Union Loses Termination Case because It Waited Too Long to Name Arbitrator



After an employee was fired for allegedly assaulting a co-worker, the union filed a grievance the very next day. But it took the union 26 months to actually appoint the arbitrator. The employer said the delay was too long and asked the arbitrator to dismiss the case. The Alberta arbitrator agreed. Two things were clear: 26 months was an excessive delay and the union's procrastination was responsible for it. The only question was whether the delay prejudiced, i.e., hurt the employer's case. I'm not a big fan of the idea that prejudice is based on the passage of time, 'there comes a point where the amount of time passed becomes so excessive' that it does real damage to the memories of the witnesses. This case has reached that point, the arbitrator concluded, and the Alberta Court of Appeal upheld that ruling [*United Food and Commercial Workers Canada Union, Local No 401 v Sofina Foods Inc*, 2021 ABCA 191 (CanLII), May 20, 2021].