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Alberta Human Rights Complaint #: [REDACTED]

Alberta Labor Relations Board File #: [REDACTED]

October 1 2016,

I would ask the IBEW LU 424 to seek alternate council, clearly Mr. Benedict is not willing to be in any way reasonable in this matter and is taking this as a personal matter now due to past disputes between myself and Mr. Benedict and refuses to be reasonable in this matter. Due to past dealings with Mr. Benedict there is a reasonable apprehension of bias here with Mr. Benedict and plenty of reason to believe that he will in no way be fair in this matter. I would ask that the IBEW LU 424 seek an alternate law firm to deal with this matter.

Once again I am requesting a meeting with Mr. White to sit down and discuss this matter which I have every right to do as a member of the IBEW LU 424.

Once again it is the IBEW LU 424 who continues to frustrate this matter and continues to refuse to make any attempt to resolve this matter.

Let me make this very clear to the IBEW LU 424 I am willing to attend an IME which is fair and impartial but the IBEW LU 424 refuses to give me any kind of a fair examination.

Under the IBEW Constitution I have every right to ask to appeal this decision and I am doing so. Up to now the IBEW LU 424 has given me absolutely no hearing and no appeal process Under section XXIV Section 12 of the IBEW Constitution states

“Sec. 12. Any member who claims an injustice has been done him by any L.U., trial board, or by any System Council, may appeal to the I.V.P. any time within forty-five (45) days after the date of the action of the L.U., trial board or System Council.”

Notice it says “Any member” I have the right to request an appeal to the suspension of my dispatch abilities under the IBEW LU 424 constitution. The IBEW LU 424 can NOT continue to give me no appeal and no hearing and just continue to drag this on for years like this! I am sick of the IBEW LU 424 and how unfair and biased they are. It seems that the IBEW Constitution only applies to certain people and others it doesn't.

The IBEW LU 424 has absolutely NO right to continue to suspend my dispatch abilities and the Alberta Labor laws are very clearly that the IBEW LU 424 has no such right to suspend my dispatch abilities other than for non-payment of dues and my dues are paid up.

<http://www.qp.alberta.ca/documents/Acts/L01.pdf>

26 No trade union shall expel or suspend any of its members or take disciplinary action against or impose any form of penalty on any person for any reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union, unless that person has been

- (a) served personally or by double registered mail with specific charges in writing,
- (b) given a reasonable time to prepare the person's defence,
- (c) afforded a full and fair hearing, including the right to be represented by counsel, and
- (d) found guilty of the charge or charges, and if a monetary penalty has been imposed, fails to pay it after having been given a reasonable time to do so.

152(1) No trade union or person acting on behalf of a trade union shall

- (a) expel or suspend a person from membership in the trade union or deny membership in the trade union to a person by applying to the person in a discriminatory manner the membership rules of the trade union;
- (b) take disciplinary action against or impose any form of penalty on a person by applying to the person in a discriminatory manner the standards of discipline of the trade union.

Clearly in both section 26 and section 152 of the Alberta Labor Relations code it clearly states that the union is not to impose any form of penalty on a person. The IBEW LU 244 continues to impose a penalty on me by suspending my dispatch abilities and refusing to allow me to work even though my dues are paid up that is clearly a penalty and is disciplinary action.

I have never been served by double registered mail with any specific charges in writing, and I have never been given a hearing at all and I have never been found guilty of any breeches of the IBEW Constitution therefor the IBEW LU 424 has not followed the Alberta Labor Laws in this matter and is in violation of the Alberta Labor laws section 26 and 152.

The IBEW LU 424 is also in no way being reasonable in their demands with this IME. I agreed to the terms set out by Kevin Levy and once I did then he changed them to the current demands. The IBEW LU 424 has absolutely no intention of even trying to resolve this matter and want to continue to wrongly keep me out of work.

The demands currently being made by the IBEW LU 424 are in no way reasonable and are unfair and would lead to a biased IME in the favor of the IBEW LU 424. The IBEW LU 424 has no right to dictate all the conditions for this IME and must at least make an attempt to work with me which they have in no way done.

The terms which the IBEW LU 424 are currently demanding are:

1. Total and unrestricted access to all information relevant to the case, reflecting your entire lifespan made available to the evaluator (i.e. Dr. Chu).
2. Controlling access to the information available to the assessor is not considered compatible with insuring an independent process.
3. The relevant questions that are to be posed to the independent evaluator will be formulated by the retaining party (IBEW424).
4. The report generated cannot be controlled or edited by yourself, or manipulated to include only partial information.
5. Standard practice in the substantive field of IMEs further precludes the report (generated by the independent evaluator; i.e. Dr. Chu) from being sent directly to the person undergoing the evaluation (you). However, once IBEW424 received the IME Report from Dr. Chu, it will produce a copy of it to you.

I will answer these in order of the demands set out by the IBEW LU 424 as to why they are in no way fair.

1. Life Time of Medical Information

The IBEW LU 424 cannot demand a life time of medical information and must be reasonable with the amount of medical information which they are requesting and can only request the amount of medical information related to this matter and relevant to my job duties.

Even the Alberta Human Rights Bulletins agree with me in this matter

http://www.albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/bulletins/obtaining_med_info_in_workplace.asp (Item "B")

"To assess an employee's needs, the employer may request only information that is relevant to the employee's job duties. The employer does not have an unconditional right to full disclosure of the employee's medical situation."

"All parties are expected to keep an open line of communication to resolve conflicts over medical information."

To request a life time of my medical information goes well beyond anything needed by the IBEW LU 424. The IBEW is requesting a full life time of medical information be released and that is extremely unfair and is way too much information to be released. This goes well beyond what is relevant to my job duties.

The IBEW LU 424 refuses to keep any kind of an open line of communication here and refuses to even meet with me after multiple requests for meetings with Mr. White who is the business manager for the IBEW LU 424 and refuses to even meet with me and attempt to resolve this matter after I have requested multiple times a meeting with him to try and resolve this situation.

Further down in the same bulletin from the Alberta Human Rights Commission it goes on to say

“For instance, requiring information about past medical history is asking for too much information. Generally, employees have a right to privacy regarding their medical information.”

This is exactly what the IBEW LU 424 is doing they are demanding a life time of medical information which clearly the Alberta Human Rights own bulletins say is too much information. The IBEW LU 424 has also already been provided a letter by my doctor as well (Dr. Jahandar) clearing me to return to full working duty saying I am fit to return to work which the IBEW LU 424 has ignored for close to the past 4 years.

This also comes from the Alberta Human Rights Bulletin

“Employers must try less intrusive methods of obtaining clear medical information before requiring this information through other means.”

The IBEW LU 424 has not tried the least intrusive method and has demanded an Independent Medical Exam (“IME”) since the start. Ever since the pre-hearing meeting at the Alberta Labor Relations Board (“ALRB”) the IBEW LU 424 has demanded an IME and has refused to try and other methods of resolving this matter. When I had a lawyer in this matter I went and saw Sharon Brintnell at the University of Alberta twice and she was going to do a full occupational work assessment on me to determine if I could or could not work but the IBEW LU 424 said they would refuse any report generated by Ms. Brintnell. Sharon Brintnell is a worldwide known occupational therapist who is more than qualified to perform such an exam.

Sharon Brintnell
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Edmonton, AB
Canada, T6G 2G4
Phone #: 780-492-2067
Email: sharon.brintnell@ualberta.ca

<https://rehabilitation.ualberta.ca/departments/occupational-therapy/contact-us/staff-directory/brintnellsharon>

She is the director of the OPAU research and services unit at the University of Alberta
And the president of the World Federation of Occupational Therapists (“WFOT”)
Was on the board of directors for the Canadian Association of Occupational Therapists (“CAOT”)

Ms. Brintnell is more than qualified to perform such an exam and could have given the IBEW LU 424 recommendations to be able to return me to work and if I could or could not work but the IBEW LU 424 refused to accept any findings from her.

Again from the Alberta Human Rights Bulletin in regards to medical information (Item “B”) states:

“Generally, an employee has the right to refuse to disclose medical information such as the diagnosis of their disability.”

This once again comes from the Alberta Human Rights Bulletin regarding medical information. Even though the IBEW LU 424 has in no way proven that this IME is needed I have said that I am still willing to go through with this IME as long as it is paid in full by the IBEW LU 424.

http://www.albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/bulletins/obtaining_med_info_in_workplace.asp#Requestinganindependent

“The employer may only ask for the information that is necessary to make decisions about accommodating the employee, providing disability leave, or assessing if the employee can return to work.”

There is case law as well that supports my position here that the amount of information requested by the IBEW LU 424 in this matter is too broad in the case Communications, Energy and Paperworkers Union of Canada Locals 1-S, 2-S and 3 v. Sasktel, 2011

Communications, Energy and Paperworkers Union of Canada Locals 1-S, 2-S and 3 v. Sasktel, 2011 <http://canlii.ca/t/fmmt5>

“Simply put the Union claims that the information being routinely sought in both the MAR and Great-West Life forms is too intrusive and more than is reasonably necessary. Further, it maintains that the authorizations are too broad.”

“91. As noted by Arbitrator Munroe in The British Columbia Public School Employers’ Assn. vs British Columbia Teachers’ Federation Award at pps 7 and 8, Arbitrator Hope went on in the Victoria Times – Colonist Case to observe at page 12 of that Award:

...it is important to recognize that there is nothing inherent in the employer-employee relationship which vests in an employer a discretionary right to compel employees to

compromise their right of privacy through the disclosure of personal medical information. In particular, that is not a discretion which falls within the retained rights concept which vests in an employer those rights coincidental with the management and direction of the enterprise and the work force which have not been bargained away.”

““97. The result is that there has to be a balancing of an employee's right to privacy of medical information versus an employer's legitimate business interests”

“Arbitrators have generally limited the type of medical information which employee’s must provide in the circumstances, and have almost universally held an employer is not entitled to know an employee’s medical diagnosis. “

“144. “History" must be limited to when the illness, disability or accident for the current absence began. It is not reasonably necessary to enquire into an Employee's medical history.”

“146. "Diagnosis (including any complications)" as well as "Primary", "Secondary", "Subjective Symptoms" and "Objective Signs (including results of current X-rays, blood pressure, laboratory data and any relevant clinical findings): please attach a copy of your clinical notes and all relevant test results and consultation reports related to this period of disability" are all too intrusive and must be replaced with an inquiry as to the nature of the illness or disability.”

Clearly the request of the IBEW LU 424 for a life time of medical information is too broad here and is unreasonable.

By asking Dr. Chue to request this information he would also be violating the Alberta College of Physician & Surgeons Code of Conduct (Item “D”)

“(g) Avoid discrimination based on, but not limited to, age, gender, medical condition, race, color, ancestry, national or ethnic origin, appearance, political belief, religion, marital or family status, physical or mental disability, sexual orientation or socioeconomic status. (NOTE: In human rights legislation, this is known as “protected grounds”.)”

And the Canadian Medical Association Code of Ethics would also be breached here as well (Item “E”)

“9. Refuse to participate in or support practices that violate basic human rights.”

The request for a life time of medical information would be way too broad and requesting this much information is a prima facie case of discrimination by requesting this much information about my disabilities and violates my privacy. Asperger’s Syndrome and A.D.D. is considered a mental disability. Having a doctor request this much information would be unreasonable for Dr. Chue to do as it would put him in violation of both the CPSA and the CMA’s codes of conduct and the code of ethics.

2. Controlling access to information

I would in no way be controlling access to the information in this matter. Dr. Chue has said that he is willing to do brand new testing in this matter. I would in no way be controlling access to the information available here since Dr. Chue himself will do new testing on me. Dr. Chue has stated to me that the testing would be 3 – 4 hours in length which I have said multiple times that I am willing to attend. The report would be written by Dr. Chue on the basis of the testing which he has done and he would be able to come to the conclusion if I can or cannot work. I have also stated to the IBEW LU 424 that I would be willing to give you a summary of this report which would include the decision of Dr. Chue as to if I can or cannot work and any recommendations he would have to return me back to work again, which is the information that the IBEW LU 424 is looking for. The summary of the report with this information to the IBEW LU 424 or their lawyer directly. I would in no way be controlling access to this report in any way and the report would come from Dr. Chue's office to the IBEW LU 424. The accusation made by the IBEW LU 424 that I would be controlling access to the information in this matter is false and unreasonable.

3. Relevant Questions

Once again there would be no need for any "relevant" questions here in this matter as I just previously stated Dr. Chue is planning on doing brand new testing and writing a report based on that testing. Any questions which the IBEW LU 424 would ask would steer Dr. Chue in their direction and would lead the doctor on to possibly come to a conclusion that the IBEW wants. Dr. Chue is qualified to determine what testing he needs to do to come up with the answer of if I can or cannot work. The only information Dr. Chue needs is to know that I am diagnosed with Asperger's Syndrome and Attention Deficit Disorder ("A.D.D.") and that the IBEW LU 424 has occupational safety concerns as to if I can work. The IBEW LU 424 will not be allowed to steer Dr. Chue in their direction in this matter and by allowing them to pose questions to Dr. Chue in this matter is unfair and unreasonable and would lead to an unfair IME.

4. Editing report

Once again this is yet another wild and incorrect accusation made by the IBEW LU 424. As I have previously stated that the summary of this report generated by Dr. Chue would be faxed directly from his office to the IBEW LU 424. I would in no way be editing the report and would be sent directly from the doctor's office. This has been stated to the IBEW LU 424 multiple times already. The IBEW LU 424 would not receive the full report only I would get the full report and the summary sent to the IBEW the IBEW LU 424 is not entitled to diagnosis information as per the Alberta Human Rights Bulletin as it would be considered a diagnosis.

Alberta Human Rights Bulletin regarding medical information (Item “B”) states

“Generally, an employee has the right to refuse to disclose medical information such as the diagnosis of their disability.”

As a compromise to this though as I have previously stated I would be willing to have Dr. Chue fax the IBEW LU 424 a summary of the report stating if I can or cannot work along with any recommendations which he may have. These are the answers which the IBEW LU 424 are looking for and I am willing to give them and that summary would come from Dr. Chue’s office not from me.

5. Copy of report

The IBEW LU 424 has absolutely no right to deny me a copy of my own medical information I have a right to have a copy of the full unedited report which came directly from the doctor who performed the IME. The IBEW LU 424 did not want me to give them a copy of the report and wants it directly from the doctor which I have agreed to but the IBEW LU 424 expects me to accept a copy of the report from the union which may or may not even be complete. That is unacceptable the report which is given to me should be once again given to me directly by the doctor who performed the IME for the same reasons the IBEW LU 424 wants their copy of the summary sent directly from the doctor’s office.

It is a violation of the Health Information Act (“HIA”) to deny me access to my own medical information. It is a violation of section 7(1) of the Health Information Act. The IBEW LU 424 should in no way be controlling this report either which is exactly what they have demanded of me. So why should the IBEW LU 424 be allowed to control this report. Also the IBEW LU 424 would only be getting a summary of the report not the full report which states if I can or cannot work and any recommendations which Dr. Chue may have. The only one which would have the full copy of the IME report would be me for my records.

https://www.assembly.ab.ca/HIARReview/Health_Information_Act.pdf

7(1) An individual has a right of access to any record containing health information about the individual that is in the custody or under the control of a custodian.

By asking Dr. Chue to not give me a copy of my own medical information Dr. Chue would be violating the Alberta College of Physicians & Surgeons Code of conduct (Item “D”)

“(c) Know and comply with applicable legislation regarding confidentiality and health information.”

And under the Canadian Medical Association (“CMA”) their code of Ethics State (Item “E”)

“33. Be aware of your patient’s rights with respect to the collection, use, disclosure and access to their personal health information; ensure that such information is recorded accurately.”
The recommendation of Dr. Els would violate the Health Information Act by refusing me access to my own medical records.”

The Health Information Act is very clear that I am allowed access to my own information and by asking Dr. Chue to withhold that information he would be in violation of both the Alberta College of Physician & Surgeons code of conduct but as well as the Canadian Medical Association code of Ethics. It would be unreasonable to ask any doctor to violate two sets of codes of ethics.

I am willing to undergo a fair and impartial IME but the IME outlined by the IBEW is not fair and not impartial and would result in a biased IME in the favour of the IBEW LU 424.

The IBEW LU 424 has absolutely no right to dictate all the terms of this IME and I have a say in this matter as well. This is a clear case of discrimination by the IBEW LU 424 and it needs to cease immediately. Due to past arguments and disagreements with Mr. Benedict I do not believe that he is going to be fair and impartial in this matter due to some of the things said. There is a reasonable apprehension of bias here on the part of Mr. Benedict and I ask that he be removed from this matter immediately and that the IBEW LU 424 find another law firm to deal with this matter.

The process outlined by the IBEW is not a “standard process” for IMEs and would result in a biased and unfair IME in the favour of the IBEW LU 424.

The IBEW LU 424 is in no way being reasonable in their request in this matter as I have clearly shown.

Also in the response from Mr. Benedict he states

“Please send any communications related to this issue to this office, and not directly to IBEW 424's officers or employees.”

Mr. Benedict as part of the IBEW LU 424 I have every right to deal with the IBEW LU 424 office as they are the ones who represent the members of this union. If they want to send the information to you then they can do so. But I do not deal with you I deal with my union representatives who is Mr. White and the other Assistant business managers at the IBEW LU 424 hall here in Edmonton. You have absolutely no right to tell me that I cannot deal with them. If any information is sent it will be addressed to Mr. White and then it is his responsibility to decide if he wants it sent to the lawyer or not, once again Mr. Benedict is way out of line here and I ask that he be removed from this matter as there is no chance of him being fair here or any attempt for him to even try and work with me in this matter.

This is nothing short of blackmail on the part of the IBEW LU 424 and what they are doing to me simply because I do not have legal counsel the IBEW LU 424 thinks that they can get away with anything they want and simply demand that I agree to these terms and conditions no matter how unfair they are otherwise they will continue to suspend my dispatch abilities and refuse me the right to work until I agree to every term they want. This is unacceptable and this needs to cease now.

As I said know exactly why Mr. Benedict is doing this and I have more than enough grounds here that he will in no way be fair in this matter or make any attempt to try and resolve this matter.

This all stems from an incident back in 2015 when the Alberta Human Rights Commission accidentally leaked a copy of a medical report which never should have been released in the first place. Mr. Benedict sent me emails asking that he be allowed to use these copies of the leaked medical reports from the Alberta Human Rights Commission. I would not give Mr. Benedict permission to use this report and there were some very angry emails sent back and forth. As I said I have more than a case here of reasonable apprehension of bias here and that Mr. Benedict has absolutely no intention of even trying to work with me in this matter to resolve this. I do not believe that Mr. Benedict is making any attempt to resolve this and refuses to budge from his unfair position due to this incident and several others and is taking advantage of me simply because I do not have legal counsel in these cases.

Because I wouldn't give Mr. Benedict permission to use the leaked report (which he never should have had in the first place) he threw a fit and has been unreasonable ever since. Mr. Benedict and the IBEW LU 424 continue to work in bad faith here and are doing absolutely nothing to try and resolve this matter.

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 SCR 817, 1999 CanLII 699 (SCC) <http://canlii.ca/t/1fqlk> (Item "F")

"20 Both parties agree that a duty of procedural fairness applies to H & C decisions. The fact that a decision is administrative and affects "the rights, privileges or interests of an individual" is sufficient to trigger the application of the duty of fairness: Cardinal v. Director of Kent Institution, 1985 CanLII 23 (SCC), [1985] 2 S.C.R. 643, at p. 653."

The IBEW LU 424 must be procedurally fair what information they are asking for. The terms of the IME which the IBEW LU 424 is currently asking for is procedurally unfair and would result in a biased and unfair IME. It is unfair for the IBEW LU 424 to ask for a life time of medical information and for them to refuse access to my own medical reports and to make acquisitions against me that I would edit the reports or control access to the reports is extremely unreasonable and unfounded.

What the IBEW LU 424 is doing to me is a prima facie case of discrimination and it needs to cease now!

Kerr v. Boehringer Ingelheim (Canada) (No. 4), 2009 BCHRT 196 (CanLII)
<http://canlii.ca/t/23v0z> (Item "I")

"Given the importance of work to a person's sense of well-being, I find that not returning a person to work after a leave of absence constitutes an adverse effect for purposes of the Code. As the Court noted in Wallace v. United Grain Growers Ltd. (1997), 1997 CanLII 332 (SCC), 152 D.L.R. (4th) 1:"

Seiu-West v Cypress Health Region, 2014 CanLII 21601 (SK LA)
<http://canlii.ca/t/g6qr3> (Item "J")

"98. It is prima facie discrimination for an employer to refuse to employ or to continue to employ an employee because of a physical or a mental disability."

By the IBEW LU 424 refusing to allow me to work even after them receiving a letter from my doctor stating I was fully cleared to return to work along with letters from a specialist in developmental disabilities (Dr. Orimalade) who says that having Asperger's Syndrome should not preclude me from any job and yet the IBEW LU 424 still refuses to allow me to be dispatched though the IBEW LU 424 hall. The IBEW LU 424 is refusing to dispatch me due to my mental disabilities being Asperger's Syndrome and A.D.D. (See Item "G" and Item "H")

The IBEW LU 424 has made absolutely no attempt to return me to work and have not even attempted any kind of a modified work program in the nearly 4 years that I have been off of work now.

Once again IBEW LU 424 I am asking to appeal the decision of Kevin Levy to suspend my dispatch abilities as the IBEW Constitution has in no way been followed in this matter and this decision needs to be immediately overturned. I also want to sit down with Mr. White as well and speak directly to him about this matter. Mr. White please call me immediately in regards to this matter so we can setup a date and time to meet at.

[REDACTED]

[REDACTED]