Labour Relations Board
Saskatchewan

SASKATCHEWAN UNION OF NURSES, Applicant and REGINA QU'APPELLE HEALTH REGION, Respondent

LRB File No. 133-05; October 23, 2007
Vice-Chairperson, Angela Zborosky; Member: Ken Ahl

For the Applicant: Neil McLeod, Q.C.
For the Respondent: Larry LeBlanc, Q.C.

Statutory interpretation – Words and phrases – Definition of collective bargaining – Obligation to bargain collectively can be found outside of negotiations for collective agreement and negotiations for resolution of formal grievances – Collective bargaining applies to discussions/negotiations relating to any disputes concerning terms and conditions of employment whether or not parties engaged in grievance procedure.

Duty to bargain in good faith – Change in bargaining position – Employer's representative made representation in bargaining that was later overridden by employer – Either representative did not enjoy proper authority to bind employer during bargaining or there were deficiencies in representative's mandate or communication of his mandate by employer – Employer therefore did not make all reasonable efforts to conclude agreement on issue in dispute – Board finds violation of s. 11(1)(c) of *The Trade Union Act*.

Duty to bargain in good faith – Change in bargaining position – Employer reversed or corrected position then failed to provide explanation for reversal or correction after undertaking to do so – In light of significance to union and members of change in position as well as union's detailed account of its view of course of negotiations, employer had duty to explain its position in more detail including what happened to cause erroneous representation to be made and precise effect on employer – Board finds violation of s. 11(1)(c) of *The Trade Union Act*.

Duty to bargain in good faith – Refusal to bargain – Employer refused to discuss withdrawal of position and reasons therefor and brought continued discussions on issue to halt – Failure of employer to provide information prevented union from assessing its position, checking employer's position and formulating new response – Employer's refusal to continue to meet to resolve issue constitutes violation of s. 11(1)(c) of *The Trade Union Act*.

Duty to bargain in good faith – Remedy – Board attempts to place union in position it would have been in but for employer's breach – Board orders employer to provide union with complete unconditional proposal for settlement of dispute, orders employer to provide union with certain information, orders employer to meet with union to bargain collectively and orders employer to provide union with written assurance that employer's representatives have proper authority to bargain resolution to dispute.

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

REASONS FOR DECISION

Background:

[1] The Applicant, Saskatchewan Union of Nurses (the "Union" or "SUN"), is certified to represent nurses working in all of the health regions in Saskatchewan including the Respondent, Regina Qu'Appelle Health Region (the "Employer" or "RQHR"). The Union and Employer (and its predecessors) have been parties to successive provincial collective bargaining agreements for a number of years. The Union filed an application on July 26, 2005 alleging that the Employer violated s. 11(1)(c) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*") by reason of certain conduct engaged in by the Employer's representatives during negotiations for the resolution of grievances under the provincial collective bargaining agreement.

[2] Specifically, the Union complains that, in settlement discussions over the issue of premium pay for weekend work, the Employer violated s. 11(1)(c) of the *Act* by suddenly changing its position on the scope of nurses to whom the settlement would apply. The Union states that the Employer's representative agreed during the parties' negotiations that the premium pay would be paid to all nurses in the RQHR, rather than being limited to those nurses covered by the grievances. However, after reaching this agreement, the Employer's representative later insisted that only those nurses on whose behalf grievances were filed would be covered. The Union also alleges that the Employer has refused to continue to discuss settlement of the grievances and has thereby violated s. 11(1)(c) of the *Act*.

[3] The Employer filed a reply on August 12, 2005 denying that it failed to bargain in good faith as required by s. 11(1)(c). It takes the position that its

representative wrongly assumed that the Employer was obliged to pay all nurses in the RQHR as opposed to only those covered by the grievances filed by the Union and that, before a final agreement on the issue was reached, the Employer discovered that error and corrected its position with the Union.

[4] A hearing was held on March 10 and 13, 2006.

Facts:

[5] At the hearing of the application the Union led evidence through two witnesses: Judy McKenzie, an employee relations officer employed by the Union, and Beverly Miller, president of Local 105 (representing employees at the Regina Pasqua Hospital) of the Union; both of whom were directly involved in discussions with RQHR over the dispute at hand. The Employer led its evidence through Bruce Stremel, executive director, employee relations and employment services of RQHR, who oversaw but was not directly involved in the discussions with the Union that gave rise to this complaint. In addition, the Employer, while not leading the evidence of Ed McRae a senior labour relations consultant with RQHR, made Mr. McRae available for cross-examination by the Union.

[6] The parties are largely in agreement over the sequence of events that gave rise to this application by the Union. The primary area where the facts are in dispute relates to the differences in the positions and evidence of Mr. Stremel and Mr. McRae, both employees of RQHR, over the nature of the representations made by Mr. McRae to the Union's representatives concerning the scope of coverage of the settlement. We will address this factual dispute in the course of these Reasons for Decision. Any other material differences in the evidence provided by the witnesses will also be noted.

[7] Ms. McKenzie testified that, during the time period 2000-2003, several locals of the Union filed grievances on behalf of their members against certain health districts (predecessors to the current health regions) represented by the Saskatchewan Association of Health Organizations ("SAHO") in the province, alleging a failure by the respective employers to pay premium pay (at double-time) for hours worked by nurses on a third consecutive weekend. Included among these grievances were two policy

grievances - one filed on behalf of nurses working at the Regina Pasqua Hospital (Local 105 of the Union) and one filed on behalf of nurses working at the Regina General Hospital (Local 106 of the Union). In addition, there were a number of grievances filed by individual nurses working in other facilities within the RQHR.

[8] On February 20, 2002 an arbitration decision was rendered by a board of arbitration chaired by Robert Pelton, Q. C. (the "Pelton arbitration award"), in relation to one such grievance filed by Local 069 of the Union against the Swift Current District Health Board. The arbitration board held that the employer was required to pay premium pay for the third consecutive weekend worked by a nurse.

[9] Following the issuance of the Pelton arbitration award, on March 25, 2002, SAHO issued a "collective agreement interpretation update" to all of the employers on whose behalf it negotiates, including RQHR, which provided a summary of the Pelton arbitration award and directed all employers to settle any grievances they had where nurses were claiming premium pay for a third consecutive weekend worked. At this point in time, the issue of whether a fourth and subsequent consecutive weekend worked would also attract such premium pay was still a live one as it had not been dealt with in the Pelton arbitration award.[1]

[10] Following the direction from SAHO, throughout 2002 and 2003, representatives of RQHR and the Union entered into discussions with a view to resolving outstanding grievances on the issue (that of the third consecutive weekend worked) on the basis of the Pelton arbitration award. The evidence of both parties indicates that the process was fraught with difficulties and was protracted in nature, leading to a significant amount of frustration for the parties and the nurses. One difficulty arose when the Union and Employer set a deadline of June 30, 2002 for individual nurses to assert their claims for premium pay pursuant to the policy grievances but several nurses missed the deadline. Also, on May 27, 2003, several nurses filed a duty of fair representation application with the Board alleging that the Union had failed to fairly represent them with the Employer on this issue. In addition, on May 12, 2003 (just prior to the filing of the

[1] It may be noted that while the parties differed on the issue of whether those grievances included a claim for working on a fourth and subsequent consecutive weekend, it matters not to the determination of this application because, at some point early in the process, the parties agreed that the grievances did include (or would be extended to include) claims for working a fourth and subsequent consecutive weekend.

duty of fair representation application), the Union had filed an additional policy grievance with the Employer on behalf of employees who had not received payment for the third consecutive weekend.

[11] The discussions between the parties eventually resulted in a written settlement agreement dated January 20, 2004. This agreement essentially provided for the final resolution of the policy grievances as they related to the working of a third consecutive weekend and included nurses who made claims as of June 30, 2002 as well as the duty of fair representation applicants and potentially additional nurses who had missed the deadline and could provide a reason for their delay in asserting a claim. Also, given certain concessions by the Employer and the fact that the parties soon expected the release of an arbitration decision (involving another local of the Union and another health region) dealing with the issue of premium pay for work on a fourth and subsequent consecutive weekend, the parties included an agreement by the Union to limit the period of recovery on those fourth and subsequent weekend claims to no earlier than February 1, 2002.

[12] The settlement agreement of January 20, 2004, although lengthy, is helpful to understanding the scope of the partial settlement of the grievances to that date. In the "Background" portion of the agreement, the parties outlined the difficulties they had with implementation of the Pelton arbitration award in the RQHR. After a recital of the essential background facts, the final "Background" item reads as follows:

> *J. The parties have now come to terms on a settlement that will (i) result in a final resolution of the policy grievances, as they relate to the working of the third consecutive weekend, and Grievance 106-R-247-03*[2] *and (ii) limit the period of recovery on the policy grievances as they relate to the working of fourth and subsequent weekends.*

[13] The actual "Agreement" portion of the January 20, 2004 memorandum of agreement reads as follows:

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[2] The subject matter of this grievance is referenced earlier in the January 20, 2004 agreement as a grievance filed by the Union on May 12, 2003 on behalf of "all affected employees that did not receive payment upon settlement of" the Union's policy grievances, the Union claiming that the Employer did not fulfill its obligations with regard to the settlement of those policy grievances (in relation to third weekend claims).

Agreement

The Employer and the Union agree as follows:

1. *The Employer and the Union will jointly prepare a list of nurses who have submitted claims for compensation for working third consecutive weekends between February 1, 2000 and June 30, 2002, and whose claims have not been paid. The Employer and the Union will agree on the amount to be paid each nurse with a legitimate claim. As each nurse's claim is agreed to by the Employer and the Union, s/he will be paid as soon as possible and the Employer's liability to that nurse under the policy grievances will be considered satisfied as regards the third consecutive weekend issue. Each nurse will not have to wait until all claims have been agreed to before s/he is paid.*

2. *This list of nurses and the amount they should be paid will become part of this Agreement. It is not the intention of either the Employer or Union to prevent an employee who is entitled to payment for a third consecutive weekend worked between February 1, 2000 and June 30, 2002 from being paid, so the Employer will not immediately be released from its obligations under the two policy grievances and Grievance 106-R-247-03 by the Union. However, when the 4th and subsequent weekend issue is decided and paid, if necessary, the three grievances will be withdrawn in their entirety by the Union and the Employer's obligations under the grievances will be at an end. At that time, the Union will sign a Release in favour of the Employer releasing the Employer from all liability under, or relating to the subject matter of, the three grievances.*

3. *The Employer will send the attached "Important notice for nurses who work weekends" to each of its current employees within the Union's bargaining unit at the Regina General and Pasqua Hospitals who worked for the Employer on or before June 30, 2002 (both "on payroll" and "employed, but not currently getting paid") on or before February 2, 2004. The notice will be posted on the unit bulletin boards in Regina General Hospital and Pasqua Hospital. Unit reps on all units will be asked to bring this notice to the attention of the unit employees, past and present. The contents of the notice will be publicized at the monthly meeting of Locals 105 and 106 and form part of the minutes of those meetings.*

4. *If any nurse claims payment for a third weekend worked between February 1, 2000 and June 30, 2002 but is not on the list referred to in Paragraph #1 and was not paid in December, 2002, that*

nurse will have to explain why she did not make her claim sooner before getting paid.

5. *Nothing in this Agreement affects the right of any nurse to grieve improper payment of weekends after June 30, 2002 nor affects the right of the Employer to defend such a grievance on whatever grounds available to it.*

6. *Nothing in this Agreement affects the rights of any nurses who have filed individual grievances regarding the improper payment of weekends. Specifically, the redress for those nurses in Grievances No. 105-R-288-99, 290-99, and 293-99; and 268-R-214-00, 215-00, 216-00, 217-00, and 261-00 will still be retroactive to 30 days before the grievance was filed (assuming valid claims).*

7. *There will be a different process with respect to the payment of the nurses covered by the Application to the Labour Relations Board File No. 099-33. The Union will identify them and advise them that they will receive their payment on the condition that they first provide a Release and Withdrawal of Application in favour of both the Union and Employer with respect to any claims they may have had under their Application to the Labour Relations Board. They will also have to make sure that any nurses who were already paid the money owing to them in December, 2002 also sign and return to the Union and Employer a Release and Withdrawal of Application. Everyone listed on the LRB Application will have to provide the signed Release and Withdrawal before anyone listed is paid. The payments for each nurse will be sent on these terms to the Union's solicitor with respect to the DFR application, being Neil McLeod. The nurses listed on that LRB Application who have not yet been paid will be asked to sign and return the Release and Withdrawal to him on the condition that it will not be used until the nurses who are entitled to be paid under this Agreement have been paid. Any nurse who has already been paid or who is not entitled to be paid under this Agreement will simply be asked to sign a Release and Withdrawal and send it to Neil McLeod. The Union and Employer will agree on the wording of this Release and Withdrawal.*

8. *The Union and the Employer agreed that the arbitration hearing scheduled for January 6, 7 and 8, 2004, can be postponed indefinitely as it relates to the third consecutive weekend issue.*

9. *Recognizing that the scope of the policy grievances has been extended by agreement to cover the working of a fourth or subsequent consecutive weekend, the parties agree that the Union remains free to pursue the policy grievances in so far as they relate to the working of a fourth or subsequent consecutive weekend. However, the Union agrees that its claim for compensation in that regard will extend back only to February 1,*

> *2002 - for greater certainty, that the remedy sought by the Union will be limited to compensation for working fourth and subsequent consecutive weekends from and after February 1, 2002 - and the Union undertakes to advise the board of arbitration that the parties have agreed, should the Union be successful, on this limitation of retroactive redress. In the event that the board of arbitration should disregard such advice and award a longer period of recovery, the Union agrees that the Employer is not obligated to pay any redress for the period prior to February 1, 2002 and that the Union will not take steps to enforce the arbitration award for money owing prior to February 1, 2002.*[3]

[14] On May 27, 2004, an arbitration decision was rendered by a board of arbitration chaired by Daniel Shapiro, Q.C. (the "Shapiro arbitration award") involving a similar grievance between Locals 5 and 16 of the Union and Kelsey Trail Regional Health Authority. In the Shapiro arbitration award, it was determined that the employer was also responsible to pay premium pay for fourth and subsequent consecutive weekends worked by a nurse.

[15] As with the Pelton arbitration award (concerning premium pay for the third consecutive weekend), on June 18, 2004 SAHO issued a collective agreement interpretation update to the employer health regions advising of the Shapiro arbitration award and directing the employers to negotiate the resolution of any grievances in their respective regions in accordance with the Shapiro arbitration award.

[16] In the meantime SUN and RQHR representatives were continuing to address the implementation of the Pelton arbitration award concerning the third consecutive weekend. As of January 2004 the RQHR, through its representative Mr. Stremel, had hired Mr. McRae as a senior labour relations officer and assigned Mr. McRae to conclude the negotiations with SUN concerning the implementation of the third consecutive weekend as well as handle discussions regarding the claims for the fourth and subsequent consecutive weekend.

[17] Despite the lengths to which the parties went to address the implementation of the third consecutive weekend settlement culminating in the agreement of January 20, 2004, it still took some time to conclude the payouts. The

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[3] Attached to the January 20, 2004 agreement is the notice referred to in paragraph 3 of the agreement. It

parties had agreed that discussions for the resolution of the fourth and subsequent consecutive weekend issue would not take place until the payouts were completed for the third consecutive weekend settlement.

[18] Ms. Miller testified that on October 1, 2004 the parties met to continue discussions concerning the third consecutive weekend payout. With reference to her meeting notes, Ms. Miller testified that the parties also briefly discussed a process for payment of the fourth and subsequent consecutive weekend issue. She said that Mr. McRae advised that there would be "no gathering of names" but, rather, they would "process all 1902 nurses in health region" and that anyone who worked a fourth and fifth weekend would be remunerated at a premium rate. Ms. Miller stated that there was no discussion about doing one computer run and then extracting names of those covered by grievances. She also testified that Mr. McRae said that the best process would be only one computer run which would be done by unit and facility and that every weekend in the relevant time period would be run. Ms. Miller also testified that a concern arose regarding the issue of rural nurses who might work in two different health regions.

[19] Following the October 1, 2004 meeting Ms. McKenzie stated that Ms. Miller and Ruby Forshner, president of Local 106 (representing employees at the Regina General Hospital) of the Union advised her that it was their understanding that the Employer intended to run all nurses in the RQHR and apply the payouts for the fourth and subsequent consecutive weekends worked to all nurses in the RQHR. All affected nurses would be paid at once because Mr. McRae said “there’s no way we’re doing this again” referring to the lengthy process for paying out third consecutive weekend claims.

[20] On February 24, 2005 Mr. McRae advised Ms. McKenzie that all claims for the third consecutive weekend worked were being processed and that all would be paid in March 2005. Ms. McKenzie testified that approximately 2000 employees were paid out, with a total cost of approximately $1.2 million. This concluded the settlement of the third consecutive weekend issue.

[21] On February 28, 2005 Ms. McKenzie sent an e-mail to Mr. McRae to clarify the process and anticipated payout of the claims for the fourth and subsequent

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speaks only to pay for work on the third consecutive weekend.

> *Thank you for your e-mail dated February 24, 2005 advising that the DFR Employees will receive their monies owing on March 11, 2005 .*
>
> *SUN wishes to request clarification on the process and anticipated payout the 4th, 5th and subsequent consecutive weekend payouts.*
>
> *As you are aware, part of the settlement of the 3rd weekend grievances for Local 105 and 106 dealt with the subsequent payout for the 4th, 5th etc. weekends. However the RQHR had indicated that no grievance or payout on 4th weekend would happen until the 3rd weekend issue was completed and the employees paid out.*
>
> *In recent conversations* ***you indicated that the RQHR had a process in mind that would be less time consuming and entail much less work than was required for the 3rd weekend payout. If I am correct the plan was to have payroll identify any employee in the RQHR who had worked a third weekend. Then based on this information the Region could determine who was owed either a 4th, 5th and subsequent weekend payment and once verified they would be paid. This would be done whether or not the employee worked at the RGH or Pasqua or had filed a grievance. In other words all Employees who had worked a 4th, 5th and subsequent weekend would be paid.***
>
> ***Please advise if I am correct in my assessment of our discussions*** *and if so when the Region will be proceeding with these payments.*
>
> **[emphasis added]**

[22] At no time did Mr. McRae respond to Ms. McKenzie that her understanding was incorrect in relation to the process to be used for payouts of the fourth consecutive weekend. The next contact Ms. McKenzie had with Mr. McRae was when Mr. McRae contacted her by telephone on March 3, 2005 to arrange a meeting to discuss how further to proceed. Ms. McKenzie stated that they talked about how much time and effort it took to calculate the third consecutive weekend claims. At this time, Mr. McRae advised Ms. McKenzie that he would run every person in the RQHR (from all locals) for the time period between February 2002 (the date to which there would be retroactive recovery as per the January 20, 2004 agreement) and September 2004 (the

date following the Shapiro arbitration award when the RQHR began to pay premium pay for the fourth and subsequent consecutive weekends worked).

[23] Mr. McRae, Ms. McKenzie and other representatives met again on March 15, 2005. At this meeting, Mr. McRae provided four documents: (i) the settlement agreement between the parties dated January 20, 2004; (ii) a one-page document containing the proposed process for calculating and paying all claims for the fourth and subsequent consecutive weekend worked; (iii) a document containing definitions of time codes; and (iv) a sample of a computer-generated printout to be used in calculating a nurse's loss. Document (ii) referenced above, prepared by Mr. McRae, reads as follows:

> *4th & 5th & SUBSEQUENT CONSECUTIVE WEEKENDS WORKED*
>
> - *Eligible Period -- February 1, 2002 to September 18, 2004 (Run all SUN Members in the Region)*
> - *Hours eligible - 2400 Friday - 0700 Monday.*
> - *Hours worked equal to or greater than 4 hours to be an eligible weekend for first and each consecutive weekend (Must be actually worked – NOT PAID)*
> - *Weekend Workers are not eligible for 3rd and subsequent weekends worked.*
> - *Shift Trades are not eligible for premium pay. (Add shift trades detail to database for audit purposes).*
> - *Weekend Premium to be deducted for weekends determined eligible (4th weekend decision).*
> - *Will pay the difference between what the members should have received and what they actually did receive (up to and including double time for weekend premium pay).*
> - *Provide SUN with complete detail for them to audit. Data will be provided in a Microsoft Access database table as the amount of data is too large to use Excel. Software required to run this will be Microsoft Access 97 or higher with SR2 pack. Build a query to print detail for SUN and LR so that when they are auditing an employee they can print all detail that will include the weekends identified to be eligible and shift trades, etc.*

[24] With reference to the documents provided at the meeting of March 15, 2005, the parties discussed the process to be used. Ms. McKenzie testified that Mr. McRae thought the settlement for the fourth and subsequent consecutive weekends worked would cost RQHR approximately double the cost of the third weekend claims because it involved approximately 2100 employees (all nurses in the RQHR) over a two-year period, with claims for two weekends rather than one. As a result of these discussions at the March 15, 2005 meeting, three additional matters were added to the proposed process document (document (ii) above): that appropriate union dues would be remitted to SUN, that nurses' seniority hours would not be adjusted and that the information provided by the RQHR would only be used by the Union for the purposes of verifying the claims at issue. Mr. McRae confirmed these additions in a revised document which he faxed to the Union on March 23, 2005. On the cover sheet he asked Ms. McKenzie to review the documents and, if acceptable, to initial as confirmation that this was the manner in which they would proceed with payouts of claims for the fourth and subsequent consecutive weekend worked.

[25] After a few more phone calls with Mr. McRae, Ms. McKenzie stated that she arranged for a second meeting which was held on April 11, 2005 in order to address two outstanding issues the Union had with the process as outlined in the revised document. The remaining items on the revised document had been marked "agreed" by the Union. The two outstanding issues were: (i) the definition of "weekend" (that it be changed to "001 Saturday" from "2400 Friday"); and (ii) the number of hours worked on the weekend to trigger the payment period with regard to the second issue -- the Employer stated that it should be four hours (which is actually 3.78 hours) while SUN thought there should be no minimum number of hours worked to trigger the payment. With regard to the issue involving the definition of a "weekend" the Union was prepared to accept the Employer's position and most of the discussions focused on the necessary hours to trigger the payment. Ms. McKenzie testified that she advised Mr. McRae at this meeting that the four-hour trigger was likely to have a more significant effect on the rural nurses in the RQHR who are often on standby and might get called in to work for a short period of time. Until the Union had those numbers, it did not know how large a problem this presented to reaching a settlement. Ms. McKenzie testified that this discussion ended with Mr. McRae agreeing to generate information that would identify

how many nurses would be affected by this limitation (i.e. those who worked less than four hours on a fourth and subsequent consecutive weekend) in order that SUN could assess whether the lack of agreement on this item was a major obstacle to concluding the settlement. It appeared the Union had some concerns over whether it could reach an agreement with the Employer on this last issue and, when its representative asked Mr. McRae what would happen if the Union could not agree to this, Mr. McRae said they would probably have to run an arbitration on it. The Union took that to mean an arbitration hearing only in relation to the issue of the number of hours worked as a trigger for payment.

[26] It was following the April 11, 2005 meeting between the parties that further discussions for the payout of the fourth and subsequent consecutive weekends fell apart and, eventually, discontinued entirely.

[27] On April 22, 2005 at Mr. Stremel's request, Mr. McRae sent a memo to Mr. Stremel to update him on the status of negotiations for the fourth and subsequent consecutive weekend claims and, most importantly, a cost breakdown for those claims. Without reciting that letter in its entirety, it is clear that Mr. McRae provided the estimated costs for payment of these claims to all nurses in the RQHR based on "running every employee in the region." The total cost was estimated to be $2.1 million.

[28] Upon receipt of this memo, Mr. Stremel met with Mr. McRae. Mr. Stremel had serious concerns over the fact that it appeared that Mr. McRae had represented to SUN that the RQHR would pay all nurses in the RQHR, instead of only those covered by the policy grievances at the Regina General Hospital and Regina Pasqua Hospital as well as a handful of individual grievances. Mr. Stremel stated that, when confronted with this error, Mr. McRae seemed shocked and surprised and was uncertain how this misunderstanding could have occurred. Mr. Stremel referred Mr. McRae to the January 20, 2004 memorandum of agreement between the parties which, in Mr. Stremel's view, clearly limited the scope of Mr. McRae's negotiations with SUN to negotiation of payouts for only those nurses who had grieved. Mr. Stremel also referred Mr. McRae to the policy grievances themselves and he advised Mr. McRae that Mr. McRae had to clear this matter up with the Union and correct any misunderstanding with regard to the scope of coverage of the settlement.

[29] Mr. Stremel also instructed Mr. McRae to re-do his memo of April 22, 2005 to reflect only the estimated costs of paying claims to those nurses in the RQHR who were actually covered by the grievances. Mr. McRae did so that same day. In the second April 22, 2005 memo, Mr. McRae clearly revised the cost estimates and now categorized them as "Cost Estimate Local 105 Employees" and "Cost Estimate Local 106 Employees." Mr. McRae also referenced certain individual grievances (by number) and stated that the estimated total cost was $1.6 million. At the outset of the memo, Mr. McRae stated:

> *As per our discussions regarding our obligations with respect to the payment to 4th, 5th and subsequent weekends worked, it would appear that our obligation only extends to the employees who actually filed grievances and to those employees covered by one or the other "policy grievances" filed by Sun Locals 105 & 106. A list of those employees who filed individual grievances is attached.*

[30] Mr. Stremel testified concerning the mandate he provided to Mr. McRae concerning the settlement of the claims for the fourth and subsequent consecutive weekends worked. He stated that he provided Mr. McRae with the January 2004 memorandum of agreement and stated that the Employer's obligations arose out of the agreement, that the agreement reflected the extent of Mr. McRae's authority and that Mr. McRae's mandate was restricted by the agreement – Mr. McRae was not authorized to make any representations beyond that. Mr. Stremel testified that he was kept advised of the progress of negotiations through conversations with Mr. McRae along the way but that he did not see the process document and just assumed that Mr. McRae was following the memorandum of agreement.

[31] Mr. McRae also testified at the hearing. While the Employer did not call the evidence of Mr. McRae, it offered to make Mr. McRae available for cross-examination by the Union. Essentially, Mr. McRae denied the statements made by Mr. Stremel. He stated that at no time did he represent to the Union that all nurses in the RQHR would be paid but only said that he would "run all nurses in the region" meaning that he would generate a computer list of all nurses in the RQHR containing the information necessary to his and the Union's representatives' analysis of those nurses

entitled to make a claim, i.e. only those who had grieved. Mr. McRae said he proposed this type of process because, throughout the course of negotiations with the Union in dealing with the third consecutive weekend claims, he had the payroll department generate computer runs of select employees at select locations on seven different occasions. Mr. McRae stated that those in the payroll department were annoyed by this and that the computer was too often being tied up by his requests. Mr. McRae proposed the generation of one run for all nurses as a means to speed up the analysis/verification of claims. This was particularly important for those nurses who worked in more than one facility across the RQHR or in more than one region. Mr. McRae firmly believed that the Union should have understood his position on this issue. He also stated that Mr. Stremel knew his plan in this regard.

[32] Mr. McRae denied being "shocked" or "surprised" in his April 22, 2005 meeting with Mr. Stremel or that he had made a mistake or had been operating on a misunderstanding as to the scope of coverage of the settlement. Although he was not specifically cross-examined on this point, Mr. McRae provided no explanation for his failure to respond to Ms. McKenzie's e-mail of February 28, 2005 clarifying the scope of coverage. However, in cross-examination, Mr. McRae did not adequately explain the reason why he prepared the two memos for Mr. Stremel on April 22, 2005. He stated that they discussed that the Union believed all nurses in the RQHR would be paid and he thought he should contact Ms. McKenzie before their next meeting to "clarify" RQHR's position on the scope of coverage.

[33] Ms. McKenzie testified that, on April 27, 2005, Mr. McRae called her and advised that RQHR had changed its position on the scope of coverage of the settlement for the fourth and subsequent consecutive weekends worked. Ms. McKenzie stated that Mr. McRae told her they had looked at the January 2004 memorandum of agreement and it said that the Employer only had to pay out claims for the two locals. Mr. McRae apparently stated that the same limited scope was to apply to the settlement of the fourth and subsequent consecutive weekend claims. Ms. McKenzie stated that she was very upset by this reversal of position by the Employer having had no prior indication that the Employer was limiting payment to only those who had grieved. When Ms. McKenzie reported the matter to the Union's executive director Karl Austman, Mr. Austman arranged a meeting with Mr. Stremel which was eventually held on May 30, 2005.

[34] At the May 30, 2005 meeting, the parties discussed RQHR's position on settlement as well as the proposal the Union believed was made to it by Mr. McRae. Ms. McKenzie stated that, when asked why the Employer was reversing its position, Mr. Stremel stated that the RQHR would only agree to apply the memorandum of agreement to those who filed grievances, that Mr. McRae overstepped his authority and the settlement would cost too much money. Mr. Stremel asked the Union to follow up the meeting with a letter explaining its views on what had occurred in the negotiations to date and its position on the matter. Ms McKenzie testified that the Employer's position was that it was not prepared to pay anyone until all of this was resolved.

[35] Ms. McKenzie testified that the Union's reputation suffered as a result of the Employer's actions. Prior to the Employer's change in position, the Union had widely communicated to its members the position the Employer had taken with respect to the scope of coverage of the settlement. It told nurses that all nurses in the RQHR would be covered by the settlement at several meetings, including local membership meetings, district council meetings and duty roster call-ins (members phoning the Union's office with questions). It was an important issue to the members and all knew about the arbitration awards.

[36] In its May 31, 2005 letter the Union set out its view of what occurred in the negotiations with Mr. McRae and its position on the status of those negotiations. In essence the Union took the position that, while a settlement agreement was entered into January 20, 2004, the Employer proposed an amended process for the implementation of payments for claims for the fourth and subsequent consecutive weekend through the parties' discussions between February and April 2005. The Union also stated that it had been negotiating in good faith with a RQHR representative who had previously represented the Employer. The Union stated that, as a result of these circumstances, RQHR was obligated to pay all nurses in the RQHR for the time period limited by the January 2004 agreement.

[37] The Union received no response to its letter of May 31, 2005 or to a second letter dated July 18, 2005 asking for the Employer's response, despite Mr. Stremel's indication to Mr. Austman on July 4, 2005 that the Employer's response would

Statutory Provisions:

[38] Relevant statutory provisions include ss. 2(b), 2(d), 2(i), 5(d), 5(e) and 11(1)(c) of the *Act*, which provide as follows:

> *2 in this Act:*
>
> (b) *"bargaining collectively" means negotiating in good faith with a view to the conclusion of a collective bargaining agreement, or a renewal or revision of a bargaining agreement, the embodiment in writing or writings of the terms of agreement arrived at in negotiations or required to be inserted in a collective bargaining agreement by this Act, the execution by or on behalf of the parties of such agreement, and the negotiating from time to time for the settlement of disputes and grievances of employees covered by the agreement or represented by a trade union representing the majority of employees in an appropriate unit;*
>
> *. . .*
>
> (d) *"collective bargaining agreement" means an agreement in writing or writings between an employer and a trade union setting forth the terms and conditions of employment or containing provisions in regard to rates of pay, hours of work or other working conditions of employees;*
>
> . . . .
>
> (i) *"labour-management dispute" means any dispute or difference between an employer and one or more of his employees or a trade union with respect to:*
>
> *(i) matters or things affecting or relating to work done or to be done by the employee or employees or trade union; or*
>
> (ii) *the privileges, rights, duties, terms and conditions, or tenure of, employment or working*

> *conditions of the employee or employees or trade union;*
>
> *5 the board may make orders:*
>
> *(d) determining whether an unfair labour practice or a violation of this Act is being or has been engaged in;*
>
> *(e) requiring any person to do any of the following:*
>
> *(i) to refrain from violations of this Act or from engaging in any unfair labour practice;*
>
> *(ii) subject to section 5.1, to do anything for the purpose of rectifying a violation of this Act, the regulations or a decision of the board;*
>
> . . . .
>
> *11(1) it shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer:*
>
> . . .
>
> *(c) to fail or refuse to bargain collectively with representatives elected or appointed, not necessarily being the employees of the employer, by a trade union representing the majority of the employees in an appropriate unit;*

Arguments:

The Union

[39] The Union argued that the Employer's conduct in the negotiation of the resolution of the claims for the fourth and subsequent consecutive weekends worked constituted a failure to bargain in good faith in violation of s. 11(1)(c) of the *Act*. The Union took the position that the duty to bargain in good faith as required by the *Act* applies to the circumstances before us. With reference to the definition of collective bargaining in s. 2(b) of the *Act*, the Union argued that this duty of good faith applies beyond the situation of bargaining a collective agreement and equally includes "the

negotiation from time to time for the settlement of disputes." The Union further argued that while the duty to bargain collectively concerning disputes includes processing and negotiating the resolution of grievances, it goes further to apply to the negotiation of all disputes between the parties over terms and conditions of employment. In further support of its position concerning the scope of "disputes" to which the duty would apply, the Union pointed out that the definition of "labour/management dispute" in s. 2(i) includes any difference concerning privileges, rights, duties, terms, etc. between a union and employer.

[40] The Union acknowledged that the Board might have some concern about its jurisdiction being invoked if the duty to bargain in good faith were to apply to all possible discussions between a union and an employer concerning terms and conditions of work. The Union stated that the Board might restrict the application of the duty to bargain in good faith to situations where the parties have engaged in a collective bargaining process in a formal manner and in circumstances where the actual conduct of the parties in the course of their negotiations is at issue.

[41] The Union argued that, regardless of whether the Board accepts the evidence of Mr. Stremel or Mr. McRae, the Employer has failed to bargain in good faith in violation of s. 11(1)(c) of the *Act*. If the Board accepts the evidence of Mr. Stremel, the Employer violated s. 11(1)(c) by: (i) reneging on an agreed-to term of settlement after significant progress in negotiations had been made; (ii) putting forward Mr. McRae as its representative and then failing to provide Mr. McRae with proper authority to bargain an important issue of implementation thereby disabling him in his role and responsibility as a representative of the Employer to put forward a position on which the Union could rely; and/or (iii) repudiating its position without justification and without providing a full explanation to the Union, even after it undertook to do so.

[42] On the other hand, if the Board accepts the evidence of Mr. McRae over that of Mr. Stremel, the Union argues that the Employer has still violated s. 11(1)(c) because Mr. McRae misrepresented (whether innocent or otherwise) the Employer's position in bargaining with the Union, he was negligent in doing so and/or he failed to properly fulfill his role as a representative of the Employer bound to clearly state the

Employer's position to the Union. The Union maintained that it suffered loss as a result of its reliance on this misrepresentation.

[43] The Union pointed out that the effect of the improper conduct by the Employer was that it undermined the credibility of the Union, as bargaining agent, in the minds of its members.

[44] In making the preceding arguments, the Union referred to the following cases: *University of Saskatchewan and University of Saskatchewan Faculty Association*, [1990] Spring Sask. Labour Rep. 30, LRB File No. 280-88; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Regina Exhibition Association Limited*, [1993] 4th Quarter Sask. Labour Rep. 216, LRB File Nos. 256-93 to 260-93; *Canadian Union of Public Employees, Local 2569 v. Santa Maria Senior Citizens Home Inc.,* [1994] 4th Quarter Sask. Labour Rep. 134, LRB File No. 192-94; *International Brotherhood of Electrical Workers, Local 529 v. Bill's Electric City Ltd., Prince Albert, Saskatchewan*, [1996] Sask. L.R.B.R. 399, LRB File No. 061-96; *Saskatchewan Government Employees Union v. SPI Marketing Group*, [1996] Sask. L.R.B.R. 150, LRB File No. 129-95; *International Union of Operating Engineers, Local 870 v. Gunner Industries Ltd.,* [1996] Sask. L.R.B.R. 749, LRB File No. 160-96; *United Food and Commercial Workers International Union, Local 226-2 v. Western Canadian, Beef Packers Inc.*, [1998] Sask. L.R.B.R. 743, LRB File No. 026-98; *Canadian Union of Public Employees, Local 1832 v. Benian Management Ltd.,* [1987] September Sask. Labour Rep. 36, LRB File No. 136-87; *Saskatchewan Government Employees' Union v. Government of Saskatchewan, The Honourable Bob Mitchell and The Honourable Ed Tchorzewski*, [1993] 1st Quarter Sask. Labour Rep. 261, LRB File No. 264-92; *University of Regina Faculty Association v. Saskatchewan Indian Federated College*, [1995] 1st Quarter Sask. Labour Rep. 139, LRB File No. 217-94.

[45] In its application, the Union requested that the Board order the Employer to agree to pay all nurses in the RQHR, whether they filed or were covered by a grievance or not, and that the Board order the Employer to bargain collectively with the Union to conclude settlement discussions concerning payouts of claims for the fourth and subsequent consecutive weekends worked. At the hearing, however, the Union referred to the reasoning in *Saskatchewan Joint Board, Retail, Wholesale and*

Department Store Union v. Loraas Disposal Services Ltd., Carman Loraas and Bill Humeny, [1998] Sask. L.R.B.R. 556, LRB File Nos. 208-97 to 227-97 and 234-97 to 239-97, specifically, that the purpose of a remedy is to place a party in the position it would have been in but for the breach of the *Act*. The Union therefore revised its request for relief so as not to be punitive in nature but rather designed to support and foster the underlying purposes of the *Act*. The Union asked that the Board order: (i) that the Employer meet with representatives of the Union to bargain collectively concerning the issue of premium pay for any nurses in the RQHR working the fourth and subsequent consecutive weekend; and (ii) that, prior to the meeting to bargain collectively, the Employer provide the Union with (a) a list of all nurses in the RQHR who had worked a fourth and subsequent consecutive weekend where the scheduled shift was greater than 3.78 hours; (b) a list of all nurses in the RQHR who had worked a fourth and subsequent consecutive weekend where the scheduled shift was less than 3.78 hours; (c) a list of all nurses covered by the policy and individual grievances filed where their scheduled shift was greater than 3.78 hours; (d) a list of all nurses covered by the policy and individual grievances filed where their scheduled shift was less than 3.78 hours; and (e) a breakdown of the cost for premium pay payable to each nurse for each of the preceding groups of nurses referenced in (a) through (d). The Union also requested an order that the Employer provide written assurance to the Union that its representatives have the authority to bargain and settle terms relating to the issue of payouts of the fourth and subsequent consecutive weekend claims.

The Employer

[46] The Employer submitted that the duty to bargain in good faith and the standards required for the negotiation of a collective agreement are not applicable to the situation before us. Firstly, the non-grieving nurses throughout the RQHR who might have benefited from the payout, are not employees with "disputes" or "grievances" to which s. 11(1)(c) applies. Furthermore, the suggestion by the Union that the definition of "labour-management dispute" applies to extend the scope of the duty to bargain collectively is an attempt to use a defined term where it is not mentioned in either of the provisions regarding the duty to bargain in good faith or the definition of collective bargaining.

[47] The Employer argued that, in the alternative, even if one were to accept that the non-grieving nurses who might benefit from an agreement to pay out all nurses in the RQHR are considered to have "disputes" or "grievances," the extent of the Employer's obligation to bargain in good faith extends only to the requirement that the Employer observe the grievance and arbitration procedure in the collective agreement. Only a refusal to acknowledge that procedure amounts to a failure to bargain in good faith.

[48] In the further alternative, the Employer took the position that the so-called reversal of its bargaining position was not a failure to bargain in good faith because there was no evidence of an intention to avoid entering into an agreement to resolve the outstanding grievances. The Employer pointed to steps that it had taken to meet its duty to bargain in good faith - it recognized both the Pelton arbitration award and the Shapiro arbitration award as applying to the resolution of the policy grievances, it agreed to extend the deadline for nurses with claims for the third consecutive weekend (which had the effect of increasing the cost from $500,000 to $1.2 million) and it negotiated the settlement agreement of January 2004. There were important and compelling reasons for Mr. Stremel's immediate intervention in the parties' negotiations in that the additional cost for gratuitously including a payout to all nurses in the RQHR (as opposed to only those who grieved) was half of a million dollars. The Employer pointed out that, at the stage of the negotiations where the error occurred and Mr. Stremel intervened, the parties were not even *ad idem* on all points of the agreement. The threshold number of hours worked to trigger the payment was an outstanding issue and, in the Employer's view, a significant obstacle to reaching a settlement. It is impossible to predict whether the parties would have worked that issue out or come to another resolution or whether it would have been necessary to go to arbitration.

[49] The Employer submitted that only in exceptional circumstances where there is a clear commitment to bargain mid-term of a collective agreement can a duty to bargain in good faith be found to apply. In addition, although not strenuously argued by the Employer, it was suggested that because only SAHO has legal capacity to negotiate changes to a collective agreement and the Employer lacks such capacity, a duty to bargain in good faith cannot be found in the circumstances of this case.

[50] The Employer stated that it did not intend to urge upon the Board the inconsistent statements of Mr. McRae and Mr. Stremel, however, the Employer took the position that the Union had not made out its case whether the Board accepts the evidence of one or the other.

[51] The Employer submitted that the representations made by Mr. McRae to the Union were not as clear as the Union contends them to be. The comment allegedly made by Mr. McRae on October 1, 2004 was an off-hand one and should not have been expected to turn into a commitment to gratuitously pay an extra half of a million dollars. What started out as a method of gathering information ("run all nurses in the region") could not reasonably have turned into a willingness to explore payment to all nurses including those who did not grieve. The Employer pointed out that Ms. McKenzie's e-mail of February 28, 2005 was not put to Mr. McRae in cross-examination and that, in Mr. McRae's subsequent telephone call to Ms. McKenzie, the two also discussed making a determination as to who had filed individual grievances. It would seem odd that such a determination would have been necessary if the parties had really agreed that all nurses in the RQHR would be paid.

[52] From the perspective of Mr. Stremel, the Employer was clear in its direction to Mr. McRae. Mr. McRae had the authority to negotiate the issues arising from the policy grievances as they funneled through the January 2004 agreement. The Employer urged the Board to find that, if Mr. McRae exceeded his authority, it was not intentional. The Employer suggested that, at some point, Mr. McRae had lost sight of the distinction between "running all nurses" and "paying all nurses" and suggested that Mr. McRae was operating under an erroneous assumption.

[53] The Employer suggested that the settlement agreement of January 20, 2004 is evidence of the limited scope of coverage for the settlement of claims of the fourth and subsequent consecutive weekends worked -- both in terms of Mr. McRae's scope of authority to negotiate the issue and the reasonable expectations of the Union. Also, in that agreement, the parties had limited the retroactivity date for the policy grievances as they related to the fourth and subsequent weekend claims. Therefore, the agreement should have guided discussions for the resolution of these claims along the same lines as those for the third consecutive weekend.

[54] With respect to the Union's argument that the Employer violated the duty to bargain in good faith by not providing a proper explanation for its change in position, the Employer stated that it did give such an explanation. The explanation Mr. Stremel gave at the meeting on May 30, 2005 could only have subsequently been repeated on the same terms: (i) that the Employer wanted to rely on its strict legal rights, as it viewed the policy grievances; and (ii) that there was substantial additional cost associated with paying all nurses as opposed to only those who had grieved.

[55] The Employer relied on the following cases: *United Food and Commercial Workers, Local 1400 v. Western Grocers, a division of Westfair Foods Ltd., Saskatoon, Saskatchewan*, [1993] 1st Quarter Sask. Labour Rep. 195, LRB File No. 010-93; *Canadian Union of Public Employees, Local 1975 v. University of Regina*, [1994] 3rd Quarter Sask. Labour Rep. 194, LRB File No. 145-94; *Canadian Union of Public Employees v. Saskatchewan Association of Health Organizations and South East Health District*, [2001] Sask. L.R.B.R. 741, LRB File No. 281-00; *Grain Services Union (ILWU – Canada) v. Saskatchewan Wheat Pool, Heartland Livestock Services (324007 Alberta Ltd.) and GVIC Communications Inc.*, [2003] Sask. L.R.B.R. 52, LRB File No. 003-02; *Versa Services Ltd. v. The Alberta Union of Provincial Employees, Local 103*, [1994] Alta. L.R.B.R. 400, Board File: GE-01620; *Saskatchewan Government Employees' Union v. Government of Saskatchewan, Saskatchewan Association of Health Organizations, Mamawetan Churchill River District Health Board, Keewatin Yathé District Health Board and North East District Health Board,* [1999] Sask. L.R.B.R. 307, LRB File No. 109-98; *United Food and Commercial Workers Union, Local 410 v. Ferraro's Ltd.* [1992] Alta. L.R.B.R. 578, Board File: GE-00992; *Graphic Communications International Union, Local 34-M v. Southam Inc.,* [2000] Alta. L.R.B.R. 177, Board File: GE-03216; *Saskatchewan Indian Federated College, supra*; *Barber Industries, a division of Bralorne Resources Limited and Glass, Molders, Pottery, Plastics & Allied Workers International Union AFL/CIO/CLC, Local 371* (1990), 3 CLRBR (2d) 288; and *Syndicat canadien de la Fonction publique et sa section locale 2519 v. Corporation Le Lycée Claudel*, [1996] OLRB Rep. May/June 370, File No. 1526-95-U.

Union’s Reply

[56] In reply to the Employer’s argument, the Union pointed out that the circumstances before the Board are clearly not negotiations for changes to a collective bargaining agreement but rather the resolution of grievances and disputes. As such, SAHO has no role with regard to bargaining these issues and it is the Employer who has a duty here to bargain in good faith.

[57] The Union also pointed out that the non-grieving nurses do have disputes. Although they had not initially grieved, when the Employer put their situation and possible entitlement on the table, they were drawn into the dispute and representations that they would be included gave rise to certain expectations on their part. There is no evidence to suggest that what the Employer had offered was simply a "gratuitous" payment because the matters became part of the consideration that went back-and-forth between the parties -- this issue was alongside other issues on which the Union had to make decisions in attempting to reach a settlement. The Union pointed out that one could not predict how the negotiations would have played out because the Employer simply stopped bargaining when this dispute arose between the parties. In addition, it was only at the hearing of this matter that the Union was ever advised of the actual dollar figures representing the difference between the parties’ positions. In addition to failing to continue to bargain the resolution of the matter, the Employer never shared this information. As such, the Union has not been in a position to attempt to address the matter, mitigate it, or check whether the Employer's calculations were correct. All that the Union’s representatives were told was that Mr. McRae overstepped his authority and that it cost half of a million dollars. The message sent to the Union was that it should walk away from this important and complex issue. In the Union's view, the Employer had the obligation to continue to bargain with the Union concerning the fourth and subsequent consecutive weekend claims and it did not do so.

Analysis and Decision:

[58] In the case before us, it is necessary to determine whether the process engaged in by the parties is "collective bargaining" within the meaning of s. 2(b) such that the Employer is subject to the duty to bargain in good faith, as required by s. 11(1)(c) of the *Act*. If the Employer is subject to such a duty, it becomes necessary to

consider the nature of the duty, whether the Employer violated the duty in the circumstances of this case and, if so, the appropriate remedy.

[59] In *Saskatchewan Indian Federated College*, *supra*, the Board outlined the importance of the duty to bargain in good faith and indicated that the first question necessary to a determination of a violation of s. 11(1)(c) was whether the parties had engaged in "collective bargaining." At 150 and 151, the Board stated:

> *This Board has on many occasions stressed the central position occupied in the legislative scheme laid out in The Trade Union Act by the obligation on both parties to engage in collective bargaining. In a decision in Retail, Wholesale and Department Store Union v. Westfair Foods Ltd., operating as Western Grocers, LRB File No. 157-93, the Board made the following comment:*
>
> > *In bringing an application under Section 11(1)(c) of The Trade Union Act, the Union has asked the Board to perform one of its most difficult, and in some ways paradoxical, tasks. The duty to bargain collectively lies at the heart of the relationship between an employer and a trade union representing employees, and is a vital element of the legislative scheme set out in our Act and in similar pieces of legislation. Labour relations boards have, on many occasions, made an effort to capture in their decisions the nature of this duty, and the character of the responsibility which lies upon a tribunal such as ours to supervise the performance of the obligation to bargain.*
>
> *In that decision, the Board also drew on a striking description by the Ontario Labour Relations Board in Sumner Press v. Windsor Printing Pressmen and Assistants' Union (1991), 13 C.L.R.B.R. (2D) 293, at 295, of the nature of the paradox faced by labour relations tribunals in determining whether the parties have lived up to their duty to bargain:*
>
> > *Collective bargaining law involves an important balance: legal pressure to engage in negotiations and conclude agreements determining the terms of employment, but freedom from legal prescription as to what those terms will be.*
>
> *The task of the Board is not to intervene in the bargaining process directly in an effort to dictate the agenda at the bargaining table or the outcome of negotiations. Our responsibility on an application such as this one is to discern whether the course of dealings*

> *between the parties can be described as bargaining collectively as that process is defined in Section 2(b) of The Trade Union Act: . . .*
>
> [definition of "bargaining collectively" omitted]

Were the parties engaged in collective bargaining within the meaning of s. 2(b) of the *Act*?

[60] The Union argued that the duty to bargain in good faith not only applies to the parties' conduct during negotiations for a collective bargaining agreement but to any negotiations "for the settlement of disputes and grievances." The Union urged the Board to accept that the discussions engaged in by the parties concerning the scope of coverage of the claims for the fourth and subsequent consecutive weekends worked were a "dispute or grievance" as contemplated by the definition in s. 2(b) of the *Act*.

[61] On a review of the case law, it is abundantly clear that the duty to bargain in good faith applies to the negotiation for the settlement of grievances. In the *University of Saskatchewan* decision, *supra*, the Board considered the scope of the definition of "bargaining collectively" in s. 2(b) of the *Act* in circumstances where the university alleged a violation of s. 11(1)(c) by the faculty association for failing to negotiate in good faith for the settlement of 306 grievances. The faculty association instructed its members to fail to appear at a meeting with the university, a step in the grievance procedure that allowed for the provision of information concerning the grievances. The Board found the faculty association guilty of an unfair labour practice, concluding that it had demonstrated no real interest in resolving the individual grievances but rather had filed them in order to clog the grievance procedure, all as part of a larger strategy to pressure the university to make a special wage offer.

[62] In *Bill's Electric City, supra*, the Board found the employer guilty of a violation of s. 11(1)(c) for failing to deal with the union concerning various terms and conditions of employment, as well as grievances, after a certification order had been issued. The Board noted that the obligation imposed by the certification order was to recognize the union as the exclusive representative for the purposes of bargaining collectively regarding terms and conditions of employment. Although the Board was addressing a situation of total repudiation of the relationship by the employer, the

Board's discussion concerning the scope of the obligation as defined in s. 2(b) of the *Act* is helpful to our analysis. At 403, the Board stated:

> *In many decisions over the period of more than half a century, the Board has emphasized that the duty to bargain is one of the central features of The Trade Union Act. The objectives of the Act cannot be met entirely on the basis of allowing employees to organize, join and assist trade unions. The leverage which employees can exercise by this means depends on the imposition on the employer of a responsibility to deal with the trade union, and only with the trade union, in matters which concern the terms and conditions of employment of employees.*
>
> *It is evident from the definition in Section 2(b) that the scope of this responsibility goes beyond being present at the bargaining table, though the term "bargaining" is often associated with the negotiation of a collective agreement.* ***An employer is in fact obligated to enter into discussions with the trade union about any matters concerning the terms and conditions of employment of employees. These include questions of how the provisions of the collective agreement are to be applied or interpreted, and the use of the grievance procedure to resolve disputes arising out of these questions.***
>
> **[emphasis added]**

[63] The Employer argued that the duty to bargain in good faith as it relates to the negotiation for the resolution of disputes and grievances only applies in circumstances where one party has refused to follow the grievance procedure or, in essence, repudiates the relationship itself such as the situation that occurred in *Bill's Electric, supra*. Although we agree that that illustrates one example where the Board might find a violation of s. 11(1)(c) (for other examples, see: *SPI Marketing Group and Gunner Industries*, both *supra*[4]), s. 2(b) cannot be read in such a restrictive manner. In our view, it is apparent that the duty applies to a much broader scope of the party's conduct. It applies not only to the processing of grievances but also to discussions for the resolution of "disputes" which may or may not be "grievances." The word "dispute" in s. 2(b) would otherwise be redundant.

---

[4] In both decisions the Board found a violation of s. 11(1)(c) for the employer's failure to participate in the grievance process. The Board ruled that arbitrability must be dealt with by an arbitrator; the employer cannot simply ignore the grievance.

[64] In *Regina Exhibition Association, supra*, the union made an application under s. 11(1)(d) of the *Act* relating to the employer's failure to allow a union representative to meet to discuss an employee's termination. While the Board found no violation of s. 11(1)(d) because there was no collective bargaining agreement yet in place, the Board speculated that s. 11(1)(c) would apply and a violation of s. 11(1)(c) would have been found had the same been asserted by the union. Therefore, even though no grievance had been filed (there was no collective agreement in place and therefore no applicable grievance procedure), the Board obviously determined that there was a "dispute" between the parties (the employee's termination) to which the obligation to bargain in good faith would apply. In expressing this opinion, the Board stated at 224 regarding the scope of the obligation to bargain in good faith:

> *It is our view, however, that this conduct may nonetheless have constituted an unfair labour practice under Section 11(1)(c).* ***The general obligation to bargain which is imposed upon an employer by the certification order is not****, as counsel acknowledged,* ***limited to the negotiation or administration of a collective agreement. It embraces all aspects of the relationship between an employer and employees which may affect their terms and conditions of employment.***
>
> [**emphasis added**]

[65] In making its argument, the Employer referred to the Board's decision in *University of Regina*, *supra*, where the union alleged that the employer was in violation of s. 11(1)(c) by refusing to follow its past practice with regard to scheduling employees for earned days off and for failing to raise the issue of this change with the union in a timely manner. In that case, the Board stated that there are two situations in which the duty to bargain in good faith applies: (i) negotiations for the conclusion of a collective agreement; and (ii) negotiation for the settlement of disputes and grievances. With regard to the latter, the Board stated at 198 that, if there is a grievance procedure in the collective bargaining agreement, "the statutory duty to negotiate in good faith for the settlement of disputes is funnelled into the grievance procedure and is satisfied if the Employer complies with its obligations under the grievance and arbitration process." The Board also stated at 198, "[t]here is no duty on either side to engage in a parallel set of negotiations in addition to the process they have negotiated for resolving these disputes." In this decision the Board suggests that, if the dispute is grievable, s. 11(1)(c)

is only engaged to the extent that the Board must determine whether the Employer has complied with its duty to resolve the dispute in accordance with the grievance procedure.

[66] While we agree that there is no duty to engage in another parallel set of negotiations alongside the grievance procedure in order to satisfy the duty to bargain collectively, the decision in *University of Regina, supra,* cannot be read in a manner which suggests that, while following the grievance procedure, there is no obligation to comply with the principles of good faith. In fact, this appears to be recognized in a subsequent statement by the Board (at 198) that it did not view any delays in the grievance procedure as "attributable to any obstructionist conduct by the Employer" which it would view as relevant to a s. 11(1)(c) allegation. The *University of Regina* decision must also be interpreted in light of the question the Board was asked to decide - whether the essence of the dispute was a violation of the collective agreement (which must be resolved through the grievance arbitration provisions) or was an independent violation of s. 11(1)(c).

[67] Based on the weight of authority to which we refer below, it is our view that s. 11(1)(c) should be read as complementary to the grievance procedure, guiding and regulating the parties' conduct as they follow the steps of the prescribed grievance procedure. Although the parties in the *University of Saskatchewan* case, *supra*, referred to earlier, were involved in the grievance procedure, it is apparent that the Board considered that the obligation of good faith applied beyond the mere processing of grievances. The Board's analysis of the scope of s. 2(b) of the *Act* is helpful in guiding our interpretation and application of that provision. At 37, the Board stated:

> *The above definition means that* ***there are various facets to the duty to bargain collectively. All are parallel, yet interrelated. All are designed to advance the overall purpose of the Act. None are to be interpreted in such a way that they negate or make nonsense of any other.***
>
> ***Although most decisions of labour relations tribunals have dealt with the duty to bargain in good faith in the context of negotiations for a collective bargaining agreement, the general principles are no less applicable to negotiations for the settlement of disputes and grievances of employees*** *(see Duval Corporation of Canada, Decisions of SLRB and Court Cases Arising Therefrom, Vol. III, p. 319; Agra Industries Ltd., Nipawin, Decisions of SLRB and Court Cases Arising Therefrom,*

> *Vol. III, p. 325). In Canada Safeway Limited, March 1986, Sask. Labour Report, p. 23, the Board stated that in its simplest form the duty to bargain in good faith* ***requires the parties to meet and engage in a rational and frank discussion of the issues that divide them.*** *Union and employer alike are under an* ***obligation to enter into serious discussions with the shared intent of resolving the grievance. Tactics designed to impede or frustrate this discussion violate the requirements of the Act.***
>
> [**emphasis added**]

[68] The decision in *Western Canadian Beef Packers, supra*, makes it very clear that the obligation to bargain in good faith can be found outside of negotiations for a collective agreement as well as negotiations for the resolution of formal grievances. Although this case involved a finding of a violation of s. 11(1)(d) for the employer's failure to allow a union representative to come to the workplace to discuss grievances, the Board noted that the scope of the obligation to negotiate the settlement of disputes and grievances exists quite apart from the grievance procedure. The Board stated at 752:

> ***The obligation to negotiate for the settlement of disputes and grievances exists under the Act quite apart from the obligations of an employer to process grievances pursuant to a procedure negotiated in a collective agreement****: See, United Steelworkers of America v. Bird Machine Co. of Canada Ltd. [1980] May Sask. Labour Rep. 61, LRB File Nos. 009-80 to 013-80, and Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Regina Exhibition Association Limited, [1993] 4th Quarter Sask. Labour Rep. 216, LRB File Nos. 256-93 to 260-93, at 224.*
>
> [**emphasis added**]

[69] The case authority referred to above is clearly in favour of the interpretation that the duty to bargain in good faith applies to discussions/negotiations relating to any disputes concerning the terms and conditions of employment of any member of the bargaining unit whether or not the parties are engaged in the grievance procedure. Therefore, it is unnecessary in this case to reach a definitive conclusion as to whether the parties were negotiating the resolution of a "grievance" or of a "dispute" when discussing the issue of claims for the fourth and subsequent consecutive weekends worked, although we do find that those discussions/negotiations may be

classified as either one. While the parties were negotiating a resolution to a grievance, the scope of those negotiations expanded based on the Employer's representations. Therefore, the duty applies because the events giving rise to the claim before us occurred during the course of negotiations for the resolution of a grievance. The "grievance" at issue is the claim by the Union that employees who had worked fourth and subsequent consecutive weekends were entitled to premium pay. It was in the course of the discussion for the resolution of that issue that the matter of the scope of coverage was raised. Therefore, the parties were already subject to the obligation to bargain in good faith – that obligation does not just "disappear" if the parties engage in discussions that go beyond the strict parameters of the original dispute or grievance.

[70] Similarly, we find that if the discussions/negotiations as they related to the claims of the non-grieving nurses for the fourth and subsequent consecutive weekends worked are not negotiations for the resolution of "grievances," they most certainly must be discussions/negotiations regarding "disputes" within the contemplation of s. 2(b). The argument that the nurses across the RQHR who did not file grievances cannot have a "dispute" puts too fine a point on the issue – once the Employer suggested their inclusion in the settlement or it appeared to the Union that it had, the issue became part of the overall negotiations for the resolution of the dispute. In addition once these nurses were informed of their potential entitlement to a settlement, certain expectations were created such that when the Employer withdrew this part of the offer, they had a "dispute." Furthermore it is not necessarily the non-grieving nurses' "dispute" that is at issue – the Union had a dispute over the scope of coverage of the settlement, whether one considers the fact that it was expressed to these nurses that they would be covered by the settlement or not.

[71] It must be noted that, during the parties' discussions concerning the claims for the third weekend worked, the parties also expanded the scope of coverage of the grievance settlement to include non-grieving nurses who had filed duty of fair representation claims with the Board. In viewing those negotiations, it would have been absurd for the Board to apply the duty of good faith to the portion of discussions that dealt with grieving nurses and not to the portion of discussions involving non-grieving nurses, particularly when it appeared the discussions were held together and, in fact, culminated in the settlement agreement covering both groups. Similarly with regard to

discussions/negotiations of claims for the fourth and subsequent consecutive weekends worked, those discussions took place at the same time and it would be improper to view them as separate - part of the discussions being related to a dispute or grievance and the other part not.

[72] While we agree with the submission made that not all discussions between the parties over terms and conditions of employment are necessarily "disputes" to which the duty of good faith applies, it is not necessary for the purposes of this decision to define the precise parameters of discussions that would fall within s. 2(b) of the *Act*. Obviously, parties' discussions over terms and conditions of employment that give rise to differences in interpretation of a provision of a collective bargaining agreement are amenable to disposition through the grievance and arbitration procedures in the collective agreement and the disputes/differences in and of themselves do not attract the scrutiny of the Board. It is the parties' *conduct* while handling a dispute or grievance or when negotiating a possible resolution to the dispute or grievance that is of concern to the Board. In the case before us, what is at issue is the conduct of the Employer during discussions for the resolution of a dispute or grievance. Even though the degree of formality of discussions might be a factor to consider when assessing whether it is "negotiating . . . for the settlement of disputes and grievances" within the meaning of s. 2(b), it was not necessarily so in the situation in *Western Canadian Beef Packers*, *supra*. In that case, the Board noted the relationship between ss. 11(1)(c) and (d) and concluded that an overture made to negotiate, even if it is not a formal step of the grievance procedure, can still attract the scrutiny of the Board. The Board stated at 754 and 755:

> *We are of the opinion that Mr. Third, acting on behalf of the Employer, was in violation of s. 11(1)(d) of the Act in refusing to meet with the Union's grievance committee including Mr. Meinema, a duly appointed representative of the Union.* ***It is no answer for the Employer to say that the formal steps of the grievance procedure in the collective agreement had been duly fulfilled and that it was seeking to engage in a more informal discussion process rather than to re-open the final step of the grievance procedure. Having made the overture to the Union in indicating that the Employer wanted to discuss the grievances further, and having obtained the response of the Union that it was agreeable to doing so, the Employer could not then seek to dictate who the Union's representatives in that discussion would be.***

> *This is not to say that a party can unreasonably insist upon meetings and discussions for an illegitimate purpose under the guise of negotiating for settlement of grievances, but this was certainly not the situation in the present case. The Union in this case had every right to accept the Employer's offer of further negotiation free of any condition as to who its representatives could or could not be.*
>
> **[emphasis added]**

In the circumstances before us, the degree of formality with which the discussions were undertaken and the context in which they occurred (i.e. discussions for the settlement of a grievance) are sufficient to conclude that this was the negotiation of a "dispute," that the parties owed an obligation of good faith and their conduct is subject to scrutiny by the Board under s. 11(1)(c) of the *Act*.

[73] A further argument made by the Employer was that the Union is asking the Board to find a mid-term bargaining obligation in circumstances where there has only been a "willingness to talk," and not an explicit agreement to open the collective bargaining agreement to negotiate mid-term changes. In making this argument, the Employer relied on *Saskatchewan Wheat Pool, supra,* and *Versa Services, supra*, where it was determined that only in exceptional circumstances would the Board find such a mid-term obligation otherwise it would discourage parties from negotiating important matters during the life of a contract. This argument is inapplicable to the circumstances of this case. The parties were not in the process of negotiating changes to the collective bargaining agreement; they were negotiating the resolution of a dispute or grievance over a question of the interpretation and application of a provision of the collective agreement. Although this may be considered a mid-term bargaining obligation of sorts, for the reasons outlined earlier, it is one that falls within the definition of s. 2(b) of the *Act* and thereby attracts the duty to bargain in good faith. This exception to the rule concerning mid-term bargaining obligations was clearly recognized in the *Saskatchewan Wheat Pool* decision, *supra*, where the Board stated at 78:

> *[89] In certain cases a refusal to bargain may be a breach of an extant collective agreement, as where the agreement contains a provision for mid-term bargaining in certain circumstances. However,* ***with few exceptions – for example, negotiating for the settlement of disputes and grievances, failure to comply***

> ***with which is a violation of s. 11(1)(c) of the Act,*** *and pursuant to s. 43, the technological change provisions of the Act –* ***the Act does not expressly require an employer to bargain collectively with a certified union during the term of a collective agreement.*** *Otherwise, under the Act, the parties are bound to bargain collectively only upon notice during the "open period" in the circumstances described in s. 33(4) for the renewal or revision of the agreement, or in the case of a first collective agreement imposed by the Board, s. 26.5(9).*
>
> [**emphasis added**]

[74] It is for similar reasons that the Board also finds no relevance to the Employer's argument that the Employer lacked legal capacity to enter into a collective agreement and therefore the Union should have more properly proceeded against the representative employers' organization, SAHO. As stated, we do not view the negotiations here as the negotiation of terms/amendments to a collective agreement. The parties were engaged in negotiations for the resolution of a dispute or grievance; interpreting and applying the terms of the collective agreement, not changing them. The Board's decision in *SAHO, supra*, where the Board held that a union could not bring an unfair labour practice application against SAHO without evidence that established that SAHO had the power to interpret and administer the collective agreement, to settle disputes under the collective agreement and to bind the actual employer to a settlement simply has no relevance to this application. Furthermore, the evidence clearly indicated that it is the Employer and not SAHO that negotiates the resolution of grievances/disputes in the RQHR as evidenced by the January 2004 memorandum of agreement.

Did the Employer violate s. 11(1)(c) of the *Act*?

[75] Having found that the discussions/negotiations by the parties were "collective bargaining" or, in other words, negotiations for the resolution of disputes and grievances, it is necessary to determine whether the Employer was in violation of the duty to bargain in good faith found in s. 11(1)(c) of the *Act*.

[76] In the words used by the Board in *University of Saskatchewan, supra*, the question becomes whether the Employer's conduct was designed to or had the effect of impeding discussions for a resolution of the matter at hand.

[77] In *Government of Saskatchewan and Saskatchewan Association of Health Organizations, supra*, the Board indicated at 341 that it may find that a specific proposal constitutes a failure to bargain in good faith if "the proposal itself or in conjunction with other conduct indicates a subjective unwillingness to conclude a collective agreement."

[78] In *Southam, supra*, referred to by the Employer, the Alberta Labour Relations Board provides a useful summary of principles to be considered, many of which are consistent with the case law in Saskatchewan. After stating that the parties must respect the objectives of the statute, including the recognition of the union, the full and rational discussion of the issues and the making of serious efforts to reach a collective agreement, the Alberta Board outlined several principles concerning the duty to bargain in good faith at paragraph 46, some of which include the following:

> *- Parties have a duty to make solicited disclosure to each other of information that is necessary to understand a position or formulate an intelligent response . . .*
> *. . .*
>
> *- Parties must not deliberately misrepresent material facts. Misrepresentation is the "antithesis of good faith" . . .*
>
> *- Parties may not refuse to meet before positions have been thoroughly explored, and they must meet through representatives who are equipped to engage in the full and rational discussion that the duty demands.*
> *. . .*
>
> *- An employer may not engage in "surface bargaining," in which an outward willingness to observe the form of collective bargaining masks and intention to avoid entering a collective agreement at all. Tactics that may be indicative of surface bargaining include: reneging on positions already agreed to with no compelling reason; and "receding horizon" bargaining, in which new issues or proposals are unjustifiably introduced late in the bargaining . . .*
> *. . .*
>
> *- The duty to engage in rational discussion means that parties must be willing to explore the issues brought to the table. They have a duty to explain the rationale for their positions, particularly on issues that are central to negotiations or where significant changes to existing terms and conditions are sought . . .*

[case references omitted]

[79] It is not open to the Employer to say that, because there was no evidence of bad faith on its part, the application alleging a violation of s. 11(1)(c) of the Act must be dismissed. In *Western Canadian Beef Packers, supra*, at 754, the Board noted the relationship between ss. 11(1)(c) and (d), as also described in *Regina Exhibition Association*, *supra*, and stated that, although there was no bad faith on the part of the employer in refusing to meet with a specific union representative, the ramifications of that failure were "subtle yet serious" and that the employer's conduct in preventing that representative from carrying out his duties had undermined the authority of the union and the representative's status in the eyes of the employees. While the intentions/motives of an employer might indicate bad faith and a violation of s. 11(1)(c), intentions or motive are often irrelevant with the focus being on the effect of the conduct on the union and/or its members or on the course of negotiations.

[80] The Board also examined the issue of whether "bad faith" is necessary to a finding of a violation of s. 11(1)(c) in *Saskatchewan Indian Federated College, supra*. The Board, while speaking of the issue in relation to the goal of concluding and executing a collective agreement, stated at 152 "the core question is whether there is anything to indicate an unwillingness or inability to strive towards this goal." The Board determined that a specific finding of "bad faith" was not a required element of the unfair labour practice, and stated at 152:

> *Though the threat is clearly most acute if an employer is attempting in a malicious or calculating way to undermine the authority of the union,* ***we have in the past made it clear that we do not regard bad faith as an essential element of an unfair labour practice under Section 11(1)(c)****. In Saskatchewan Government Employees' Union v. Government of Saskatchewan, LRB File No. 264-92, the Board made this comment:*
>
> > *Though the vast majority of cases requiring the interpretation of Section 11(1)(c) involve an allegation that employer conduct was inspired by bad faith, or an unlawful desire to undermine the bargaining position of the trade union,* ***it is not, in our view, essential to make a finding of anti-union animus or bad faith*** *in order to conclude that an unfair labour practice has been committed.* ***The section speaks of "refusing" to bargain collectively, which clearly raises the***

> ***issue of intent or motive; it also speaks, however, of "failing" to bargain, which may comprehend a broader range of conduct.***
>
> **[emphasis added]**

[81] Before turning to the arguments raised by the Union, we wish to address the matter of the conflicting versions of events testified to by the Employer's representatives, Mr. Stremel and Mr. McRae. On the whole of the evidence presented by both parties, we prefer the evidence of Mr. Stremel to that of Mr. McRae where the evidence is in conflict. We also prefer the evidence of Ms. McKenzie to that of Mr. McRae concerning the parties' settlement discussions. We find that Mr. McRae did represent to the Union that he was not only going to "run all nurses in the region" as in performing one "computer run," but that he represented that the Employer would *pay all nurses in the region*, not only those who had grieved.

[82] There are several reasons for this finding. Firstly, the evidence of Mr. Stremel is more consistent with the evidence of the Union's witnesses as well as the documentary evidence entered by both parties. Secondly, and perhaps more importantly, this conclusion is more consistent with other evidence testified to by all of the witnesses, including Mr. McRae. Notably, when Ms. McKenzie sent the February 28, 2005 e-mail to Mr. McRae (early on in the negotiations) to confirm with him that he had represented that all nurses in the RQHR would be included in the settlement, not only those who had grieved, Mr. McRae failed to respond to her to qualify or correct this understanding. In addition, later in the negotiations, Mr. McRae agreed to generate further information for the Union about the rural nurses to determine the extent of the effect on them should the Union agree to a four-hour trigger of hours worked for entitlement to premium pay. It makes little sense for Mr. McRae to generate such information if he had not represented to the Union that all nurses in the RQHR would be paid, because those rural nurses were not covered by the two policy grievances (the policy grievances related to employees at the Regina General Hospital and Regina Pasqua Hospital).[5]

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[5] While we were made aware that certain individual grievances were also filed, we were not told how many. There were very few referred to in the memorandum of agreement and in any event, appear not to be

[83] In making this finding of fact, what is probably of most significance to the Board is the evidence of what transpired between Mr. Stremel and Mr. McRae on April 22, 2005. On that day, Mr. McRae wrote a memo to Mr. Stremel concerning the estimated costs of the settlement for the claims for the fourth and subsequent consecutive weekends worked. In that memo, Mr. McRae appears to estimate the costs associated with the settlement based on payment to *all nurses in the RQHR*. That all nurses were included is particularly obvious when that memo is contrasted with the second memo which Mr. McRae prepared the same day after meeting with Mr. Stremel who had advised Mr. McRae that the scope of the settlement should be restricted to those covered by the grievances and should not include all nurses in the RQHR. When one examines the two memos prepared by Mr. McRae on the same day, it is obvious by the wording in the estimated total cost that the first memo considered payment to all nurses in the RQHR and that the second memo (following Mr. McRae's discussions with Mr. Stremel) included only those nurses who filed grievances. There is a $500,000 difference in the estimated costs of the settlement between the two memos. It is for these reasons that we conclude that, up until April 27, 2005 -- the date that Mr. McRae contacted Ms. McKenzie following his meeting with Mr. Stremel, Mr. McRae had represented to the Union, on behalf of the Employer, that all nurses in the RQHR, whether they had grieved or not, would be included for the settlement of the claims for the fourth and subsequent weekends worked.

[84] We now turn to the arguments advanced by the Union as grounds for a violation of s. 11(1)(c) of the *Act* by the Employer. One of the arguments made by the Union was that the Employer was reneging on an agreed-to term of settlement after significant progress in negotiations had been made. This argument is closely related to the Union's third argument, that is, that the Employer improperly repudiated the agreement, without compelling justification. However, if we consider the Union's first argument simply as an assertion that the Employer must be held to the agreement Mr. McRae has made, Mr. McRae having apparent authority to conclude an agreement, the argument is more in the nature of a "failure to ratify" the agreement by Mr. McRae's principals. While there are difficulties in finding the Employer liable on this basis given that the parties were not *ad idem* on the entire agreement, it is in our view more

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important to the outcome of this decision as the parties attached little or no significance to them at the hearing.

appropriate to consider the whole of the Employer's conduct when we examine the issue of Mr. McRae's authority, or lack thereof, and the relationship between mandate and ratification. In addition, we will also examine whether the Employer reneged on/repudiated an agreement without reasonable justification.

[85] The Union's second argument was that the Employer is in violation of s. 11(1)(c) by putting forward Mr. McRae as its representative and then failing to provide Mr. McRae with proper authority to bargain an important issue of implementation. The Employer disabled Mr. McRae in his role and responsibility as a representative of the Employer to put forward a position upon which the Union could rely. As previously stated, this argument causes us to consider the principles of bargaining in good faith as they relate to the issue of Mr. McRae's authority to enter into the agreement that he did, as well as the relationship between mandate and ratification. In examining this issue we are mindful of the Board's direction in the *University of Saskatchewan* decision, *supra*, at 37 that the principles of good faith as applied to negotiations for a collective agreement are "no less applicable to negotiations for the settlement of disputes and grievances."

[86] In the *Government of Saskatchewan* decision*, supra*, the Board considered an allegation that members of the employer's bargaining team lacked the proper authority to carry on meaningful bargaining at the table and that those representatives had "never enjoyed a mandate to determine the bargaining strategy which would be adopted." The Board found a violation of s. 11(1)(c) in the following terms, at 273:

> *We are not persuaded that the conduct of the Employer over the course of negotiations was actuated by any unlawful motive. On the two occasions referred to, however, we do find that the Employer representatives were not equipped to carry out their obligation to bargain collectively.*
>
> *We therefore find that the Employer was guilty of an unfair labour practice in that* ***they failed to provide their representatives on these two occasions with plenary power to proceed to the conclusion of a collective agreement.*** *It should be stressed that we are not suggesting that the requirement of approval or consultation is itself an unfair labour practice, nor that the informal exchanges which took place between the parties by telephone should be discouraged. The representatives of the parties at the bargaining table are simply that - representatives - and* ***it is to be expected that they will obtain instructions and approval from***

> ***their principals.*** *The Union itself had a complicated method for obtaining such instructions and approval, and the parties to any negotiations must be prepared to accommodate such a process****. It is necessary, however, for bargaining representatives to come to the table armed with sufficient information and authority that they can engage in meaningful bargaining. In our view, on the two occasions mentioned above, that was not true of the Employer representatives in this case.***
>
> **[emphasis added]**

[87] In *Saskatchewan Indian Federated College, supra*, the Board found a violation of s. 11(1)(c) where the employer submitted the collective agreement to other stages of review after the conclusion of collective bargaining with the union. The Board found that the negotiating committee had not been given genuine authority to reach an agreement. The Board stated that the employer had treated the negotiation process as a series of stages and had treated the agreement that was reached at the bargaining table with the union as merely a "working basis for a review and further renegotiation based on the reactions of senior administration and the board of governors." The Board determined that this process impaired the ability of the union to respond to all of the concerns the employer had and caused the union to "play all their cards" before knowing the complete position of the employer. With respect to the authority which representatives must bring to the table, the Board stated at 157:

> ***It must be stressed, however, that it is the Employer as an entire corporate entity which has the legal obligation to bargain*** *with the Union. It is not only the committee at the bargaining table which must make an effort to reach a collective agreement, which can then be reviewed and altered by officers at other levels of the organization at their leisure.* ***The process which takes place at the bargaining table must reflect the objectives and limitations both parties want to see expressed in the collective agreement. The representatives of each party at the table must be confident that they are dealing with representatives on the other side who can speak with full authority to commit their principals, who can outline the limits which will be placed on what can be agreed to, and who can respond freely and candidly to developments which occur during bargaining.***
>
> *In the course of this process, both parties may expect to compromise, and to be called upon to give up certain things in*

> *order to gain something else.* ***They are entitled, however, to make their decisions about what strategy to adopt on the basis of complete information about the position of their opposite numbers.***
>
> [**emphasis added**]

[88] The Board continued at 158 and 159:

> ***It is vitally important for the health of a bargaining relationship that an employer confide full authority to their representatives at the bargaining table to negotiate a collective agreement. The parties in this case had agreed on an approach to bargaining in which both sides had ample opportunity to obtain further information, to consult their principals about particular issues or about the state of the bargaining in general, and to ensure that they continued to enjoy the support and reflect the bargaining objectives of the party to whom they were accountable.*** *Any assessment of financial feasibility, political acceptability or cultural desirability should be so closely tied to what is happening at the table that the negotiators can continue to feel confident that they are carrying out their mandate in seeking to reach an agreement. The kind of review and financial assessment carried out by Dr. Hampton and Mr. Khaladkar, and the further review intended by the board of governors should not be seen as separate steps entirely outside the bargaining process; such activities are an integral part of the bargaining process, and must also be carried out in compliance with the duty to bargain.*
>
> *This does not mean that the step of ratification is necessarily an empty gesture. Both parties to this application acknowledged that no agreement could be finalized until both the members of the bargaining unit and the board of governors had signalled their approval.* ***It is the responsibility of both these bodies*** *themselves, and those to whom the task of bargaining has been delegated, however,* ***to ensure that there is sufficient interchange of information and instructions that ratification is a reasonable expectation.*** *As the decision in Barber Industries, supra, suggests,* ***a failure by one or other of the principals to ratify an agreement constitutes something of a crisis in the bargaining process, for it must either cast doubt on the bona fides of the mandate given to the negotiators, or signify a drastic loss of confidence in those representatives in the course of bargaining.***
>
> ***The Union is in error in arguing that an employer will always be in breach of the duty to bargain if they seek to reopen discussion on particular issues*** *or do not forward an agreement for ratification within a particular period. It is our view, however, that the Union was legitimately concerned when the agreement*

> *which they interpreted as bringing this set of negotiations nearly to an end merely raises the curtain on a number of further stages of bargaining. Reaching agreement in the circumstances facing these parties was bound to be a protracted and complicated process, and neither party complained seriously of this, aside from occasional expressions of impatience.* ***The Employer was bound, however, to ensure that the committees at the bargaining table could reach an agreement, an agreement which - barring some political catastrophe of an unexpected kind - could be reasonably counted on to be acceptable to the principals on both sides.*** *This is an assumption about the process which the Union was entitled to make. If the Employer envisaged a substantially different process, they had an obligation to make that clear at a much earlier stage.*
>
> [**emphasis added**]

[89] In *Barber Industries, supra*, cited by the Employer, the Canada Industrial Relations Board makes a similar observation to that made in the *Saskatchewan Indian Federated College* decision, *supra*, concerning the relationship between ratification and mandate and, at page 297, specifically notes the importance of this consideration where the proposal came from the party that failed to obtain ratification:

> *An unexplained failure to ratify a proposal negotiated by a committee, ostensibly acting within their mandate, calls into question either the bona fides of the refusal to ratify or the adequacy of the mandate given to that bargaining committee. This is particularly so where the employer's committee has made the proposal to the trade union, rather than the other way around. It is also particularly so for a small employer with close links between the bargaining committee and the persons responsible for ratification.*

[90] In *Lycée Claudel, supra*, also cited by the Employer, after dismissing the union's argument that there was an agreement reached at the table because there was sufficient evidence of a representation of apparent authority by the employer or negotiating committee to bind the employer to the agreement, the Ontario Labour Relations Board went on to consider whether the employer failed to make every reasonable effort to conclude a collective agreement as a result of its failure to ratify the tentative agreement. The union questioned the sufficiency of the mandate of the employer's representatives to conclude a collective agreement. Commenting on the relationship between mandate and ratification, the Board stated at paragraph 52:

> *[52] . . . But at a minimum, reasonable efforts to conclude a collective agreement and good faith require that there be substance to the authority and mandate of a team, so that progress toward a collective agreement is real and not illusory. Even where agreements are made at the table subject to ratification, the statutory duty continues to apply, as the cases make clear. A formal mandate with no content is problematic as is the repudiation of agreements within the mandate without sufficient reason. Adequate authority should mean for instance, at the very least, that if an employer's proposal was adopted in its entirety by the other side, there would need to be a very good reason why it was not ratified.*

[91] One of the questions before us is whether Mr. McRae had sufficient authority to enter into an agreement for the resolution of claims for the fourth and subsequent consecutive weekends worked. It appeared to the Union that he had such authority - the Union had dealt with him in the past and his position bore the title of "senior labour relations officer," the only labour relations officer designated as "senior," and reporting directly to Mr. Stremel.

[92] On April 27, 2005 when the Union was advised that the settlement would not include payment to all nurses in the RQHR, the conclusion it drew was that Mr. McRae did not have the authority to bargain an important issue, that is, the scope of coverage of the settlement. In our view, the overriding of Mr. McRae's authority to make the representation that he did means that either he did not enjoy proper authority to bind the Employer during bargaining or that there were deficiencies in the mandate or communication of his mandate, by the Employer. In either event, there were serious consequences and the conduct of the Employer amounts to a breach of the duty to bargain in good faith within the meaning of s. 11(1)(c) of the *Act*.

[93] We appreciate that the Employer takes the position that this problem did not arise out of a lack of authority given to Mr. McRae but rather it was a situation of Mr. McRae exceeding his authority and, in essence, making a mistake about the terms that would be acceptable to the Employer. In other words, Mr. McRae was mistaken about his mandate.

[94] The question then becomes whether a sufficient mandate was given to Mr. McRae. In our view, it was not. The Employer suggested that Mr. McRae should

have known the scope of his authority and what it was that he was to accomplish in settlement discussions with the Union. In this regard, Mr. Stremel pointed to the memorandum of agreement of January 2004 and stated that he asked Mr. McRae to settle the matter in line with that agreement. The difficulty with that statement is that the memorandum of agreement deals almost exclusively with the settlement of the third weekend claims, an arbitration decision not yet having been really rendered in relation to the fourth and subsequent weekend claims. The only aspect of the fourth and subsequent weekend claims dealt with in that memorandum of agreement, an aspect which Mr. McRae did in fact incorporate it into the settlement discussions with the Union, is the limitation on the period of retroactivity of the claims. Following repeated questioning of Mr. Stremel by both counsel at the hearing concerning the nature of the mandate communicated to Mr. McRae, Mr. Stremel repeatedly referred to Mr. McRae's obligations as they arose out of the January 2004 memorandum of agreement and said that Mr. McRae's mandate was restricted by the terms of that agreement. Only briefly did Mr. Stremel mention that Mr. McRae was also shown the grievances. It is difficult to attribute much, if any, significance to this latter point given the lack of clear evidence on it by Mr. Stremel as well as his focus on the memorandum of agreement as the primary source of Mr. McRae's mandate. Upon a review of the memorandum of agreement, the mandate given to Mr. McRae was inadequate. There is nothing in the memorandum of agreement to limit the scope of coverage of the settlement of claims for the fourth and subsequent weekends worked. If anything, the content of the memorandum of agreement which explained the problems encountered by the parties in limiting the scope of coverage of the third consecutive weekend settlement to only those nurses who had grieved (an issue which was resolved by setting new deadlines for claims and by allowing nurses who filed duty of fair representation applications to make a claim) made it quite possible that Mr. McRae thought he had the authority to settle the claim in such a manner as to prevent a repeat of the problems encountered with the third consecutive weekend claims. The problems with the third consecutive weekend claims could be avoided in relation to the fourth consecutive weekend claims by paying all nurses in the RQHR. It is also for these reasons that we find that the Union reasonably relied on Mr. McRae's representations as "there was something in it" for the Employer as well. In any event, there was no clear mandate given to Mr. McRae by reference to the memorandum of agreement.

[95] On the whole of the evidence, we find that, through either a lack of communication or a miscommunication between Mr. Stremel and Mr. McRae, the mandate given to Mr. McRae was insufficient to the extent that the Employer had not made all reasonable efforts to conclude an agreement on the issue in dispute between the parties. The Employer is therefore in violation of s. 11(1)(c) on this ground as well. For Mr. McRae to be unable to bind the Employer by his representations on an important term of the negotiations illustrates a lack of substance in his authority and mandate.

[96] We also find the Employer in violation of s. 11(1)(c) for the representation that Mr. McRae had the authority to conclude a settlement on terms that he did, when he, in fact, did not.

[97] The Employer argued that at most, the situation before us may be characterized as a failure to ratify by the Employer. However, there was no evidence led at the hearing that the settlement negotiations were subject to a ratification process of any sort, by either party. Given that the course of discussions between the parties occurred over a somewhat lengthy period of time and included not only face-to-face meetings but also the exchange of correspondence, it is obvious that each party had the opportunity to consult their principals as necessary throughout the course of their negotiations. It appears that the Union approached the negotiations on the basis that it would be binding on the employees it represented and, given its continuous discussions with the Union's executive officer during the course of negotiations, it would be binding on the Union as well, without any ratification process. The only evidence we have from the Employer on this issue is Mr. McRae testifying that we he would have been in constant contact with Mr. Stremel and that Mr. Stremel knew his plan for payment of the claims. Mr. Stremel acknowledged that he had had discussions with Mr. McRae along the way, although he denied being advised of many details of the process for payment of the claims. In any event, there was ample opportunity for consultation. This evidence implies a significant miscommunication between Mr. Stremel and Mr. McRae. However, in the circumstances of this case, it was reasonable for the Union to conclude that Mr. McRae, by his words and conduct, either had the proper authority or enjoyed the support of his principals to conclude a settlement on the terms that he did.

[98] In our view, it may be presumed that the Union suffered detriment as a result of this course of conduct by the Employer. Right from the outset of its negotiations with the Employer on the fourth weekend worked claims, the Union accepted Mr. McRae's representation on the scope of coverage of the settlement and it engaged in "give and take" and arguably "played all of its cards," all without knowing the Employer's actual position. Furthermore, upon the correction or reversal of the Employer's position, the Union's reputation likely suffered with its members, certain expectations having been raised as a result of the Union's broad communications with its membership on the Employer's proposal that all nurses in the RQHR would be paid.

[99] In the alternative, even if we accept the Employer's argument that this situation involved a failure to ratify the agreement by the Employer, the matter requires consideration of the Union's third argument, that is, whether the Employer was guilty of a violation of s. 11(1)(c) by repudiating its position without justification and without providing a full explanation to the Union, even after it undertook to do so.

[100] In *Saskatchewan Indian Federated College, Barber Industries,* and *Lycée Claudel*, all *supra*, an employer's failure to ratify an agreement, particularly one based on a proposal of the employer, represented something of a crisis in the bargaining process and called into question the *bona fides* of the refusal to ratify (or the adequacy of the mandate). While we have concluded that the mandate was, in fact, inadequate and amounted to a violation of s. 11(1)(c) of the *Act*, the extent to which we question the *bona fides* of the Employer's refusal to ratify is through a consideration of the reasons for that refusal to ratify. Although the Union did not put its argument in quite these terms, in the circumstances before us the analysis is the same whether the issue is an improper failure to ratify or that the Employer repudiated the agreement without compelling justification, both of which would amount to a violation of s. 11(1)(c) of the *Act*.

[101] Therefore, the reasons for either: (i) the Employer's refusal to ratify; or (ii) its repudiation of the agreement on scope of coverage of the settlement, must be examined. In this case, those reasons are the same. The Employer says that it could not accept Mr. McRae's representation to the Union that the scope of coverage of the settlement would include payment to all nurses in the RQHR because it was costly

($500,000 more than payment to all nurses who had grieved) and because the Employer wanted to rely on its strict rights as set out in the grievances.

[102] In *Benian Management, supra*, the parties negotiated a collective bargaining agreement and, after the union accepted the employer's wage offer but before ratification by its members, the employer withdrew the offer, providing reasons why it felt it necessary to do so: (i) the employer was required to spend a lot of money on new equipment; (ii) there had been proposed changes to government billing procedures and the employer expected administrative expenses to increase; and (iii) there had been significant decline in the number of patient visits. The Board concluded that the employer had no compelling justification to repudiate its position: the cost of the equipment purchased was known before negotiations started, the employer did not know the billing procedure changes or their effect and there was no proof that the declining number of visits affected the employer's income. In determining that the employer had violated s. 11(1)(c), the Board stated at 36 and 37:

> *The Board has previously examined the nature and extent of the duty to bargain collectively as defined in Section 2 (b) and Section 11(1)(c) of The Trade Union Act (see, for example, Morris Rod Weeder Co. Ltd., LRB File No. 451-77, Reasons dated October 3, 1977). While it has avoided laying down any formal rules or procedures with respect to bargaining collectively and has decided each case upon its own peculiar facts,* ***it has determined that a party may commit an unfair labour practice if, in later stages of bargaining, it suddenly repudiates its earlier agreements without some compelling justification.***
>
> *In Ladner Private Hospital Ltd. v. Hospital Employees Union Local No. 180, BCLRB Decision No. 19/77, dated March 29, 1977, the Board observed that the consequences of a belated and radical departure from tentative agreements and understandings are threefold:*
>
> > *"First, as a practical matter the bargaining would lose its momentum. Second, as an industrial relations matter there would have occurred a gross deviation from the normal standards of bargaining behaviour. Third, for those reasons, as a legal matter the normal (although not automatic) response would be a finding of a breach of the duty to bargain in good faith and to make every reasonable effort to conclude a collective agreement."*

> *Once again, without in any way attempting to formulate formal rules or procedures with respect to bargaining collectively, the Board finds on the facts before it that* ***nothing occurred between the time that the employer's offer was made and accepted and the date on which it was withdrawn to justify the employer's approach to collective bargaining. The parties have reached an agreement at the bargaining table, and the employer's last-minute alteration without adequate justification indicated a lack of good faith.***
>
> **[emphasis added]**

[103] We have concerns over the adequacy of the reasons given by the Employer. The cost of paying all nurses in the RQHR versus all nurses who had grieved was a fact in existence (although perhaps the exact amount was not specifically known to the parties but for the estimation that it was the double the cost of third weekend worked claims) at the time the proposal was made by Mr. McRae. All that occurred between the time the Employer made this proposal and the date it was withdrawn was the discovery by Mr. Stremel of the more precise costs associated with the proposed payment. The reason given by the Employer that it wants to rely on its strict rights as contained in the grievances is not a reason so much as it is a legal excuse for a change in its position. Given that there were previous opportunities for the Employer to cost out its proposal, this approach to bargaining violates the canons of good faith.

[104] Of greater concern to the Board, however, is the manner in which the Employer undertook the withdrawal of its position. Having notified the Union of the reversal or "correction" of its position, the Employer was under an obligation to do more than it did. The Employer undertook to provide its position in writing to the Union following the May 30, 2005 meeting. It failed to do so. At the hearing, the Employer took the position that that was unnecessary because it would just repeat what the representative said at the meeting. With respect, we disagree. In light of the significance to the Union and its members of the change in position as well as the Union's detailed letter of its view of the course of the negotiations, the Employer had a duty to explain its position in more detail, including what happened to cause the erroneous representation to be made and the precise effect of it on the Employer. The manner in which the Employer chose to ignore the Union's request for its position implies that the Employer expected the Union to simply drop the matter without the benefit of an

explanation or full disclosure and that, otherwise, the negotiations would not continue. Ms. McKenzie testified that the Employer represented as much at the meeting. The Employer stated it has not refused to continue to bargain the matter, however, by refusing to discuss the withdrawal of its position and the reasons therefor (in more detail than saying “it costs too much”) it brought a halt to continued discussions on the issue. The failure to provide this information prevented the Union from assessing its position, checking the Employer's position and formulating a new response. Rational discussion over the issue as well as continued discussions to resolve the grievance are required by the duty to bargain in good faith and the bringing of this application by the Union does not extinguish that duty. Furthermore, there was no explanation by the Employer why it did not provide the information to the Union that it provided in evidence to the Board at the hearing.

[105] Therefore not only has the Employer refused to provide the Union with a compelling justification and complete reasons but it has also refused to continue to meet to resolve the grievances. For each and all of these reasons, the Employer is in violation of s. 11(1)(c) of the *Act*.

[106] Although the Board has determined that it accepts the evidence of Mr. Stremel insofar as it conflicts with Mr. McRae's in terms of the representation to the Union that all nurses would be included in the settlement, even if we were to accept Mr. McRae's version of events, we would also have found the Employer in violation of s. 11(1)(c). In this respect, we accept the Union's argument that Mr. McRae misrepresented (whether innocently or otherwise) the Employer's position in bargaining with the Union and that he was negligent in doing so. If Mr. McRae understood the Employer's mandate concerning the scope of coverage of the settlement, which he says he did, Mr. McRae knew or ought to have known that the Union believed the Employer's position was that all nurses in the RQHR would be paid. Whether the Union's position is sufficiently unambiguous in Ms. McKenzie's e-mail of February 28, 2005 or not, upon receiving that e-mail, Mr. McRae should have responded to clarify any ambiguity and to correct the Union's understanding. Mr. McRae failed to properly fulfill his role as a representative of the Employer which was to clearly state the Employer’s position to the Union. The Union suffered loss as a result of its reliance on this misrepresentation, primarily in terms of its reputation for effectiveness in the eyes of its members.

Remedies:

[107] The Union relied on the Board's decision in *Loraas, supra,* which provides a guiding principle for the type of remedies it seeks in this case. In *Loraas*, the Board stated at 568:

> *The **overriding goal** of the Board in designing an appropriate remedy is **to place the Union and its members in the position they would have been in but for the Employer's breach of the Act**. In so doing, the Board **avoids punitive remedies** and seeks to design remedies that support and foster the underlying purposes of the Act, which include the encouragement of unionized workplaces and the **encouragement of healthy collective bargaining.***
>
> **[emphasis added]**

[108] In *Bills Electric City, supra*, after finding a violation of s. (11)(1)(c), the Board ordered, in addition to a cease and desist order, that within a certain time period the employer representatives meet with union representatives to discuss terms and conditions of employment of employees in the bargaining unit and to make reasonable efforts to resolve the issues cited by the union in a grievance it had filed. The Board also ordered the employer to respond to the union's requests for various remittances and union dues required under the collective agreement.

[109] In *Barber Industries, supra*, the Alberta Board ordered the employer to provide more clear directions to its negotiators on certain items, to make the importance of certain items more clear during the negotiations and to table an offer which did not require ratification. In that case, the nature of the failure to bargain in good faith involved deficiencies in the communication between the principal and the committee members in terms of their mandate at the bargaining table.

[110] Similarly, in *Lycée Claudel*, *supra*, the Ontario Board found that the development of the mandate by the employer fell short of the duty to make every reasonable effort to conclude a collective agreement and it made a declaration to that effect. The Ontario Board noted that an unlawful failure to ratify would often attract a

remedy imposing the agreement if all other issues had been settled at the table, however, if the breach is found at the mandate stage, the more appropriate remedy is the type ordered in *Barber Industries*. The Ontario Board therefore ordered the employer to develop an unconditional proposal for an agreement (i.e. one that the employer's principals would accept and that their representative is authorized to put forward without ratification) and to return to the table to bargain with the union in good faith, including the bargaining of the matter of the changed situation that the employer stated had caused its failure to ratify. The Board noted at paragraph 66 that "[t]his is not to say that the parties are returning to zero" as much of the agreement negotiated at the table had little to do with the changed situation (that had been rejected by the employer's principals) and because the union, having earlier convinced employer representatives of the acceptability of its proposal for an agreement, should have an opportunity to continue to discuss that issue.

[111] Although we have found the Employer has violated the duty to bargain in good faith on a number of grounds, the Union's focus, as concerns its request for remedial relief, appears designed to address: (i) the lack of compelling justification for a change in the Employer's position in order that the Union can properly respond to that position (through its requests for certain information); (ii) the concern that a representative have actual authority and a proper mandate to conclude an agreement with the Union (through its requests for assurance that the representative has that authority); and (iii) the concern that the Employer must continue to meet with the Union to negotiate a resolution to the grievances.

[112] We find that all of the remedies requested by the Union are designed to place the Union in the position that it would have been in but for the Employer's breach and are in accordance with the principles set out in *Loraas, Barber Industries and Lycée Claudel*, all *supra*. However, upon consideration of the remedies in *Barber Industries and Lycée Claudel*, we find that it is also appropriate to order the Employer to put forward an unconditional proposal to the Union for its acceptance, without further ratification by the Employer. We also issue the same caution as the boards in those cases did - the parties are not starting at "zero" as many of the items agreed to were not the subject of a change in position by the Employer. Further, it is expected that both parties will continue to honor their obligations to bargain in good faith a resolution to the

matter at hand. That is not to say that the parties are not permitted to pursue arbitration, but only that all reasonable efforts to conclude an agreement must be made.

[113] The Board therefore will issue an Order to the following effect:

(a) Determining that the Employer has committed an unfair labour practice within the meaning of s. 11(1)(c) of the *Act* by failing or refusing to bargain in good faith;

(b) Ordering that, within 30 days of the date of this decision, the Employer will provide the Union with a complete, unconditional proposal for settlement of the grievances/dispute concerning the issue of premium pay for any nurses who have worked a fourth and subsequent consecutive weekend for the Employer, without the need for any further ratification by the Employer, which proposal shall remain open for acceptance by the Union at least until the end of the meeting mandated by the Board's Order in (d) below;

(c) Ordering that, also within 30 days of the date of this decision, the Employer will provide the Union with the following information:

(i) A list of all nurses employed by the Employer in the RQHR who have worked a fourth and subsequent consecutive weekend where the shift worked on the fourth and/or subsequent weekend was a scheduled shift of 3.78 hours or more;

(ii) A list of all nurses employed by the Employer in the RQHR who have worked a fourth and subsequent consecutive weekend where the shift worked on the fourth and/or subsequent weekend was a scheduled shift of less than 3.78 hours;

(iii) A list of all nurses employed by the Employer and covered by the policy/individual grievances who have worked a

fourth and/or subsequent consecutive weekend where the shift worked on the fourth and/or subsequent weekend was a scheduled shift of 3.78 hours or more;

(iv) A list of all nurses employed by the Employer and covered by the policy/individual grievances who have worked a fourth and/or subsequent consecutive weekend where the shift worked on the fourth and/or subsequent weekend was a scheduled shift of less than 3.78 hours; and

(v) A listing of the premium pay potentially payable to each nurse in each of the categories (i) through (iv) above, utilizing the Employer's payroll records;

(d) Ordering that, within 45 days of the date of this decision, the Employer will meet with a representative or representatives of the Union to bargain collectively with respect to the grievances/dispute concerning the issue of premium pay for any nurses who have worked a fourth and subsequent consecutive weekend for the Employer;

(e) Ordering the Employer to provide written assurance to the Union, in advance of the meeting mandated in the Board's Order in (d) above, that the Employer's representatives at the meeting and subsequent meetings with the Union to negotiate the resolution of the grievances/dispute have the proper authority to bargain a resolution to the grievances/dispute; and

(f) Ordering the Employer to cease and desist from further violations of the *Act*.

[114] The Board shall remain seized to deal with any issues arising out of implementation of these remedies.

DATED at Regina, Saskatchewan this **23rd** day of **October, 2007.**

LABOUR RELATIONS BOARD

Angela Zborosky
Vice-Chairperson