AMALGAMATED TRANSIT UNION, LOCAL 615, Applicant (Respondent) v JOSE JAMES, Respondent (Applicant) and CITY OF SASKATOON, Respondent (Respondent)

LRB File Nos. 031-26 & 018-26; April 1, 2026
Vice-Chairperson, Patricia Warwick (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*
Citation: *Amalgamated Transit Union, Local 615 v Jose James and City of Saskatoon,* 2026 SKLRB 20

Counsel for Amalgamated Transit Union, Local 615 Applicant (Respondent):	Simon Blackstone
Jose James, Respondent (Applicant):	Self-Represented
Counsel for City of Saskatoon, Respondent (Respondent):	Tyson Bull

Hearing by way of written submissions – Clauses 6-111(1)(g) and (q) of *The Saskatchewan Employment Act* and Subsection 28(2) of *The Saskatchewan Employment (Labour Relations Board) Regulations, 2021* – Board has power to hear and determine case without further notice when party fails to file a reply.

Summary dismissal – Clause 6-111(1)(p) of *The Saskatchewan Employment Act* – Union seeking summary dismissal of Union member's duty of fair representation complaint – Board determines no arguable case pled – Union's application for summary dismissal allowed – Union member's duty of fair representation complaint dismissed.

REASONS FOR DECISION

Background:

[1] Patricia Warwick, Vice-Chairperson: Jose James ("Applicant") has filed a complaint under Section 6-59 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 ("*Act*") against the Amalgamated Transit Union, Local 615 ("Union") which is LRB File No. 018-26 ("DFR Application"). The Union has applied for summary dismissal of the DFR Application ("Dismissal Application") which is LRB File No. 031-26. The City of Saskatoon ("Employer") takes no position respecting the Dismissal Application.

[2] The Board is summarily dismissing the DFR Application for the reasons outlined below.

Background and Summary of Proceedings:

[3] The Union is the certified bargaining agent of an all-employee unit working in the Transit Branch of the Employer.

[4] The Applicant is a former employee of the Employer who worked in the Transit Branch as an Operator. The Applicant was terminated from employment with the Employer on August 15, 2025. The cause for the termination was an altercation which took place between the Applicant and a transit customer.

[5] The Union filed a grievance with the Employer related to the Applicant's termination on August 15, 2025 ("Grievance"). The Grievance was abandoned by the Union on October 21, 2025 after the Union investigated the circumstances of the Grievance, met with the Applicant and received a legal opinion respecting the merits of the Grievance.

[6] The following steps have been taken at the Board to date:

- On January 23, 2026, the Applicant filed the DFR Application with the Board alleging that the Union breached its duty of fair representation owed to the Applicant under Section 6-59 of the *Act*.

- On February 6, 2026, the Union filed a Reply to the DFR Application and the Dismissal Application.

- On February 6, 2026, the Employer filed a Reply to the DFR Application taking no position on the DFR Application and asking to make submissions on remedy if the DFR Application were to be granted.

- On February 6, 2026, the Board invited the Applicant and the Employer to provide Replies to the Dismissal Application. Neither the Applicant nor the Employer provided a Reply to the Dismissal Application within the ten-day filing period or at all.

- The Union did not file additional material with the Board.

- The Board contacted the parties on March 16, 2026 indicating that the Board intended to deal with the Dismissal Application. No further material was filed by any of the parties.

[7] The Union's Dismissal Application contained the following recitation of the facts related to the Grievance. These facts were not contested by the Applicant as the Applicant did not file a Reply to the Dismissal Application.

> ***Union Response to Termination***
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> *20. When the Union became aware of the Applicant's termination, they sought a legal opinion about the viability of the outstanding grievance relating to the Applicant's termination.*
>
> *21. In the course of the construction of the legal opinion, the Union, the Applicant, and Counsel met on August 25, 2025, to explain to the Applicant that the Union was seeking a legal opinion and to gather more information for the legal opinion.*
>
> *22. That legal opinion, dated September 25, 2025, surveyed the Applicant's employment, disciplinary history, and the caselaw relating to termination for physical altercations, including the caselaw on self-defence, mitigating and aggravating factors, and issues pertaining to his credibility and reliability. The legal opinion concluded that the Applicant's termination grievance would be unlikely to succeed at arbitration.*
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> *23. After careful consideration, the Union decided not to advance the grievance. This decision was made unanimously by eight (8) Union representatives at the October 8, 2025, Local 615's Executive Board Meeting*
>
> *.*
>
> *24. On November 12, 2025, the Applicant and the Union met to discuss the Union's decision not to advance the grievance. At this meeting, the Applicant expressed he felt the legal opinion was biased and refused to watch the video of the incident.*
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> *25. The Executive Board voted "no" to whether the Applicant raised any points that would change their mind about not proceeding to arbitration. Notes were taken at this meeting.*
>
> *26. The Union confirmed their decision not to proceed with the grievance in a letter to the Applicant dated November 14, 2025. The Applicant finally watched the video of the incident at some point in January.*
>
> *27. The Applicant filed his complaint to the Board on January 19, 2026.*

DFR Application Allegations:

[8] The DFR Application articulates the facts supporting the allegations that the Union acted arbitrarily, discriminatorily and in bad faith during the Grievance process as follows:

- The Union received a legal opinion respecting the validity of the Grievance which led to the Union abandoning the Grievance. The Applicant alleges the legal opinion was biased and not accurate.
- The Union did not show or arrange for a viewing of the recording of the incident that was the subject of the Grievance.

- The Union did not engage with the Employer respecting the Grievance.

[9] There are no further particulars of the Union's alleged bad faith, arbitrariness, and discrimination outlined in the DFR Application.

Argument on behalf of the Union:

[10] The Union relies on Section 6-111(1)(p) of the *Act* and the test set out by the Board in *Roy v. Workers United Canada Council*, 2015 CanLII 885 (SK LRB) ("*Roy*") in support of its argument for summary dismissal of the DFR Application.[1]

[11] The Union argues that the Applicant's DFR Application does not raise an arguable case or a breach of section 6-59 of the *Act* as is the requirement of the *Roy* test. The Union argues:

- The Applicant has not raised any facts which would meet the applicable legal tests to uphold a complaint that the Union acted in bad faith, acted arbitrarily or discriminated against the Applicant respecting the Union's decision to abandon the Grievance;

- Allegations in the DFR Application are merely assertations and not supported by fact or evidence. The Union relies on the case of *Raso v. United Food and Commercial Workers Union, Local 175*, 2015 CanLII 62625 (ONLRB) ("*Raso*") in support of the principle that allegations which are entirely vague and unspecified cannot succeed;

- The Union had no obligation to engage with the Employer respecting the Grievance. The obligation of the Union was to decide whether to advance the Grievance through the process in a manner that was not arbitrary and discriminatory and was not in bad faith. There would never be an obligation to engage with the Employer such that a duty would arise under Section 6-59 of the *Act*.

Argument on behalf of Employer:

[12] The Employer did not file a Reply to the Dismissal Application. The Employer did not take a position with respect to the DFR Application.

Relevant Statutory Provisions:

[13] The following provisions of the *Act* are applicable to this matter:

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[1] Also, the Union directed the Board to the case of *SGEU v. Morrisseau Dickson*, 2025, SKLRB 15 (CanLII) respecting summary dismissal applications.

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.

. . .
Powers re hearings and proceedings
6-111*(1) With respect to any matter before it, the board has the power:*

> *(g) subject to the regulations made pursuant to this Part by the Lieutenant Governor in Council:*
>
> > *(i) to determine the time within which any party to a hearing or proceeding before the board must file or present any thing, document or information and the form in which that thing, document or information must be filed; and*
> >
> > *(ii) to refuse to accept any thing, document or information that is not filed or presented within the time or in the form determined pursuant to subclause (i);*
>
> *. . .*
>
> *(p) to summarily dismiss a matter if, in the opinion of the board, there is a lack of evidence or no arguable case;*
>
> *(q) to decide any matter before it without holding an oral hearing;*

[14] The following provisions of *The Saskatchewan Employment (Labour Relations Board) Regulations, 2021*, Chapter S-15.1 Reg 11 (effective April 1, 2021) ("*Regulations*") are relevant to this matter:

PART 2

Applications and Forms

…

Application for summary dismissal
19*(1) In this section:*

> ***"application to summarily dismiss"*** *means an application pursuant to subsection (2);*
>
> ***"original application"*** *means, with respect to an application to summarily dismiss, the application filed with the board that is the subject of the application to summarily dismiss;*
>
> ***"party"*** *means an employer, union or other person directly affected by an original application.*

(2) A party may apply to the board for an order to summarily dismiss an original application.

(3) An application to summarily dismiss must:

(a) be in Form 18 (Application for Summary Dismissal); and

(b) be filed and served in accordance with subsection (5).

(4) In an application to summarily dismiss, a party shall specify whether the party requests the board to consider the application with or without an oral hearing.

(5) The application to summarily dismiss must be filed, and a copy of it must be served on the party that made the original application and on all other parties to the original application, before the date for the hearing of the original application is set.

…

PART 3
Participation, Interventions, Votes and Hearings

…

Reply

24*(1) In this section, "original application" means an application made pursuant to Part 2 that is the subject of a reply.*

(2) An employer, union, labour organization or other person named in an original application shall file a reply in Form 21 (Reply) within 10 business days after the date on which a copy of the application was provided to the employer, union, labour organization or other person by the registrar pursuant to section 23.

(3) The registrar shall provide a copy of every reply to:

(a) the party that filed the original application; and

(b) any person that filed a reply to the original application or an application to intervene pursuant to section 25.

…

Hearings

28*(1) On an application being filed pursuant to the Act and these regulations, the registrar shall give the parties to the application, including any employer, union, labour organization or other person that filed a reply pursuant to section 24 or an application to intervene pursuant to subsection 25(2), notice of the date, place and time for hearing the application.*

(2) If an employer, union, labour organization or other person named in the application does not file a reply pursuant to section 24:

(a) unless the employer, union, labour organization or other person has made a request to the registrar to receive notices respecting the hearing and provided an address for service, the employer, union, labour organization or other person is not entitled to any notice by the registrar respecting the hearing of the application; and

(b) the board may hear and determine the application notwithstanding that the employer, union, labour organization or other person has not filed a reply pursuant

> *to section section 24 or received any further notice respecting the hearing of the application.*

Analysis and Decision:

Hearing By Way of Written Submissions

[15] The Board has the power to decide any matter before it without holding an oral hearing as authorized by Section 6-111(1)(q) of the *Act*.

[16] Further, Section 24 of the *Regulations*, sets out the requirement that parties file a reply to an application made under Part 2 of the *Regulations* within ten days of being notified of the application by the Board's registrar. Under Section 28(2)(b) of the *Regulations,* should a party fail to reply within the ten-day period, the Board has the power to hear and determine the application without further notice to the offending party.

[17] Here, the Union filed the Dismissal Application under Part 2 of the *Regulations* with the Board on February 6, 2026. The Board's registrar notified the Applicant and the Employer of the Dismissal Application on that same day. No reply was received by the Board from the Applicant within the ten-day period or at all. No reply was received by the Employer to the Dismissal Application; however, in its reply to the DFR Application, the Employer requested to make submissions respecting remedy if the DFR Application was to be upheld by the Board. This is of no consequence to the Dismissal Application.

[18] Out of courtesy, on March 16, 2026, the Board's registrar informed the parties that the Board intended to deal with the Dismissal Application. No further submissions were received by the Board from any party in response to the March 16, 2026 correspondence.

[19] The Board has considered the chronology of events in this matter and has decided to deliberate on the Union's Dismissal Application and make a decision without holding a hearing in accordance with Section 6-111(1)(q) of the *Act* and Section 28(2)(b) of the *Regulations.* As will be discussed below, a large factor in making the decision to proceed with determining this matter without holding a hearing is that the Board takes the view that it is plain and obvious that the DFR Application does not raise an arguable case against the Union.

Dismissal Application:

[20] The Board has considered many applications for summary dismissal and has applied the test set out in *Roy* as follows:

> *"[8] The Board recently adopted the following as the test to be applied by the Board in respect of its authority to summarily dismiss an application (with or without an oral hearing) as being:*
>
> > *1. In determining whether a claim should be struck as disclosing no arguable case, the test is whether, assuming the applicant is able to prove everything alleged in his/her claim, there is no reasonable chance of success. The Board should exercise its jurisdiction to strike on this ground only in plain and obvious cases and where the Board is satisfied that the case is beyond doubt.*
> >
> > *2. In making its determination, the Board may consider only the subject application, any particulars furnished pursuant to demand and any document referred to in the application upon which the applicant relies to establish his/her claim.*
>
> *[9] Generally speaking, summary dismissal is a vehicle for the disposition of applications that are patently defective. The defect(s) must be apparent without the need for weighing of evidence, assessment of credibility, or the evaluation of novel statutory interpretations. Simply put, in considering whether or not an impugned application ought to be summarily dismissed, the Board assumes that the facts alleged in the main application are true or, at least, provable. Having made this assumption, if the Board is not satisfied that the main application at least discloses an arguable case, and/or if there is a lack of evidence upon which an adverse finding could be made, then the main application is summarily dismissed in the interests of efficiency and the avoidance of wasted resource."*[2]

[21] In applying this test, the Board's task here is to assume all the facts alleged in the Applicant's DFR Application are provable and then to evaluate whether they raise an arguable case and/or evaluate whether there is a lack of evidence upon which an adverse finding could be made against the Union.

[22] A careful review of the DFR Application reveals that no arguable case is raised and that there is a lack of evidence upon which an adverse finding against the Union could be made.

[23] The core of the DFR Application is that the Union breached Section 6-59 of the *Act* and did not represent the Applicant fairly with respect to his collective bargaining rights – that the Union acted in a way that was arbitrary, discriminatory or in bad faith. However, these allegations are not supported by any real facts or evidence and the statements made in the DFR Application run counter to the unsupported allegations.

[24] As summarized above, the facts pled by the Applicant to support the Section 6-59 complaint are that the Union received a biased legal opinion about the Grievance; that the Union did not show nor assist in having the Employer show the Applicant the recording of the

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[2] *Roy,* paras. 8 and 9.

circumstances leading to the Grievance; and, that the Union did not engage with the Employer over the Grievance.

[25] None of these factual underpinnings, if proven, would successfully make out a Section 6-59 complaint against the Union. The test for a Section 6-59 complaint has been recently confirmed by the Court of King's Bench in *Saskatchewan Government and General Employees' Union v. Lapchuk*, 2025 SKKB 53 (CanLII) ("*Lapchuk*"). At paragraphs [103] to [104] of *Lapchuk* the Court says:

> *"[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:*
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> > ***[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.*
>
> *[Footnotes omitted] [Emphasis in original]"*

[26] To summarize, the direction from the Court and guidance from earlier Board decisions respecting duty of fair representation complaints, is to wholistically review the conduct and decision-making process of the Union and to determine whether the Union fairly and reasonably investigated the circumstances of the grievance and came to an informed decision. Communication with a union member must be fair but the Union has carriage of any grievance decision, and the Board is not to "sit on appeal" of decisions made by the Union. The DFR Application must raise an arguable case based on this guidance from the Court and earlier decision of the Board. If not, it will be summarily dismissed by the Board.

[27] Here, the Union argued that the bald assertions of bad faith, discrimination and arbitrariness do not demonstrate a breach of the Union's duty of fair representation. Also, the factual underpinnings outlined in the DFR Application would not support an arguable case against the Union as per the guidelines set by the Court and in cases decided by the Board. The Board agrees with the Union.

[28] Turning to the allegations set out in the DFR Application, the first allegation to consider is that the legal opinion which formed the basis of the Union's decision to abandon the Grievance was biased. The Board acknowledges that an allegation of bias could form the basis of a breach of Section 6-59 of the *Act*. However, at a hearing of the DFR Application itself, the Board's role, as per *Lapchuk* and the Board's decisions cited therein, would not be to sit on appeal of the actions of the Union respecting its abandonment of the Grievance. The Board's role would not be to examine the validity of the legal opinion or to substitute the Board's legal opinion for the Union's legal opinion. Rather, the Board would be assessing whether the Union considered the merits of the Grievance in a principled way and then made the decision to abandon the Grievance based on that principled investigation. There are no allegations made in the DFR Application which indicate the Union did not do this.

[29] Here, the Union clearly considered the merits of the Grievance. The Union met with the Applicant and its lawyer, garnered and received a legal opinion and met with the Applicant again before abandoning the Grievance. In the DFR Application, the Board would not assess the veracity of the legal opinion received by the Union. The Board would consider the Union's overall decision-making respecting the Grievance and decide whether the Union made an informed decision. The Union's approach here, including garnering the legal opinion and meeting with the Applicant on more than one occasion, demonstrates that the Union informed itself and communicated with the Applicant respecting the decision to abandon the Grievance.

[30] Importantly, there are no facts pleaded by the Applicant which would support the allegation that the legal opinion was biased – there is simply the general allegation that this was so. Also, there are no facts pleaded which support the allegation that the Union made its decision for reasons other than reliance on the facts underlying the Grievance and the legal opinion assessing those facts. The Board agrees with the Union and finds support in the *Raso* case that entirely vague allegations should be struck for failing to disclose a violation of Section 6-59 of the Act.[3]

[31] Finally, the DFR Application itself supports the notion that the Union engaged in a thoughtful decision-making process in coming to the conclusion to abandon the Grievance. The DFR Application mentions that a legal opinion was sought by the Union and that the Union met with the Application on more than one occasion before making its decision to abandon the Grievance.

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[3] *Raso*, supra. at para. 4.

[32] The Board finds that it is plain and obvious that there are no facts pleaded which would form the basis of an arguable case that the Union breached its duty of fair representation to the Applicant by relying on a biased legal opinion.

[33] The next allegation is that the Union did not show the recording of the incident leading to the Grievance to the Applicant or arrange for the Employer to do so. The Board agrees with the Union that this allegation, if made out, would not amount to arbitrary, discriminatory or bad faith conduct by the Union.

[34] Again, in considering the DFR Application, the Board would be assessing the Union's conduct related to its abandonment of the Grievance in a wholistic manner. The Board would be reviewing the Union's conduct in investigating and deliberating on the Grievance and deciding whether the Union treated the Applicant in a way that was contrary to Section 6-59 of the *Act*. The allegation that the Union did not show the recording or arrange for the recording to be shown to the Applicant would be a specific detail which, in these circumstances, would not amount to a breach of the Union's duty of fair representation. Also, the unchallenged facts presented by the Union demonstrate that the Applicant was provided with access to the recording of the incident which led to the termination.

[35] Therefore, the Board finds that it is plain and obvious that the alleged factual underpinning related to the recording would not support an arguable case that the Union breached its duty of fair representation to the Applicant.

[36] The last factual allegation which allegedly supports a Section 6-59 complaint is that the Union did not engage with the Employer about the Grievance. Engagement with the Employer would occur through the parties' grievance process. As the Union decided to abandon the Grievance, the grievance process would not be engaged and this allegation could not support a duty of fair representation complaint against the Union.

[37] Even acknowledging that the Applicant is self represented and not sophisticated in the procedures of the Board or the intricacies of the *Act*, and reading the DFR Application in the most generous way, there is nothing pleaded which, if proven, could constitute a breach of Section 6-59 of the *Act*. The allegation that the legal opinion is biased, which could constitute a breach of Section 6-59, is vague and unsupported by any facts or evidence. The allegations that the recording was not shown to the Applicant and that the Union did not engage with the Employer over the Grievance would not lead to a finding of a breach of Section 6-59 even if proven.

[38] It is plain and obvious that the applicant does not raise an arguable case with respect to a breach of Section 6-59 of the *Act* and the DFR Application is dismissed.

[39] As a result, with these Reasons, an Order will issue that the application for summary dismissal in LRB File No. 031-26 is granted and the application in LRB File No. 018-26 is dismissed.

[40] The Board thanks the Union for the helpful submissions which were reviewed and considered in deciding in this matter.

DATED at Saskatoon, Saskatchewan, this **1st** day of **April, 2026.**

LABOUR RELATIONS BOARD

Patricia Warwick
Vice-Chairperson