errors on the factual analysis. This is a pleading of a claim in negligence, not a breach of the duty of fair representation. The duty of fair representation requires more than the pleading of errors in analysis, as recently stated in *IUOE Local 870 v Copeman,* 2026 SKLRB 12 (CanLII):

> *[11] The Board has noted that a union does not have to make the correct decision on a file, it is permitted to make mistakes, Scheller v UFCW, 1400, 2025 SKLRB 27 (CanLII) and Ha v Saskatchewan Polytechnic Faculty Association, 2024 CanLII 126796 (SK LRB). A decision of a union not to grieve or proceed with a grievance must rise above a difference of opinion or a different evaluation of the evidence to a failure to properly evaluate to constitute a breach of the duty.*
>
> *[12] A union is not required to grieve a case. It is also not a breach of the duty for a union to make a decision a member disagrees with. A union must fairly consider a case and make a fair decision..*

[18] Reading the submissions of the parties in response to this application, and considering the relief sought, it is clear that the dispute between the parties relates to an interpretation of the Arbitration award in *the Policy Arbitration.*

[19] The Union takes the position that *the Policy Arbitration* decision determined that the Employer's expression of interest policy is valid. Ms. Orell-Bast reads the decision as only applying to the position put forward on the grievance.

[20] In *the Policy Arbitration,* the Union clearly put forward an argument challenging the expression of interest policy generally and not just as it relates to the one position at issue, this can be seen through the use of a policy grievance, but also through the arguments the Union advanced, see for example *the Policy Arbitration* at paras 10, 13, 14, and 17-23. The majority of the arbitration panel did not accept this argument.

[21] The Board would also note that many of Ms. Orell-Bast's arguments against the expression of interest policy mirror the dissent of the Union nominee in *the Policy Arbitration*. The validity of the policy generally was arguably before the Arbitration panel.

[22] Pursuant to s. 6-49(2) of the Act, arbitration decisions are final and binding on the parties to an arbitration. That is, the Union is generally not permitted to challenge the panel's determination in *the Policy Arbitration* that the expression of interest policy is a valid exercise of management rights other than through judicial review. This provision, and the doctrines of *res judicata*, also generally prohibit attempting to re-litigate the same issue in another grievance.

[23] A union member is not entitled to a grievance. The union controls the grievance process, *Canadian Merchant Service Guild v. Gagnon et al.,* 1984 CanLII 18 (SCC), [1984] 1 SCR 509. It is not arbitrary for the Union to decide that a matter has already been adjudicated and not to seek to re-litigate a matter. It is also not arbitrary to determine that a policy grievance binds the Union as it relates to the challenged policy and not just on the particular set of facts that are the subject of a grievance.

[24] It is understood that despite *the Policy Arbitration,* Ms. Orell-Bast disagrees with the Employer's continued use of the expression of interest policy. Given *the Policy Arbitration*, the duty of fair representation does not require the Union to continue challenging a policy through grievance arbitration that it has previously unsuccessfully challenged at arbitration.

[25] It is plain and obvious that Ms. Orell-Bast has no arguable case as it relates to the Union's decision to not challenge the expression of interest policy through further grievance arbitrations.

[26] As a result, with these Reasons an Order will issue that the Application for Summary Dismissal in LRB File No. 171-25 is granted and the application in LRB File No. 159-25 is dismissed.

[27] Subject to s. 6-115(3), this decision of the Board is final.

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

[29] 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 **9th** day of **March, 2026.**

LABOUR RELATIONS BOARD

Kyle McCreary