

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice William J. Burnett
Mr. Justice Christopher J. Mainella
Madam Justice Janice L. leMaistre

BETWEEN:

<i>LYDIA BARTEL-ZOBARICH</i>	)	<i>L. Bartel-Zobarich</i>
	)	<i>on her own behalf</i>
)	
	)	<i>G. H. Smorang, Q.C.,</i>
<i>(Applicant) Appellant</i>	)	<i>K. Haig-Anderson</i>
	)	<i>for the Respondent</i>
	)	<i>Manitoba Association of</i>
<i>- and -</i>	)	<i>Health Care Professionals</i>
)	
	)	<i>A. M. Mariani</i>
<i>MANITOBA ASSOCIATION OF HEALTH</i>	)	<i>for the Respondent</i>
<i>CARE PROFESSIONALS (MAHCP-</i>	)	<i>Concordia Hospital</i>
<i>BARGAINING AGENT), CONCORDIA</i>)	
<i>HOSPITAL (EMPLOYER) AND MANITOBA</i>	)	<i>T. D. Gisser</i>
<i>LABOUR BOARD</i>	)	<i>for the Respondent</i>
	)	<i>Manitoba Labour Board</i>
)	
<i>(Respondents) Respondents</i>	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
	)	<i>October 19, 2018</i>

PER CURIAM

[1] The applicant appeals the dismissal of her application for judicial review of a decision of the Manitoba Labour Board (the Board) dated October 30, 2015, which dismissed her application for review and reconsideration of an earlier Board decision dated September 21, 2015. As noted by the reviewing judge, in the decision dated September 21, 2015 “the

Board had dismissed the applicant's complaint that the Manitoba Association of Health Care Professionals (the "Union") committed an unfair labour practice by not fulfilling its duty of fair representation under s. 20 of *The Labour Relations Act*, C.C.S.M. c. L10 (the "Act")."

[2] The applicant also moves to file new evidence including character letters, new evidence after the June 6, 2016 hearing before the reviewing judge and a new actuarial report.

[3] Before the Board, the applicant alleged that the Union did not fulfill its duty of fair representation in connection with the settlement of her grievance with the respondent Concordia Hospital and, in particular, its effect on her pension. Significantly, the applicant received independent legal advice before agreeing to the settlement of her grievance.

[4] We are not satisfied that it is appropriate or in the interests of justice to admit the new evidence.

[5] Decisions of the Board as to unfair labour practices under section 20 of the *Act* are entitled to a high level of deference and are subject to a standard of review of reasonableness on judicial review.

[6] The reviewing judge was satisfied that both of the Board's decisions were reasonable, and he concluded that the Board made no reversible error.

[7] In our view, the reviewing judge chose the correct standard of review, and he correctly applied it (see *Dr Q v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19 at paras 43-44). Given the record, we see no error in his decision.

[8] In the result, the motions to introduce new evidence and the appeal are dismissed with costs to the Union and the respondent Concordia Hospital.

Burnett JA

Mainella JA

leMaistre JA
