Labour Relations Board
Saskatchewan

GRAIN SERVICES UNION (ILWU – Canada), Applicant v. SASKATCHEWAN WHEAT POOL, 324007 ALBERTA LTD. o/a HEARTLAND LIVESTOCK SERVICES and GVIC COMMUNICATIONS INC., Respondents

LRB File No. 003-02; October 10, 2003
Vice-Chairperson, James Seibel; Members: Don Bell and Maurice Werezak

For the Applicant:	Ronni Nordal
For the Respondent, Saskatchewan Wheat Pool:	Rob Garden, Q.C.
For the Respondent, GVIC Communications Inc.:	Susan Barber
For the Respondent, 324007 Alberta Ltd. o/a Heartland Livestock Services:	Jeff Grubb, Q.C.

Reconsideration – Criteria – Board confirms criteria for reconsideration – Request for reconsideration not appeal or hearing *de novo* but allows important policy issues to be addressed – Original decision does not have unanticipated or unintended effect and does not mark significant change in Board's historical approach to mid-term bargaining – Board confirms original decision and dismisses application for reconsideration.

***The Trade Union Act*, s. 13.**

REASONS FOR DECISION

Background:

[1] Grain Services Union (ILWU – Canada) (the "Union") has applied to the Board for reconsideration of the decision and Order of the Board dated February 21, 2003 dismissing the Union's application which alleged that Saskatchewan Wheat Pool ("SWP") had committed an unfair labour practice in violation of s. 11(1)(c) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*"). The original decision is reported at [2003] Sask. L.R.B.R. 52, LRB File No. 003-02.

[2] The Board heard the application for reconsideration on May 20, 2003. Although several additional grounds for reconsideration were raised in the application, only two grounds were pursued at the hearing: (1) that the original decision and Order of the Board have an unanticipated or unintended effect in their application; and, (2) that

the original decision is precedential and amounts to a significant policy adjudication which the Board may wish to change.

Arguments:

[3] With respect to the first ground for reconsideration, Ronni Nordal, counsel for the Union, argued that the Board's original decision leaves the Union without a forum to pursue its complaint against SWP regarding the effect of the transfers of Heartland Livestock Services to 324007 Alberta Ltd. and of Western Producer Publications to GVIC Communications Inc. and the ramifications for the affected employees relating to their interest in the GSU/SWP pension plan. Counsel noted that SWP has taken the position that, while it will not oppose arbitration of the grievance that was filed with respect to the issue, it is not the "employer" for the purposes of the grievance. Therefore, the Union would have to pursue the successor employers over a unilateral amendment to the collective agreement made by SWP. Further, counsel noted that, even if an arbitrator required the successor employers to establish pension plans identical to the GSU/SWP pension plan, such, in fact, cannot be done because it would require a significant increase to the employees' contribution rate. The Union is in a catch-22 situation because arbitral jurisprudence tends to indicate that interpretation of a pension plan is outside an arbitrator's jurisdiction.

[4] With respect to the second ground for reconsideration, Ms. Nordal argued that the Board's decision leaves the Union without a remedy. If one accepts that the effect of SWP's actions was to unilaterally amend the collective agreement, then the Board's position with respect to the duty to bargain during the term of a collective agreement leaves the Union without recourse.

[5] Rob Garden, counsel for SWP, filed a written brief that we have reviewed. With respect to the first ground for reconsideration, counsel for SWP argued that, on a close reading of the original decision, the effect of the decision is not "unanticipated" or "unintended" in that the Board contemplated that the grievance may be arbitrable, that SWP may be a party to the arbitration and that the affected employees may still be employees for the purposes of the administration of the pension plan. Counsel asserted that arbitral jurisprudence allows for interpretation of a benefit plan where, as in the

present case, it is incorporated into and made part of the collective agreement and that, in any event, the issue of arbitrability is for an arbitrator to determine.

[6] With respect to the second ground for reconsideration, Mr. Garden argued that the original decision does not represent a significant change to Board policy regarding the duty to engage in mid-term bargaining. With the exception of the technological change provisions of the *Act*, or other exceptional circumstances, the Board has consistently rejected that the duty exists. Counsel asserted that, if an arbitrator determined that SWP breached the collective agreement while it was the employer, then an appropriate remedy could be fashioned.

Analysis and Decision:

[7] A request for reconsideration is not an appeal or a hearing *de novo*, nor is it an opportunity to reargue a case, raise new arguments or present new evidence, but rather, it generally allows important policy issues to be addressed, such as evidence to be presented that was not previously available, or errors to be corrected. See, *Re Volta Electrical Contractors Ltd.,* [2000] OLRB Rep. September/October 1041.

[8] The position of the Board with respect to the criteria applicable to applications for reconsideration of its decisions was described in *Remai Investment Corporation, o/a Imperial 400 Motel v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, et al.,* [1993] 3rd Quarter Sask. Labour Rep. 103, LRB File No. 132-93, at 107-108. This position was recently confirmed in the decisions of the Board in *United Brotherhood of Carpenters and Joiners of America, Local 1985, et al. v. Graham Construction and Engineering Ltd., et al.*, [2002] Sask. L.R.B.R. 295, LRB File No. 227-00 and *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Saskatchewan Gaming Corporation – Casino Moose Jaw, et al.,* [2002] Sask. L.R.B.R. 641, LRB File No. 187-02. In the latter decision, at 643, the Board stated:

> *The Board has adopted six general criteria for determining when it will entertain an application for reconsideration. These criteria were adopted from the British Columbia Industrial Relations Council's decision in Overwaitea Foods v. United Food and Commercial Workers, No. C86/90 and include:*

> *1. If there was no hearing in the first instance and a party subsequently finds that the decision turns on a finding of fact which is in controversy and on which the party wishes to adduce evidence; or*
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> *2. if a hearing was held, but certain crucial evidence was not adduced for good and sufficient reasons; or*
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> *3. if the order made by the Board in the first instance has operated in an unanticipated way, that is, has had an unintended effect on its particular application; or*
>
> *4. if the original decision turned on a conclusion of law or general policy under the Code which law or policy was not properly interpreted by the original panel; or*
>
> *5. if the original decision is tainted by a breach of natural justice; or*
>
> *6. if the original decision is precedential and amounts to a significant policy adjudication which the Council may wish to refine, expand upon, or otherwise change.*

[9] In the present case, the Union relies upon the third and sixth of these criteria.

[10] Does the original decision have an unanticipated or unintended effect? We do not think so. The Board clearly indicated that the Union had recourse to the grievance and arbitration procedure. While that procedure may not have the result the Union seeks, it is open for an arbitrator to determine whether SWP breached the collective agreement between the parties, whether by ignoring or acting in disregard of its terms – what the Union refers to as “unilateral amendment” of its terms –or otherwise.

[11] Does the original decision mark a significant change in the Board’s previously stated position with respect to the duty to engage in mid-term bargaining? Again, we do not think so. In the original decision, the Board canvassed in detail its prior decisions with respect to the issue and it is our opinion that the decision in the present

case is consistent with the Board's jurisprudence and does not make any radical alteration to its historical approach.

[12] Accordingly, we confirm the Board's February 21, 2003 decision, and dismiss this application.

[13] Board Member Maurice Werezak dissents from these Reasons and may issue a written dissent in due course.

DATED at Regina, Saskatchewan this 10th day of October, 2003.

LABOUR RELATIONS BOARD

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James Seibel,
Chairperson