

Court of King's Bench of Alberta

Citation: International Brotherhood of Boilermakers, Local 146 v Alberta Labour Relations Board, 2026 ABKB 462

Date: 20260623
Docket: 2303 18859
Registry: Edmonton

Between:

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers,
Local Lodge 146

Plaintiffs

- and -

Alberta Labour Relations Board and Cessco Fabrication & Engineering Ltd.

Defendants

**Memorandum of Decision
of the
Honourable Justice M. Hayes-Richards**

I. Introduction

[1] The Applicant, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Lodge 146 (Union) filed three Unfair Labour Practice complaints with the Alberta Labour Relations Board (Board) on or about November 22, 2019. The Union alleged the Respondent, Cessco Fabrication & Engineering Ltd. (Cessco), had committed various unfair labour practices in contravention of the *Labour Relations Code*, RSA 2000, c L-1 (*Code*).

[2] On September 21, 2023, the Board issued a decision that dismissed in part the Union's Unfair Labour Practice complaints and granted declaratory relief only in respect of one of the Union's complaints (Decision). The Union applies for judicial review of the Board's Decision.

II. Procedural History

[3] The Unfair Labour Practice complaints arose from collective bargaining between the Union and Cessco following the expiry of their collective agreement in February 2018. The Union had been the certified bargaining agent of a bargaining unit of employees of Cessco for more than 70 years. In January 2019, new leadership for both the Union and Cessco agreed to a "fresh start" bargaining process. The bargaining process broke down, eventually leading to a lockout and strike in June 2020.

[4] The Union filed their Unfair Labour Practice complaints in November 2019 alleging breaches of the following sections of the *Code*:

- Section 60 (duty to bargain in good faith)
- Section 148(1)(a) (interference with union representation)
- Section 149(1)(c) (intimidation or threats to discourage union activity)

[5] The s 149(1)(c) complaint was summarily dismissed in June 2020 before a merits hearing, but that dismissal was quashed by the Alberta Court of Appeal in April 2022. See: ***International Brotherhood of Boilermakers v Alberta Labour Relations Board***, 2022 ABCA 139.

[6] In the meantime, the ss 60 and 148(1)(a) complaints had already proceeded to a hearing on February 3-5, 2021 (the first hearing), with the Board reserving its decision. By the time the Court of Appeal quashed the summary dismissal decision (over fourteen months later), the Board had still not delivered its decision on these two complaints.

[7] After the release of the Court of Appeal's decision, the Union wrote to the Director of Settlement on June 7, 2022, asking "that the Board reconvene the Hearing with respect to the outstanding complaint pursuant to Section 149(1)(c) in accordance with the Decision of the Alberta Court of Appeal...".

[8] In response, the Vice-Chair of the Board held a case management meeting on July 6, 2022, the outcome of which is captured in a Hearing Summary of the same date as well as a letter dated July 11, 2022, in which the Director of Settlement set out the results of the case management meeting as follows:

In light of the Court of Appeal decision and for efficient processing of the Board's file, the Board declines to further consider the summary dismissal request of the Employer and directs the section 149(1)(c) issue be determined. Parties to further consider what additional evidence, if any is necessary to determine the issue, and advise the Board Officer if the tentatively scheduled additional hearing dates remain available for any witnesses.

[9] Between July 12 and September 27, 2022, correspondence was exchanged between the parties and the Board about hearing dates and witness availability. On November 17, 2022, the Union's lawyer, Mr. Mercer, wrote to the Board referencing concerns and objections it says it

made at the case management meeting on July 6, 2022, with respect to the Board's delay in issuing its decision with respect to the ss 60 and 148 complaints. Mr. Mercer wrote that he was reiterating on behalf of the Union the concern and objection to the Board's undue delay, pointing out the matters had been outstanding for over 35 months in a labour relations context that resulted in a lockout, and commenting that he could not think of a more urgent Labour Board matter.

[10] Vice-Chair Schick responded on December 5, 2022, "reminding the parties" that in its case management meeting of July 6, 2022, the Board "specifically advised that, given new evidence would likely be introduced which would be considered along with the evidence from the prior hearing dates, the parties should not be surprised that the Board would not issue any decision on the reserved matters until any additional hearing dates were completed."

[11] Vice-Chair Schick then indicated that the Board heard no concerns about that further delay from the parties at the time, and the Board had proceeded in accordance with that understanding since the case management meeting. Vice-Chair Schick said the Board intended to proceed in the manner previously advised, "so that the evidence on the various alleged unfair labour practices can be dealt with in a single decision."

[12] On December 9, 2022, Mr. Mercer responded to the Board disagreeing with its characterization of the case management meeting as it related to delay, indicating:

You announced, without the Union's consent or agreement, after I raised concerns about the inordinate delay in this matter, that the Board would not be issuing its decision in the prior Unfair Labour Practice complaints until after the Section 147 [sic] complaint was heard.

The Union neither consented nor agreed with a further delay with respect to the previous complaints.

[13] The Board heard additional evidence from two witnesses on January 28-29, 2023, on the s 149(1)(c) complaint (second hearing). The Board released a single, consolidated Decision, addressing all three complaints, months later, on September 21, 2023.

[14] Prior to the release of the Board's Decision, Mr. Mercer wrote to the Chair of the Board on June 28, 2023, objecting to the continuing delay. The Union did not receive a response to Mr. Mercer's letter, apparently due to an administrative error that resulted in the Chair not receiving the letter.

[15] The Union then filed a mandamus application on September 15, 2023, which was served on the Board on September 18th. The Board's Decision was released three days later, on September 21, 2023.

III. The Board's Decision

A. Procedural History and Explanation for Delay

[16] The Board's Decision set out the history of these proceedings. The Board explained that it chose to hear evidence on the s 149(1)(c) complaint before issuing its decision on the ss 60 and 148(1)(a) complaints because the evidence relating to the s 149(1)(c) complaint might have provided background and context relevant to the ss 60 and 148(1)(a) complaints: Decision at paras 105-106.

[17] The Board pointed out that both parties urged the Board to consider the totality of the circumstances of the parties' bargaining and the surrounding events in coming to a conclusion on whether bad faith bargaining could be made out (s 60 of the *Code*). The Board held the same argument was appropriate with respect to the s 149(1)(c) complaint and explained why the Board felt it was appropriate to hold off deciding the ss 60 and 148(1)(a) complaints until all evidence was before it (para 106):

Once that allegation was again live, and new evidence was to be called to support it, it was vital for the Board to have the totality of the evidence in relation to any alleged intimidation of employees seeking to have the members revoke the bargaining rights of the Union such that the Board could include that evidence in its consideration of whether the Employer was merely surface bargaining as a tactic to remove the Union. It is unfortunate that as a result of the preliminary summary dismissal decision, subsequently overturned by the Court of Appeal, such evidence was not available to be presented in the first set of hearing days on this matter. Had the Board been satisfied of bad faith bargaining on the basis of the evidence heard at those hearing dates, the Board would certainly have issued a decision forthwith. Not having been so satisfied for the reasons to be discussed below, but before having issued such a decision and being faced with the introduction of additional evidence of the Court of Appeal's decision that might possible further aid the Union's case, the Board deliberately held off any decision until the totality of the evidence about the surrounding circumstances could be completed.

B. Section 60 (duty to bargain in good faith)

[18] The Board dismissed the s 60 bad faith bargaining complaint, finding that when viewed in totality, Cessco's bargaining actions did not demonstrate an intention not to reach a collective agreement. The Board found that although Cessco engaged in hard bargaining, including maintaining positions on seniority and pensions and reintroducing certain proposals, this conduct did not amount to surface bargaining, backwards bargaining, or otherwise demonstrate an absence of genuine intent to reach an agreement.

[19] The Board identified one instance of potential backwards bargaining, but concluded it was not sufficiently serious, destructive, or late in the process to warrant a finding of bad faith when considered in context.

C. Section 149(1)(c) (intimidation or threats to discourage union activity)

[20] The Board dismissed the s 149(1)(c) intimidation complaint. The Board applied the reverse onus found in s 149(2) to all three elements of the test under s 149(1)(c), but was not satisfied that the evidence established threats, coercion, or intimidation intended to compel employees to cease union membership.

[21] The Board accepted the evidence of Cessco's President/CEO, Mr. Dave Hummel, that he did not threaten or intimidate employees, including during conversations with a specific employee, Mr. Tyler Gergely (who had become a manager at Cessco by the time of the hearings). The Board found that despite issues with Mr. Hummel's evidence, it was not so unreliable as to be entirely rejected.

[22] The Board noted that although there was a reverse onus on Cessco, absent any evidence from the Union, there was no positive evidence that Cessco attempted to induce revocation of the Union's bargaining rights.

D. Section 148(1)(a) (interference with Union representation)

[23] The Board upheld the complaint under s 148(1)(a) of the *Code*, finding that a letter sent by Cessco to bargaining unit employees during negotiations, when read in light of all the surrounding circumstances (including statements made at a safety meeting), disparaged the Union's competence and conduct of bargaining in a manner that interfered with the Union's representation of employees.

[24] The Board applied the objective "reasonable employee" standard and found that the communications in the letter crossed the line from permissible expression of views, into unlawful interference. However, the Board held that given the limited practical impact of the interference (the Union still went on strike and probably would have approved of some of the actions taken by the Union representative that Cessco complained about), there was no need for a remedy beyond a declaration of breach.

IV. Grounds of Review

A. Procedural Fairness

[25] The Union advances several procedural fairness complaints. These include the failure to invite submissions on the procedural choice to defer issuing its merits decision without notifying the parties, inordinate delay in issuing a decision resulting in an abuse of process, and a delay giving rise to an apprehension of results-driven reasons.

B. Substantive Unreasonableness of the Board's Decision

[26] The Union also challenges the substance of the Board's Decision, listing nine grounds for review that include concerns with the Board's assessment of the evidence, its treatment of credibility and circumstantial evidence, its application of the reverse onus provision, and its conclusions regarding bad faith bargaining, surface bargaining, backwards bargaining, and interference with union representation.

V. Standard of Review

[27] Different standards of review apply depending on the nature of the issue under consideration.

A. Procedural Fairness

[28] Questions of procedural fairness do not attract deference on judicial review. The Court does not assess such issues on a reasonableness standard, nor does it ask whether the Board's approach was "correct" in the sense used for substantive review. Rather, the overarching question the Court must determine is whether the proceedings met the level of procedural fairness required by law : *Sandhu v College of Physicians and Surgeons of Alberta*, 2023 ABCA 61 at para 36, *Baron Real Estate Investments Ltd v Edmonton (City)*, 2021 ABCA 64 at para 17, *R v Ferzli*, 2020 ABCA 272 at para 21.

[29] The content and duty of procedural fairness is context-specific and is informed by the factors identified in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*]. These include the nature of the decision and the process followed, the statutory scheme, the importance of the decision to the affected parties, any legitimate expectations, and the procedural choices made by the decision-maker: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 77 [*Vavilov*].

[30] Labour Board hearings are quasi-judicial in nature: their statutory purpose includes addressing labour disputes in a timely fashion as the Board's decisions are important to and can have significant impact on the affected parties. There is a high duty of procedural fairness owed to the parties.

[31] Where delay is relied on as constituting a breach of procedural fairness or an abuse of process, the applicable framework is drawn from *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 [*Blencoe*] and *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 [*Abrametz*]. These cases require the Union to establish the delay was inordinate (having regard to the nature of the proceeding, its complexity, and the conduct of the parties), that the delay caused significant prejudice, and the delay amounted to an abuse of process (it rendered the proceeding manifestly unfair or in some other way brought the administration of justice into disrepute): *Abrametz* at para 72. See also paras 43 and 101 of that decision.

B. Substantive Unreasonableness

[32] Reasonableness is the presumptive standard on judicial review of administrative decisions absent a legislated standard of review, a statutory appeal mechanism, or one of the recognized categories requiring correctness: *Vavilov* at para 23. None of the exceptions apply in this case and all parties agree that the standard of review of the Board's Decision is reasonableness. A reasonable decision is one that is justified, transparent, and intelligible.

[33] A reasonableness review, while still a robust form of review, has at its core judicial restraint and "respect for the distinct role of administrative decision makers": *Vavilov* at para 13. It considers the "justification, transparency and intelligibility" of a decision: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*].

[34] Reviewing courts should respect administrative decision makers and their specialized expertise, should not ask how they themselves would have resolved an issue, and should focus on whether the Applicant has demonstrated that the decision is unreasonable: *Vavilov* at paras 75, 83. This means "the focus of reasonableness review must be on the decision actually made by the decision maker" and the "reviewing court must consider only whether the decision made by the administrative decision maker – including both the rationale for the decision and the outcome to which it led – was unreasonable": *Vavilov* at para 83. In this context, reviewing courts "must refrain from 'reweighing and reassessing the evidence considered by the decision maker'": *Vavilov* at para 125. A reasonableness review is not a line-by-line search for minor or peripheral error.

[35] Ultimately, "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": *Vavilov* at para 85.

[36] In the labour relations context, particular deference is owed to the Board's expertise in assessing collective bargaining dynamics, drawing inferences from a complex factual matrix, and determining whether bargaining conduct amounts to hard bargaining or bad faith.

VI. Analysis

A. Procedural Fairness Grounds

[37] The Union's procedural fairness grounds arise from various facets of the Board's delay in issuing the Decision, and specifically from the delays arising after the first hearing, due to the Board's decision to defer issuing reasons until after the merits hearing on the s 149 complaint. The Union argues there is a reasonable apprehension of reasoning bias, and the overall delay was inordinate, prejudicial, and deliberate, resulting in an abuse of process.

1. The decision to defer issuing reasons until after the second hearing

[38] The Union argues the Board made a unilateral decision to defer issuing reasons after the first hearing without notifying the parties or inviting submissions and this violated the duty of fairness under the *Baker* factors.

[39] The Union's argument is two-fold. First, it says the Board decided after the first hearing to defer the release of its decision until after the Court of Appeal issued its decision respecting the s 149 summary dismissal judicial review. It relies on para 106 of the Board's Decision in coming to this conclusion (that paragraph is reproduced above at para 17).

[40] In my view, para 106 of the Decision does not support such a conclusion. In its Decision, the Board does not say that it decided to wait for the Court of Appeal's decision. It says that having not yet issued its own decision before receiving the Court of Appeal's decision overturning the summary dismissal of the s 149 complaint, the Board then held off issuing a decision on the ss 60 and 148 complaints until hearing the evidence respecting the s 149 complaint. The Board further clarified that it did so because the evidence respecting the s 149 complaint could reasonably impact its decision with respect to the s 60 complaint. The Union's first argument must fail on a simple reading of the impugned paragraph.

[41] The Union's second argument is that the Board unilaterally decided to defer issuing its reasons with respect to the first hearing without notifying the parties or inviting submissions on this procedural decision. The Union argues that it was not given the opportunity to address this procedural decision before the Board announced its deferral at the case management meeting.

[42] The delay issue is not addressed in the Board's Hearing Summary (July 6, 2022) or its letter to the parties (July 11, 2022) summarizing the decisions coming out of the case management meeting.

[43] It appears from the correspondence exchanged after the meeting, namely the Union's letters dated November 17 and December 9, 2022 and the Board's letter dated December 5, 2022, that the issue of deferring the Board's decision on the ss 60 and 148 complaints until after the hearing of the s 149 complaint was discussed at the July 7, 2022 case management meeting. The extent of that discussion is less clear.

[44] What is clear is that the Union raised concerns about the inordinate delay in receiving a decision arising from the first hearing during the case management meeting, and the Board indicated it would not issue its decision until after the second hearing (see summary of

correspondence under Procedural History section). The Board's decision to defer was made despite the Union's clear opposition and concerns about delay.

[45] While case management decisions fall squarely within the Board's procedural discretion, in my view, the way the Board exercised its discretion was procedurally unfair to the Union. The original summary dismissal decision effectively severed the s 149 complaint from the other two complaints. The parties proceeded to the first hearing on the other two complaints understanding that in doing so, the s 149 intimidation complaint would not be before the Board. The Union was prepared to proceed without the benefit of any evidence respecting its s 149 complaint. The Union was entitled to a decision on those two complaints on a timely basis after the first hearing was held in February 2021.

[46] I note the Union is not challenging the Board's underlying reasoning for why it re-joined the s 149 complaint with the other two complaints, namely, that the evidence respecting the s 149 intimidation complaint could have reasonably impacted the Board's decision with respect to the s 60 bad faith bargaining complaint. That premise seems reasonable as the intimidation complaint has a rational potential to inform the bad faith bargaining complaint. However, while it is true the evidence related to the intimidation complaint could have provided context to the bad faith bargaining complaint, the Union was prepared to receive a decision on the bad faith bargaining and interference complaints without consideration of the intimidation evidence. The Union firmly opposed the joining of the intimidation complaint and resulting delay. One reason for the Union's opposition is that by the time the Board made its procedural decision to re-join the s 149 complaint with the other two complaints (in July 2022), over two years had passed from the time of the lockout/strike in June 2020. That delay itself had implications given s 90(1)(c) of the *Code* which allows certification applications by competing rival unions after the passage of two-years.

[47] The Union continued to express its objection and concern over the undue delay even after the case management meeting in July 2022. The Union wrote to the Board in November re-iterating its concerns over the undue delay in the Board issuing its decision respecting the two complaints heard at the first hearing. The November letter was sent by the Union's lawyer after the original proposed dates for the second hearing of September 2022 did not work out because Cessco's witness could not appear in person in September and the Union was not prepared to proceed with virtual evidence. The second hearing dates were then set for January 2023 to accommodate in-person evidence. In its November 2022 letter, the Union confirmed its continued position that the delay in receiving a decision from the first hearing was inordinate, highly prejudicial to the Union and employees, manifestly unfair, and that the delay brought the administration of justice into disrepute.

[48] In my view, the Board's decision to amalgamate the s 149 complaint with the other two complaints, despite the obvious further delay that would cause, and over the expressed objections of the Union (Decision para 106), was procedurally unfair. It resulted in further delay that the Union was actively trying to avoid.

[49] There was nothing procedurally fair in making the Union wait for a decision on the two complaints heard at the first hearing, even if the Union's s 60 bad faith bargaining complaint would have been dismissed as the Board says at para 106 of its Decision. Knowing the outcome of their bad faith complaint, even if dismissed, could have assisted in getting these parties back to the bargaining table, or alternatively, allowed the Union to pursue judicial review at an earlier date.

[50] I find the Board's deferral of its decision regarding the ss 60 and 148 complaints until after the second hearing was procedurally unfair to the Union. However I note, and the Union has not disputed, that the Board's stated reason for the deferral made sense. It allowed the Board to hear evidence related to the intimidation complaint that the Board properly concluded could have reasonably impacted its decision on the bad faith s 60 complaint.

[51] Although I have found the deferral decision to be procedurally unfair, I would not provide the Union with the remedy it seeks of an expedited hearing before a new panel. I will explain why at the end of this section after dealing with the Union's other procedural fairness grounds.

2. Apprehension of results-driven reasons

[52] The Union argues the Board's deferral of its decision on the ss 60 and 148 complaints until after the second hearing raises a reasonable apprehension of reasoning prejudice. The Union says that by waiting for thirty-one and a half months after the first hearing to issue its Decision, the Board tied its own hands in needing to be able to justify its own delay. The fact the Board's justification for its delay requires a specific outcome means that when crafting its Decision in 2023, only one substantive outcome was available to it to maintain that justification, i.e. no relief or no material relief for the Union.

[53] The Union suggests that at a certain point the delay itself became an albatross overshadowing the proceedings, and when the Board finally released its Decision in September 2023, a finding that the Union was entitled to any sort of remedy would have undermined any justification the Board could proffer for its own delay. For that reason, the Union says the Decision is irreparably tainted by a reasonable perception that the Board crafted its Decision with a view toward defending its earlier choices and conduct.

[54] Cessco's position is that the Board was not dishonest in the reasons provided, and that the Union's reliance on *R v Teskey*, 2007 SCC 25 [*Teskey*], is misplaced. In *Teskey*, a decision was given at the end of a criminal case, only to be followed months later by extensive reasons. This gave rise to a concern that the trial judge's post-decision review and analysis of the evidence was conducted to support the bottom-line bench decision given, rather than to arrive at an honest decision.

[55] Cessco points out that the Board avoided this very concern by not giving a decision after the first hearing. Because the Board waited to give its Decision, there was no bottom-line decision the Board would have felt compelled to rationalize or justify in its subsequent Decision. The Board kept an open mind and crafted its Decision without "the spectre of having made an earlier or interim order."

[56] Allegations of results-driven reasoning can engage procedural fairness where the process itself undermines adjudicative integrity. In my view, the issuance of a Decision after a lengthy deliberation does not, without more, establish unfairness. Unlike cases such as *Teskey*, where a decision maker announces a bottom-line outcome and then later attempts to retrofit reasons to justify it, the Board did not render an interim or final disposition prior to issuing its Decision.

[57] The fact that it may have had one opinion of the evidence after the first hearing, does not mean that it could not fairly reconsider its opinion in light of the further evidence adduced at the second hearing. Had the Board come to a different conclusion on the s 60 bad faith complaint after the second hearing, its delay in making a finding of bad faith earlier would have been

explainable in relation to the further evidence it heard. I am not persuaded that the circumstances here give rise to a reasonable apprehension of reasoning prejudice.

3. Abuse of process

[58] The Union argues that the thirty-one-and-a-half-month delay from the first hearing to the rendering of the Decision was inordinate, caused significant prejudice, and amounted to an abuse of process.

[59] Delay can constitute an abuse of process in two ways. First, the fairness of a hearing can be compromised where delay impairs a party's ability to answer the complaint against them. This is not the argument here. If this argument had been made, this Court would have found that the delays caused by the Board did not compromise the fairness of the hearing. The Union had a full and fair hearing, on all three complaints. It was able to call all its evidence and make full submissions.

[60] The Union's argument relies on the second way that delay can constitute an abuse of process, namely, that even when there is no prejudice to hearing fairness, an abuse of process can occur if significant prejudice has come about due to inordinate delay: *Abrametz* at paras 40-42, citing *Blencoe* at paras 122 and 132.

[61] In *Blencoe*, the Supreme Court of Canada set out a three-step test to determine whether delay that does not affect hearing fairness nonetheless amounts to an abuse of process. In such cases, the delay must be inordinate and directly cause significant prejudice. When these two requirements are met, the Court must assess whether the delay amounts to an abuse of process. Delay amounts to an abuse of process if it is manifestly unfair to a party or in some other way brings the administration of justice into disrepute: *Abrametz* at paras 43, 72 and 101.

[62] The doctrine of abuse of process is flexible and context-dependent. Its primary focus and central concepts revolve around the integrity of the courts' adjudicative functions, and the proper administration of justice: *Abrametz* at paras 35-36. It exists to ensure that the administration of justice is not brought into disrepute: *Behn v Moulton Contracting Ltd*, 2013 SCC 26 at para 41.

[63] Cessco's position is that the law relied on by the Union respecting delay does not apply to the circumstances of this case, and in any event, there was no inordinate delay, or any proven prejudice to the Union.

[64] The Union submits the Board has a statutory mandate to facilitate resolutions of labour disputes through expeditious resolution processes. This it says is apparent from the preamble to the *Code*, which states:

WHEREAS the public interest in Alberta is served by encouraging harmonious, mutually beneficial relations between employers and employees through freely selected bargaining agents, through balanced, fair and constructive collective bargaining, and through fair, equitable and expedient resolution of matters arising with respect to terms and conditions of employment;

[65] The Union further points out this mandate is supported by the Board's Mission Statement, which is to "administer, interpret and enforce Alberta's collective bargaining laws in an impartial, knowledgeable, efficient, timely and consistent way."

[66] The Union argues it was prepared to proceed to the first hearing even though it had a judicial review outstanding of the summary dismissal of its s 149 complaint. It called all

evidence it wished to call concerning the ss 60 and 148 complaints at the first hearing. When the s 149 complaint was sent back by the Court of Appeal, the Union made it clear to the Board that it did not want to delay receiving a decision from the first hearing to permit the Board to hear evidence of the circumstances surrounding the s 149 complaint.

[67] The Union argues a parallel judicial review application should not preclude parties from advancing other matters before the Board, if they choose to do so. Finding otherwise has a punitive effect against parties who exercise their rights to seek judicial review. I agree.

[68] I reject Cessco's arguments that the Union contributed to the delay by bringing a judicial review of the summary dismissal of the s 149 complaint and by refusing virtual hearings. The Union had a right to have the summary dismissal judicially reviewed, and the review was successful. Moreover, the Union was willing to proceed to a hearing and adjudication of the other two complaints without waiting for the decision on the judicial review.

[69] Further, while virtual hearings may have been faster for the second hearing, the Union had a legitimate concern about the lack of reliability and credibility of Cessco's witness, Dave Hummel, who testified at the first hearing as well. Due to these concerns, the Union wanted this witness to appear in person. The fact that in person testimony could not be accommodated for four months is not the Union's fault. It was also during this further delay to set an in-person hearing that the Union wrote to the Board and again objected to the delay in issuing a decision arising from the first hearing.

[70] I agree with the Union that the underlying facts of these proceedings emphasize why parties require expeditious resolution. The parties were in a contentious collective bargaining relationship, which had reached impasse under circumstances where the Union alleged Cessco had breached the *Code*, eventually leading to lockout and strike action even before the Board held the first hearing.

[71] The Board's explanation in its Decision for the initial delay before the Court of Appeal rendered its decision is that because the Board had decided after the first hearing to dismiss the Union's s 60 complaint of bad faith bargaining, it was in no hurry to release its decision: Decision at para 106. In my view, this explanation undermines the very purpose of the *Code*, ignoring the reality of the ongoing contentious bargaining relationship, and the fact that an unsuccessful party always has the right to seek judicial review. The Board's stated choice not to rush to give their decision led to the Court of Appeal issuing its decision in the summary dismissal matter before the Board was able to issue a decision from the first hearing. That then led to the Board's decision to re-open the hearing of the first two complaints in order to hear evidence relating to the s 149 complaint. That then led to further delay.

[72] As stated by the Supreme Court in *Abrametz* at para 46:

Inordinate delay in administrative proceedings, as in other legal proceedings, is contrary to the interests of society. Decisions by administrative decision makers need to be rendered promptly and efficiently. Administrative delay undermines a key purpose for which such decision-making authority was delegated – expeditious and efficient decision-making.

[73] Cessco argues that the Union's reliance on *Abrametz*, and the cases cited therein, is misplaced, as *Abrametz* and *Blencoe* concern pre-hearing delay and abuse of process, not post-hearing deliberation. Cessco's position is that no concrete prejudice to hearing fairness has been

shown in any event. Further, the Union's application seeking mandamus days before the Decision was issued, undercuts its delay argument and shows that the Union was prepared to receive a decision, even after the delay, and is only now complaining because it was unsuccessful.

[74] Cessco is correct that decisions like *Abrametz* and *Blencoe* arise in different factual settings. Both cases involve pre-hearing delay relating to prosecutorial administrative hearings. However, I disagree with Cessco that the reasoning in *Abrametz* has no application to the facts before me. *Abrametz* and *Blencoe* are still instructive on the importance of expeditious and efficient decision-making in administrative matters and set out the test for finding abuse of process, and the possible remedies, even where there is no hearing prejudice.

[75] Whether delay is inordinate is assessed with reference to the factors set out at paras 42-51 of *Abrametz*, including the nature and purpose of the proceedings, the length and causes of the delay, and the complexity of the facts and issues in the case. A consideration of these factors in this case is complex given the manner in which these proceedings played out.

[76] I agree with the Union that the nature and purpose of these proceedings required an expeditious resolution. The Board's explanation that it was in no hurry to release its decision after the first hearing because it had decided to dismiss the Union's bad faith bargaining complaint is not in line with the requirements and purpose of the *Code*. The delay in preparing and releasing a decision on the ss 60 and 148 complaints after the first hearing led to the intervening Court of Appeal decision that quashed the summary dismissal of the s 149 complaint.

[77] The Board was then faced with the question of how to proceed given it intended to dismiss the s 60 complaint but knew the s 149 intimidation evidence could reasonably impact its decision on the s 60 complaint. The Board decided to re-join the s 149 complaint with the other two complaints and proceed to a second hearing so it could consider all the evidence on the complaints together. While I have found that decision was procedurally unfair to the Union, who did not want the complaints amalgamated due to the delay it would cause, and was willing to take the risk of not having that evidence before this Board, it is difficult to find the Union suffered any real prejudice from that procedural decision, other than a further delay in receiving the dismissal of its s 60 complaint.

[78] On the other hand, the Board's decision to amalgamate the complaints into one hearing appears to have been made in good faith to give the Union the possible benefit of proving its s 60 complaint. It also allowed for all the related complaints to be heard and decided at one time, rather than requiring further Board resources for separate hearings, and potentially conflicting outcomes.

[79] While the overall delay from the first hearing to the Decision was 31.5 months, it must be remembered that the overall delay included the determination of all the Union's complaints, including a complaint that was not sent back to the Board until almost 15 months after the first hearing.

[80] In my view, a consideration of the complexity of the facts and issues in this case does not support the type of initial delay that occurred from the first hearing to the re-joining of the complaints, but is informative of the overall delay. While there were many exhibits filed, there were only three witnesses who gave evidence at the first hearing, which lasted three days,

including argument. Although the issues were complex, they were not so complex as to explain a failure to render a decision before the Court of Appeal's decision in April 2022. The real reason for the initial delay was the Board's erroneous belief that it did not need to issue a decision forthwith given it intended to dismiss the s 60 bad faith bargaining complaint after the first hearing.

[81] The complexity of the facts and issues is relevant to the amount of time it took the Board to issue its decision after re-joining the complaints and holding a second hearing. That delay is more understandable. The Board had to set the matter down for an in-person hearing after the Union objected to earlier virtual hearing dates and the Board did so within 6 months of the July 2022 case management meeting. The Board then issued its decision within eight months of the second hearing. While it would certainly have been better if the Decision had been released sooner, it takes time to draft reasons on complex issues, and the Board had to reconsider the evidence from the first hearing in light of the evidence at the second hearing, some of which came from the same employer witness.

[82] I note Cessco's argument that the Union could have brought a mandamus application sooner, but I disagree the Union's choice not to do so undercuts its delay argument. The Union was faced with a difficult choice: bring a mandamus application which would delay the second hearing (if it was unsuccessful) or proceed to the second hearing in the hope that it would receive a decision quickly. While the Union chose the second option, it did so on assurances from the Board that a decision would be forthcoming soon after the second hearing. I can not fault the Union for the choice it made, but at the end of the day, the Union got what it originally asked for, a decision on the merits on all three complaints.

[83] I find that after consideration of all the above circumstances, the delay in this case was not inordinate. For that reason, the test for abuse of process as set out in *Abrametz* has not been met.

4. Remedy with respect to the procedural fairness grounds

[84] I have found that it was procedurally unfair for the Board to defer its decision on the ss 60 and 148 complaints until after hearing evidence on the s 149 complaint. I made that finding because the Union expressly objected to the further delay that would be caused by joining the complaints and re-opening the hearing and was prepared to receive a decision without the benefit of the intimidation evidence. However, I have also found that the Board's decision was made in good faith, knowing that it was going to dismiss the Union's s 60 complaint, and knowing that the intimidation evidence could reasonably impact the bad faith claim. There were also other legitimate benefits to joining these complaints including having the same Board hear all the evidence related to all three complaints, especially where Cessco's witness overlapped for all three complaints.

[85] As a remedy, the Union requested a new hearing on an expedited basis before a new panel. Given my finding there was no apprehension of results-driven reasons, and no abuse of process, and given my conclusions below dismissing the Union's substantive grounds of review, I am not prepared to grant the Union its requested remedy of a new hearing. The Union received a fair hearing on all three complaints and the Board's decision was reasonable. Further delay in these circumstances would be counter productive.

B. Substantive Reasonableness Grounds

[86] The Union challenges the substance of the Board's Decision, listing nine grounds for review that include the Board's assessment of the evidence, its treatment of credibility and circumstantial evidence, its application of the reverse onus provision, and its conclusions regarding bad faith bargaining, surface bargaining, backwards bargaining, and interference with union representation. The Union submits that the contents of the Decision are not transparent or intelligible and fall outside the range of outcomes that can be justified by the evidence and the law. These grounds are reviewed on a reasonableness standard.

1. Assessment of evidence and treatment of credibility and circumstantial evidence

[87] The Union submits the Board committed errors of law and fact in dismissing the allegation of intimidation under s 149(1)(c) of the *Code*. Its position is that the Board adopted an incorrect approach in its credibility assessment and failed to consider relevant circumstantial evidence, resulting in an unreasonable conclusion. The Union also argues that the Board misapplied the reverse onus in s 149(2) of the *Code*; the latter argument will be dealt with in the next subsection.

[88] The Union takes issue with the Board's assessment of the reliability and credibility of Cessco's witness, Dave Hummel, and its treatment of circumstantial evidence.

[89] The Union argues that the Board erred by accepting portions of Mr. Hummel's evidence as uncontradicted despite having found his evidence generally unreliable. In particular, the Board accepted Mr. Hummel's denial of intimidation even though, on a key allegation, the Union says his evidence went no further than stating that he did not recall whether the relevant discussion occurred. The Union submits that evidence of non-recollection cannot discharge Cessco's onus under s 149(1)(c), especially where the allegation concerns conduct uniquely within the employer's knowledge.

[90] The Union further argues that the Board failed to account for significant credibility concerns surrounding Mr. Hummel's testimony. The Board itself noted multiple incidents in which Mr. Hummel minimized events, gave contradictory evidence, or revised his testimony only when confronted with contrary information. The Union argues this demonstrated pattern of unreliability ought to have been weighed against his denial of intimidation, particularly in relation to private conversations with then employee, Tyler Gergely.

[91] The Union also criticizes the Board's refusal to draw reasonable inferences from the surrounding circumstances. The Union points to the timing of the conversations between Mr. Hummel and Mr. Gergely, the contentious bargaining environment, Mr. Hummel's proven unlawful communications to employees, and Mr. Gergely's subsequent efforts to terminate the Union's bargaining rights. The Union submits that when considered together, this circumstantial evidence supported an inference that Mr. Hummel's conduct was deliberate and coercive. The Union argues the Board unreasonably treated Mr. Hummel's denial as dispositive and failed to consider whether the circumstantial evidence rendered the intimidation allegation more likely than not.

[92] Cessco says the Union's challenge to the Board's dismissal of the s 149(1)(c) complaint amounts to an impermissible request for the Court to reweigh evidence and substitute its own credibility and factual findings for those of the Board. Cessco argues the Board's treatment of the

evidence, including credibility assessments, was reasonable, justified on the record, and within its fact-finding authority.

[93] Cessco emphasizes the Board did not find Mr. Hummel to be dishonest overall. It says the Board took a nuanced and contextual approach, recognizing that Mr. Hummel tended initially to minimize certain evidence and had imperfect recollection, but was forthcoming when issues were put to him directly. Cessco says the Board was entitled to attribute weight selectively to different aspects of Mr. Hummel's testimony, particularly where the evidence addressed distinct allegations.

[94] Cessco argues that the Board did not fail to consider circumstantial evidence. It contends the Union is asking this Court to draw inferences the Board reasonably declined to make. Cessco disputes the factual premise that Mr. Gergely was actively seeking to decertify the Union, noting the only evidence before the Board was limited to Mr. Hummel's testimony that Mr. Gergely raised questions about revocation, but he declined to discuss revocation with Mr. Gergely, instead referring him to a lawyer.

[95] In Cessco's submission, the Board was not required to infer intimidation from strained labour relations, hard bargaining, or Mr. Hummel's communications with employees; contentious bargaining or alleged anti-union animus, does not, without more, establish intimidation or threats within the meaning s 149(1)(c). Cessco says the standard of review prevents this Court from reassessing whether different inferences could have been drawn absent a demonstrable failure in reasoning or disregard of relevant evidence.

[96] In Cessco's view, the Board's reasons demonstrate a coherent and rational chain of analysis, and the Union has failed to identify any central or significant shortcoming capable of rendering the Board's conclusion unreasonable.

[97] In my view, the Board treated Mr. Hummel's evidence with caution, having identified internal inconsistencies and a tendency to minimize events initially, followed by eventual acknowledgements when pressed. Mr. Hummel's evidence was not rejected wholesale by the Board; it was not preferred where it conflicted with more reliable testimony from the Union's witnesses. The Board expressly stated that, despite its shortcomings, it was not prepared to entirely disbelieve Mr. Hummel's evidence because when prompted, Mr. Hummel was often forthcoming. The Board found that his evidence could therefore satisfy an evidentiary onus where unchallenged by contrary evidence.

[98] I disagree with the Union that Mr. Hummel's evidence went no further than stating that he did not recall a relevant discussion. Mr. Hummel testified to discussions with Mr. Gergely on two occasions where Mr. Gergely brought up revocation and Mr. Hummel declined to participate in such discussions after speaking to the company's lawyer. Rather, Mr. Hummel told Mr. Gergely he could not discuss revocation with him, that he was not to do so on company time, and he gave Mr. Gergely the name of a lawyer: Decision at paras 54, 57-59.

[99] Absent exceptional circumstances, a reviewing court does not reweigh evidence or second-guess credibility findings simply because alternative inferences were available. In my view, this is what the Union is asking this Court to do. As set out above, the Board acknowledged the weaknesses and inconsistencies in portions of Mr. Hummel's evidence, explained how they affected the weight the Board attributed to the evidence of different witnesses, and articulated why the Board ultimately preferred certain accounts. Making such

credibility assessments and weighing the evidence lies at the core of the Board's fact-finding role. The Union's arguments invite the Court to reassess the evidence and draw different inferences. That is not the Court's role on a judicial review where the standard of review is reasonableness, even if the Court might have come to different conclusions.

[100] Further, in my view, the Board did not ignore circumstantial evidence. It considered the surrounding circumstances but was not persuaded that they supported the inferences urged by the Union. The Board was not required to accept circumstantial evidence simply because it can support an alternative conclusion. The question is whether the conclusion reached falls within a range of acceptable outcomes, and I am satisfied that it does.

2. Reverse onus provision in s 149(1)(c)

[101] The Union's arguments about the misapplication of the reverse onus provision overlap with the arguments above about the Board's reliability and credibility findings related to Mr. Hummel and its treatment of circumstantial evidence. In addition, the Union argues that the Board's reasoning effectively amounted to an adverse inference against the Union and a reversal of the onus. In the Union's view, the Board misapplied, and effectively nullified the statutory reverse onus by faulting the Union for not leading evidence of the contents of private conversations between Mr. Hummel and Mr. Gergely. According to the Union, this amounted to an adverse inference against the Union for failing to produce evidence that was inherently outside its possession or control. The Union says this undermines the purpose of the reverse onus in s 149(1)(c), which exists precisely because employers often control the relevant evidence.

[102] The Union further argues that the Board's reliance on *Warehousemen & Miscellaneous Drivers Local 419 v ICB Warehousing Division of Alar-Anson*, [1977] 1 Can LRBR 145 (Ont LRB) [*Warehousemen*] was misleading because the caselaw it relies on makes clear that adverse inferences apply only where the missing evidence is reasonably within the complainant's control. The Union says that principle cannot apply to private employer-employee conversations of which the Union had no access. It says the core reason for the reverse onus provision is to prevent employers from defeating complaints by relying on a lack of direct evidence where those facts lie solely in the employer's possession. The Board effectively lowered the evidentiary burden on Cessco by permitting it to satisfy the reverse onus through bald denials from an unreliable witness. The Union submits this is an unreasonable error of law and analysis.

[103] Cessco argues the Board correctly articulated and applied the reverse onus, recognizing that there can be an onus on the person making the allegation to provide some positive evidence. Cessco led positive, direct evidence through Mr. Hummel denying any intimidation, threats, penalties, or efforts to compel employees, and in particular Mr. Gergely, to refrain from union activity. Mr. Hummel's evidence addressed the alleged incident with Mr. Gergely and included evidence that Mr. Hummel declined to participate in any revocation efforts, instead directing Mr. Gergely to seek independent legal advice.

[104] Cessco argues the Board was entitled to accept parts of Mr. Hummel's evidence despite other reliability concerns. The Board found that Mr. Hummel's evidence could therefore satisfy an evidentiary onus where it was unchallenged by contrary evidence or alternative version. Cessco says the Board's analysis reflects a rational chain of reasoning, transparency, and justification. The Board was entitled to conclude, on a balance of probabilities, that Cessco did not engage in intimidation or prohibited conduct.

[105] A review of the Board's reasons respecting the reverse onus shows that the Board expressly identified the applicable statutory framework, acknowledged the existence of the reverse onus, cited applicable case authority, and explained its conclusion that on the evidence before the Board, Cessco had discharged the onus.

[106] I disagree with the Union that the passage cited by the Board from *Warehousemen* is misleading. The Board does not fault the Union for not calling evidence of Mr. Hummel's and Mr. Gergely's private conversations. The Board points out that labour boards have long stressed that even in the cases of a reverse onus, the failure of a complainant to call evidence may still prove fatal to its case: Decision at para 99. The Board says that it might not take much for an employer to cast doubt on the more basic elements of a complaint, such as whether the communication itself occurred: Decision at para 100. When that happens, as the Board found here, the complainant may bear a tactical burden to rebut the employer's case. As stated further down in the same paragraph of *Warehousemen*, citing *The Board of Education for the Borough of York (Board File No. 0575-76-U, a decision dated September 27, 1976)*:

...the complainant may bear a tactical burden to rebut the employer's case. He or she may succeed in casting doubt upon the employer's case by adducing evidence of a contemporaneous anti-union campaign by the employer or of such other facts that would cause the Board to question the sincerity of the employer's explanation.

[107] The Board had before it Mr. Hummel's positive evidence that he did not threaten or intimidate Mr. Gergely or others. Nothing put to him in cross-examination challenged that aspect of his recollection. The Board found that Mr. Hummel was being forthright in his testimony on this issue, and as the Board pointed out, the Union failed to discount his evidence on this point.

[108] The Union argued other circumstantial evidence should undermine Mr. Hummel's testimony on this point, for example, that there was an anti-union campaign, but the Board did not agree. The circumstances entitled the Board to treat Mr. Hummel's evidence as positive and uncontradicted for the purpose of the s 149(1)(c) analysis. This Court may not have come to the same conclusion given the shortcomings in Mr. Hummel's evidence, but that is not the test. The Board expressly stated that, despite its shortcomings, it was not prepared to entirely disbelieve Mr. Hummel's evidence. In my view, the Board's interpretation and application of the reverse onus and its assessment of the evidence was reasonable and grounded in the evidentiary record. The Board's acceptance of Mr. Hummel's evidence on this point satisfied the reverse onus.

3. The Board's conclusions regarding bad faith bargaining, surface bargaining, backwards bargaining, and interference with union representation

[109] The Union submits the Board's rejection of its bad faith bargaining complaint was unreasonable. It says the Board failed to engage with the evidentiary record as a whole and misconceived the nature of the bargaining conduct. The Union points to Exhibit 13, a draft collective agreement reflecting months of negotiation and, according to the Union, numerous agreed upon provisions. The Union submits that the evidence at the hearing, including admissions made during cross-examination, established that Exhibit 13 captured substantive agreements.

[110] The Union argues the Board unreasonably declined to make findings on its meaning and treated the document with undue caution, which effectively stripped it of its probative value. The Union argues Cessco engaged in backward bargaining by retreating from previously agreed-upon terms, particularly related to vacation, shift scheduling, overtime and seniority, and the Board improperly confined its analysis to isolated instances.

[111] The Union further argues Cessco's overall conduct amounted to surface and concessionary bargaining inconsistent with a genuine intention to reach an agreement. It says Cessco pressed objectionable proposals to impasse, including major concessions on pensions and seniority, without any financial disclosure or business justification. The Union argues the Board unreasonably discounted this evidence and speculated about hypothetical justifications not supported on the record. The Board's conclusions with respect to the collective bargaining around seniority is of particular concern to the Union. Seniority played a central role in the parties' collective bargaining, including prior disputes over out of seniority layoffs.

[112] The Union says that when taken cumulatively, the Board's analysis was fragmented, ignored critical context, and failed to recognize obvious indicators of bad faith bargaining, which rendered its decision unreasonable.

[113] Cessco argues the Union's bad faith bargaining allegations are another impermissible attempt to relitigate matters fully considered by the Board. Cessco says the Board correctly identified and applied governing legal principles and properly assessed the totality of bargaining conduct rather than rely on isolated indicia such as backward movement on proposals or insistence on difficult terms. The Board properly found that although some proposals were reintroduced or modified, Cessco made concessions and continued to engage in meaningful negotiations. Cessco submits these findings fall squarely within the Board's expertise and attract strong deference on judicial review.

[114] Cessco also argues the Board reasonably rejected the Union's arguments concerning seniority, pensions, and wage concessions. Cessco says employers are entitled to advance concessionary proposals and to bargain over seniority and compensation without providing financial disclosure provided they haven't asserted an inability to pay. According to Cessco, the Board properly distinguished between unwillingness and inability to pay and found no evidence to conclude Cessco's conduct demonstrated an improper objective or lack of genuine intent to reach an agreement.

[115] According to Cessco, the Board understood the importance of seniority but reasonably concluded Cessco's proposals, viewed contextually at each stage of bargaining, did not cross into bad faith. Cessco submits the Board's reasons are transparent, coherent, and responsive to the core arguments made, and the Union's arguments are a disagreement with outcome rather than an identification of reviewable error.

[116] In my view, the Board correctly identified the legal principles distinguishing hard bargaining from bad faith or surface bargaining and applied those principles to the evidence. The Board considered the history of negotiations, the evolution of proposals, including those found in Exhibit 13, and the positions taken by both parties. The Board's determinations were inherently contextual and fact-specific, requiring the Board to assess bargaining conduct as a whole, not through isolated incidents.

[117] The Board was dealing with complicated issues where it has specialized expertise in labour relations and collective bargaining. The Board cited the relevant case authority, reviewed the relevant evidence, and considered the totality of the circumstances that took place between the parties. The Board's conclusions are entitled to significant deference. I find that the Board's analysis falls within the range of reasonable outcomes.

[118] On a final note, to the extent the Board failed to address certain arguments or pieces of evidence, as alleged by the Union, it was not required to respond to every submission or item of evidence. I find the Decision, read as a whole, allows this Court to understand why the Board reached the conclusions it did and to determine whether those conclusions were justified. The substantive grounds of review are dismissed.

VII. Conclusion

[119] I find it was procedurally unfair for the Board to defer its decision on the ss 60 and 148 complaints until after it heard the s 149 complaint but decline to grant the requested remedy. I dismiss all other grounds of review, both procedural and substantive.

Heard on the 20th day of March, 2026.

Dated at Edmonton, Alberta this 23rd day of June, 2026.

M. Hayes-Richards
J.C.K.B.A.

Appearances:

David Mercer
for International Brotherhood of Boilermakers

Tim Nessim
for Alberta Labour Relations Board

James Lingwood
for Cessco Fabrication & Engineering Ltd.