

ROBERT FLANNIGAN, Applicant v UNIVERSITY OF SASKATCHEWAN FACULTY ASSOCIATION, Respondent and UNIVERSITY OF SASKATCHEWAN, Respondent

LRB File Nos. 088-25, 127-25 & 167-25; January 30, 2026

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

Citation: *Flannigan v USFA & University of Saskatchewan*, 2026 SKLRB 9

The Applicant, Robert Flannigan: Self-Represented

Counsel for the Respondent, University of Saskatchewan Faculty Association: Samuel Schonhoffer

Counsel for the Respondent, University of Saskatchewan: Jon Danyliw

Sequencing – Whether Summary Dismissal or Production application should proceed first – Summary dismissal should proceed first as potentially determinative and production not required to determine

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** Robert Flannigan (“the Member”) filed a duty of fair representation application in LRB File No. 088-25 against the University of Saskatchewan Faculty Association (“the Association”) on May 14, 2025. The Association filed a reply on June 13, 2025. The University of Saskatchewan (“the Employer”) filed a reply on May 30, 2025.

[2] On July 7, 2025, in LRB File No. 127-25, the Association filed an application for summary dismissal of the Members application in LRB File No. 088-25 (“the Summary Dismissal Application”).

[3] On September 3, 2025, in LRB File No. 167-25, the Member filed for pre-hearing production against the Association and the Employer (“the Production Application”).

[4] When these matters came to appearance day for scheduling there was a dispute between the parties as to what application should proceed first. The Board invited submissions from the parties on sequencing. The Board has received and reviewed the submissions of the parties.

[5] The Member seeks for the Production Application to be heard first. The Association seeks for the Summary Dismissal Application to be heard first.

Relevant Statutory Provisions:

[6] Section 6-59 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 ("the Act") states that an employee has a right to be fairly represented by the bargaining agent with respect to the employee's rights pursuant to a collective agreement or Part VI of the Act.:

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.

[7] The Board's general order making authority and ability to control its process is pursuant to s. 6-103 of the Act:

6-103(1) Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed on it by this Act or that are incidental to the attainment of the purposes of this Act.

(2) Without limiting the generality of subsection (1), the board may do all or any of the following:

(a) conduct any investigation, inquiry or hearing that the board considers appropriate;

(b) make orders requiring compliance with:

(i) this Part;

(ii) any regulations made pursuant to this Part; or

(iii) any board decision respecting any matter before the board;

(c) make any orders that are ancillary to the relief requested if the board considers that the orders are necessary or appropriate to attain the purposes of this Act.

(d) make an interim order or decision pending the making of a final order or decision.

[8] The Board has the authority to adjourn applications pursuant to s. 6-111(1)(k). The summary dismissal authority is s. 6-111(1)(p):

6-111(1) With respect to any matter before it, the board has the power:

...

(k) to adjourn or postpone the hearing or proceeding;

...

(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:

[9] The Board determines questions on sequencing by considering fairness, efficiency, and judicial economy as discussed in *CLAC Local 151 v Woodland Constructors Ltd.*, 2023 CanLII 58549 (SK LRB)

[13] In spite of the different forum and type of proceeding involved, the key considerations employed by the Court are also relevant when the Board is determining the sequencing of related applications. Paraphrasing from Piett,[5] some of the questions when assessing the key considerations include:

- *Has the party seeking postponement of any application(s) proceeded promptly with the application(s) it seeks to have determined first?*
- *Will postponing the application(s) promote efficiency, in the circumstances?*
- *Are any of the applications time sensitive, or needing to be heard promptly to ensure the proceeding is conducted fairly?*

[14] In addition, the Board has generally prioritized certification applications to ensure that employees are not unduly delayed in the exercise of their rights,[6] though successorship and recission applications could be prioritized based on similar reasoning. When determining sequencing, the Board will be mindful of making economical use of the time and resources of the parties and the Board. Ultimately, the list of factors which may impact sequencing in specific circumstances is not closed

[10] In *UFCW, Local 1400 v ATCO Structures & Logistics Ltd. and ATCO Frontec Ltd.*, 2023 CanLII 115175 (SK LRB), the Board applied these factors and determined that summary dismissal applications should proceed prior to applications related to union abandonment and a common employer.

[11] The timing of all applications is neutral to the Board's determination; all issues were raised within a reasonable time. However, considering the fairness, efficiency, and judicial economy of the competing applications, the Board should determine the Summary Dismissal Application first.

[12] A summary dismissal application is potentially determinative of this matter. If the Summary Dismissal Application is unsuccessful, it should assist the Board in identifying and narrowing the issues in dispute between the parties.

[13] Further, summary dismissal applications are determined based on generously read assumed facts, *Roy v Workers United Canada Council*, 2015 CanLII 885 (SK LRB), *SGEU v Morrisseau Dickson*, 2025 SKLRB 15 (CanLII). The Board's approach to summary dismissal as stated in Roy at paras 8-9:

[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.

Summary dismissal is a pleadings motion, the facts the Board will assume are already contained in the DFR Application. The Board, and the parties, do not require production to argue and determine the summary dismissal application.

[14] It is most efficient to determine the summary dismissal question before dealing with any issues related to production. Production is not required to determine the summary dismissal application, and it may be determinative of the underlying matter. The Production Application is held in abeyance pending the determination of the Summary Dismissal Application.

[15] As a result, with these Reasons an Order will issue that the Application for Summary Dismissal in LRB File No. 127-25 is to be determined first and the application in LRB File No. 088-25 is held in abeyance pending the Board's determination in LRB File No. 127-25. The Registrar shall set filing deadlines for written argument on the Summary Dismissal application.

[16] 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 **30th** day of **January, 2026**.

LABOUR RELATIONS BOARD



Kyle McCreary
Chairperson