Michael Beitel, Applicant v. Unifor, Local 1-S (Canada), Respondent Union and DirectWest Corporation, Respondent Employer

LRB File No. 222-14; January 16, 2015

Chairperson, Kenneth G. Love, Q.C.; sitting alone pursuant to Section 6-95(3) of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1

For the Applicant:	W.R. Waller
For the Respondent Union:	Adam Touet
For the Respondent Employer:	Will Egan

Duty of Fair Representation – Employee claims that Union failed to protect earned bonuses available under previous collective agreement in negotiations for a new collective agreement. Board reviews jurisprudence and finds that Union did not fail to properly represent employee.

Proper forum – Applicant argues that matter should be determined by Employment Standards Officer pursuant to provisions of the *Saskatchewan Employment Act* – Board reviews jurisdiction and determines that questions posed are not the same and that the Board is the proper forum to determine if Applicant had been properly represented.

Deferral to another forum – Board reviews it jurisdiction to defer to another forum – Board finds that deferral not appropriate in this case.

Duty of Fair Representation with respect to the collective bargaining process – Board confirms earlier decisions that held that Board had authority to review collective bargaining decisions taken by Union to ensure that those decisions did not violate the duty of fair representation. Board finds Union not to have breached the duty of fair representation insofar as its negotiation of a new collective agreement which adversely impacted the Applicant.

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love, Q.C., Chairperson:** Unifor, Local 1-S (Canada), (the "Union") is certified as the bargaining agent for a unit of employees of DirectWest Corporation (the "Employer"). Michael Beitel (the "Applicant") was an employee of the Employer engaged in the sale of telephone book advertising to customers of DirectWest, the publisher of telephone books in Saskatchewan.

[2] The Applicant brought this application pursuant to Section 6-59 of *The Saskatchewan Employment* Act (the "SEA") claiming that he had been discriminated against when the Union negotiated a new collective agreement which resulted in the elimination of bonus payments to which he claimed to be entitled.

[3] For the reasons that follow the application is dismissed.

Preliminary Application:

[4] At the commencement of the hearing, the Applicant requested that the Board adjourn this matter *sine die* in order to permit the question of compensation to be determined by the Employment Standards Branch of the Ministry of Labour Relations and Workplace Safety. The Applicant argued that this was the appropriate forum for determination of the amount claimed for wages due.

[5] The Employer and the Union objected to the requested adjournment on the basis that it had only been requested of them the day prior to the commencement of the hearing. They argued that the jurisdiction of the Board under Section 6-59 was restricted to a determination if the Union had acted arbitrarily, discriminatorily, or in bad faith.

[6] After consideration of the arguments, the Board denied the requested adjournment and proceeded with the hearing of the matter.

Facts:

[7] The Applicant was a Media Advisor-Major Accounts for the Employer. He had been employed with the Employer for 26 years, but determined to retire from his employment at the end of 2014.

[8] Prior to commencement of negotiations for a new collective bargaining agreement, the Employer and the Union recognized a need to make changes to the sales compensation paid to, among others, the Applicant. This was due to the erosion of the print advertising market by other social media forums, which was having a negative impact on sales revenues and sales commissions paid to those employees of the Employer engaged in advertising sales for the telephone directories.

[9] Discussions between the Union and the Employer regarding this issue commenced as early as April, 2011. Dave Kindred, one of the employees involved in those discussions, testified that there were a dozen or so separate meetings with respect to the issue. He testified that during the discussion period, the Union consulted with the sales group, including the Major Accounts group.

[10] Mr. Kindred testified that an agreement was reached as to how to proceed on October 26, 2013. He testified that they were trying to come up with something that worked, but didn't look at how it may impact individuals involved.

[11] The compensation scheme for those engaged in sales of advertising had been changed in 2002. Prior to that change, the compensation scheme provided for a small base compensation component. Additionally, there was a commission paid which was revenue based and which was paid out as soon as advertising was confirmed.

[12] In 2002, the compensation scheme was altered to allow payments to salespeople to correspond to review as received by the Employer. This scheme levelled the income peaks and valleys experienced under the scheme prior to 2002. One aspect of the new scheme adopted in 2002 is that there was a pre-payment of sales bonuses that rolled over from year to year with the result that employees who terminated their employment were not paid bonuses for their final year as those had been pre-paid in the previous year.

[13] Under the new scheme, which came into effect with the new collective agreement in 2014, there was an increase to the base salary component. Additionally, sales personnel were entitled to earn additional performance bonuses, 60% of which was not performance based. These bonuses were to be paid quarterly to provide a balanced income during a bad quarter, which could be made up for in subsequent quarters. Additionally, for 2014, the first two quarters bonus payments were guaranteed regardless of performance.

[14] Mr. Kindred described the benefits of the new agreement as being:

1. More stable for the employees with less risk;
2. Less stress on employees which allowed retention of those employees; and
3. The formula took into account potential negative impacts.

[15] Where the issue arose between the Union and the Applicant was with respect to one provision of the agreement which guaranteed Media Advisors-Major Accounts their earned compensation January 1, 2014 to December 31, 2014; for existing advisors who achieve 0% growth or higher for the 2013 calendar year. The Applicant did not reach this threshold in 2013.

[16] Meetings were held with sales representatives to review the proposed compensation scheme. A vote was conducted among the sales staff as to whether or not to approve the proposed compensation scheme. The proposed plan was accepted by the sales staff by a 72.7% vote in favour on October 31, 2013.

[17] On August 14, 2014, the Applicant wrote to the President and CEO of the Employer to advise him of his decision to retire at the end of the year (December 31, 2014) and also to request that he review the issue of compensation which he felt was due to him from 2013 under the old Collective Agreement.

[18] The Employer responded on September 2, 2014 noting that the compensation changes were implemented as a result of negotiations with the Union. The Employer suggested that he contact the Union.

[19] A copy of a grievance was not provided to us, but there were emails and text messages between the Applicant and the Union with respect to the filing of a grievance. On January 29, 2014 the Union advised the Applicant, in writing, that it would not proceed with a grievance on his behalf in respect of his claim for additional compensation.

[20] The Applicant then filed this complaint on October 6, 2014.

Relevant statutory provision:

[21] Relevant statutory provisions are as follows:

> ***6-59****(1)An employee who is or a former employee who was a member of the union has a right to be fairly represented by the union that is or was the employee's or former employee's bargaining agent with respect to the employee's or former employee's rights pursuant to a collective agreement or this Part.*
>
> *(2)Without restricting the generality of subsection (1), a union shall not act in a manner that is arbitrary, discriminatory or in bad faith in considering whether to represent or in representing an employee or former employee.*
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> *. . .*
>
> ***6-111****(1) With respect to any matter before it, the board has the power:*
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> *. . .*
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> *(l) to defer deciding any matter if the board considers that the matter could be resolved by mediation, conciliation or an alternative method of resolution;*

Applicant's arguments:

[22] The Applicant argued that the 2013 revenue bonus, which the Applicant claimed to be due to him, was "Earned Wages" pursuant to *The Labour Standards Act.*[1] In respect of this ground, the Applicant relied upon a decision by the Saskatchewan Court of Queen's Bench in *Maurer v. Frontier Peterbilt Sales Ltd.*[2]

[23] The Applicant also argued that the Union could not bargain away earned wages. In respect of this argument, the Applicant referenced s. 75 of *The Labour Standards Act*[3] and the Saskatchewan Court of Appeal decision in *Dominion Bridge Inc. v. Routledge.*[4]

[24] The Applicant argued that the Union owed a duty of fair representation to the Applicant during the negotiation of a collective agreement. In support, the Applicant cited the

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[1] R.S.S. 1978 c. S-15.1 now repealed and replaced by provisions in *The Saskatchewan Employment Act*, proclaimed in effect on April 29, 2014.
[2] [1996] 146 Sask. R. 100, 8 W.W.R. 193, S.J. No. 404
[3] As noted above, this statute was repealed and replaced by *The Saskatchewan Employment Act.*
[4] [1999] 177 Sask. R. 114, 7 W.W.R. 547, S.J. No. 215

Court of Queen's Bench decision in *Young v. U.M.W., Local 7606* and this Board's decision in *McEwan (Re:).*[5]

[25] The Applicant argued that the scope of the duty of fair representation encompassed the union's responsibility to abide by and protect member's rights pursuant to employment standards and human rights legislation. In support the Applicant cited *Halsbury's Laws of Canada*[6] and this Board's decision in *Petite (Re:).*[7]

[26] The Applicant also argued that the Board was not the appropriate forum for this matter and that the matter should be determined by a Labour Standards Officer pursuant to the *Labour Standards Act* (repealed and replaced by *The Saskatchewan Employment Act*). The Applicant argued that the essential nature of the dispute involved a dispute over wages which should be resolved under the *SEA*. In support, the Applicant again cited *Dominion Bridge Inc. v. Routledge.*[8]

Union's arguments:

[27] The Union denied that it had acted in a manner that was arbitrary, discriminatory or in bad faith insofar as its negotiation of the provisions of the new collective agreement. They further argued that the Applicant had failed to satisfy the onus upon the Applicant to demonstrate that the Union had been arbitrary, discriminatory or had acted in bad faith. The Union also argued that there was no negligence on the part of the Union in its actions, nor was there any evidence of malice, ill will, or dishonesty on their part.

[28] The Union acknowledged that the duty of fair representation applied insofar as negotiation of a collective agreement. However, it argued that the Board should be hesitant to second guess the policy and practical necessities of collective agreement bargaining, stressing that bargaining was not a one way street, and that both sides had to agree if a revised agreement was to be negotiated.

[29] In support of their position, the Union cited the Board's decision in *Natalie Owl v. SGEU.*[9]

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[5] [2007] CanLII 68751 (SKLRB), S.L.R.B.D. No. 17, 143 C.L.R.B.R. (2d) 253, LRB File No. 001-06
[6] Labour, IV.3(3)(b)(ii), HLA 324
[7] [2009] CanLII 27858 (SKLRB), LRB File No. 158-08
[8] [1999] 177 Sask. R. 114, 7 W.W.R. 547, S.J. No. 215
[9] [2014] CanLII 42401 (SKLRB), LRB File No. 345-13

Employer's arguments:

[30] The Employer argued that it was within the rights of the Union to negotiate changes to the remuneration for sales personnel. They argued that the Union did the right thing and that there was no valid claim by the Applicant that he had been dealt with in an arbitrary, discriminatory or bad faith manner.

[31] The Employer relied upon the Board's decision in *Lucyshyn v. Amalgamated Transit Union, Local 615.*[10]

Analysis and Decision:

What is the proper forum for this dispute?

[32] The Board has limited jurisdiction with respect to this application. The Applicant argues that the application should be determined by an Employment Standards Officer under the *SEA* but the Applicant has brought this application pursuant to Section 6-59 of the *SEA,* not under the employment standards provisions.

[33] This Board has no initial jurisdiction with respect to complaints concerning the employment standards provisions of the *SEA.* If, however, following a determination by an Employment Standards Officer, and an appeal to an adjudicator pursuant to Part IV of the *SEA*, the Board may ultimately acquire jurisdiction under Section 4-8 of the *SEA* as a result of an appeal on a question of law from the decision of an adjudicator. We are far from that situation.

[34] If an application were made regarding a wage claim, that claim would be between the applicant and his employer. The claim in this case is as between the Applicant and his Union based upon an allegation that he was not properly represented in respect of the negotiation of the provisions of the revised collective agreement.

[35] In *McNairn v. United Association of Journeymen and Apprentices of the Plumbing, Pipe Fitting Industry of the United States and Canada,*[11] Mr. Justice Cameron described the test for determination of the proper forum for the complaint as requiring the

[10] [2010] CanLII 15756 (SKLRB), LRB File No. 035-10
[11] [2004] CanLII SKCA 57

examination of the "essential character" of the dispute.[12] In *Floyd*, Bayda C.J. says at paragraph [2]:

> *[2] Our task is to determine the "essential character" of the dispute between [the parties]. In going about our task we are not to concern ourselves with labels or the manner in which the legal issues have been framed-in short with the packaging of the dispute. We must proceed on the basis of the facts surrounding the dispute….*

[36] More recently, there has been some judicial movement towards reducing the multiplicity of proceedings in relation to the same complaint. In *British Columbia Workers Compensation Board v. Figliola*[13] the Supreme Court of Canada reviewed a provision in the British Columbia *Human Rights Code*[14] which the Court found was aimed at reducing the prospect of multiplicity of proceedings. Madam Justice Abella says at para 34 – 38:

> *[34] At their heart, the foregoing doctrines exist to prevent unfairness by preventing "abuse of the decision-making process" (Danyluk, at para. 20; see also Garland, at para. 72, and Toronto (City), at para. 37). Their common underlying principles can be summarized as follows:*
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> - *It is in the interests of the public and the parties that the finality of a decision can be relied on (Danyluk, at para. 18; Boucher, at para. 35).*
> - *Respect for the finality of a judicial or administrative decision increases fairness and the integrity of the courts, administrative tribunals and the administration of justice; on the other hand, relitigation of issues that have been previously decided in an appropriate forum may undermine confidence in this fairness and integrity by creating inconsistent results and unnecessarily duplicative proceedings (Toronto (City), at paras. 38 and 51).*
> - *The method of challenging the validity or correctness of a judicial or administrative decision should be through the appeal or judicial review mechanisms that are intended by the legislature (Boucher, at para. 35; Danyluk, at para. 74).*
> - *Parties should not circumvent the appropriate review mechanism by using other forums to challenge a judicial or administrative decision (TeleZone, at para. 61;Boucher, at para. 35; Garland, at para. 72).*
> - *Avoiding unnecessary relitigation avoids an unnecessary expenditure of resources (Toronto (City), at paras. 37 and 51).*

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[12] See also the Court of Appeal's decision in *Floyd v. University Faculty Association et al.,* [1996] CanLII 3995 (SK CA)
[13] [2011 SCC 52 (CanLII), [2011] 3 S.C.R. 422
[14] R.S.B.C. 1996 c. 210

> *[35] These are the principles which underlie s. 27(1)(f). Singly and together, they are a rebuke to the theory that access to justice means serial access to multiple forums, or that more adjudication necessarily means more justice.*
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> *[36] Read as a whole, s. 27(1)(f) does not codify the actual doctrines or their technical explications, it embraces their underlying principles in pursuit of finality, fairness, and the integrity of the justice system by preventing unnecessary inconsistency, multiplicity and delay. That means the Tribunal should be guided less by precise doctrinal catechisms and more by the goals of the fairness of finality in decision-making and the avoidance of the relitigation of issues already decided by a decision-maker with the authority to resolve them. Justice is enhanced by protecting the expectation that parties will not be subjected to the relitigation in a different forum of matters they thought had been conclusively resolved. Forum shopping for a different and better result can be dressed up in many attractive adjectives, but fairness is not among them.*
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> *[37] Relying on these underlying principles leads to the Tribunal asking itself whether there was concurrent jurisdiction to decide human rights issues; whether the previously decided legal issue was essentially the same as what is being complained of to the Tribunal; and whether there was an opportunity for the complainants or their privies to know the case to be met and have the chance to meet it, regardless of how closely the previous process procedurally mirrored the one the Tribunal prefers or uses itself. All of these questions go to determining whether the substance of a complaint has been "appropriately dealt with". At the end of the day, it is really a question of whether it makes sense to expend public and private resources on the relitigation of what is essentially the same dispute.*
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> *[38] What I do not see s. 27(1)(f) as representing is a statutory invitation either to "judicially review" another tribunal's decision, or to reconsider a legitimately decided issue in order to explore whether it might yield a different outcome. The section is oriented instead towards creating territorial respect among neighbouring tribunals, including respect for their right to have their own vertical lines of review protected from lateral adjudicative poaching. When an adjudicative body decides an issue within its jurisdiction, it and the parties who participated in the process are entitled to assume that, subject to appellate or judicial review, its decision will not only be final, it will be treated as such by other adjudicative bodies. The procedural or substantive correctness of the previous proceeding is not meant to be bait for another tribunal with a concurrent mandate.*

[37] Our Court of Appeal adopted this reasoning in its decision in *University of Saskatchewan v. Peng and Saskatchewan Human Rights Commission.*[15] At paragraph [13], Klebec C.J., summarized the considerations and questions which a tribunal must consider as a result of *Figliola* as follows:

> *(a) whether the other tribunal or tribunals have concurrent jurisdiction to decide human rights issues;*
>
> *(b) whether the legal issue decided by the other tribunal is essentially the same as the one the complainant has raised before the current tribunal; and*

[15] [2014] SKCA 98 (CanLII)

> *(c) whether, in the prior proceeding, the complainant had an opportunity to know the case to be met and an opportunity to meet it, without regard to how closely the earlier process by another tribunal mirrored the process the tribunal prefers or the one it uses.*

[38] Utilizing either the "essential character" test from *McNairn* or the considerations required by *Figliola* yields the same result in this case. The "essential character" of this dispute, as characterized by the Applicant is a claim for wages which he submits are due to him. The secondary issue arises which is whether or not the Union properly represented him in respect collective bargaining with the employer. No matter what the answer to the proper representational question, this Board has no jurisdiction with respect to the wage complaint at this time.

[39] We cannot, of course, speak for either an employment standards officer under the *SEA* insofar as a complaint under Part II of the *Act.* However, as noted above, it is clear that unless and until an adjudication is made which is appealed in accordance with Part IV of the *SEA* the Board has no jurisdiction in respect of wage assessments under Part II.

[40] The issues are also quite distinct. The application here is between the Union and the Applicant. A wage assessment would be between the Employer and the Applicant.

[41] At this preliminary stage, the third question from *Figliola* does not require analysis.

Should the Board defer its decision?

[42] Section 6-111(1)(l) of the *SEA* permits the Board to "defer deciding any matter if the board considers that the matter could be resolved by mediation, conciliation, or an alternative method of resolution". Only the Applicant, by its application for an adjournment, requested the Board take this under consideration.

[43] The Board discussed its authority to defer in its decision in *Teamsters, Local 395 v. PCL Industrial Constructors Inc.*[16] At paragraphs 46 – 52, the Board reviewed the leading jurisprudence and its decisions in respect thereto.

[44] In *United Food & Commercial Workers, Local Union 1400 and The Labour Relations Board et al.* established the following criteria for the Board to exercise its authority to defer to arbitration:

> *(i) the dispute put before the Board in an application for an unfair labour practice order and the dispute intended to be resolved by the grievance-arbitration procedure provided for in the collective agreement must be the same dispute;*
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> *(ii) the collective agreement must make possible (i.e. empower) the resolution of the dispute by means of the grievance arbitration procedure; and*
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> *(iii) the remedy sought under the collective agreement must be a suitable alternative to the remedy sought in the application before the Board.*

[45] When we analyze this application in the light of these criteria, the Board must decline to exercise its authority to defer this matter. Firstly, the disputes are not the same. They involve the Applicant against alternatively, his Union, or the Employer. Secondly, the jurisdiction of this Board and an Employment Standards Officer under the *SEA* are quite different. Finally, the remedies sought are not the same.

[46] In *Teamsters, Local 395 v. PCL Industrial Constructors Inc.*[17] the Board determined that it had the authority to defer not just to an arbitration proceeding, but to any proceeding which would be able to provide a suitable alternative remedy to the remedy sought in the application before the Board.

[47] What is being sought from the Board and what would be sought from an Employment Standards Officer are much different. An Employment Standards Officer cannot make a determination as to whether or not the Union properly represented the Applicant. That responsibility rests with this Board. Accordingly, we decline to defer this matter under Section 6-111(1)(l).

Did the Union violate section 6-59 of the *SEA?*

[48] The Board's jurisprudence with respect to the duty of fair representation is well developed and known.[18] There is no significant difference which comes into play in this application that precludes the Board's reliance upon its earlier jurisprudence under *The Trade Union Act* to interpret Section 6-59 of the *SEA*.

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[16] [2011] CanLII 81816 (SK LRB), LRB File No. 019-10
[17] [2011] CanLII 81816 (SK LRB), LRB File No. 019-10
[18] See *Banks v. Canadian Union of Public Employees, Local 4828* [2013] CanLII 55451 (SK LRB); Natalie Owl v. SGEU [2014] CanLII 42401 (SKLRB)

[49] As was the case under the former provisions, the Applicant has the onus of proof that the Union acted in a manner which was arbitrary, discriminatory, or in bad faith. In our opinion, the Applicant has failed to discharge this onus.

[50] There was little or no evidence which addressed the issues under Section 6-59. There was no evidence that the Union had been discriminatory or had acted in bad faith. Nor was there evidence that the Union had been arbitrary.

[51] In *Johnston v. Service Employees' International Union, Local 333,*[19] the Board confirmed that the duty of fair representation applied to collective bargaining. In its analysis, the Board held that the extension of the duty of fair representation arose out of the granting to the Union of the exclusive right to represent the employee for collective bargaining. In *Canadian Merchant Services Guild v. Gagnon,*[20] the Supreme Court held that "representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employees".

[52] In its decision in *Johnston*, the Board quoted from its decision in *Radke v. Canadian Union of Paperworkers,*[21] as follows:

> *What is expected of trade union officials in their representation of employees is that they will act honestly, conscientiously and without prejudgment or favouritism. Within the scope of these criteria, they may be guilty of honest errors or even some laxity in the pursuit of the interests of those they represent. In making decisions about how or whether to pursue certain issues on behalf of employees, they should certainly be alert to the significance for those employees of the interests which may be at stake. Given the importance of the employee interests the union has the responsibility to pursue, they should also carry out their duties seriously and carefully. The ultimate decision made or strategy adopted, however, may take into account other factors than the personal preferences or views of an individual employee.*

[53] In *Johnston,* the Board also adopted comments made it in *United Steelworkers of America v. Six Seasons Catering Ltd,*[22] [1994] 3rd Quarter Sask. Labour Rep. 311, LRB

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[19] [2003] CanLII 62879 (SK LRB), LRB File No. 157-02
[20] [1984] CanLII 18 (SCC)
[21] [1993] 2nd Quarter Sask. Labour Rep. 57, LRB File No. 262-92
[22] [1994] 3rd Quarter Sask. Labour Rep. 311, LRB File No. 118-94

File No. 118-94, in respect of the duty to bargain in good faith in relation to the negotiation of a collective agreement. At page 318, the Board says:

> *In the case of the negotiation of provisions for a collective agreement, however, there are obvious difficulties of determining what constitutes a breach of the duty of fair representation. Unlike the situation which obtains in the case of decisions made in relation to grievances, the range of considerations of policy, practicality, strategy and resources which are legitimately taken into account are virtually limitless. Although labour relations tribunals and courts have acknowledged that this aspect of the duty exists, they have shown themselves reluctant to contemplate the chastisement of trade unions for a breach of the duty to negotiate fairly.*
>
> *The difficulty of determining how the principles of the duty of fair representation would apply where the issue arises in the context of the bargaining process is particularly acute in the case of an allegation that the conduct of the union is "discriminatory," which is the sort of charge the Union fears here. Collective bargaining is by nature a discriminatory process, in which the interests of one group may be traded off against those of other groups for various reasons - to redress historic imbalances, for example, or to reach agreement within a reasonable time, or to compensate for the achievement of some other pressing bargaining objective. The role of the union is to think carefully about the implications of the choices which are made, and no employee or group of employees can be assured that their interests will never be sacrificed in favour of legitimate bargaining goals or strategies.*

[54] In the conduct of collective bargaining, there are necessarily tradeoffs that occur as a part of the negotiation process. It is not the Board's position to sit in review of decisions made by Unions bargaining on behalf of their members for the best economic advantage for the collective group. There are, as noted above, policy considerations, practical considerations, bargaining strategies, as well as the normal give and take necessitated by collective bargaining.

[55] In *Johnston*, the allegation was that the Union failed to negotiate a wage increase for Mr. Johnston. At paragraph [25] of that decision, the Board found that Mr. Laurie, one of the negotiators for the Union was negligent in his approach to the negotiation of the collective agreement with respect to Johnston's wage increase. The Board went on to say:

> *However, the test that we must apply on duty of fair representation cases requires that the Union be guilty of serious or major negligence in undertaking its duties as the exclusive representative of the employee. The Union in this instance did obtain general wage increases that are consistent with the pattern of settlement in Saskatchewan during the period in question. The wage increases were applied to the head cook position, although they did not result in any significant increases for the Applicant during the life of the collective agreement.*

[56] Notwithstanding this finding of negligence in negotiation, the Board dismissed the application by Mr. Johnston.

[57] This case does not approach the fact situation in *Johnston*. There was no evidence that the Union was negligent in its negotiation of the new collective agreement. The evidence was that the negotiators carefully considered the position of the major accounts group and the negotiating team included a representative from the Major Accounts group. Furthermore, the evidence was that the Employer's bargaining position was modified considerably during negotiations to reach the eventual settlement.

[58] During collective bargaining, it is not always possible to get the same treatment for all employees impacted by those negotiations. Sometimes employees are red-circled, or others are provided market adjustments for retention of those employees. The results are the product of give and take with each side seeking to reach an agreement which is to its economic advantage. Individual interests cannot always be fully protected or benefited.

[59] The application under Section 6-59 is dismissed. An appropriate Order will accompany these Reasons.

DATED at Regina, Saskatchewan, this **16th** day of **January, 2015.**

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson