The Labour Relations Board
Saskatchewan

ST. THOMAS MORE COLLEGE, Applicant v. ST. THOMAS MORE COLLEGE FACULTY UNION (1977), Respondent

LRB File No. 123-07; February 12, 2008
Vice-Chairperson: Catherine Zuck, Q.C. Members: Gerry Caudle and Clare Gitzel

For the Applicant: David Stack
For the Respondent: Ted Koskie

Duty to bargain in good faith – Collective agreement – Union's new executive committee attempted to reopen bargaining on issues thoroughly canvassed and agreed to during bargaining – Executive committee also encouraged union's members not to ratify agreement – Board concludes that union failed to make reasonable efforts to conclude collective agreement and thereby violated s. 11(2)(c) of *The Trade Union Act*.

Duty to bargain in good faith – Remedy – Board unable to conclude on evidence that union's members would have ratified collective agreement but for union's unfair labour practice – Board declines to deem collective agreement in force – Board attempts to place employer in position it would have been in had union not committed unfair labour practice and orders union to conduct another ratification vote.

***The Trade Union Act*, s. 11(2)(c).**

REASONS FOR DECISION

Background:

[1] St. Thomas More College (the "Employer" or the "College") filed an application on October 16, 2007 seeking an order determining whether an unfair labour practice had been engaged in by St. Thomas More College Faculty Union (1977) (the "Union") within the meaning of s. 11(2)(c) of *The Trade Union Act*, R.S.S. 1978, c. T-17, as amended (the "*Act*"). The Union filed a reply on October 23, 2007 denying that it had engaged in an unfair labour practice. The matter was heard on January 7, 2008.

Decision:

[2] The Union engaged in an unfair labour practice, within the meaning of s. 11(2)(c) of the *Act*, because the Union's executive committee did not make reasonable efforts to conclude a collective agreement and, rather, actively encouraged the Union's members to refuse to ratify a tentative collective agreement.

Facts:

[3] By certification Order dated May 2, 1977 the Union was certified as the bargaining agent for all sessional lecturers, special lecturers, instructors and lecturers, assistant professors, associate professors, professors and librarians employed by the Employer. These are all of the in-scope employees of the College and there are approximately 67 to 71 of them. There are also several out-of-scope employees of the College.

[4] The College is a liberal arts college, federated with the University of Saskatchewan. It is financially and legally independent but academically merged with the University of Saskatchewan. The College has the autonomous power to hire staff and negotiate with them as to the terms of their employment.

[5] There is a collective agreement between the Union and the Employer for the period from July 1, 2002 to June 30, 2005 which continues in force until there is a successor collective agreement in effect. The Union served notice to bargain and negotiations began in earnest on October 10, 2006.

[6] The structures of the Union and its executive and negotiating committees are relevant to this application. According to the constitution and bylaws of the Union, there is an executive committee of four active members of the Union elected from the membership. Elections are held in March and, in April, the executive committee itself determines which of its members will serve as president, vice-president/secretary and treasurer. The executive committee takes office on July 1. The powers of the executive committee, *inter alia*, are:

> *To carry on business of behalf of the Union, including negotiating with the College Board of Governors respecting salaries, terms*

> *and conditions of employment for membership in the Union, and respecting any other matter in any way related to or affecting the relationship between the College and the Union.*

[7] The executive committee makes all decisions necessary for the management of the Union by way of resolution passed by a majority of its members present at the meeting where the resolution is voted upon.

[8] There is provision for standing and special committees, including the following about a negotiating committee:

> *Two or three members of the Executive Committee or of the active membership who shall be responsible for negotiating changes to the collective agreement with the Board of Governors of the College. The Negotiating Committee shall consult with the general membership about its priorities for collective bargaining and shall keep the membership informed through periodic newsletters. It shall also meet regularly with the Executive Committee for advice and direction.*

[9] The requirement that a collective agreement must be ratified says:

> *Collective agreements negotiated by the Negotiating Committee shall be ratified by the voting members of the Union in a special meeting called for that purpose by the President. The collective agreement shall be ratified by a majority vote of the active members of the Union present at the meeting.*

[10] The Union struck a negotiating committee which bargained with the Employer's negotiating committee from October 2006 until the summer of 2007. The personnel of the Employer's negotiating committee remained constant, being the Employer's human resources manager, Kathie Jeffrey, the Dean of the College and the CFO/director of administration. The personnel of the Union's negotiating committee changed over time. The members when bargaining ended were Dr. Valenzua, who had been on the committee the entire time, and Dr. Farthing, who had been on the committee since November 2006. Dr. Valenzua was the president of the Union from the time bargaining began until July 1, 2007. Dr. Farthing had been on the Union's various negotiating committees since 1991 and became a member of the executive committee from and after July 1, 2007.

[11] Dr. Farthing testified that, throughout bargaining, the Union's negotiating committee had the mandate to make the decisions on behalf of the Union that were necessary at the bargaining table to reach a collective agreement. The executive committee set the Union's agenda for negotiations. The negotiating committee and the executive committee were in close contact during the entire period and all issues were discussed. Due to the fact that the Union's membership consists of employees with different kinds of positions, there were differences of priorities, needs and expectations with respect to negotiations. On many issues with respect to the collective agreement there was not a unanimous point of view among the Union's members. There was actual division and dissension among the various classifications of employees and the executive committee conveyed this to the negotiating committee. At times, the executive committee assisted the negotiating committee with canvassing the membership to find members' views on certain issues. At other times, the executive committee gave the negotiating committee recommendations on what the negotiating committee's position should be on various trade-offs and priorities in an attempt to balance competing interests and the negotiating committee accepted the advice of the executive committee. But, on some issues, there was no way to reconcile the competing interests of the Union's members and the executive committee gave the negotiating committee authority to make the decisions at the bargaining table that the negotiating committee thought would ultimately result in a suitable collective agreement for the Union. Dr. Farthing stated that there was no doubt that the negotiating committee had the mandate to conclude a collective agreement on behalf of the Union, subject to ratification by the members of the Union.

[12] An exchange of emails between the parties documents that a tentative collective agreement was reached in June 2007. Both negotiating committees knew throughout bargaining that any tentative agreement would have to be ratified by both sides before it became effective – this coincided with the past practice followed by both sides since certification. The two negotiating committees verbally agreed that they would each recommend ratification of the tentative agreement. Before this could occur, both sides discussed and agreed to editorial changes to the tentative agreement. References to the agreement of the negotiating committees to recommend ratification were contained in emails between Dr. Farthing and Ms. Jeffrey on June 20, 2007 and July 5, 2007.

[13] The final draft of the tentative agreement was agreed to by both parties on July 4, 2007. At that time, only Dr. Farthing remained on the negotiating committee as Dr. Valenzua had left the College. Dr. Farthing, Ms. Jeffrey and the Employer's CFO/director of administration met, shook hands to signify agreement and reiterated that they would each recommend ratification. The plan was that the Union would send the final draft of the tentative agreement to its members and give them at least two weeks' notice of a ratification meeting. If ratified by the Union's members, the tentative agreement would then be presented to the Employer for ratification.

[14] The Union's executive committee changed on July 1, 2007. The new president was Mary Ann Beavis, who had been on the prior executive committee. Drs. Jenkins, Chartier and Farthing were new members on the executive committee. (The pre-July 1, 2007 executive committee will be referred to as the "old executive committee" and the post-July 1, 2007 executive committee will be referred to as the "new executive committee" hereinafter).

[15] Dr. Farthing presented the tentative collective agreement to the new executive committee. He explained the compromises that the negotiating committee had made and told the new executive committee that he thought that this was the best agreement that the Union could get. He recommended the agreement to the new executive committee.

[16] However, as the Union's witnesses phrased it, the new executive committee looked at the tentative collective agreement with "a new set of eyes" and there were some terms with which the new executive committee did not agree. The new executive committee sent a letter dated July 13, 2007 to the Employer, stating:

> *…the Executive Committee cannot forward this version of the Agreement to our members. We do not believe the membership will approve the Agreement as a whole because of certain issues. The matters of most concern include, in order of priority:*
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> > *1) The proposed clause replacing 5.1.10.8. is problematic, and ultimately, unacceptable for a number of reasons…it is a serious concern for all our members that seniority is recognized. See attached page for a wording [sic] the clause that, we believe, addresses both the concerns of our members and the concerns of the College…*

[17] The letter went on to list four problems that the new executive committee had with clauses 11.2.3.1 and 2, which deal with conflicts of interests, and minor problems the new executive committee had with two other clauses. The letter also referred to several editorial change and ended with:

> *Although we recognize that there will be difficulties with our members, especially with the issue of the pay schedule for CSF's [Continuing Sessional Faculty], we feel that we can bring this Agreement to our members with confidence if the above changes can be addressed. We hope to resolve these matters as quickly as possible for the sake of our members and for the sake [sic] the College. We hope to begin the coming Academic year on the right note.*

[18] Dr. Farthing said that this letter was sent by the new executive committee instead of the negotiating committee because he did not think it was appropriate for the negotiating committee to send such a letter. Dr. Farthing had thought that the tentative collective agreement as concluded would be acceptable and ratified by the Union's membership, which is why he agreed to its terms. It was common ground that all of the matters raised in the letter of July 13, 2007 had been the subject of negotiations and the terms of the tentative collective agreement concerning them had been finally agreed to by both negotiating committees. The concerns raised by the new executive committee were not "new" matters but were issues that had always been problematic within the Union. In the past, it had been the Union's practice to raise matters with the Employer that could become problems with the collective agreement and to discuss these matters in a collegial manner and the July 13, 2007 letter was sent in that spirit.

[19] The Employer's July 16, 2007 letter in response to the Union's letter stated that the Employer was "not prepared to re-negotiate the concluded agreement by re-opening discussions that have been discussed and agreed to in a context of good faith."

[20] In August 2007, the new executive committee prepared a letter to the Union's membership which was sent via email to members and posted on the Union's website. A copy of the tentative collective agreement was also sent to members and posted on the Union's website. The format of the tentative collective agreement showed

the previous clause on the left hand side of the page and the new language on the right hand side.

[21] Much of the content of the new executive committee's August 2007 letter to the Union's members does not violate the *Act* and was proper in the circumstances. The letter thanked the Union's negotiating committee for its hard work and encouraged members to read the tentative agreement and attend the ratification meeting to express their views, ask questions and vote. Much of the letter simply pointed out the changes in the terms of the collective agreement and, in some cases, explained what the new wording meant.

[22] However, in several places the contents of the August 2007 letter moved beyond a factual explanation and, instead, expressed the opinions of the new executive committee. Specifically, the letter stated:

> *Since the Negotiations Committee completed its negotiations in June, with advice from the previous Union Executive, we feel obliged (as confirmed by legal counsel) to pass this proposal to our members, regardless of any concerns we may have with this proposed Agreement…*
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> *…What follows is an account of these main changes and some possible concerns that should provide a basis for the discussion and debate at our next meeting…*
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> *…One concern here is that the Administration failed to accept the previous formula for deciding a fair salary for CSF's [sic](there was much talk on the part of the Administration of financial uncertainties/hardships and the "overly generous" settlement for CSF's [sic] in the 2002 – 2005 Agreement). Since there is no clear equivalent to CSF status at the University of Saskatchewan, the CSF salary was more vulnerable in negotiations….*
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> *…Two concerns here are, first, that the nature of the conflict of interest is very unclear in the proposed wording (for instance, it is unclear whether the conflict of interest is solely of a financial/legal nature) and, second, that it requires faculty members to respond in writing to specific questions simply "should the Dean have reasons to believe" that an academic staff member has such a conflict. It seems that the Dean should have be required to produce some evidence of the conflict of interest before an academic staff member is required to respond to questions…*

> *…A concern here is about what kind of evidence is being asked for in f) and g). Besides what is given in letters of reference, cover letter and CV (which are already part of the pre-existing clauses), what kind of evidence for "positive collegial relationships" or "other relevant information that relates to the specific course applied for" is being sought? Or, what counts as evidence against? There is a concern here about job security for our sessional faculty and for providing some protection for academic freedom for sessional faculty…*
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> *…The concern with this first clause is that seniority has been changed into something more like a preferential hiring clause. Such a clause clearly gives the department head quite a bit of discretion to decide what counts as "equal among the candidates under consideration" and weakens job security for sessional faculty. In other words, it is well within the interpretation of this clause for sessional faculty to lose seniority even though they have been previously considered qualified to teach a course and even though they may have excellent teaching evaluations and contribute significantly to the life of the College (for instance, in the case where a sessional faculty member has only an MA, while another new candidate has a Ph.D.).*
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> *…Generally these two clauses are a concern, not only because they treat sessional faculty as easily replaceable cogs in the machine, but also because our sessional faculty would have less job security than sessional faculty enjoy at the corresponding University. They are also a concern because the wording for seniority in the replaced clause 5.1.10.8 is identical to the wording for seniority for CSF's [sic] in clause 5.1.11.8. If we accept the changes in 5.1.10.8, we have given grounds for changing the wording in 5.1.11.8…*
>
> *…The first two memorandums of understanding listed above are fairly uncontroversial. However, the third memorandum listed above raises some questions. Although from the Union side, an examination of the nature and implications of CSF positions could possibly lead to improvements in the working conditions for CSF's, it also raises questions about where the administration wants to go with this examination...*
>
> *…We have highlighted some of the main changes in the proposed Agreement and some possible concerns for our members…*

[23] Dr. Farthing did not regard the new executive committee's letter of August 2007 as a document in which the negotiating committee had to recommend ratification of the tentative collective agreement; he intended to make his recommendation at the ratification meeting itself and deal with all expressed concerns at that time. He regarded

the letter to the members as a communication addressed to an academic audience and felt it only raised issues that had existed all along with the membership. He thought that the letter could be described as "constructive criticism." Dr. Farthing said that the intent behind the letter was to let the membership know that the executive committee was aware of the concerns of some of the members on some issues raised by new language in the tentative collective agreement and to attempt to "corral debate" at the ratification meeting to these issues. Dr. Beavis thought that the letter to the membership was neither a resounding endorsement nor a resounding condemnation; it praised some parts of the tentative agreement and showed concerns about other aspects. It was designed to make the membership read the new agreement, take it seriously and make judgments about it. She agreed that there was no mention of a recommendation to ratify in the letter.

[24] The Union's ratification meeting was held on September 14, 2007, when the members were back at work from summer vacations. The new executive committee delayed the ratification meeting until that date in order to maximize attendance at the meeting. Dr. Beavis chaired the meeting and remained neutral because of her role as chair. Dr. Farthing made a presentation to the meeting, explaining the reasons behind the new terms of the tentative collective agreement and recommending ratification of the agreement. He spoke of how the negotiating committee had to consider the differing views of the membership and how it dealt with trade-offs, which included accepting recommendations and advice from the old executive committee. He informed the membership of guiding principles the negotiating committee used to make its decisions. Dr. Farthing spoke of the bargaining history with the Employer and emphasized that the parties had to keep in mind the College as a whole. He said that he thought the agreement was the best that could be obtained at this time and that there were some good mechanisms in it to achieve further change. He unequivocally told the membership that the negotiating committee recommended ratification of the tentative collective agreement.

[25] The two remaining members of the new executive committee spoke against the seniority and job security provisions in the tentative collective agreement as they affected sessional lecturers, although each indicated that they spoke as an individual member and not as a member of the executive committee. It was raised by other members that a change in language intended to extend the concept of academic freedom

to the librarian had the unintended result of taking academic freedom away from the sessional lecturers. Enrollment numbers for the College were known to be down by this time and there was resulting concern expressed about the trade-offs made with respect to job security. By secret ballot, the members attending the meeting voted against ratification of the tentative collective agreement. This was the first time that a recommended tentative collective agreement had not been ratified by the Union's membership.

[26] By letter dated September 17, 2007 the Union advised the Employer that the agreement was not ratified and asked that the negotiating committees reconvene. On October 9, 2007 the Employer responded that it felt the Union had committed "an unfair labour practice in failing to present the Collective Agreement to its membership as a genuinely negotiated settlement with the compromises that that implies." The Employer added that "The failure to do so is, I believe, a breach of the duty to negotiate in good faith and use reasonable efforts to conclude a Collective Agreement." The Employer asked the Union to redo the vote or the Employer would file an unfair labour practice application. The Union replied that it would not redo the ratification vote and asked the Employer to reconsider the Union's request to reconvene the negotiations. The Employer would not and filed this application instead.

Relevant statutory provisions:

> *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;

. . .

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 any thing for the purpose of rectifying a violation of this Act, the regulations or a decision of the board;

. . .

11(2) It shall be an unfair labour practice for any employee, trade union or any other person:

(c) to fail or refuse to bargain collectively with the employer in respect of employees in an appropriate unit where a majority of the employees have selected or designated the trade union as their representative for the purpose of bargaining collectively;

Employer's arguments:

[27] In addition to his argument at the hearing, counsel for the Employer filed a written argument, which the Board has considered.

[28] The Employer's counsel portrayed this situation as a "crisis" in collective bargaining as the failure to ratify had been characterized in previous decisions of the Board. The Employer argued that the Union failed to meet its duty to bargain by failing to recommend the tentative collective agreement for ratification by its members and/or by failing to give its negotiating committee a proper or sufficient mandate to reach a collective agreement.

[29] The Employer took the position that part of the duty to bargain in good faith that the *Act* imposes on the Union is the duty to use reasonable efforts to conclude a collective agreement, which includes the Union recommending ratification to its members. In this case, the Employer said, the tentative agreement was not ratified by the Union's membership because the executive committee did not fairly present the tentative agreement to the Union's membership as the product of collective bargaining. The executive committee first tried to reopen the agreement and, when that failed, reluctantly passed the tentative agreement to the membership for ratification, while at the same time expressing the concerns it had about the agreement. The executive committee used disparaging language such as "cogs in a wheel" in expressing its concerns. At the ratification meeting, two members of the executive committee spoke against the agreement. The Employer said that it was entitled to rely on the leadership of the Union to support the negotiating committee and that the negotiating committee's agreement to recommend ratification extended to bind the executive committee. The Employer added that, in troublesome areas of a collective agreement, the only way to get an agreement is if the leadership backs the negotiators.

[30] In addition and/or in the alternative, the Employer argued that the Union's duty to bargain in good faith included the Union giving its negotiating committee the authority and mandate to bind the Union to an agreement that would have a reasonable chance of ratification. If a tentative collective agreement was not ratified, then an inference that could be drawn is that the Union's negotiating committee did not have the proper mandate. If the Union had given the proper mandate to its negotiators, it had a duty to support them in the ratification process. In this case, the Employer argued, the Union had not given the negotiating committee the proper mandate because the executive committee sought to backtrack on matters that the negotiating committee had agreed to, and this constituted a breach of the duty to bargain. New members of the executive committee should not be allowed to affect bargaining, otherwise a deal would never be concluded. Once a compromise has been made on an issue to reach a tentative agreement, new members cannot renege on the compromise made.

[31] The Employer took the position that the fundamental problem is that now the bottom line of the Employer has been revealed to the Union, without a collective bargaining agreement being concluded. The Employer asked the Board to deem the

collective agreement in force because there would not be a fair revote in the face of continuing opposition by the executive committee. Alternatively, the Employer requested a revote with conditions that would minimize the executive committee's opposition to ratification.

[32] Counsel for the Employer referred the Board to *Saskatchewan Association of Health Organizations v. Health Sciences Association of Saskatchewan*, [2002] Sask. L.R.B.R. 378, LRB File Nos. 081-02 & 137-02, *Nav Canada and Public Service Alliance of Canada*, [1999] C.I.R.B. No. 13 (CIRB), *Saskatchewan Union of Nurses v. Regina Qu'Appelle Health Region*, [2007] Sask. L.R.B.R. ---, LRB File No. 133-05 (not yet reported), *Canadian Union of Public Employees v. Potashville School Division #80*, [2000] Sask. L.R.B.R. 231, LRB File No. 206-98 and *Saskatchewan Government Employees' Union v. Government of Saskatchewan*, [1993] 1st Quarter Sask. Labour Rep. 261, LRB File No. 264-92.

Union's arguments:

[33] Counsel for the Union also supplemented his argument at the hearing with a written argument, which the Board has considered.

[34] The Union argued that there was no evidence that any kind of a "crisis" had occurred because the tentative collective agreement was not ratified. The duty to bargain in good faith does not include the duty to ratify a tentative agreement and it is not an automatic unfair labour practice if there is no ratification. In this case, there was no evidence of an unfair labour practice. The Union's negotiating committee had the proper mandate to bargain on behalf of the Union. There were always complex issues and diversity, leading to difficulty in obtaining a pure consensus from the Union's membership. The evidence shows that the executive committee and negotiating committee tried to balance the diverse interests and make trade-offs to reach an agreement that they thought the Union's membership would ratify. But, there was never a guarantee that they would succeed in obtaining ratification.

[35] The Union took the position that the new executive committee's letter of July 13, 2007 was simply its attempt to improve the chances of ratification and was what

the Union always had done in this collegial environment. When the Employer refused to negotiate, the Union accepted this and proceeded with the ratification vote.

[36] The Union argued that the new executive committee's letter to the membership in August 2007 was a balanced treatment of issues that the Union always was aware of. It was acceptable as part of the free flow of information to which the membership was entitled in order to make an informed vote at the ratification meeting. It was an internal document of the Union.

[37] The Union admitted that it was true that the August 2007 letter did not recommend ratification but argued that this was not required by law. The agreement to recommend ratification was made by the negotiating committee and the negotiating committee honoured its agreement when Dr. Farthing recommended ratification to the executive committee and to the membership at the ratification meeting. There was nothing wrong with the new executive committee members speaking as individual members at the ratification meeting against the tentative agreement provisions. There was no negative inference to be drawn because the ratification meeting did not occur until September 2007. Other issues came up at the ratification meeting and the fluid environment meant that some things became more important than when they were bargained and these were the reasons that there was no ratification.

[38] The Union took the position that there was not enough evidence presented for the Board to make a decision on remedy and, therefore, there should be a subsequent hearing on remedy if the application succeeds.

[39] Counsel for the Union referred the Board to *Potashville School Division, supra, Canada Safeway Limited v. Retail, Wholesale and Department Store Union, Locals 496, 544, 950 and 955*, [1988] Winter Sask. Labour Rep. 57, LRB File Nos. 200-88, 201-88, 202-88 & 203-88 and *Communication and Electrical Workers of Canada v. Saskatchewan Telecommunications*, [1989] Spring Sask. Labour Rep. 68, LRB File No. 158-88.

Analysis:

[40] This case presents the Board with the relatively rare situation of an employer's accusation that a union is guilty of a failure to comply with its duty to bargain in good faith when a tentative collective agreement is not ratified by the membership of the union.

[41] The duty to bargain established by the *Act* is imposed on both employers and unions in the same words and these words were interpreted in *Potashville School Division, supra,* as follows at 241:

> *[32] In the context of bargaining for a first or renewal collective agreement, section 2(b) of the Act requires each party to fulfill at least three obligations:*
>
> *1) to negotiate in good faith with a view to concluding an agreement;*
> *2) to embody the terms of that agreement in writing; and*
> 3) *to execute the agreement.*

[42] In *University of Regina Faculty Association and Saskatchewan Indian Federated College* [1995] 1st Quarter Sask. Labour Rep. 139, LRB File No. 217-94, the Board made the following comments, at 150:

> *With the exception of that portion of Section 2(b) of the Act which refers to the negotiation of disputes and grievances, it is clear from this provision that the essential objective of the bargaining process is the conclusion and execution of a collective agreement. Though the Board may examine many facets of the conduct of the party charged with failing to comply with the duty to bargain, and may assess that conduct as a whole, the core question is whether there is anything to indicate an unwillingness or inability to strive toward this goal.*

[43] It is against this core question of whether there is anything to indicate an unwillingness or inability to strive toward the goal of concluding and executing a collective agreement that the Board has examined the conduct of the Union.

[44] The questions for the Board to answer are:

1. *Does the Union's duty to bargain in good faith include the duty to recommend the tentative collective agreement?*
2. *Does the Union's duty to bargain in good faith include the duty to ratify the tentative collective agreement?*
3. *Does the Union's duty to bargain in good faith impose any other obligations on the Union?*
4. *Who in the Union must carry out the Union's duty to bargain in good faith?*
5. *Did any of the Union's actions violate its duty to bargain in good faith and support a finding of an unfair labour practice under s. (11)(2)(c)?*
6. *If there is an unfair labour practice under s. (11)(2)(c), what is the appropriate remedy?*

Does the Union's duty to bargain in good faith include the duty to recommend the tentative collective agreement?

[45] An examination of "ratification" cases (*Office and Professional Employees International Union v. The Board of Education for the City of Hamilton* [1993] OLRB Rep. April 308 (OLRB); *Saskatchewan Indian Federated College, supra; Barber Industries v. Glass, Molders, Pottery, Plastics and Allied Workers International Union* (1990), 3 C.L.R.B.R. (2d) 288 (ALRB); *Potashville School Division, supra*; *Saskatchewan Association of Health Organizations v. Health Sciences Association of Saskatchewan* [2002] Sask. L.R.B.R. 392, LRB File Nos. 081-02 & 137-02; *Nav Canada, supra*; *Saskatchewan Telecommunications, supra*, and *DeMarco Health Care Inc. and Hospital Employees' Union*, BCLRB No. 237/97 (BCLRB)) convinces the Board that the duty to recommend a tentative collective agreement that is subject to ratification to those who will do the ratification is not a duty that is inherently included in the general duty to bargain in good faith. In all of these cases, it was necessary for an agreement to recommend ratification to be found as a fact before there was any imposition of such an obligation.

[46] For example, in *Saskatchewan Association of Health Organizations, supra,* the union's negotiating committee had agreed in writing to recommend ratification, but the

agreement was subject to a condition precedent that was to be fulfilled by the employer. The Board ruled that the union's duty to recommend ratification had not arisen because the condition precedent had not been met by the employer. The Board therefore found that the union did not commit an unfair labour practice by failing to recommend acceptance of the tentative agreement to its membership based on the words of the agreement purporting to give rise to the duty. (It should also be noted that, in that case, the union's constitution provided that "[t]he Executive Council had the sole responsibility for recommending acceptance or rejection of the terms of any Collective Agreement negotiation by the Negotiating Committee, to the members of the Collective Bargaining Unit…" The negotiating committee could in fact only make an agreement to recommend to the executive council).

[47] In *Nav Canada, supra,* the negotiating committees on both sides agreed in writing to recommend ratification, but one of the union's committee members did not actually sign the document. In addition, some other committee members had second thoughts about their promise to recommend. The Canada Industrial Relations Board found that the members of the union's negotiating committee were specifically obliged to recommend ratification because of their agreement to do so. (The CIRB also found that other actions of the negotiating committee members violated the general duty to bargain in good faith).

[48] Thus, the obligation to recommend ratification arises from an express agreement made between the parties to the collective agreement. Not every collective bargaining session results in a collective bargaining agreement that requires ratification. Each case depends on its facts as to whether either party has the power to conclude a binding agreement or whether the agreement is not binding until some form of ratification has occurred.

[49] If, as a fact in a particular case, ratification of the collective agreement is required, it is not automatic that someone must recommend that the agreement should be ratified. There will be occasions where a party who has been engaged in collective bargaining cannot attain an agreement that it is pleased with but feels it is the best that it can achieve in the circumstances. That party has a duty to present the agreement for ratification but is not required to persuade those who must ratify the agreement to ratify it.

[50] Whether or not the parties will recommend ratification is simply another issue for negotiation between the parties, if either or both parties wants such a recommendation from the other party to make ratification more likely. There is no legal basis for assuming a recommendation to ratify will occur simply because a collective agreement, subject to ratification, has been concluded. An obligation to recommend ratification can only be imposed if the party has expressly agreed to recommend ratification. Because the obligation or duty is grounded in an express agreement, the details and extent of the duty and actual individuals who are bound by the obligation will be determined by the terms of the agreement. These terms will hopefully be stated in most situations but, in some cases, may have to be implied from other facts.

[51] The Board finds that there was in fact an agreement made between the negotiating committees of the Union and the Employer to recommend the tentative collective agreement to their respective parties. This agreement was made verbally and was documented in the emails exchanged between Ms. Jeffrey and Dr. Farthing. By virtue of this agreement, the individuals on the Union's negotiating committee (by July 2007, only Dr. Farthing) were obligated to recommend ratification of the tentative bargaining agreement, as were the individuals on the Employer's negotiating committee.

[52] The evidence was that both parties knew that, according to the Union's constitution and bylaws, there would not be a binding collective bargaining agreement until the membership of the Union voted, by a majority of those attending a meeting called for the purpose, to ratify the agreement. Therefore, the Board finds that an implied term of the parties' agreement was that Dr. Farthing (*qua* negotiating committee) would recommend ratification at this meeting to the members present. The Board concludes that, on the evidence presented of what occurred at the ratification meeting, Dr. Farthing fulfilled his obligation to recommend ratification of the tentative collective agreement to the members of the Union attending the ratification meeting on September 17, 2007.

Does the Union's duty to bargain in good faith include the duty to ratify a tentative collective agreement?

[53] It is also well established by the foregoing "ratification" cases that a failure to ratify a tentative collective agreement does not necessarily constitute a breach of the

duty to bargain in good faith. Where collective agreements are bargained but are expressly subject to ratification by one or both parties, ratification is not simply an empty rubber-stamping of the agreement or an automatic approval process.

[54] If a party does not ratify a tentative collective agreement, it can simply mean that those with the power to ratify a collective agreement cannot agree with its terms. This eventuality is contemplated by both parties who negotiate an agreement subject to ratification.

[55] An example of a decision where the employer failed to ratify a collective agreement and was not guilty of an unfair labour practice is *The Board of Education for the City of Hamilton*, *supra*. In that case, there was a drastic change in government funding arrangements affecting the employer after a tentative agreement was bargained but before it was ratified by the employer. The Ontario Labour Relations Board ruled that the employer had a good reason to not ratify the tentative agreement and was therefore not engaging in a breach of its duty to bargain in good faith. The Ontario Board said, at 318 and 319:

> *61 There are quite a few OLRB cases which deal with the issue of "resiling" from positions agreed upon before, but they do not provide an unequivocal answer. Sometimes a party has been able to withdraw from its previous position, and sometimes it has not, depending upon the reasons for the purported change of heart, and whether the Board could conclude that the earlier position was a sham, or a later one a device to avoid entering into a collective agreement. . . . Each case turns on its own particular facts.*
>
> *62 In the instant case, it is important to note that the January 16 settlement expressly contemplates that it will be subject to ratification. Prima facie, the terms of that settlement mean what they say. The deal is provisional; and, OPEIU seems to have taken it for granted that its members retained a veto, and were entitled to reject the settlement if, for some reason or other, they found it wanting, It seems to be acknowledged that that is a political process in which the OPEIU membership had a free hand to disregard the recommendation of their negotiating team. There is nothing to suggest that the Board ever gave up a reciprocal right to reject, and there was no representation from its negotiating committee to this effect. Obviously, the Board, too, is a "political body" with responsibilities to its electorate and its own view of the employer's interests – especially in the wake of [a provincial]*

> *election, and in the light of the employer's escalating economic difficulties.*
>
> *63 …We do not suggest that an elected body has an entirely free hand to resile from its agreements or float with the political winds; however, it is entitled to exercise its own judgement in accordance with the negotiated terms of settlement.*
>
> *64 This is not a case in which there was a sudden, unexplained change of heart, nor was the Board's decision to reopen bargaining just a matter of "politics" or shifting alliances among the Board's members.*
>
> *65 …The change in circumstances was real and compelling.*

[56] In contrast, in *DeMarco Health Care Inc., supra,* the parties made a specific agreement that the employer could not refuse to ratify the agreement because funding was not received from the employer's funding agency. The employer did not ratify the collective agreement. The British Columbia Board agreed that, when a collective agreement is subject to ratification, it is a party's right to not ratify the agreement. However, in this case the reason for non-ratification was lack of funding and the employer lost the right to refuse to ratify for this reason because of the specific agreement the parties had made.

[57] The principle that a failure to ratify is not a breach of the duty to bargain in good faith if there is a good reason for the failure to ratify was confirmed in *Potashville School Division, supra.* In that case, the Board had no choice but to find that the Employer's failure to ratify was an unfair labour practice because the Employer did not provide any explanation for not ratifying.

[58] However, a failure to ratify can and has been found to be *evidence* that a party is bargaining in bad faith. If the circumstances of the non-ratification prove that the negotiating committee of a party was not given a full and sufficient mandate to conclude a collective agreement (subject to ratification), then the failure to give the proper mandate to the negotiating committee (not the failure to ratify) is a breach of the duty to bargain in good faith (*Saskatchewan Indian Federated College, supra; Barber Industries, supra*).

[59] Or, the failure to ratify can be one more act of a party who never had the intention to bargain in good faith to conclude and execute a collective agreement. In such

a case, it is not the failure to ratify but the proven lack of intention to bargain in good faith that is the basis of the unfair labour practice. As noted in *Barber Industries, supra*, at 297 "[a]n 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" both of which could lead to the conclusion that the party was bargaining in bad faith.

[60] All these cases stress, and the Board has often said, that there is no template for the finding of a failure to negotiate in good faith toward the conclusion and execution of a collective agreement. In all cases, the specific facts must be examined to uncover whether bad faith bargaining can be inferred or not.

[61] When the failure to ratify is on the union's side in the normal course of events, there is generally less of an inference to be drawn from the failure to ratify itself that the union is engaging in bad faith bargaining. As was said in *The Board of Education for the City of Hamilton, supra,* it is usually taken for granted that the members of a union retain a veto and are entitled to reject a tentative collective agreement if, for some reason or other, they find it wanting. There is usually little ability for a union negotiating committee to guarantee the outcome of the democratic process of ratification and this ability decreases the larger and/or the more diverse the union's membership is.

[62] In this case, there was evidence that the membership of the Union is diverse and there are various job classifications at the College. The members' interests in such things as seniority and job security are varied because they hold different classifications and positions. Reaching a consensus among the members is sometimes not possible. The Union's negotiating committee clearly had the proper mandate from the executive committee during the bargaining process to conclude a collective agreement and had the power to make all the decisions required to achieve that goal. The negotiating committee clearly intended to bargain in good faith because it did conclude a tentative collective agreement. The Union's negotiating committee did the best it could to agree with the Employer on a collective agreement that the Union's membership would ratify. The evidence of criticism of the tentative collective agreement at the ratification meeting included comments about the seniority issue, as well as a fear that academic freedom was being denied to sessional lecturers. There was also a change in priorities for members in September 2007 because they had just discovered that the College's

enrollment had decreased. With this evidence, it is not possible for the Board to draw the inference that the failure to ratify the tentative agreement was in fact evidence that the Union was not bargaining in good faith to conclude a collective agreement.

Does the Union's duty to bargain in good faith impose any other obligations on the Union?

[63] Again, there cannot be a template imposed to apply in all cases as to what constitutes bargaining in good faith. In this case, the Board was faced with the specific fact situation where the Union's negotiating committee was given the proper mandate by the executive committee to conclude a collective agreement with the Employer, subject to ratification. There was a close relationship between the negotiating committee and executive committee, whereby the executive committee was aware of and approved of what the negotiating committee was doing. The negotiating committee stayed within its mandate. It bargained a collective agreement that it felt would be ratified by the Union's members and that it agreed to recommend for ratification to the Union's members. After bargaining concluded but before ratification, the individuals on the executive committee changed and the new executive committee thereafter withdrew its support for the tentative collective agreement.

[64] In such a case, it is clear in the *Act* and the cases interpreting the duty to bargain in good faith (i.e. *Potashville School Division, supra; Saskatchewan Indian Federated College, supra, Nav Canada, supra, Saskatchewan Telecommunications, supra*), that the execution of the collective agreement is an integral part of the duty. The situation where, according a union's constitution and/or bylaws, the execution of a collective agreement cannot happen until members have ratified the collective agreement has not been made an exception in the *Act* to the obligation to execute a collective agreement. The concept of ratification of the collective agreement by either party is not referred to in the *Act.* As there is a duty imposed by the *Act* on both parties to use reasonable efforts to conclude a collective agreement, there is also a duty imposed by the *Act* on both parties to use reasonable efforts to execute a collective agreement.

[65] What constitutes reasonable efforts by a union to execute a collective agreement, when ratification is required, will depend in the circumstances of each case, having regard to the "core question" of whether the union's actions indicate an

unwillingness or inability to execute the collective agreement. In *Saskatchewan Telecommunications, supra,* the Board said at 70 that "[t]he union therefore had an obligation to make every reasonable effort to conclude the collective bargaining agreement by having it ratified and executed." In the case before us, the Union's negotiating committee, with a mandate from and in consultation with the old executive committee, bargained an agreement that the negotiating committee was content to recommend for ratification. The Board finds that, at a minimum, in order for the Union to show a willingness and ability to execute the collective agreement, it must forward the tentative collective agreement for ratification and it must not actively encourage members to refuse to ratify.

[66] In such a case, there is a difference between informing members of the provisions of a tentative collective agreement in order that they may make an informed decision and actively encouraging members to refuse to ratify. Informing members can include advising of both the negative and positive aspects and truthfully answering questions about both. It will always require an assessment by the Board, based on all of the unique facts of each case, as to whether or not the union went further than merely informing members and actively encouraged members to refuse to ratify.

[67] This position on the Union's duty to bargain in good faith may appear to be contrary to the position taken by the Board in *Saskatchewan Association of Health Organizations, supra.* In that case, where a condition precedent for the ratification recommendation was not met by the Employer, the Board said at 410:

> *At that stage, the proviso having not been fulfilled by the delivery of the two reports, HSAS was entitled to recommend rejection of the MOS [tentative collective agreement] to its membership. The contingency for making a positive recommendation was not met and HSAS was free, in a collective bargaining sense, to respond accordingly.*

[68] However, *Saskatchewan Association of Health Organizations* was a situation where the negotiating committee was not recommending ratification. The specific issue being considered by the Board was whether the union had bargained in bad faith by failing to recommend acceptance of the tentative agreement. The Board's comments in the instant case do not apply to a situation where there is a tentative

collective agreement that is not being recommended for ratification. Rather, in this case the Board is determining the parameters of bad faith bargaining where the negotiating committee recommended ratification with the acquiescence of the old executive committee, but the new executive committee did not agree.

Who in the Union must carry out the Union's duty to bargain in good faith?

[69] In *Saskatchewan Indian Federated College*, *supra*, the Board made the following comment 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.*

[70] Relying on this, the Board finds that there is a corresponding duty on the Union itself, not only on its negotiating committee, to use reasonable efforts to conclude and execute a collective agreement. Again, it will always be a question of analyzing the facts in each particular case to determine which individuals are "the union" in this context. It will be whoever is the "directing mind" of the union in the task of negotiating collective agreements as opposed to the entire membership as a whole (unless it is the entire membership who does direct the bargaining).

[71] In this case, the constitution and bylaws of the Union put all of the decision making power to manage and carry on business on behalf of the Union in the hands of the executive committee, including the power to bargain collective agreements. The old executive committee appointed a negotiating committee as provided in the Union's constitution and bylaws. The negotiating committee at all times consisted of the pre-July 1, 2007 president of the Union and at least one other member who was not on the old executive committee. The post-July 1, 2007 president of the Union was a member of the old executive committee and participated in its consultations with the negotiating committee. She also was on the negotiating committee for a brief period. As required by the constitution and bylaws, the negotiating committee was in regular and constant contact with the old executive committee for advice and direction. The negotiating committee followed that advice and direction except in specific instances where the old

executive committee gave the negotiating committee the authority to make the decisions required to reach a collective agreement. Dr. Farthing of the negotiating committee became a member of the new executive committee. Because of this close relationship between the two committees and the powers of the executive committee, it is the Board's opinion that the executive committee, as well as the negotiating committee, was bound by the obligation to bargain collectively with the Employer. Both committees therefore had the included duty to use all reasonable efforts to execute the collective agreement.

Did any of the Union's actions violate its duty to bargain in good faith and support a finding by the Board of an unfair labour practice under s. (11)(2)(c)?

[72] The Board finds that the Union, through both its old executive committee and negotiating committee, met its duty to bargain in good faith up to and including the conclusion of the tentative collective agreement on July 4, 2007.

[73] It is the actions of the new executive committee that lead the Board to conclude that the Union was guilty of bargaining in bad faith because it did not use all reasonable efforts to execute the tentative collective agreement.

[74] The July 13, 2007 letter to the Employer stating that "the Executive Committee cannot forward this version of the Agreement to our members" was a clear indication that the new executive committee did not like the tentative agreement for the reasons specified in the letter to the extent that it was not going to forward it to the members for ratification. It was an express statement by the new executive committee that it was unwilling to take any reasonable steps towards executing the tentative collective agreement because it objected to several provisions. It refers to a proposed clause as being "unacceptable." The new executive committee, instead of making reasonable efforts to have the tentative agreement ratified so that it could be executed by the Union, demanded changes to the tentative agreement. It stated that it would only take the reasonable step of forwarding the tentative collective agreement to the membership for ratification if the Employer agreed to the new executive committee's new proposals.

[75] When the Employer refused to make the changes that the new executive committee demanded, the new executive committee obtained legal advice that it must submit the agreement for ratification (and thus avoid breaching its duty to bargain in good

faith by resiling on the tentative agreement and by refusing to send it to the members for ratification). However, there was no evidence to indicate any change to the new executive committee's dislike of the tentative collective agreement and its unwillingness to execute it.

[76] In anticipation of the ratification meeting, the new executive committee communicated with each member in August 2007 about the changes in the new collective agreement, which was correct and necessary to ensure a knowledgeable and informed membership at the ratification vote. However, the new executive committee went further than giving neutral information about the collective agreement; it also stated in detail what it did not like about certain parts of the tentative agreement. It made only negative comments under the guise of expressing "concerns." It did not balance these "concerns" with any justification for the provisions or the decisions that the negotiating committee made. With respect to the main "concern" about seniority, the evidence was that there was an explicit trade-off made by the Union whereby it agreed to the Employer's proposal because it had received a concession in a related clause. There was no mention of that or any other trade-offs in the communication from the new executive committee to the members of the Union.

[77] The new executive committee told the Union's members that it *had* to forward the agreement for ratification, regardless of the reasons why the new executive committee did not like the agreement. This left the impression that, if the new executive committee had its way, the tentative collective agreement would not be executed.

[78] The new executive committee used language that was designed to inflame the members' opinion against the tentative agreement such as:

> *…Administration failed to accept the previous formula for deciding a fair salary for CSF's… much talk on the part of the Administration of…the "overly generous" settlements for CSF's in the 2002-2005 Agreement…*
>
> *It seems that the Dean should have to be required to produce some evidence of the conflict of interest before an academic staff member is require to respond to questions…*

> *There is a concern here about job security for our sessional faculty and for providing some protection for academic freedom for sessional faculty…*
>
> *Generally these two clauses are concern, not only because they treat sessional faculty as easily replaceable cogs in the machine…*

[79] There was reference to a problem that had not even occurred in this round of bargaining, which was "[I]f we accept the changes in 5.1.10.8., we have given grounds for changing the wording in 5.1.11.8 . . . ."

[80] The justification given by Dr. Beavis and Dr. Farthing for the letter of August 2007 was that it was intended to foster debate. However, the Board finds that the language shows that it actually was intended to foster only criticism of the tentative agreement, in an attempt to prevent ratification of the agreement. One important factor in the Board's decision is the evidence presented about the membership of the Union. With the exception of one librarian, all members are academic teachers. All are intelligent and knowledgeable about their working conditions and their particular needs with respect to the same, depending on their particular job status. This diversity in job status has always resulted in a membership that is not unanimous on various work related issues. This is a membership capable of critical analyses of the collective agreement and capable of expressing opinions. While in some unions the membership may not be adept at critical thinking and debate and may therefore need some help from the leadership to raise possible issues, both pro and con, on important provisions to ensure that the membership knows what it voting to ratify, this is not one of those unions. It would have been sufficient for the new executive committee to stop at the explanation of changes to the collective agreement in the August 2007 communication with the members. The fact that the new executive committee went further and listed all of its own problems with specific provisions of the new agreement (without stating corresponding "pros") shows that the new executive committee was trying to influence the membership to its point of view that the tentative collective agreement should not be ratified and, therefore, should not be executed. If, in the words of Dr. Farthing, the intent of the communication was to "corral debate," the words of the communication corralled debate into only the criticism of specific provisions highlighted by the new executive committee.

[81] Finally, two of the four members of the new executive committee spoke at the meeting against ratification of the collective agreement. The one member who spoke in favour was on the negotiating committee and was complying with the negotiating committee's promise to recommend ratification. Even though the two individuals said they were not speaking as members of the new executive committee, neither they nor anyone else spoke positively about the tentative agreement on behalf of the new executive committee. While the Board has found that only the negotiating committee had a duty to *recommend* the tentative agreement, the new executive committee did nothing to alleviate its August 2007 written attempt to discourage ratification at the ratification meeting. Two of the four members of the new executive committee did what they could to convince the members that they should not ratify the collective agreement in the situation where the third member had made an express agreement to recommend ratification and fourth member interpreted her duty as being a neutral chair of the meeting.

[82] All of these actions by the new executive committee fall within the ambit of the situation where resiling from positions previously agreed upon leads the Board to conclude that the party who resiled did not intend to conclude and execute a collective agreement. As contemplated in *The Board of Education of the City of Hamilton*, *supra*, at 319, there was a "sudden, unexplained [to the Employer] change of heart." The new executive committee's attempt to reopen bargaining was "just a matter of politics or shifting alliances among the [executive committee's] members." There was no change in circumstances that may have warranted the executive committee's reconsideration of the agreement it had collaborated in making. The issues raised were not new but rather had been thoroughly canvassed during bargaining.

[83] In the same way and for the same reasons the Board concludes that there was not a sufficient reason that would justify the new executive committee's encouragement of the Union's members to refuse to ratify the tentative collective agreement. There was no valid excuse for the new executive committee to fail to take all reasonable steps to execute the collective agreement.

[84] Therefore, the Board finds that the Union engaged in an unfair labour practice, within the meaning of s. 11(2)(c) of the *Act*, because the Union's executive committee did not make reasonable efforts to conclude a collective agreement and,

rather, actively encouraged the Union's members to refuse to ratify a tentative collective agreement.

If there is an unfair labour practice under s. (11)(2)(c), what is the appropriate remedy?

[85] The Board, having found that an unfair labour practice has been committed by the Union, will order the Union to cease and desist from engaging in this prohibited behaviour.

[86] The Board also orders the Union to post copies of these Reasons for Decision and the accompanying Order in the College's premises in a location where they are accessible to all of the Union's members and on its website.

[87] As to whether the Board will order any further remedy as requested by the Employer, the Board is mindful that the overriding goal of the Board in designing a remedy is to place the Employer in the position that it would have been but for the Union's unfair labour practice. A remedy should not be punitive but should support and foster healthy collective bargaining, which is an underlying purpose of the *Act* (see, for example, *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Loraas Disposal Services Ltd.*, [1998] Sask. L.R.B.R. 556, LRB File Nos. 208-97 to 227-97, 234-97 to 239-97).

[88] The evidence was that this was the first time that a tentative collective agreement recommended by the Union's negotiating committee was not ratified by the membership. The inference the Board was asked to draw by the Employer was that the actions of the new executive committee caused the membership to refuse to ratify.

[89] However, the members who attended the ratification meeting (and only those members) were given an alternative to the view expressed by the new executive committee. This alternative was presented by the negotiating committee which did give all the reasons as to why the tentative collective agreement should be ratified. In addition, the evidence of what else occurred at the ratification meeting showed that the members

themselves had at least one reason for refusing to ratify that was totally different from the reasons given by the new executive committee.

[90] The members attending and voting at the ratification meeting had the negative information presented by the new executive committee, the positive information presented by the negotiating committee, their own information and opinions and the information and opinions expressed by other members on which to base their vote on ratification.

[91] As stated above, the fact that the collective agreement was made subject to ratification shows that the parties were aware of the possibility, on the Union's side, that the majority of members voting would not approve the tentative agreement for their own reasons.

[92] Based on the evidence outlined above, it is not possible for the Board to conclude that the members would have ratified the tentative agreement but for the Union's unfair labour practice. Therefore, the Board is not prepared to deem the tentative collective agreement in force as requested by the Employer.

[93] It is not possible to restore the Employer to exactly the same position that it would have been in had the Union not committed the unfair labour practice. The damage has been done and cannot be undone with respect to the members who read the August 2007 letter and attended the September 15, 2007 ratification meeting. However, the Employer is entitled to have the tentative collective agreement properly placed before the Union's membership for ratification without an unfair labour practice being committed by the Union. The Board therefore orders the Union to conduct another ratification vote in accordance with its constitution and bylaws as soon as possible and, in any event, no later than 45 days after the date of the Board's Order accompanying these Reasons for Decision.

DATED at Regina, Saskatchewan, this 12 day of **February, 2008**.
LABOUR RELATIONS BOARD

Catherine M. Zuck, Q.C.
Vice-Chairperson