

**Labour Relations Board
Saskatchewan**

**UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400 and THE PEPSI
BOTTLING GROUP, Joint Applicants**

LRB File No. 051-03; February 28, 2006

Chairperson, James Seibel; Members: Leo Lancaster and Pat Gallagher

For the Union: Drew Plaxton

For the Employer: Barry Dong

Collective agreement – Clause – Duration of agreement - While collective bargaining agreement with term in excess of three years not unlawful *per se* and not unlawful for one party or another to propose same, constitutes unfair labour practice for party in bargaining to insist upon and press to impasse proposal for collective agreement with term exceeding three years.

Duty to bargain in good faith – Refusal to bargain – While not unlawful for party to propose agreement with term in excess of three years, pressing proposal to impasse constitutes failure to bargain in good faith – Other party has no duty to discuss matter and may reject proposal out of hand.

Collective agreement – Interpretation – Party cannot look at proposal for longer-term agreement and accept only first three years of it thereby binding proposing party – Parties not *ad idem* with respect to what agreed.

Collective agreement – Notice to revise – Where parties agree to collective agreement with term of operation exceeding three years, either party may seek to renegotiate relying upon deemed three year expiry date set forth in s. 33(3) of *The Trade Union Act*.

***The Trade Union Act*, ss. 2(b), 11(1)(c), 24 and 33(3).**

REASONS FOR DECISION

Background, Issues and Agreed Facts:

[1] United Food and Commercial Workers, Local 1400 (the “Union”) and The Pepsi Bottling Group (the “Employer”) made a joint reference of dispute application to the Board pursuant to s. 24 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”), regarding the following issues:

1. *Are Collective Bargaining Agreements with a term in excess of three years duration, set out in either in one Collective Agreement or more than one Collective Bargaining Agreement negotiated contemporaneously with a combined term in excess of three years prohibited by the Act or illegal per se?*
2. *Is it a failure to bargain in good faith if a party either refuses to discuss a term of operation which exceeds three years or if a party presses the matter to impasse?*
3. *If a party to collective bargaining proposes a Collective Bargaining Agreement with terms and conditions including a term of operation in excess of three years, is the other party entitled to unilaterally accept the terms and conditions for the first three years only as a binding Collective Bargaining Agreement?*
4. *If the parties do agree to a Collective Bargaining Agreement with a term of operation exceeding three years, can either party to the Collective Bargaining Agreement give notice to bargain relying on the deemed three year expiry date set forth in Section 33(3) of the Act.*

[2]

The parties submitted the following statement of agreed facts:

1. *The union is certified bargaining agent for certain employees of Pepsi Cola Canada Beverages (West) Ltd. (now known as the Pepsi Bottling Group) in the City of Regina, in the Province of Saskatchewan, and has entered into a number of Collective Bargaining Agreements with the employer, the last of which expired 6 October 2002.*
2. *The parties commenced negotiations for a renewal of the Collective Agreement in November, 2002. Bargaining took place for 2 days on November 21 and 22, 2003. Thereafter, all subsequent bargaining took place by facsimile.*
3. *The union delivered Notice to Revise in a timely fashion prior to expiry of the Collective Agreement and negotiations commenced.*
4. *On the 22 November 2002, during negotiations, the employer tabled an offer that contained a number of terms including a five year term of operation from 7 October 2002.*
5. *In the last round of negotiations, the parties agreed to back to back agreements, one three year and one two year. The union throughout this round of negotiations has refused to discuss an agreement in excess of three years and has advised the employer of same. The employer throughout has refused to offer anything but a five year agreement.*
6. *The employer's offer was taken to the membership on 5 December 2002. The membership rejected this offer, this was communicated to the employer.*
7. *On 13 December 2002 the employer forwarded to the union a revised "final offer" that addressed one area of the union's concerns but still contained the term of operation of five years. The union agreed to take*

this offer to the membership. The offer did not contain an option of a split agreement, but only the five year term.

8. *15 December 2002, the union's membership voted on the offer. This vote was conducted by secret ballot. The union posed two questions to the membership, the first whether or not the membership accepted the employer's offer for the first three year period of operation; the second whether the membership accepted the employer's offer for the remaining two years of the term of operation. The employer was not party to this process.*
9. *The union's membership voted to accept the offer for the first three years of operation but rejected the offer in relation to the further two years of operation.*
10. *On 12 December 2002, the employer was advised by the union of the above and on 19 December 2002, the union forwarded a draft Collective Agreement embodying employer's "final offer" but only for the first three years of operation. The employer advised by correspondence dated 30 December it would not accept the same and would not sign the agreement.*
11. *The parties have agreed to refer this dispute to the Labour Relations Board pursuant to s. 24 of The Trade Union Act.*

Analysis and Decision:

[3] Certain of the issues were essentially or substantially rendered moot by the intervening decision of the Board in *United Steel Workers of America, Local 5917 v. Wheat City Metals, a Division of Jamel Metals Inc.*, [2005] Sask. L.R.B.R. 189, LRB File No. 060-05, (upheld on judicial review (2005), 268 Sask. R. 89 (Sask. Q.B.)).

1. Are collective bargaining agreements with a term in excess of three years duration, set out in either in one collective agreement or more than one collective bargaining agreement negotiated contemporaneously with a combined term in excess of three years prohibited by the Act or illegal *per se*?

[4] In *Wheat City Metals, supra*, the Board determined that, while such agreements are not unlawful *per se*, and it is not unlawful for one party or another to propose such an agreement, it is an unfair labour practice for a party in bargaining to insist upon and press to impasse a proposal for a collective agreement with a term exceeding three years.

2. Is it a failure to bargain in good faith if a party either refuses to discuss a term of operation which exceeds three years or if a party presses the matter to impasse?

[5] This question was substantially answered by the Board in *Wheat City Metals, supra*. It is a failure to bargain in good faith to press to impasse a bargaining proposal for an agreement with a term in excess of three years. While it is not unlawful to propose an agreement with such a term, there is no duty upon the other party to “discuss” the matter and such party may reject the proposal out of hand. Similarly, if such party consents to discuss the proposal at greater length, it is not precluded at any time from refusing to discuss it further and need not provide any reason therefor. The rationale is that, since the proposing party cannot press the proposal to impasse or predicate industrial action upon a refusal by the receiving party to agree, once it is communicated that the receiving party does not wish to discuss the proposal, either at the outset or later on, there is nothing to be served and it makes no sense to insist that they do so. In other words, any discussion regarding a proposal for a lengthier term of agreement is at all times a matter of the mutual willingness of the parties to do so.

3. If a party to collective bargaining proposes a collective bargaining agreement with terms and conditions including a term of operation in excess of three years, is the other party entitled to unilaterally accept the terms and conditions for the first three years only as a binding collective bargaining agreement?

[6] As observed by the Board in *Wheat City Metals, supra*, the intertwining of the term of a proposed collective agreement with a proposal on major monetary issues, particularly wages and benefits, nearly always underlies the rationale for the party making the proposal; that is, such party makes the proposal on the basis that it believes it understands what it will cost (or in the case of the union, what its members will obtain) over the term of the agreement. Thus, while a party may not engage in deliberately false bargaining with the intention to lull the other party into false expectations, both parties will know that either of them may seek to renegotiate the longer-term agreement during each open period commencing with that which coincides with the third anniversary of the agreement – the decision to do so may be predicated upon any number of reasons.

[7] If what the parties mean by the question is that a party can look at a proposal for a longer-term agreement and accept only the first three years of it and the

proposing party is automatically bound, then the answer is that it cannot. The basis for this, in contract law, is that the parties are not *ad idem* with respect to what has been agreed. Because the issues of agreement term and monetary items are inextricably enmeshed, the proposals on monetary items are often dependent upon the term of the agreement, and the proposing party would often not make the proposal unless it was for the full term proposed, albeit with the knowledge that the other party may seek to renegotiate during the open periods commencing with that of the third anniversary.

4. If the parties do agree to a collective bargaining agreement with a term of operation exceeding three years, can either party to the collective bargaining agreement give notice to bargain relying on the deemed three year expiry date set forth in s. 33(3) of the Act?

[8] This issue was addressed and disposed of in *Wheat City Metals, supra*, and the answer is that either party may seek to renegotiate relying upon the deemed three year expiry date.

DATED at Regina, Saskatchewan, this **28th** day of **February, 2006**.

LABOUR RELATIONS BOARD

James Seibel,
Chairperson