**CITATION:** Miasik v. Ontario (Labour Relations Board), 2025 ONSC 6792
**DIVISIONAL COURT FILE NO.:** 735/24-JR
**DATE:** 20251216

2025 ONSC 6792 (CanLII)

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**DIVISIONAL COURT**

**Lococo, D. Edwards and Shore JJ.**

| | |
|---|---|
| **BETWEEN:** | |
| PETER MIASIK | *Umar Sheikh*, for the Applicant |
| Applicant | |
| **– and –** | |
| THE ONTARIO LABOUR RELATIONS BOARD and UNIFOR LOCAL 1459 | *Aaron Hart*, for the Respondent Ontario Labour Relations Board |
| Respondents | *Erin Masters*, for the Respondent Unifor Local 1459 |
| | **HEARD:** May 27, 2025 |

**REASONS FOR JUDGMENT**

[1] The Applicant was employed with Fiat Chrysler Automobiles Canada ("FCA Canada" or the "Employer") for 24 years, when his employment was terminated. The Applicant alleges that Unifor Local 1459 (the "Union") violated its duty of fair representation pursuant to s. 74 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A, (the "*Act*") in its handling of his grievance.

[2] By its decision, dated August 28, 2024 (the "Decision"), reported at 2024 CanLII 87594 (ON LRB), the Ontario Labour Relations Board ("OLRB") determined that the Union did not violate s. 74 of the *Act*. The Board also dismissed the Applicant's request for reconsideration, in its decision dated October 21, 2023 (the "Reconsideration Decision"), reported at 2024 CanLII 112236 (ON LRB).

[3] This is an application for judicial review of the Decision and the Reconsideration Decision.

[4] For the reasons below, the application is dismissed.

**Factual Background:**

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[5] The Applicant was employed at the Etobicoke Casting Plant of FCA Canada. His employment was covered by a collective agreement.

[6] In October 2021, the Employer implemented a mandatory COVID-19 Vaccination Policy. The Applicant failed to comply with the vaccination policy and was placed on an unpaid leave of absence by the Employer on or around January 3, 2022. The Union filed an individual grievance on his behalf on January 5, 2022 ("Suspension Grievance").

[7] While the Suspension Grievance was pending, several Unifor local unions pursued a policy grievance against the Vaccination Policy. An award was issued on May 25, 2022, finding that the policy was reasonable up until the date the award was issued, but that it was not reasonable going forward. As such, FCA declared the policy to be of no force or effect as of June 25, 2022.

[8] Immediately after the award, the Employer recalled all employees who had been suspended or placed on a leave of absence pursuant to the policy. Workers, including the Applicant, were instructed to return to work on June 27th, 2022. The Applicant did not return to work.

[9] The Applicant received a letter dated July 6, 2022, from the Employer indicating his absence without leave since June 27th, 2022, and that his employment would be deemed terminated if he did not return to the workplace or present satisfactory evidence explaining his absence, by July 13, 2022.

[10] On July 10, 2022, the Applicant was involved in a motor vehicle accident. The extent of the Applicant's injuries is unclear. A motor vehicle collision report indicates that his wife was injured at the scene.

[11] By letter dated July 14, 2022, the Employer deemed the Applicant's employment terminated due to his absence and lack of communication regarding the reason for the absence.

[12] The Applicant asserted that he was unable to respond to the Employer's July 6, 2022, letter due to the injuries he sustained during the collision.

[13] The Union filed a grievance challenging the Applicant's termination on July 15, 2022. The Union asserted that the Applicant's injuries from the vehicle collision should excuse his non-attendance at work and his lack of communication by the July 13, 2022, deadline.

[14] The Union contacted the Applicant on July 25, 2022, to set up a call to discuss the grievance. The phone meeting took place on July 27, 2022. During this meeting, the Union requested copies of any documents which could substantiate the Applicant’s assertion that

due to the collision, he was unable to respond to the Employer's July 6, 2022, letter. The Union reiterated this request in a follow up e-mail on July 29, 2022. The Union repeated that they were looking for "anything to help fight for your job."

[15] There is no dispute that throughout August 2022, the Union and the Applicant communicated about the documentation required by the Employer, and that the Applicant provided some documents to the Union. These documents were then provided to the Employer.

[16] On September 9, 2022, the Union attended a second grievance meeting where the Employer indicated that the information provided by the Applicant was insufficient. They requested additional documents regarding the Applicant's injuries and the medical visits during the period immediately following the collision. Specifically, the Employer sought confirmation of the Applicant's incapacity during that period.

[17] The Union communicated the Employer's request for further documentation to the Applicant and repeated its request for additional documentation on several occasions over the course of September and October 2022.

[18] On October 31, 2022, the Applicant provided the notes from his treating physician and his chiropractor, which set out the dates the Applicant received treatment. The notes show that the Applicant was first seen by his physician on July 22, 2022, and by his chiropractor on July 12, 2022. The Employer was not satisfied that the notes demonstrated that the Applicant was incapable of responding to its July 6, 2022, letter.

[19] Another grievance meeting with the Employer was held in late December 2022. The Union arranged a call with the Applicant for January 9, 2023, to discuss the meeting and the status of the Applicant's grievance. The Union again attempted to explain to the Applicant the type of documents that the Employer required. The Applicant did not provide any further documentation to the Union or the Employer that could speak to his condition in the immediate aftermath of the vehicle collision.

[20] The Union continued to meet with the Employer to discuss the Applicant's grievance in the coming months. The Union attempted to contact the Applicant by telephone on a number of occasions to discuss and obtain the information necessary to satisfy the Employer of the Applicant's incapacity during the relevant dates.

[21] On November 22, 2023, the Applicant filed a complaint with the OLRB that the Union was in violation of s. 74 of the *Act*, the duty of fair representation, alleging that the Union failed to represent and advance the terms of his grievance.

[22] Section 74 of the *Act* provides:

> A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not

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> members of the trade union or of any constituent union of the council of trade unions, as the case may be.

[23] On November 28, 2023, the Union notified the Applicant that the Employer had again denied the grievance after a grievance meeting held on September 7, 2023. The Union underscored that the Employer continued to request the documentation that had not been provided. The Union also noted that it had tried to reach the Applicant via telephone to no avail. They reiterated that the grievance had not yet been withdrawn and requested the Applicant contact the Union as soon as possible or the grievance would be withdrawn.

[24] The OLRB held an in-person hearing on August 26, 2024, with respect to the Applicant's complaint, and both parties made submissions. On August 28, 2024, the OLRB issued a decision dismissing the application. The OLRB found that the Applicant had not established that the Union breached the duty of fair representation.

[25] On September 17, 2024, the Applicant filed a request for reconsideration. The OLRB issued its decision on October 21, 2024, finding that the Applicant had not identified any material errors in the original decision which would require the OLRB to reconsider its decision.

[26] The Applicant submits that neither the Decision nor the Reconsideration Decision were reasonable.

**<u>Standard of Review:</u>**

[27] The parties agree that the appropriate standard of review is reasonableness, as set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653.

[28] This standard was explained in *Vavilov*, at paras. 15 and 68, as follows:

> [15] In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place.
>
> …
>
> [68] Reasonableness review does not give administrative decision makers free rein in interpreting their enabling statutes, and therefore

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> does not give them licence to enlarge their powers beyond what the legislature intended. Instead, it confirms that the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority. Even where the reasonableness standard is applied in reviewing a decision maker's interpretation of its authority, precise or narrow statutory language will necessarily limit the number of reasonable interpretations open to the decision maker - perhaps limiting it to one. Conversely, where the legislature has afforded a decision maker broad powers in general terms - and has provided no right of appeal to a court - the legislature's intention that the decision maker have greater leeway in interpreting its enabling statute should be given effect.

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**<u>Reasonableness of the Decision:</u>**

[29] The Applicant submits that the decision of the OLRB was unsupported by evidence and was therefore unreasonable. The Applicant submits that the OLRB erred in its finding that the Union did not act arbitrarily because the Union:

(a) failed to communicate with the Applicant for 13 months;

(b) failed to take steps to move the grievance towards resolution; and

(c) failed to clarify the documentation that the Employer was missing.

[30] The OLRB aptly addressed the issues raised above in their Decision as follows:

> 39. In the present case, Unifor would have to demonstrate that Mr. Miasik was reasonably incapable of complying with FCA's direction in the July 6, 2022, letter in order to succeed at arbitration. Unifor has repeatedly asked Mr. Miasik to provide documents and information substantiating his incapacity. It is patent that the information provided by Mr. Miasik to this point falls woefully short of establishing his incapacity to respond to FCA's request.
>
> 40. While Unifor may have done more to communicate its expectations to Mr. Miasik, I do not find that its conduct rises to the level of arbitrary conduct as asserted by Mr. Miasik. Unifor has communicated to Mr. Miasik that FCA is seeking information and documentation which shows that Mr. Miasik was incapable of complying with its July 6, 2022, direction. Unifor has repeatedly advised Mr. Miasik that the information provided by him falls short of that mark.
>
> 41. Representatives of Unifor have attempted to communicate with Mr. Miasik by telephone to discuss these matters. Mr. Miasik apparently prefers to communicate with Unifor by email. It is not

> for Mr. Miasik to dictate the manner of communication with his union representatives. I find that it is entirely reasonable that Unifor wishes to have a frank discussion with Mr. Miasik regarding the nature of the information and documentation necessary to be able to consider advancing his grievance.
>
> 42. While Unifor may not have expressly and directly told Mr. Miasik what information to provide to it, it is clear from the communications that Unifor has had with Mr. Miasik that it has requested information and documentation substantiating his incapacity to respond to FCA's July 6, 2022, direction. Mr. Miasik knows what information and documentation may be available to him. It is obvious that Unifor would not have that information. Accordingly, I do not find Unifor's failure to be more specific to be arbitrary.

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[31] The Applicant submits that from October 31, 2022, when he provided the Union with some additional documentation, until receipt of a letter from the Union on November 22, 2023, there was no other communication from the Union. But there was evidence that the Union had a call with the Applicant on January 9, 2023, following a grievance meeting with the Employer in late December 2022. Further, the Union attempted to contact the Applicant by telephone on a number of occasions thereafter. I therefore find that the OLRB's decision was supported by the evidence.

[32] The Applicant submits that the Union failed to clearly communicate what documentation the employer was missing. The Applicant acknowledges that the Union requested information and documentation substantiating his incapacity to respond to the Employer's July 6, 2022, letter. The emails from the Union specify that the doctor's letter is dated August 18, 2022, but that the Employer continues to request documentation that addresses his inability to respond to their letter or meeting with Human Resources, from the date of the accident until the date of his doctor's letter.

[33] The Applicant submits that the Union failed to advance the grievance. However, the Union continued to advance the grievance but was hampered by the Applicant's failure to provide documents and information substantiating his incapacity during the requisite time frame.

[34] I find that there was evidence on which the OLRB could find that the Union:

(a) tried to communicate with the Applicant, and it was the Applicant who failed to respond on a timely basis;

(b) took reasonable steps to move the grievance towards resolution but were hampered from doing so by lack of documentation and communication from the Applicant; and

(c) clarified or tried to clarify the documentation that was being sought by the Employer.

[35] The decision of the OLRB was transparent, intelligible and justified, and based on the evidence it had before it.

[36] I find the decision of the OLRB to be reasonable.

**Reasonableness of the Reconsideration Decision:**

[37] In the reconsideration submissions, the Applicant submits that the OLRB made a factual error in its Decision, in that the OLRB found that the Applicant had not responded to a letter from the Union sent on November 28, 2023.

[38] In the Reconsideration Decision, the OLRB acknowledged that there was an error in the finding of facts in the Decision, but that the error was not material to the determination in the initial decision.

[39] The Applicant filed the application on November 24, 2023. The Applicant replied to the November 28, 2023 letter on December 12, 2023. However, these events took place after the claims of a breach were made by the Applicant. Whether the Applicant responded to Unifor's November 28th letter does not inform whether Unifor's conduct was arbitrary, discriminatory, or in bad faith prior to November 24, 2023.

[40] The Applicant has failed to establish that this flaw in the original Decision is "sufficiently central or significant to render the decision unreasonable."

**Disposition**

[41] The parties are not seeking costs.

[42] The application is dismissed without costs.

"Shore J."

I agree
"Lococo J."

I agree
"D. Edwards J."

**Released:** December 16, 2025

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**Lococo, D. Edwards and Shore JJ.**

**BETWEEN:**

PETER MIASIK

Applicant

**– and –**

THE ONTARIO LABOUR RELATIONS BOARD and UNIFOR LOCAL 1459

Respondents

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**REASONS FOR JUDGMENT**

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**SHORE J.**

**Released:** December 16, 2025