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ORDER NO. 1731
Case No. 275/22/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

F.A.,

Applicant,

- and -

Canadian Union of Public Employees, Local 204,

Bargaining Agent/Respondent,

- and -

SHARED HEALTH (GRACE HOSPITAL SITE),

Employer.

BEFORE: **K. Pelletier, Vice-Chairperson**

A. Thomson, Board Member

D. Gillies, Board Member

This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.

SUBSTANTIVE ORDER

INTRODUCTION

1. On December 21, 2022, the Applicant filed an application with the Manitoba Labour Board (the "Board") under *The Labour Relations Act* (the "*Act*") claiming that the Union breached its duty of fair representation and accordingly breached section 20 of the *Act*.

2. On January 17, 2023, the Union filed its Reply alleging that the Applicant has failed to disclose a *prima facie* violation of the *Act*. On the same day, the Employer also filed its Reply denying each allegation contained in the Application.

3. On February 3, 2023, the Applicant filed a Response to the Replies.

4. The Board undertook a review of the Application and determined that the matter would proceed to hearing to address the preliminary issue as to whether the Application established a *prima facie* case. The preliminary hearing was held on June 20, 2023.

5. At the outset of the preliminary hearing, it was made clear to the parties that the Board would consider whether the allegations contained in the Application, if true, disclosed a reasonable likelihood that a violation of the *Act* had been established, therefore requiring a response from the Union. It was outlined that if the Board determined that a *prima facie* case had been established, then a full hearing on the merits would be scheduled. Conversely, if the Board determined that there was no likelihood that the Applicant could establish a violation of the *Act* based on the allegations made in its Application and at the preliminary hearing, the complaint would be dismissed.

6. The Board proceeded to hear and consider the evidence of the Applicant. Both the Union and the Employer had the opportunity to cross-examine the Applicant.

7. The Board informed the parties on August 11, 2023, that the Applicant had established a *prima facie* case and that the parties would be reconvened for a full hearing on the merits.

8. The hearing resumed on January 17 and 19, 2024.

9. For the reasons that follow, the Board has concluded that the Applicant has established a breach of section 20(b) of the *Act*.

BACKGROUND

10. On April 19, 2022, the Applicant started working with the Employer as an Aide Clerk in a temporary full-time position. In this role, she was represented by the Union and covered by a collective agreement between the Union and the Employer.

11. The Applicant resigned from employment on July 28, 2022.

12. The evidence established that there were no issues with the Applicant's performance at work until some time in mid-June 2022, when concerns started emerging regarding some of the duties that she was performing. This led to successive meetings with the Employer which, the Applicant claims, caused her significant distress and led to her resigning from employment. She claims that her decision to resign was supported by her union representative. She does not allege that her decision to resign was somehow involuntary or that she was somehow incapacitated when she tendered her

resignation. Moreover, she did not seek to withdraw her resignation and return to active service with the Employer.

13. The Applicant outlines that she was thriving in the workplace up to mid-June when she took a short medical absence from work. Upon her return, she discovered that her desk had been rifled through and that there were files missing. The Applicant raised these concerns with the Employer. It was at that point, the Applicant testified, that her standing within the workplace started to decline.

14. A short time later, there were a series of meetings with the Employer regarding the Applicant's performance. At each meeting, a union representative was present and took extensive notes. These notes were confirmed by the Applicant as being relatively complete and reflective of what transpired in each meeting. The Applicant and the union representative both relied on these notes as an aide-memoire: a matter of using them to refresh their memory.

15. The first performance discussion occurred on June 30, 2022. At the commencement of this meeting, the Applicant was informed that the Employer would be extending the Applicant's probation period (which was scheduled to expire a few weeks later, on July 18, 2022) for a further two-month period. The Employer did not specify the reasons for the request but proceeded to outline some concerns with the Applicant's performance. The first issue related to a missed patient appointment while the Applicant was away on medical leave. While other staff were looking through the Applicant's desk, they discovered that the Applicant had been preparing creatinine charts for patients. Relying on her memory of the meeting, and supported by the union representative's notes, she recalled being informed by the Employer that preparing the charts was a "good idea", but that she should be making her notes clearer and communicating more effectively with others in the office. She was also informed that she was to raise these ideas with her supervisor so that "everyone can be on the same page". When she asked if the Employer direction is for her to stop doing "creatine", the notes of the meeting do not reflect a clear answer.

16. While looking through the Applicant's desk in her absence, management also raised that they found other files that had not been assigned to her and which ought not have been on her desk. The Applicant disputed this claim, explaining that she had received direction from a doctor in the office to work on the files that were found.

17. Another issue raised was the Applicant's use of e-charts. While the Applicant testified that she was not informed in this meeting that she was not to use e-charts, the union representative recalled that she was informed to cease using e-charts. The notes do not reflect a clear indication that the Applicant should discontinue using e-charts. In fact, the Applicant was asked in the meeting if she wished to access e-charts and that, if so, this discussion should continue with her supervisor.

18. At the meeting, the Applicant advised those in attendance that she was unable to stand for extended periods of time, due to verified restrictions. The Applicant informed

management that she had some discussions with occupational health regarding these limitations. The Employer advised that it would investigate the matter.

19. The Employer also raised concerns regarding the Applicant's alleged inability to take criticism and that she was defensive. The union representative testified that he had requested a break in this meeting, specifically since the Applicant was defensive and did not appear to show any appreciation for the concerns that were being raised at the meeting. During this break, the union representative stated that he managed to calm the Applicant. The Applicant testified that she asked the union representative why he did not appear to be representing her and pushing back on the allegations that were presented. In the end, following a short break, the meeting resumed.

20. The union representative requested for the Employer to provide a list of duties and responsibilities, to assist the Applicant in better understanding her role. The Employer advised that it would endeavour to do so, noting that this is a new position which is intended to assist with patient flow.

21. At the end of the meeting, the Employer reiterated that it would be extending the Applicant's probation period. The union representative asked for an explanation from the Employer to better understand the reasons for the extension, to which the Employer did not provide a clear answer. The meeting then ended.

22. After the meeting, the union representative and the Applicant had a brief discussion. There is a note that the union representative informed the Applicant of her right to file a respectful workplace complaint as it relates to her claim that her desk had been improperly rifled through and that she was being unfairly targeted.

23. On July 5, 2022, the Applicant sent an email to the union representative advising that she is "finalizing a letter that [she] would like [him] to go through". She stated that she would send the letter "this evening or tomorrow". The union representative testified that he did not receive any email from the Applicant. The Applicant testified that she sent over a lengthy complaint to both the union representative and her manager on July 5, 2022. The email that she produced at the hearing suggested that it had been sent to her personal email. There was no indication that the union representative had received a copy.

24. A follow-up meeting was scheduled for July 7, 2022. From all accounts, this meeting was held for the purpose of discussing the Applicant's roles and responsibilities. The union representative attended this meeting via telephone. The Applicant advises that this meeting was effectively another opportunity for the Employer to highlight the concerns that it had with her performance. It is in this meeting that the Applicant is advised that she is no longer to use e-charting. She is also asked some questions about the duties that she is performing, to which she responds that she is performing at the request of either nurses or doctors in the office.

25. At the meeting, the Employer pointed out that it had received a letter of complaint, in reference to the letter which she drafted and sent to her manager on July 5, 2022.

The Employer stated that it would schedule another meeting to discuss the concerns she raised.

26. The meeting concluded with a statement that the Applicant's probation period will be extended, and with the union representative requesting reasons for the extension, to which the employer representative states "we can talk about that more in detail if you want", to which the union representative states: "yes".

27. The Applicant pointed out that she felt uneasy with the union representative having private discussions with the Employer in her absence, given that she claimed that he had done very little to represent her in either meeting.

28. The union representative could not recall any offline discussion with the Employer following this meeting and could not recall if there were any further discussions regarding the Employer's request to extend the Applicant's probationary period.

29. On July 15, 2022, the Employer and the Applicant met once again, this time to discuss the Applicant's complaint. The union representative was not asked to attend this meeting and testified that he did not have any knowledge of the meeting. He explained that he was not invited as it was an internal complaint process, in which the union representative was not involved. The union representative testified that, as of this day, he was still unaware that the Applicant had filed an internal complaint.

30. The Applicant stated that, though this meeting was scheduled to discuss the complaint she had filed, the issues discussed were unrelated, and the Employer only took another opportunity to discuss the concerns it had with the Applicant's performance.

31. On July 21, 2022, the Applicant received a letter which stated that her probationary period was being extended for an additional two months, to September 19, 2022. This letter, which is also copied to the union representative, outlines:

> This decision to extend your probationary period was based on concerns with your ability to complete your duties efficiently and follow direction given by the unit manager. As discussed at the meeting, your priorities are to welcome patients to the clinic, check vital signs as needed, and prepare clinic rooms to ensure they are clean and ready to receive patients for appointments.

32. The Applicant testified that when she received this letter, she was still unclear as to the reasons for the probationary extension. She further stated that the union representative had not contacted her to discuss the matter further. The union representative testified that he also had not received any further information relating to the probationary extension, and that he had not consented to the extension, as required by Article 704 of the collective agreement:

> A "probationary" employee is a newly-hired full-time or part-time employee who has not completed three or four months service respectively, from the

date of hiring. This period may be extended if the Employer so requests and the Union agrees.

33. On July 25, 2022, the Applicant testified that she was in shambles. Her confidence was exceedingly low, and she was “frantic and always in pain”. The union representative attended the meeting and took notes. There was an issue raised regarding the Applicant performing duties that are outside of her scope of care and responsibility. The Applicant responded that she had been tasked with these duties by doctors and nurses. The Employer indicated that it would follow up and investigate. In the interim, the Applicant was placed on a paid leave of absence, pending investigation.

34. At the hearing, the Applicant questioned why the union representative did not ask questions regarding the Employer’s investigation, and why he did not insert himself in the investigation. The union representative responded that, since the Employer’s investigation implicated nurses and doctors, he did not have the right to insert himself in the Employer’s investigation. Furthermore, the union representative noted that the results of the Employer’s investigation would be communicated, at which point there would be a further opportunity to seek out additional information.

35. The meeting was once again cut short as the Employer’s representative had another meeting.

36. The Applicant sent an email to the union representative on July 26, 2022, indicating that she was no longer able to “do this”; that “listening to the negativity has been too much” and that her “heart and mind can’t take it anymore”. She adds: “If it’s allowed, please let them know they have their wish. I’ll quit; I can’t keep fighting. I can put it in writing and make it official, just say the word”. The union representative responded to the email, advising for her to call him to discuss options.

37. A follow-up meeting to the July 25 meeting was scheduled for July 27, 2022. The Applicant and the union representative had a telephone conversation just prior to the start of the meeting, and the union representative took notes of the interaction. There was some discussion regarding options for the Applicant, including a voluntary resignation, to request a further extension of probation, or to proceed with the meeting. In this telephone discussion, the union representative added that: “I want you to think it over about what you mentioned to me about throwing in the towel. Talk to your doctor about it. Please get help. I will call you later.”. The Applicant testified that she took from this conversation that the union representative was recommending that she resign from employment. The union representative took exception to this suggestion, advising that he simply wanted to present all options to the Applicant, so that she could make an informed decision. He even highlighted for her the option of consulting a medical practitioner to see what was in her best interest going forward.

38. The union representative attended the meeting with the Employer on July 27, 2022, and informed them that the Applicant was not prepared to proceed with the meeting. The union representative requested that the meeting be rescheduled. The union

representative and the representative of the Employer had a brief discussion following the request for an adjournment. The union representative took notes of this brief exchange. In his notes, he writes that he has been informed that the “outcome will not be favourable” and that the Employer would be prepared to accept a resignation. The union representative added that there may be a medical factor involved and that there may be a request for a further probationary extension, which was rejected by the Employer.

39. The union representative and the Applicant then spoke on July 28, 2022, at which time the Applicant informed the union representative that she would not proceed with the meeting and that she would be tendering in her resignation. They had a further discussion about what was entailed. The Applicant provided her resignation in writing to the Employer at 7:55 a.m. on July 28, 2022. As a result, the meeting was cancelled.

40. The union representative vehemently denied having encouraged the Applicant to resign and that the decision was entirely hers to make. He stated that he was forthcoming in outlining the concerns and the information he had gleaned from his discussions with the employer’s representatives and discussed various options, one of which was a possible resignation from employment.

41. The Applicant stated that she saw no option but to resign, as she continued to face a barrage of negativity and saw no end to the Employer’s questioning of her work.

42. Following her resignation, the Applicant and the union representative had many email and telephone discussions, many more than they had while she remained employment. Essentially, the nature of these interactions related to the Applicant’s request for a letter of recommendation from the Employer and assistance in securing alternative employment. At one point, the union representative informed the Applicant that he would approach certain managers that he knew to see if there would be further employment opportunities for the Applicant. In the end, the Applicant was able to secure a neutral letter of employment, but she was not able to gain alternative employment. As of the date of the hearing, the Applicant remained unemployed.

43. The Applicant states that the union representative did very little to protect her interests. In the three meetings he attended with her, she claims that the union representative sat quietly taking notes and did not push back on the many allegations that were lodged against her. She argues that the union representative did not seek clarification, as she had requested, as to the reasons for the probationary extension. Further, the union representative did not attempt to challenge many of the Employer’s assumptions presented in the meetings. Rather, the Applicant states that the union representative simply accepted as true each of the allegations that were brought forward. The Applicant points to the issue of e-charts as an example. At the first meeting, she was not informed to cease consulting e-charts. In the second meeting she was informed to discontinue using e-charts. After this meeting, given the clear direction, the Applicant did not consult e-charts. Yet, the union representative informed her on July 27 that the Employer’s request for a probationary extension included the fact that she continued to use e-charts despite being advised otherwise.

The Applicant states that this demonstrates that the union representative was not listening to her, and he was simply accepting as truthful what the Employer was presenting.

44. Further, the union representative believes that she was led down the path of resignation by the union representation, given that he informed her that she would likely be terminated from employment.

45. The Applicant raised the issue of a letter which she claimed was drafted by her supervisor sometime in mid-June, in which it is alleged to outline that the Applicant is an exemplary employee. The Applicant sought out a copy of this letter without success. The Applicant further requested that the union representative make inquiries to locate this letter. His failure to do so, she claims, is in a violation of his duty to represent her in keeping with the obligations expressed in the *Act*.

46. The Union argued that the union representative fulfilled his obligations under the *Act* by attending and representing the Applicant in various meetings with the Employer; by informing her of her right to file a respectful workplace complaint; by asking questions and clarifications, including that the Employer prepare a list of duties and responsibilities; by pushing back on the Employer's request to extend probation; and by informing her of her options, when confronted with the prospect of a possible termination of employment. Had the Applicant elected not to resign, he would have attended the meeting on July 28 with a view of seeking out additional information relating to the investigation and would have considered the possibility of filing a grievance. However, as it stood, given the Applicant's election, the Union submits that the Union did everything that it needed to do to assist the Applicant. In so doing, the Union argues that there is no evidence that it acted in a manner that can be characterized as arbitrary, discriminatory or in bad faith as it relates to a right the Applicant possesses under the Collective Agreement.

47. The union representative and the Applicant had many discussions following her resignation. They discussed the preparation of a letter of recommendation, and the union representative offered to have discussions with managers who he knew that may be looking for additional staff. In the end, the Applicant received a letter of employment, and the union representative attempted to find alternative placement for the Applicant without success. The union representative testified that he did his best to assist the Applicant but, since she resigned, there was not much he could do to assist.

48. The Applicant maintained that the union representative did very little to assist her throughout, both prior and post resignation.

49. The Employer stated in its final submission that it believed that the Union fulfilled its obligations under the *Act*. The Employer requests the Application be dismissed without a hearing.

STATUTORY PROVISIONS

50. Section 20 of the *Act* establishes the duty of fair representation. The Applicant bears the onus of establishing a violation of either section 20(a) or (b) of the *Act*. Section 20 of the *Act* provides:

> **Duty of fair representation**
> 20 Every bargaining agent which is a party to a collective agreement, and every person acting on behalf of the bargaining agent, which or who, in representing the rights of any employee under the collective agreement,
>
> (a) in the case of the dismissal of the employee,
>
> (i) acts in a manner which is arbitrary, discriminatory or in bad faith, or
>
> (ii) fails to take reasonable care to represent the interests of the employee, or
>
> (b) in any other case, acts in a manner which is arbitrary, discriminatory or in bad faith;
>
> commits an unfair labour practice.

51. Section 20(a) of the *Act* sets forth a higher standard of care governing the scrutiny of cases concerning the "dismissal" of an employee by providing that a bargaining agent must not only refrain from acting in a manner which is arbitrary, discriminatory or in bad faith, but must also exercise "reasonable care" in representing the interests of the employee under the collective agreement.

52. The term "dismissal" is not defined in the statute. The Board has interpreted "dismissal" having regard to its normal and ordinary meaning, as understood in the context of the employment and arbitral jurisprudence governing collective bargaining regimes. Furthermore, the term "dismissal" must be interpreted in the context of the just cause provision set out in section 79 of the *Act*, which provides that every collective agreement must contain a provision requiring that the employer have just cause for disciplining or dismissing any employee in the bargaining unit. The Board has consistently held that a resignation does not fall within the rubric of section 20(a) and accordingly this matter must be considered pursuant to the standards in section 20(b).

53. As the Board noted in *V.S. v. Manitoba Government and General Employees' Union* (2010) 190 C.L.R.B.R. (2d) 184, section 20(b) of the *Act* makes it an unfair labour practice for a bargaining agent, and persons acting on behalf of a bargaining agent, to act in a manner which is arbitrary, discriminatory or in bad faith in representing the rights of an employee under the collective agreement. The applicable standard of care under section 20(b) of the *Act* is expressed in the negative. The Board's inquiry in such cases is limited to determining whether an applicant has demonstrated that his or her bargaining agent has acted in a manner prohibited by the section. If the bargaining agent has represented the employee in a

manner which is free from the three prohibited elements, then there is no violation of section 20(b) of the *Act*, and no remedy is available to the applicant employee.

54. A summary of the meaning ascribed to the terms “arbitrary”, “discriminatory” and “bad faith” by the Board appears in *J.H.B.* v. *Canadian Union of Public Employees* (2009), 164 C.L.R.B.R. (2d) 182 at page 190:

> “Arbitrary” conduct has been described as a failure to direct one’s mind to the merits of the matter, or to inquire into or to act on available evidence, or to conduct any meaningful investigation to justify a decision. It has also been described as acting on the basis of irrelevant factors or principles, or displaying an attitude which is indifferent, summary, capricious, non-caring or perfunctory. Flagrant errors consistent with a non-caring attitude may also be arbitrary, but not honest mistakes, errors of judgment, or even negligence. “Bad faith” has been described as acting on the basis of hostility or ill-will, dealing dishonestly with an employee in an attempt to deceive, or refusing to process the grievance for sinister purposes. A misrepresentation may constitute bad faith, as may concealing matters from the employee. The term “discriminatory” encompasses cases where the union distinguishes among its members without cogent reasons.

55. The duty of fair representation does not impose a standard of perfection on bargaining agents or its representatives. The Board also does not sit in appeal of decisions made by unions. Nor does the Board consider whether the union’s opinion or the likelihood of success of a grievance was correct and does not minutely assess and second guess every union action.

56. The onus of showing a *prima facie* breach of the duty of fair representation falls upon the Applicant in these proceedings.

ANALYSIS

57. The caselaw reveals that bargaining agents have a large amount of discretion when it comes to dealing with grievances. Unions may decide to file, settle or withdraw grievances even if the member disagrees. However, to counterbalance this discretion, the *Act* requires unions to treat members of its bargaining unit fairly and in good faith. They must carefully consider the matter and significance of the case for its members. They must act without serious or major negligence and without hostility. In short, the union’s decision must not be arbitrary or discriminatory and must not be in bad faith.

58. In the present case, the Applicant has not alleged that the Union has acted in a discriminatory manner, that is, based on invidious distinctions without reasonable justification or labour relations rationale. She has not alleged that the Union has acted in a discriminatory manner in its representation of the Applicant. Similarly, the Applicant has not alleged that the Union has acted in a bad faith manner in representing her. She presented no evidence that the Union has acted in a manner

that was motivated by ill-will, malice, hostility, or dishonesty. There is no basis for the Board to conclude that the Union failed to represent the Applicant due to bad faith conduct.

59. That leaves the issue of whether the Union acted in an arbitrary manner in representing the Applicant.

60. The Board has determined that the Union has acted in a manner that can be characterized as arbitrary in representing the Applicant. The Board has reached this conclusion, having determined that there were far too many deficiencies by the union representative to ultimately determine that he was acting in keeping with his obligations under the *Act*.

61. The Board is concerned with several issues that were raised at the hearing. First, as it relates to the first meeting when the Employer requested an extension of the probationary period, the Board finds that the union representative did not do enough to push back on the request and to seek out specifically the reasons for the probationary extension. The collective agreement requires the union's acquiescence to a probationary extension. The union representative testified that he did not provide his consent. Yet, the Applicant received a letter in the mail on July 21, 2022, which informed her that she was being extended for a further 2-month period. The union representative was copied on the correspondence. He failed to address the issue with the Applicant and the Employer.

62. Had there been any pushback on the probationary extension, and specifically that the Union had not provided its consent as required under the terms of the collective agreement, there may have been further recourse for the Applicant. Her probationary period may have been concluded on the basis that the Employer did not seek the Union's consent, per the terms of the Collective Agreement. However, as it stood, the Applicant was not informed that she could even contest the probationary extension. If that had been done, the Applicant may have made a different decision then to decide that resignation was in her best interest.

63. The union representative testified that he requested details about the probationary extension. Yet, he testified that it was his understanding that the request was due to repeated failure to discontinue using e-charts following the first meeting; that she was creating creatinine folders and that she was argumentative. Upon further inquiry and reflection, it was clear from the notes presented at the hearing that the Employer had informed the Applicant to cease accessing e-charts following the first meeting. Further, she was informed in the first meeting that the creatinine folders were a "good idea", but that she needed to communicate more clearly with the team. If the reason for the probationary extension was truly that she was argumentative or obstinate, this was not clearly communicated to the Applicant. At the hearing, the Applicant maintained that she still did not have any appreciation of the reasons for the extension. And the union representative's reasons for the extension did not accord with the notes of the meetings. The probationary extension letter dated July 21 states that the reason for the extension is due to the Applicant's "(in)ability to complete (her)

duties efficiently and follow direction". From the evidence heard, there were three different versions for the probationary extension presented, which led to significant confusion for the Applicant. In the Board's estimation, the union representative did not do enough to ensure that he properly understood the reasons for the extension, to ensure that he was not relying upon faulty assumptions, and that he was providing clear and appropriate information to the Applicant.

64. The Board is also concerned that the June 30 and July 25 meetings were cut short by the Employer, yet the union representative did not ensure that the Applicant's concerns were fully addressed with the Employer. The Applicant communicated at the hearing that she did not feel as though she had the opportunity to fully be heard and considered, and she indicated that she advised the union representative that she felt minimized and marginalised in these meetings. At the end of the July 7 meeting, the Employer invited the union representative to have further discussions. The union representative testified that he did not reach out to the Employer to pursue the issues on behalf of the Applicant, to communicate the concerns she had expressed.

65. The Board has identified other concerns which, on their own, would not ground a section 20 violation but, when coupled with the other concerns flagged by the Board, are worth noting. Specifically, the Applicant requested a copy of a letter from mid-June which she says outlined that she was a good employee. He did not request a copy; nor did he look into what happened between mid-June and the end of June, when concerns started appearing with her work performance. He testified that he was unaware of the existence of the letter until after she had resigned. He also did not follow up with the Applicant regarding her suggestion that she required accommodation, as she noted that she was unable to stand for extended periods of time. He did not follow up with her regarding a possible respectful workplace complaint, even though her letter of complaint was discussed in the July 7 meeting which he attended. Though the Board accepts that he did not receive a copy of the complaint, he could have followed up with her, since it was his initial suggestion that she file a complaint.

66. Given these findings, the Board has determined that the Union failed to ensure that it was aware of the relevant information and did not make a reasoned assessment of the case to the Applicant.

67. The union representative may have believed that he was relying on the right information and following the appropriate course of action. However, the many deficiencies outlined above suggest to the Board that the Union acted perfunctorily and superficially, without due regard to the facts or merits of the case and, as a result, did not fulfill its duty of fair representation.

68. For these reasons, the Board finds that the Union acted in an arbitrary manner and breached section 20 of the *Act*.

69. In terms of remedy, the general remedy for a breach of section of the *Act* is to put the Applicant back in the position she would have been had the Union not violated its

duty of fair representation. However, under section 31(4), the Board has broad remedial powers. In this case, despite the apparent lack of fair representation of the Applicant, particularly as it relates to her probationary status, it is clear that the Applicant would not be a good candidate for reinstatement. Nor is the Board satisfied that the Applicant's employment would have continued, even if the Union had successfully challenged the Employer's conclusions regarding the investigation into her acting out of scope.

70. The Board has determined that the appropriate remedy is an order that the Union pay to the Applicant $2,000.00 in accordance with section 31(4)(e) of the *Act*.

T H E R E F O R E

The Manitoba Labour Board **HEREBY GRANTS** the Application filed by F.A. on December 21, 2022.

DATED at **WINNIPEG**, **Manitoba**, this 13th day of March, 2024, and signed on behalf of the Manitoba Labour Board by

"Original signed by"
K. Pelletier, Vice-Chairperson

"Original signed by"
A. Thomson, Board Member

"Original signed by"
D. Gillies, Board Member

KP/ms/acr/kt-s