**AMALGAMATED TRANSIT UNION, LOCAL 615, Applicant v. CITY OF SASKATOON, Respondent**

LRB File No. 210-14; March 3, 2015
Vice-Chairperson, Steven D. Schiefner; Members: Dennis Perrin and Don Ewart

For the Applicant Union: Mr. Gary L. Bainbridge
For the Respondent Employer: Ms. Patricia J. Warwick & Ms. Christine G. Bogad

**Unfair Labour Practice – Application Pending – City and transit union engaged in collective bargaining – Parties unable to agree on changes to and funding for pension plan for members of Union – Parties reach impasse – City Council passes bylaw authorizing and directing changes to pension plan for members of transit union – Board finds that "application pending" statutory freeze was in place when bylaw was passed – Board reserves jurisdiction with respect to appropriate remedial relief arising out of enactment of bylaw during freeze – Changes to pension plan are approved by the trustees of the pension plan and registered with Superintendent of Pensions - Union seeks order directing the City to take necessary steps to reverse changes to pension plan for members of transit union – Board concludes that appropriate remedy is to read down impugned bylaw to the extent necessary to avoid conflict with provincial statute – Board concludes that impugned bylaw is of no force and effect for member of transit union during the period of the statutory freeze.**

***The Saskatchewan Employment Act*, ss. 6-103 & 104(2)(c).**

## REASONS FOR DECISION

**Background:**

**[1] Steven D. Schiefner, Vice-Chairperson:** The Saskatchewan Labour Relations Board (the "Board"), in Reasons for Decision issued on October 21, 2014 in these proceedings,[1] reserved jurisdiction with respect to:

[1] See: *Amalgamated Transit Union, Local 615 v. City of Saskatoon*, 2014 CanLII 63995 (SK LRB), LBR File No. 210-14.

> *(b) the appropriate remedial relief, if any, arising out of the enactment of Bylaw No. 9224 and changes made to the conditions of employment, benefits and privileges of members of the Applicant Union when an application was pending before the Board.*

**[2]** The Board heard submissions from the parties on this issue on January 30, 2015. Having done so, the Board issued the following remedial Order:

> ***ORDER***
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> ***HAVING*** *reserved jurisdiction on the appropriate remedy, if any, arising out of the enactment or Bylaw No. 9224, the General Superannuation Plan Amendment Bylaw, 2014 of the City of Saskatoon, and the changes made and/or authorized by that Bylaw to the conditions of employment, benefits and privileges of members of the Amalgamated Transit Union, Local 615 while an application was pending before the Saskatchewan Labour Relations Board, and having heard and read the submissions from the parties on the issue,* ***THE LABOUR RELATIONS BOARD HEREBY ORDERS:***
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> 1. ***THAT*** *Bylaw No. 9224, shall be of no force and effect for members of the Amalgamated Transit Union, Local 615 for the period of June 3, 2014 to October 3, 2014; and*
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> 2. ***THAT****, for the period of June 3, 2014 to October 3, 2014, members of the Amalgamated Transit Union, Local 615 shall be entitled to the benefits and privileges afforded by Bylaw No. 8226, being the General Superannuation Plan Bylaw, of the City of Saskatoon as that Bylaw existed prior to the enactment of Bylaw No. 9224.*
>
> ***LABOUR RELATIONS BOARD***

**[3]** These are our Reasons for issuing that particular Order.

**Facts:**

**[4]** The facts relevant to these proceedings are largely not in dispute, having already been found by the Board in our Decision dated October 21, 2014.

> *[5] The Union is the certified bargaining agent for all employees of the Transit Branch within the City of Saskatoon (with certain exceptions). The parties have a long history of labour relations and have entered into numerous collective agreements. The most recent agreement between the parties expired on December 31, 2012. The parties exchanged notices and commenced collective bargaining in October of 2013. Although the parties have met on numerous occasions, they have been unable to agree on the terms of a new collective agreement. The primary issues in contention between the parties are changes to, and funding for, the member's pension plan.*

*[6] By way of background, members of the Union, together with eight (8) other unions and/or associations representing City employees, are included within the City's General Superannuation Plan. The particulars of this pension plan are currently set forth in Bylaw No. 8226 of the City of Saskatoon, being The City of Saskatoon General Superannuation Plan Bylaw, 2003. A recent valuation conducted on the City's General Superannuation Plan found the plan to be significantly under-funded. Although the Union now disputes the accuracy of and assumptions contain in the valuation report, changes to and funding for the City's pension plans became the central feature of collective bargaining with all of the City's unions/associations, including the Union. This particular issue was of sufficient import that all unions/associations agreed to bargain with the City at a common table in an effort to achieve common agreements on these important issues. The result of these negotiations was memorandums of agreement being signed between the City and eight (8) of the nine (9) unions/associations.*

*[7] While the other unions/associations all agreed to a pension and wage package proposed by the City, the Union did not. The members of the Union have repeatedly voted against acceptance of various versions of the City's offer. The parties have attempted to negotiate a resolution but have been unable to do so. They have utilized the services of a conciliator without success. The City has made two (2) final offers, both of which have been voted down by the membership of the Union. Simply put, the parties are at an impasse and have been at an impasse for months.*

. . .

*[15] On May 7, 2014, the City proposed a final offer, which was rejected by the membership of the Union on May 9, 2014. In May of 2014, the City requested the assistance of a conciliator. Conciliation took place in June of 2014. However, no agreement was achieved by the parties. Thereafter, the City tabled an enhanced final offer and applied to this Board for a vote on its enhanced final offer. The vote was conducted on August 15, 2014 but was again rejected by the membership of the Union.*

*[16] On Thursday, September 18, 2014, the City served the Union with notice of its intention to lock out the Union's members (excluding those members specified by the parties in their essential services agreements pursuant to The Public Services Essential Services Act, S.S. 2008, c.P-42.2) commencing at 10:00 pm on Saturday, September 20, 2014 if the parties remained at impasse. Thereafter, the parties again engaged in collective bargaining with the assistance of a conciliator. However, the parties were again unable to resolve their differences.*

*[17] On Saturday, September 20, 2014 at 10:00 pm, the City locked out the non-essential membership of the Union from the workplace affecting some 350 employees. On Monday, September 22, 2014, a special meeting of the City's elected representatives (City Council) was held to consider changes to Bylaw No. 8226, The City of Saskatoon General Superannuation Plan Bylaw, 2003. Bylaw No. 8226 continues and governs the pension plan for all of City employees, including those employees who are members of the Union. The specific changes were set forth in Bylaw No. 9224, The City of Saskatoon General Superannuation Plan Amendment Bylaw, 2014. On September 22, 2014, Bylaw No. 9224 was passed by City Council.*

**[5]** In this Board's decision dated October 21, 2015, this Board also found that an "application" within the meaning of s. 6-111(a) of *The Saskatchewan Employment Act* was pending before the Board commencing on June 3, 2014 and continuing until October 3, 2014. The Board found that this pending application invoked the "*application pending*" statutory freeze and that this freeze was in effect when the City of Saskatoon gave notice of its intention to lockout members of the Transit Union and when it subsequently locked out those members. As a consequence, the Board found both of these actions to be unlawful. The City of Saskatoon was ordered by the Board to cease and desist from it lockout of members of the Amalgamated Transit Union, Local 615 (the "Transit Union") and to refrain from declaring another lockout until such time as it had again complied with s. 6-34 of *The Saskatchewan Employment Act*. In addition, City of Saskatoon was ordered by the Board to pay compensation to the members of the Transit Union for monetary loss suffered while the "*application pending*" statutory freeze was in effect; being the period from September 20, 2014 until October 3, 2014.

**[6]** In addition (and of particular significance to these proceedings), the Board also found that the "*application pending*" statutory freeze was in effect when the City of Saskatoon's elected representatives considered and passed Bylaw No. 9224. Although the Board did not grant any remedial relief with respect to the passage of this Bylaw at that time, the Board was satisfied that the purpose (if not effect) of the Bylaw was to make changes to the conditions of employment, benefits and privileges of members of the Transit Union. As indicated, the Board reserved jurisdiction on the issue of the appropriate remedial relief in its October 21, 2014 Decision and exercised that jurisdiction after hearing from the parties on January 30, 2015.

**[7]** Finally, it should be noted that, following its passage and approval by the Trustees of the City's Pension Plans, a copy of Bylaw No. 9224 was filed with the Superintendent of Pensions for the Financial and Consumer Affairs Authority of the Province of Saskatchewan in accordance with the requirements of *The Pension Benefits Act, 1992*, S.S. 1992, c. P-6.001. Following its review by that agency, Bylaw No. 9224 was registered pursuant to *The Pension Benefits Act, 1991* on or about October 29, 2014.

**Relevant statutory provision:**

**[8]** Relevant provisions of *The Saskatchewan Employment Act* include the following:

> ***6-103*** *(1) Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed on it by this Act or that are incidental to the attainment of the purposes of this Act.*
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> *(2) Without limiting the generality of subsection (1), the board may do all or any of the following:*
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> *(a) conduct any investigation, inquiry or hearing that the board considers appropriate;*
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> *(b) make orders requiring compliance with:*
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> *(i) this Part;*
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> *(ii) any regulations made pursuant to this Part; or*
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> *(iii) any board decision respecting any matter before the board;*
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> *(c) make any orders that are ancillary to the relief requested if the board considers that the orders are necessary or appropriate to attain the purposes of this Act;*
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> *(d) make an interim order or decision pending the making of a final order or decision.*
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> . . .
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> ***6-104****(2)In addition to any other powers given to the board pursuant to this Part, the board may make orders:*
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> . . .
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> *(c) requiring any person to do any of the following:*
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> *(i) to refrain from contravening this Part, the regulations made pursuant to this Part or an order or decision of the board or from engaging in any unfair labour practice;*
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> *(ii) to do any thing for the purpose of rectifying a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board;*

**Applicant Union's arguments:**

**[9]** In argument, the Transit Union took the position that, in light of this Board's finding that Bylaw No. 9224 was enacted by City Council during the period of the statutory freeze, the Board's remedial relief must put its members in the position they would have enjoyed had the violation not occurred. To which end, the Transit Union sought an Order that the City of Saskatoon be directed by this Board to take such steps as may be necessary to reverse any changes that were made to the pension plans of members of the Transit Union by means of Bylaw No. 9224. The Transit Union argued that this Board need only direct the outcome it

desired and then leave it up to the City of Saskatoon to choose the means by which that outcome would be achieved, much as the Board does when directing the reinstatement of an employee found to have been unlawfully terminated in contravention of *The Saskatchewan Employment Act*.

**[10]** Simply put, the Transit Union argued that, in light of the legislative prohibition against making changes to the conditions of employment, benefits and privileges during the period of a statutory freeze, and in the light of the Board's finding that the City violated that prohibition in enacting Bylaw No. 9224, the presumed remedy logically must be to direct the City to reverse those changes. In this regard, the Transit Union noted that the City's elected representatives clearly have the authority and ability to amend or rescind Bylaw No. 9224 and to enact a new Bylaw. The Transit Union disagreed that damages would have been an appropriate remedy because, in the Union's view, the more appropriate remedy would have been to simply direct that the offending actions are reversed. The Transit Union took the position that doing so would most accurately place its members in the position they would have enjoyed had the City not violated the "*application pending*" statutory freeze.

**[11]** Finally, the Transit Union relied on the decision of the Alberta Labour Relations Board in *Health Sciences Association of Alberta v. Calgary General Hospital et. al.*, [1991] Alta. L.R.B.R. 277, (1992) C.L.R.B.R. (2d) 1, Board File: GE-00538, as standing for the proposition that a municipal bylaw cannot take precedence over a statutory provision.

**[12]** Counsel on behalf of the Union filed written submissions, which we have read and for which we are thankful.

**The City's arguments:**

**[13]** The City of Saskatoon, on the other hand, took the position that the remedy desired by the Transit Union would have the practical effective of striking down or quashing a municipal bylaw. While acknowledging that we have broad remedial jurisdiction, the City argued that this Board does not have sufficient authority to declare a municipal bylaw to be invalid or to quash it. To which end, the City took the position that the Transit Union's desired remedial relief is neither appropriate nor within the jurisdiction of the Board to grant. Rather, the City argued that an award of damages was a more appropriate form of relief. The City argued that pensions, by definition, are really about money. As a consequence, money is the most appropriate means to

compensate member of the Transit Union for any injury they suffered as a consequence of the passage of Bylaw No. 9224 and/or any concomitant changes that may have occurred during the period of the statutory freeze to the conditions of employments, benefits and privileges previously enjoyed by members of the Transit Union. However, the City cautioned that it is not entirely clear that members of the Transit Union suffered any losses because during the period of the statutory freeze because of the changes authorized and directed by Bylaw No. 9224. To which end, the City noted that the freeze expired on October 3, 2014 and most of the changes contained therein were not effective until well after this period. Furthermore, the City noted that Bylaw No. 9224 was not registered with the Superintendent of Pensions until October 29, 2014.

**[14]** Finally, the City of Saskatoon cautioned the Board in granting the relief desired by the Transit Union because the City's pension plan applies to not only member of the Transit Union but also to members of the City's eight (8) other trade unions and associations. The City cautioned that quashing Bylaw No. 9224 could impact the rights and privileges enjoyed by these other employees.

**[15]** Counsel on behalf of the City filed a Brief of Law, which we have read and for which we are thankful.

**Analysis and Conclusion:**

**[16]** *The Saskatchewan Employment Act*, as did the previous *Trade Union Act*, grants wide remedial discretion to this Board. In fact, on its face, s. 6-104 of the *Act* permits this Board to order a party "*to do any thing for the purpose of rectifying a contravention*". Thus, it is clear that the legislature envisions a wide remedial role for the Board. Simply put, the Board has been generously granted both flexibility and discretion in fashioning appropriate remedial relief in event a violation or contravention is found to have occurred. Arguably, the legislature has done so to enable us to address the variety of circumstances that present themselves in the broad range of disputes that we are asked to adjudicate. However, notwithstanding the apparent broad scope of the authority granted to this Board, a review of this Board's jurisprudence illustrates that a number of guiding principles have been established by the Board in awarding remedial relief. In addition, a number of restrictions have been imposed by the Courts. See: *Amalgamated Transit Union, Local 588 v. Firstbus Canada Limited,* (2007) 145 C.L.R.B.R. (2d) 124, 2007 CanLII 68764 (SK LRB), [2007] Sask. L.R.B.R. 783, LRB File No. 082-07. In our opinion, the following restrictions and principles must guide our actions in granting remedial relief:

1. In fashioning and awarding remedial relief, the Board strives to rectify or counteract the labour relations consequences of the transgressions of an offending party. Simply put, the goal of the Board is to place an injured party, to the extent possible, in the position that they would have been but for the breach or violation of the *Act*. See: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Loraas Disposal Services Ltd*. [1998] Sask. L.R.B.R. 556, LRB File No. 208-97, 227-97 & 234-97 to 239-97.

2. Any remedial relief awarded by the Board must clearly fall within the scope of authority delegated to the Board by statute. See: *Royal Oak Mines Ltd. v. Canadian Labour Relations Board and Canadian Association of Smelter and Allied Workers*, Local 4, [1996] 1 S.C.R. 369, 1996 CanLII 220 (SCC).

3. There must be a rational connection between the breach, its consequences and the remedy imposed by the Board. See: *Royal Oak Mines, supra*.

4. Any remedy imposed by the Board should strive to foster and support healthy labour relations in the workplace. See: *Loraas Disposal Services, supra*.

5. The remedy must not be punitive in nature. See: *Royal Oak Mines, supra*.

6. The remedy must not infringe the *Canadian Charter of Rights and Freedoms*. For example, a remedy should not require a party to make statements that they do not wish to make. See: *Royal Oak Mines, supra*.

**[17]** With these principles and restrictions in mind, we turn to the appropriate remedy for members of the Transit Union flowing from the passage of Bylaw No. 9224 during the "*application pending*" statutory freeze. In this regard, it should be noted that in both our Order dated October 17, 2014 and our Reasons for Decision dated October 21, 2014, we concluded

that the statutory freeze was in effect during the period commencing on June 3, 2014 and continuing until October 3, 2014. We also concluded that the City of Saskatoon undertook a number of actions during this period in contravention of the restrictions set forth in s. 6-62(1)(l)(i) of *The Saskatchewan Employment Act*. It was our opinion that both the City's lockout notice and its actions in locking out members of the Transit Union were unlawful and we directed the City to cease and desist and to pay compensation for unlawfully locking out transit workers. The Transit Union took the position that a similar Order would be appropriate to remedy the City's unlawful actions in passing Bylaw No. 9224 during the statutory freeze. However, for a number of reasons, we were not persuaded that doing so would be appropriate.

**[18]** Firstly, Bylaw No. 9224 was enacted by elected officials acting in furtherance of authority delegated to them pursuant to *The Cities Act*, S.S. 2002, c. C-11.1. As such, it was a legislative action by duly elected officials and may not be struck down or quashed by this Board. In our opinion, striking down or quashing a municipal bylaw would require clear and express statutory authority; authority not found in s. 6-103 or 6-104 of *The Saskatchewan Employment Act*. While the Transit Union's desired remedy is not expressed in terms of striking down or quashing Bylaw No. 9224, the substantive effect of the remedy it seeks on behalf of its members is intended to achieve the same result. In this regard, we are loath to purport to do something indirectly (i.e.: by directing the City's elected officials to reverse its decision to enact Bylaw No. 9224) that we cannot do directly (namely, to strike down or quash the Bylaw).

**[19]** Secondly, when faced with conflicts between the provisions of a municipal bylaw and the provisions of *The Saskatchewan Employment Act*, the remedial jurisdiction of this Board is limited to reading down the impugned bylaw so as to avoid the conflict with the provincial legislation. The cardinal rule of municipal bylaws is that they are subject to the general laws of the realm and subordinate to provincial legislation. The principle of repugnancy, however, would direct this Board to only read down those specific provisions that are in conflict and further to do so only to the minimal extent necessary to avoid the conflict. In this regard, we note that Bylaw No. 9224 involved the pension benefits and privileges of all city employees, not just members of the Transit Union. The changes set forth in this Bylaw, which was an amendment to Bylaw No. 8225, being the General Superannuation Plan Bylaw of the City of Saskatoon, affected members of the Transit Union as well as thousands of other employees of the City. Although Bylaw No. 9224 was enacted during the statutory freeze, in our opinion, only those aspects of that bylaw that authorized or made changes to the pension benefits and privileges of members of the

Transit Bylaw were inconsistent with the prohibition set forth in s. 6-62(1)(l)(i) of *The Saskatchewan Employment Act*. In other words, Bylaw No. 9224 was not unlawful in its entirety; only those aspects of the Bylaw that authorized or made changes to the pension benefits and privileges of members of the Transit Union were in contravention of the *Act*.

**[20]** On the other hand, because Bylaw No. 9224 was enacted during the "*application pending*" statutory freeze, there is clearly a conflict between some aspects of that Bylaw and the provisions of *The Saskatchewan Employment*. In our opinion, the appropriate remedy to counteract this transgression is to read down that bylaw to the extent necessary to avoid the conflict. In this regard, we note that a similar action was taken by the Alberta Labour Relations Board in *Health Sciences Association of Alberta v. Calgary General Hospital, supra*, when faced with a conflict between a bylaw enacted by the City of Calgary and the duty to bargain set forth in the Alberta *Labour Relations Code*.

**[21]** Thirdly, the "*application pending*" statutory freeze is temporal and only applies while an application is pending before the Board. Simply put, s. 6-62(1)(l)(i) of *The Saskatchewan Employment Act* does not preclude an employer from threatening or making changes to the conditions of employment, benefits and privileges enjoyed by employees, it prevents an employer from doing so during a specific period of time. While the City has contravened this restriction, in fashioning the appropriate remedial relief for this transgression, there must be a rational connection between the breach, the consequences, and the remedy we impose. In our opinion, to maintain a rational connection between the breach and the consequences therefrom, our remedy must mirror the temporal limits of the statutory freeze; which commenced on June 3, 2014 and continued until October 3, 2014; and it must also mirror the injured party; namely, the members of the Transit Union.

**[22]** If we granted the remedy desired by the Transit Union, we risked extending the duration of the remedy well beyond the temporal limits of the freeze. By January 30, 2015, the freeze was over and, if we directed the City to reverse Bylaw No. 9224 at that time, the practical effect of doing so would have been to extend the duration of the remedy until such time as the City was able to enact a new bylaw (and have that bylaw approved by the Trustees of the City's Pension Plan and registered with the Superintendent of Pension). We would also risk interfering with those aspects of the Bylaw that are not in contravention of *The Saskatchewan Employment Act*. In our opinion, the more practical, if not more proportionate, remedy was to read down

Bylaw No. 9224 such that it had no force and effect for members of the Transit Union for the period of June 3, 2014 until October 3, 2014. In other words, notwithstanding the passage of Bylaw No. 9224 by City Council, notwithstanding the approval of the changes authorized and directed therein by the Trustees of the City's Pension Plan, and notwithstanding the registration of Bylaw No. 9224 with the Superintendent of Pensions, we Ordered that, for the period commencing on June 3, 2014 and continuing until October 3, 2014, the members of the Transit Union are entitled to the benefits and privileges afforded by Bylaw No. 8226, being the General Superannuation Plan Bylaw of the City of Saskatoon, as that Bylaw existed prior to the enactment of Bylaw No. 9224.

**[23]** Fourthly, in our opinion, this remedy is consistent with the compensation we imposed as a result of the City's unlawful actions in locking out members of the Transit Union during the statute freeze. The temporal limits of the monetary compensation contained in our Order of October 17, 2014 mirrored the temporal limits of the statutory freeze. While we also issued a cease and desist Order, we did so because the statutory freeze invalidated the City's notice of lockout. The cease and desist Order flowed from the invalidation of the City's notice of lockout; not from the lockout itself. By the time we heard the Union's application in LRB File No. 210-14, the statutory freeze had expired. At that point in time, the City's lockout was not unlawful because of the statutory freeze; it was unlawful because the City was no longer in compliance with s. 6-34 of *The Saskatchewan Employment Act*. Thus, the City was directed to cease the lockout and was enjoined from commencing a new lockout until such time as it had complied with s. 6-34 of the *Act*. The remedy imposed for unlawfully locking out members of the Transit Union while an application was pending before the Board was monetary compensation but that compensation was limited to the period of the statutory freeze.

**[24]** While there are also required notice provisions governing the passage of municipal bylaws, these are not requirements of *The Saskatchewan Employment Act;* they are requirements of *The Cities Act*. It was our opinion, that if there was a procedural defect in the enactment of Bylaw No. 9224 because of the "*application pending*" statutory freeze, this issue would be more properly resolved through an application pursuant to s. 320 of *The Cities Act*. Simply put, we felt it was important for the Board, as an administrative tribunal, to be respectful of the limits of our jurisdiction.

**[25]** For the foregoing reasons, we declined to grant the remedial relief desired by the Transit Union. Rather, we concluded that the appropriate remedy was to read down Bylaw No. 9224 to the extent necessary to avoid that Bylaw's conflict with the prohibitions contained in *The Saskatchewan Employment Act*. Specifically, we concluded that, for the period of that statutory freeze; being June 3, 2014 until October 3, 2014, members of the Transit Union were entitled to the pension benefits and privileges afforded by Bylaw No. 8226, being the General Superannuation Plan Bylaw of the City of Saskatoon as that bylaw existed prior to the enactment of Bylaw No. 9224.

**[26]** Board members Don Ewart and Dennis Perrin concur with these Reasons for Decision.

**DATED** at Regina, Saskatchewan, this **3rd** day of **March, 2015.**

**LABOUR RELATIONS BOARD**

Steven D. Schiefner,
Vice-Chairperson