SUPREME COURT OF NOVA SCOTIA
Citation: *Murphy v. Unifor Local 4606*, 2021 NSSC 323

Date: 20211123
Docket: Hfx. No. 508283
Registry: Halifax

Between:

Kim Sonya Murphy

Applicant

v.

Unifor Local 4606 and Labour Board

Respondents

DECISION ON APPLICATION FOR JUDICIAL REVIEW

Judge:	The Honourable Justice Scott C. Norton
Heard:	November 9, 2021, in Halifax, Nova Scotia
Decision:	November 23, 2021
Counsel:	Kim Sonya Murphy, Self-Represented Applicant Ronald E. Pizzo and Mary B. Rolf, for the Respondent Unifor Local 4606 Edward A. Gores, Q.C., and Caitlin Menczel, Articled Clerk, for the Respondent Labour Board, appearing on a watching brief

By the Court:

Introduction

[1] This is an Application for Judicial Review challenging the July 13, 2021 decision of a Labour Board Review Officer ("decision") dismissing the Applicant's complaint that her union had not complied with its obligation to her of fair representation. The Record of the materials before the decision-maker was filed by the Labour Board pursuant to Nova Scotia *Civil Procedure Rule* 7.09. Ms. Murphy was assisted by a social worker at the hearing before me.

[2] The Applicant, Ms. Kim Murphy, is an employee of Compass Group Canada – Compass One Healthcare ("Compass" or "Employer"). Compass was engaged in providing housekeeping services to the IWK Health Centre ("IWK"). Ms. Murphy began employment with Compass in October 2008 as a part-time housekeeper at the IWK. She continued in that role until the events giving rise to the matter before the court took place.

[3] Unifor Local 4606 ("Unifor" or "Union") is a trade union as defined in section 2(1)(w) of the Nova Scotia *Trade Union Act*, RSNS 1989, c. 475 ("*Act*"). Unifor represents the employees of Compass. Ms. Murphy is a member of the Union.

[4] Ms. Murphy filed a Duty of Fair Representation ("DFR") complaint with the Labour Board ("Board") pursuant to section 54A(3) of the *Act*. Section 54A(3) provides that:

> (3) No trade union and no person acting on behalf of a trade union shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in a bargaining unit for which that trade union is the bargaining agent with respect to the employee's rights under a collective agreement.

[5] Section 55(3) of the *Act* states that an employee can only make a DFR complaint where:

> (a) the complainant has presented a grievance or appeal in accordance with any procedure
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> (i) that has been established by the trade union, and
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> (ii) to which the complainant has been given ready
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> access;
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> (b) the trade union

(i) has dealt with the grievance or appeal of the complainant in a manner unsatisfactory to him, or

(ii) has not, within six months from the date on which the complainant first presented his grievance or appeal pursuant to clause (a), dealt with his grievance or appeal; and

(c) the complaint is made to the Board not later than ninety days from the first day on which the complainant could, in accordance with clauses (a) and (b), make the complaint

[6] The decision was made pursuant to section 56A of the *Act*, which states:

Review officer

56A (1) Where the Board receives a written complaint that a trade union or a person acting on behalf of a trade union has contravened subsection (3) of Section 54A, the Board shall appoint an employee within the Department of Environment and Labour, or a person appointed by the Minister, as a review officer to review the complaint to determine whether there is sufficient evidence of a breach of the duty of fair representation.

(2) Where a review officer appointed pursuant to subsection (1) is not satisfied on initial review that there is sufficient evidence of a failure to comply with subsection (3) of Section 54A, the review officer shall dismiss the complaint.

(3) Where a review officer decides not to dismiss the complaint pursuant to subsection (2), the review officer shall serve notice of the complaint on the trade union against which the complaint is made and request a response from the trade union.

(4) Where a review officer has received a response from a trade union to a request made pursuant to subsection (3) and is not satisfied that there is sufficient evidence of a failure to comply with subsection (3) of Section 54A, the review officer shall dismiss the complaint.

(5) Where a review officer has received a response from a trade union to a request made pursuant to subsection (3) or the trade union has failed to respond to the request within such period of time as the review officer considers necessary, and where the review officer believes that there has been a failure to comply with subsection (3) of Section 54A, the review officer shall (a) effect a settlement, if possible; or (b) where not possible, refer the complaint to the Board for disposition.

(6) A review officer appointed pursuant to subsection (1) has the power to order the parties to produce any documents or other things that the review officer considers necessary for the full review of the complaint without holding a hearing.

(7) A decision of a review officer under this Section is final and conclusive and not open to question or review.

[7] The decision dismissed the complaint pursuant to subsection (2) as the Review Officer was not satisfied on initial review that there was sufficient evidence of a failure to comply with section 54A(3) of the *Act* (duty of fair representation).

[8] I think it is helpful to reproduce in full the reasoning of the decision on the critical issue of whether the complaint was supported by sufficient evidence to allow the Board to potentially find that the Union represented the complainant in a discriminatory manner:

> To determine whether a union acted in a discriminatory manner, the Board would assess how the union handled a complainant's case and would need to be satisfied, on the balance of probabilities, by the evidence before it, that the union treated the complainant in a discriminatory manner due to protected personal characteristics such as race, sex, religion, or disability. For example, a union's conduct may be considered discriminatory if a union refused to pursue a grievance because of an employee's religious practices.
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> Additionally, a union's duty has both substantive and procedural elements. A union's decision concerning a grievance must not be discriminatory in substance. The process a union follows to make its decision must reasonably accommodate where, for example, there is a protected personal characteristic such as a disability. A union's conduct therefore may be considered discriminatory if the grievance process followed by a union had an adverse impact on an individual as it failed to take account of and therefore accommodate protected personal characteristics.
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> Ms. Murphy identified as having a diagnosed verbal learning disability in her Complaint and, throughout the complaint process before the Board, Ms. Murphy has been assisted by a social worker to assist her in navigating the complaint process. Communications from Ms. Murphy and her social worker, to the Board, indicate that a social worker had also been assisting Ms. Murphy in her dealings with the Union prior to her filing the Complaint with the Board.
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> Based on the evidence provided, the Union provided assistance to Ms. Murphy, via telephone, email and in person, in relation to the Grievance as it moved through the grievance process including requesting an accommodation from her Employer however, as the Employer indicated it had no other available positions at that time, Ms. Murphy was placed on an administrative leave. There is no evidence of any overt discrimination in that there is no evidence to suggest that the Union refused to assist Ms. Murphy or pursue the Grievance or treated her differently due to protected personal characteristics in making its decision not to take her Grievance to arbitration and to withdraw it. As explained above, the duty of fair representation process does not involve second-guessing decisions made by a union and the scope of the duty does not require that decisions made are correct, a union must act reasonably in making the decision it did. The Union had reasoned, based in another previous unsuccessful attempt at arbitrating a grievance in a *Protection of Property Act* case, that taking the Grievance to arbitration would not be successful. This was

a reasonable judgment to make. The Union's decision to withdraw the Grievance was communicated to Ms. Murphy in writing via a letter on October 7, 2019.

I have also considered whether the processes and procedures followed by the Union in handling the Grievance had a discriminatory effect on Ms. Murphy by failing to take account of her learning disability i.e., should the Union have acted differently in the handling of the Grievance?

In *Bingley*, 2004 CIRB 291 (CanLII), the Canada Industrial Relations Board ("CIRB") held that a union had unfairly represented the complainant by acting in a discriminatory manner as they had discredited the complainant's request for an accommodation in the workplace and failed to proactively pursue the associated grievance. The CIRB explained:

> [64] Due to the sensitive and important issues associated with the accommodation of disabled workers in the workplace, labour boards also look to see whether unions have given disabled employees' grievances greater scrutiny. The cases generally concur that the usual procedure applied to other members of the bargaining unit may be insufficient in representing a griever with a disability, mainly because the member's situation will require a different approach…

…

> [74] …when a member has some kind of disability, the union must not only handle the grievance in an "ordinary" manner but has to put some extra effort into the case. Thus, the union cannot handle the case like any other grievance; it must be proactive and more attentive in its approach.

There is no evidence to support a finding that the Union failed to take sufficient account of Ms. Murphy's disability or that the processes and procedures followed by the Union in handling the Grievance had a discriminatory effect on Ms. Murphy. In addition, the subject matter of the grievance does not relate to the refusal of an accommodation. It does appear that Ms. Murphy did request an accommodation for support for her disability following the filing of the Grievance, with which the Union assisted, and in their letter of September 3, the Employer stated that they were willing to allow for reasonable accommodation in the workplace. The evidence suggests that the Union were in regular contact with Ms. Murphy whilst the Grievance was being processed and offered her assistance "in any area she needed it". Ms. Murphy was in contact with the Union on September 2, 10 and 16 and then filed her Complaint on September 20, 2019.

To the extent that Ms. Murphy's underlying concern may be that she did not receive an explanation of the circumstances concerning the complaint made against her by the doctor's assistant to the IWK Health Centre (resulting in the IWK Protection Services Office's decision to issue a *Protection of Property Act* Notice against her if she returned to the IWK because of the May, 2019 incident), to her satisfaction, the Union would not be required to take a grievance to arbitration, where it had previously arbitrated a similar case and lost, as the Union had assessed it would be

> unlikely to succeed just so that questions could be asked of those involved with the incident as to why the complaint had been made.
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> Based on my review of everything submitted, I am not satisfied that there is sufficient evidence to permit the Board to potentially find that the Union represented the complainant in a discriminatory manner in relation to the Grievance.
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> [Record, Tab 102, pp.8-9]

Issues:

1. The issue before the court is whether the decision was reasonable.

Facts:

[9] The following relevant facts are derived from the Record.

[10] On or about May 28, 2019 Ms. Murphy was involved in an off-duty incident with IWK staff while she was attending a medical appointment ("incident"). The IWK complained to Compass about Ms. Murphy's conduct and Compass suspended Ms. Murphy without pay pending the outcome of its investigation of the incident. On June 5, 2019 the Union filed a grievance that Compass had suspended Ms. Murphy without pay pending the outcome of its investigation ("grievance"). It is clear from the Record that this was not being investigated by Compass with any real urgency.

[11] The initial letter of suspension sent to Ms. Murphy by Compass dated May 29, 2019, correctly advised that the IWK had restricted her site ID access for work. Without such security privileges she could not work at the IWK. In later correspondence, and when meeting with Ms. Murphy in person, Compass (mistakenly) advised her that the IWK had issued a *Protection of Property Act*, R.S.N.S., c. 363, s. 1., Notice to her denying her access to their premises. She was never served with such a Notice and when she inquired of the IWK about the Notice she was told no such Notice had been issued. This misinformation, considering Ms. Murphy's disability, was unfortunate and caused Ms. Murphy unnecessary stress as she believed she and her children would not be able to obtain medical services at the IWK. This was ultimately clarified for her by the IWK.

[12] On September 30, 2019 Ms. Murphy filed her DFR complaint on the basis that the Union had acted in a discriminatory manner in its representation of her contrary to section 54A(3) of the *Act*. It is clear that this complaint concerned the actions of the Union in dealing with her grievance. It is noteworthy that the

complaint was filed before she learned of the Union's decision not to pursue arbitration of her grievance.

[13] In her complaint, she stated that she was in regular contact with the business agent for the Union throughout the summer and that she had contacted the Union on September 3, 2019 and received a response on September 10, 2019. The remedy she sought was said to be "Looking for proper answers".

[14] The Labour Board held the complaint in abeyance until it was satisfied that Ms. Murphy had received the Union's decision on whether to arbitrate the grievance and also that she had exhausted the Union's internal appeal process in accordance with section 55(3) of the *Act*.

[15] By letter dated October 7, 2019 the Union's Grievance Committee advised Ms. Murphy that it had reviewed the grievance and determined that it did not have merit because the Union had previously been unsuccessful in arbitration in at least one case where the IWK had banned a member under the *Protection of Property Act*. It further advised Ms. Murphy that she could ask for a review of this decision under the Union Constitution and Constitution Policy that provided the procedural directions for how to ask for a review. The letter underscored that "it is very important to adhere to the timelines as described in the policy".

[16] Ms. Murphy did not actually receive the October 7, 2019 letter until November 8, 2019. She was advised by the Union business agent that she had 30 days from the date she received the letter to appeal. On November 19, 2019, Ms. Murphy appealed the Union's decision not to proceed with the grievance. By letter to Ms. Murphy dated January 27, 2020, the Union denied the request for review because it had been submitted more that 30 days after the date of the decision, contrary to the requirements of the Union Constitution and Constitution Policy.

[17] Again, it is important to underscore that the decision by the Union to deny review of the decision not to pursue arbitration is not before the court for judicial review. It is also not the basis for the DFR complaint. The duty of fair representation complaint was about the Union's dealings with her in the handling of her grievance.

[18] On January 30, 2020, the Board acknowledged by email to Ms. Murphy that she had attended their offices to advise that the Union had denied her internal appeal. The Board advised that it would now proceed with the DFR complaint and would assess whether it met the prerequisites of a duty of fair representation complaint under the *Act*.

[19] On March 13, 2020 the Board issued its Preliminary Order determining that Ms. Murphy's DFR complaint met the prerequisites of section 55(3) of the *Act*. On June 10, 2020 the Board appointed a Review Officer to conduct the next stage of the complaint process and advised Ms. Murphy by email that the review would proceed in two stages:

(a) Stage 1 – the Review Officer reviews the complaint to assess whether the evidence is sufficient to demonstrate that the Union *may* have breached its duty of fair representation. If the Review Officer concludes that the Union may have breached its duty, the Board would then request that the Union provide a formal response to the complaint. If the Review Officer concludes that the evidence is insufficient, the complaint is dismissed.

(b) Stage 2 – The Review Officer receives and considers the Union's formal response and assesses the evidence of both parties to determine whether the Union has in fact breached its duty of fair representation. If the Review Officer finds that the answer is "no", the complaint is dismissed. If the Review Officer finds the answer is "yes", the Review Officer will attempt to negotiate a settlement. If a settlement is not possible, the Review Officer will refer the complaint to the Board for decision. The Board may decide the matter with or without a hearing.

[20] By written decision dated July 13, 2021, the Review Officer found that there was not sufficient evidence to find, on a balance of probabilities, that the Union had violated its duty of fair representation. As a result, the Review Officer dismissed the DFR complaint at stage 1 of the review process.

[21] It is this decision that is before me for judicial review.

The Law

[22] The legal principles that govern my analysis of the decision were clarified by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. The majority of the Court stated that the role of a reviewing court is to review the decision – including both rationale and outcome – and decide if it was unreasonable. It is not the role of a reviewing court to conduct its own analysis.

[23] In *Carroll v. Canada (Minister of Justice)*, 2021 NSCA 71, the Nova Scotia Court of Appeal described *Vavilov* as setting out a roadmap for a reviewing court, at para 27:

> [27] The majority judgment of the Court in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, set out the roadmap for a reviewing court. It begins with the guidance to examine the written reasons (if any) with a view to understand the reasoning process followed by the decision maker. Ultimately, a reasonable decision is one based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law:
>
> > [84] As explained above, where the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with "respectful attention" and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion: see *Dunsmuir*, at para. 48, quoting D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286.
> >
> > [85] Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a whole is reasonable. As we will explain in greater detail below, **a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision.**
> >
> > [86] Attention to the decision maker's reasons is part of how courts demonstrate respect for the decision-making process: see Dunsmuir, at paras. 47-49. In *Dunsmuir*, this Court explicitly stated that the court conducting a reasonableness review is concerned with "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes": para. 47. **Reasonableness, according to *Dunsmuir*, "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process", as well as "with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *ibid*. In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.** [Bold emphasis added]

[24] Justice David Stratas of the Federal Court of Appeal is a recognized authority on administrative law. His analysis of the *Vavilov* decision in *Alexion*

Pharmaceuticals Inc. v. Canada (Attorney General), 2021 FCA 157, is very helpful. By way of introduction to *Vavilov*, Justice Strata observed:

> 7 *Vavilov* did not substantially change the jurisprudence in this Court concerning the unreasonableness of outcomes reached by administrators: *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 at paras. 22-37. The approach is a contextual one that considers the ambit of acceptable and defensible decision-making open to administrators or, put another way, the constraints acting upon administrators. However, *Vavilov* did change the law substantially by requiring that reviewing courts be able to discern a reasoned explanation for administrators' decisions. This change in the law affects the outcome of this appeal.

[25] Justice Strata made the following analysis of the *Vavilov* approach to judicial review:

> 12 *Vavilov* tells us that a reasoned explanation has two related components:
>
> • Adequacy. The reviewing court must be able to discern an "internally coherent and rational chain of analysis" that the "reviewing court must be able to trace" and must be able to understand. Here, an administrator falls short when there is a "fundamental gap" in reasoning, a "fail[ure] to reveal a rational chain of analysis" or it is "[im]possible to understand the decision maker's reasoning on a critical point" such that there isn't really any reasoning at all: *Vavilov* at paras. 103-104.
>
> • Logic, coherence and rationality. The reasoning given must be "rational and logical" without "fatal flaws in its overarching logic": *Vavilov* at para. 102. Here, the reasoning given by an administrator falls short when it "fail[s] to reveal a rational chain of analysis", has a "flawed basis", "is based on an unreasonable chain of analysis" or "an irrational chain of analysis", or contains "clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise": *Vavilov* at paras. 96 and 103-104.
>
> 13 These shortcomings must be evident on "critical point[s]": *Vavilov* at paras. 102-103. The "critical point[s]" are shaped, in part, by "the central issues and concerns raised by the parties": *Vavilov* at paras. 127-128. They are also points that are "sufficiently central or significant" such that they point to "sufficiently serious shortcomings in the decision": *Vavilov* at para. 100. They must be "more than merely superficial or peripheral to the merits of the decision": *Vavilov* at para. 100.
>
> 14 Of the two components, the one I have called "adequacy" is the most challenging. What should reviewing courts look at in order to assess adequacy?
>
> 15 The express reasons are only one place for reviewing courts to look. The failure of the administrator's reasons to mention something explicitly is not necessarily a failure of "justification, intelligibility or transparency": *Vavilov* at paras. 94 and 122. One must look at the reasons the administrator has written and

read them "holistically and contextually" in "light of the record and with due sensitivity to the administrative regime in which they were given": *Vavilov* at paras. 97 and 103.

…

19 When is a reasoned explanation on a key point inadequate?

20 The administrator must provide enough to "assur[e] the parties that their concerns have been heard", demonstrate that it "actually listened to the parties" and show it was "actually alert and sensitive to the matter before it": *Vavilov* at paras. 127-128. To this end, this Court has spoken of the need for reviewing courts to understand "the substance of the decision" along with "why the [administrator] ruled in the way that it did" so that it "can assess, meaningfully, whether the [administrator] met minimum standards of legality": *Vancouver International Airport Authority v. Public Service Alliance of Canada*, 2010 FCA 158, [2011] 4 F.C.R. 425 at para. 16.

21 In some cases, however, the requirement of a reasoned explanation is higher:

Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. (*Vavilov* at para. 133.) In such cases, the reviewing court might insist that the administrator show it has understood and grappled with the consequences of its decision: *Vavilov* at para. 134, citing *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84.

24 Reviewing courts must remember that administrators, not the reviewing courts, are the merits-deciders: *'Namgis First Nation v. Canada (Fisheries and Oceans)*, 2019 FCA 149; *Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2014 FCA 245, [2015] 4 F.C.R. 75; *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 N.R. 297 at paras. 14-20; *Bernard v. Canada (Revenue Agency)*, 2015 FCA 263, 9 Admin. L.R. (6th) 296 at paras. 13-28. In deciding the merits, administrators, some of whom are not lawyers, may not "deploy the same array of legal techniques that might be expected of a lawyer or judge" and so "'administrative justice' will not always look like 'judicial justice'": *Vavilov* at paras. 92 and 119. To expect otherwise is to overly judicialize administrative processes, threatening their efficiency and potentially undermining the very reasons why the legislator entrusted this jurisdiction to the administrator in the first place: see, e.g., *Canadian Union of Public Employees, Local 301 v. Montreal (City)*, [1997] 1 S.C.R. 793, 144 D.L.R. (4th) 577 at para. 39.

25 In the end, "a reviewing court must ultimately be satisfied that the [administrator's] reasoning 'adds up'": *Vavilov* at para. 104.

[Emphasis added]

Analysis

[26] The Review Officer summarized the facts of Ms. Murphy's employment and that she was represented by the Union during the relevant period. The Review Officer noted that Ms. Murphy had submitted medical evidence that she has ADHD (inattentive type) as well as a specific learning disorder (former verbal learning disability). It was noted by the Review Officer that Ms. Murphy was assisted by a social worker in her communications with the Board.

[27] The Review Officer considered the nature of the duty of fair representation as set out in section 54A(3) of the *Act* and discussed the applicable definitions of arbitrary, discriminatory, and bad faith representation. The Review Officer canvassed the general principles of the duty of fair representation set out by the Supreme Court of Canada in *Canadian Merchant Service Guild v Gagnon et al*, [1984] 1 S.C.R. 509, at para 38, that were endorsed by the Nova Scotia Court of Appeal in *Davison v Nova Scotia Government Employees Union*, 2005 NSCA 51:

> 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.
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> 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.
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> 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.
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> 4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.
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> 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.

[28] The Review Officer correctly noted that a DFR complaint is not an appeal of a Union's decision and the Board will not interfere in cases where a union has investigated a grievance, obtained full details (including the employer's side of the story), made reasonable assessments of the potential outcomes, and advised the employee of the reasons for its decision not to pursue a grievance or refer it to arbitration (page 5).

[29] The Review Officer identified that under section 54A(3), the onus is on the complainant to fully explain the bases of their complaint and how they believe the union failed to represent them fairly. In considering the evidence, the Review Officer's task is to assess the evidence on the balance of probabilities. There is no onus on the union at stage 1 of the process.

[30] The Review Officer considered the evidence of Ms. Murphy's communications with the Union and the Union's explanation for why it determined it would not proceed with the grievance (having unsuccessfully arbitrated similar grievances with the IWK in the past).

[31] The Review Officer weighed and analyzed the evidence and determined on a balance of probabilities that there was insufficient evidence to find that the Union may have failed to represent Ms. Murphy fairly. Although the complaint was based on the allegation that the Union had violated the duty of fair representation by representing her in a discriminatory manner, the Review Officer also considered whether the Union's representation was arbitrary or in bad faith and concluded there was no evidence on which to make such a finding. The Review Officer concluded that the decision to withdraw the grievance was not connected to Ms. Murphy's personal characteristics or any human rights protected grounds. The Review Officer found that there was no evidence that the Union had failed to sufficiently account for Ms. Murphy's disability or that the process had a discriminatory effect on her.

[32] Having considered the directions provided by *Vavilov*, *Carroll* and *Alexion*, I find that the decision was internally coherent and reflected a rational chain of analysis. I found no shortcomings in the decision. It was extremely well written. It correctly identified the legal and factual issues to be determined by the Review Officer and provided a clear and detailed analysis of each. On the critical points of whether there was sufficient evidence to allow the Board to potentially find that the Union represented the complainant in a discriminatory or arbitrary manner, I find that the decision was logical and exhibited no gaps in its rational chain of analysis.

[33] As to adequacy, it provided the complainant with enough information to assure her that her concerns had been heard and addressed. It was in all respects a reasonable decision. It meets the requirements of justification, transparency and intelligibility. To paraphrase *Alexion*, I am satisfied that the Review Officer's reasoning "adds up".

[34] The Application is dismissed. The Union does not seek a costs award. Counsel for the Labour Board did not participate at the hearing and has not sought costs. There will be no costs awarded.

[35] I request counsel for the Union to prepare an Order accordingly.

Norton, J.