Editor's Note: Corrigendum released July 13, 2015. The original of the following Reasons for Decision of the Saskatchewan Labour Relations Board was corrected with text of the corrigenda appended.

Saskatchewan
Labour Relations Board

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant v. SECURITAS CANADA LIMITED, Respondent

LRB File No. 246-14; July 9, 2015
Vice-Chairperson, Steven D. Schiefner; Members: Jim Holmes and Allan Parenteau

For the Applicant Union: Ms. Dawn McBride
For the Respondent Employer: Mr. Gordon D. Hamilton

Unfair Labour Practice – Failure to Bargain – Employer provides security services at various locations throughout province – Some, but not all of employer's workplaces are organized – Trade Union organizes additional locations and certification Order issued by Board for new locations – Contract for security services at one of the newly organized workplace about to expire – Trade union desires to "fast track" collective bargaining – Employer agrees to commence collective bargaining - At meeting, employer presents union with proposals for new collective agreement but does not send its lead negotiators – Union argues that failure of employer to send lead negotiators is indicative of bad faith – Union also argues that employer's proposes were "slapped together" – Board not satisfied that employer's conduct was indicative of a desire to frustrate, subvert or avoid collective bargaining – Board dismisses trade union's application.

Unfair Labour Practice – Unilateral Change - Employer provides security services at various locations throughout province – Some, but not all, of employer's workplaces are included within certification Orders – In the past, the employer has voluntarily recognized the union at both certified and uncertified workplaces and negotiated a province wide collective agreement with trade union – When negotiations for renewal of provincial agreement breaks down, employer terminates voluntary recognition agreement – With termination of voluntary recognition agreement, some employees loose access to dental coverage provide through trade union's group benefits – Employer promises to obtain replacement dental coverage without interruption – Union organizes some but not all of workplaces previously covered by employer's voluntary recognition – Upon learning of trade union's efforts to organize it workplaces, employer stops efforts to obtain replacement dental coverage – Trade union alleges employer's failure to obtain replacement dental coverage prior was breach of statutory freeze – Board not satisfied that employer's failure to obtain replacement dental

coverage prior to collective bargaining represented a contravention of statutory freeze - Board dismisses trade union's application.

***The Saskatchewan Employment Act*, ss. 6-62(1)(d) & (n).**

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson:** The United Food and Commercial Workers, Local 1400 (the "Union") is the certified bargaining agent for some (but not all) of the locations in Saskatchewan where Securitas Canada Limited (the "Employer") has employees. On November 4, 2014, the Union filed an application with the Saskatchewan Labour Relations Board (the "Board") alleging that the Employer had violated numerous provisions of *The Saskatchewan Employment Act*, S.S. 2013, c.S-15.1 (the "*Act*"). While the Union alleged that multiple provisions of the *Act* had been contravened by the Employer, the substance of the Union's complaints against the Employer was two-fold. Firstly, the Union alleged that the Employer had failed to bargain with the Union in contravention of s. 6-62(1)(d) of the *Act*. Secondly, the Union alleged that the Employer had failed to obtain replacement dental benefits for members of the Union and that doing so represented a change in the conditions of employment for employees contrary to s.6-62(1)(n) of the *Act*. In its application, the Union seeks declaratory relief and compensation for any employee who may have suffered a loss as a result of the absence of a replacement dental plan.

[2] The Employer denied all of the Union's allegations.

[3] Evidence in the within application was heard by a panel of the Board on March 16, 2015 and on June 11, 2015. The Union called Mr. Norm Neault, Ms. Lucy Figueiredo, Mr. Glenn Steward and Mr. Darren Kurmey. Mr. Neault is the Union's President and Ms. Figueiredo, Mr. Steward and Mr. Kurmey are each service representatives. The Employer called Perry Clark, the Employer's Area Vice-President for Western Canada; Mr. John Coletti, the Employer's Vice-President of Human Resources; and Ms. Michelle Duerr, the Employer's Branch Manager for Saskatchewan.

[4] For the reasons that follow, we find that the Union's application must be dismissed.

Facts:

[5] The facts relevant to these proceedings were largely not in dispute. The Employer provides security services and has a Canada-wide presence. In Saskatchewan, the Employer provided security services on a fee for service basis to approximately ten (10) clients at various locations throughout the Province. Most of the security services provided by the Employer are the result of the Employer being the successful bidder in a competitive bidding process. Typically, these services are provided for a specific term. Although a client could elect to award a series of contracts to the same service provider, the more common practices in the security business is for the client to undertake another competitive bidding process at the end of each term. As a consequence, the security services and the locations at which these services are provided by the Employer routinely change over time depending on the company's success in the bidding process.

[6] At times relevant to these proceedings, the Employer had contracts for the provision of security services in five (5) areas of the province, including:

- in and around the City of Saskatoon.
- in and around the City of Regina.
- at the Poplar River Power Plant owned by SaskPower Corporation and located near Coronach.
- at the Legacy Project owned by K+S Potash Canada and located near Bethune.
- at the Rocanville potash mine owned by the Potash Corporation and located near Rocanville.

[7] Until recently, the Union has represented all of the employees of the Employer. Although many of the Employer's workplaces were included within two (2) certification Orders, the employees of the Employer providing security services at the Poplar River Power Plant, at the Legacy Project, and at the Rocanville potash mine were not included (at that time) within certification Orders. However, the Employer had agreed to voluntarily recognize the Union as the representative for all of its employees in Saskatchewan. Pursuant to this voluntary recognition agreement, over the past number of years, the parties had negotiated province-wide collective agreements for all security guards employed by the Employer at all of its workplaces. The events

relevant to these proceedings occurred following failed attempts by the parties to renew their most recent collective agreement.

[8] The parties began collective bargaining in January of 2014. While they met on several occasions and utilized the services of a conciliator, they were unable to agree on the terms for the renewal of their province-wide collective agreement. In July of 2014, the Employer presented a last offer to the Union and asked the Union to take its offer to the membership for a vote. It should be noted that, at this point in time, the Employer's offer covered all of its employees not just the employee's covered by the Union's two (2) certification Orders. In July of 2014, the Employer made application to this Board for a provincial-wide vote on its last offer. However, the Board declined the Employer's application on the basis that it had no jurisdiction to supervise a vote involving the employees falling outside the scope of the Union's certification Orders.

[9] On July 30, 2014, the Employer terminated its voluntary recognition of the Union with respect to those employees falling outside the scope of the Union's two (2) certification Orders. Thereafter, a number of things happened relevant to these proceedings.

[10] Firstly, on July 31, 2014, the Employer revised its last offer to apply only to its organized employees (i.e.: those employees working in and around the cities of Regina and Saskatoon). This offer was presented to the Union but rejected by the members of those bargaining units.

[11] Secondly, the Employer ceased remitting dental premiums to the Union for those employees that had been included within the Employer's voluntary recognition of the Union (hereinafter the "affected employees"). The affected employees had been receiving dental benefits as part of the Union's group benefit plan but became ineligible with termination of the voluntary recognition agreement. As a consequence, the Employer began searching for a replacement dental plan. Mr. Clark testified that, at this point in time, the Employer's intention was to obtain replacement benefits from Manulife Insurance, as the Employer already had a group benefit plan with this carrier for its non-unionized employees (albeit in another province). Mr. Clark testified that he contacted an agent at Manulife Insurance to see about obtaining dental coverage for the affected employees.

[12] It should be noted that on July 30, 2014, in advising the affected employees of the Employer's decision to terminate the voluntary recognition, Mr. Clark wrote the following letter to the affected employees:

IMPORTANT INFORMATION FOR EMPLOYEES

WORKING AT CORONACH (SASKPOWER), BETHUNE (K & S) & ROCANVILLE (PCS)

July 30, 2014

During the course of the Company's recent dealings with the Labour Relations Board, it has become apparent that the voluntary recognition of UFCW Local 1400 by Securitas Canada for some of the Saskatchewan work sites is no longer working, particularly under the new provincial legislation.

***The Legal Stuff**: Only employees who work "in and around Regina" or "within a 25 mile radius of Saskatoon" are covered by a labour relations board certification order. The law requires that they are unionized. All other employees were voluntarily recognized by Securitas Canada – the law does not require that they are unionized. They are only unionized if Securitas and UFCW agree that they will be. These other employees work at Coronach (SaskPower), Bethune (K & S) & Rocanville (PCS) – that's you!*

***What Does All this Mean?** You will no longer be required to pay union dues and will not be covered by the expired collective agreement. If there is a strike called by UFCW Local 1400, the strike will not impact you, as you are not represented by UFCW. You can continue working. Given that you are no longer unionized, if you walk off the job at the urging of the union, Securitas will have to consider that as a resignation from your job. The union cannot fine you for continuing to work, since they cannot force you to go on strike.*

***What will the Union Do**? You can expect that UFCW will be contacting you and trying to fill you with fear and worry about this transition. They will try to get you to re-sign a union support card, so that they can once again collect union dues from you – of course, they will say that you need the union's protection from Securitas.*

***What Should You Do**? We encourage you to carefully and respectfully listen to what you are being told by everyone, and make your decision after seeing what happens during this transition period. There is no rush to join a union – you can do that anytime – but the union will want your money soon, so it will put pressure on you right away, and will likely say many things that will worry you (that are not really true).*

***Our Promise to You**. We wish to reassure you that there will be <u>no changes</u> to the terms and conditions of your employment, except that you will not have to pay union dues and there will be a speedy transition to a new dental plan. We have already talked to an insurer to arrange an equivalent dental plan to replace the UFCW plan, so that you continue to have dental coverage without any interruptions.*

> ***What About the Pay Increases from Collective Bargaining?*** *Securitas Canada intends to implement the pay increases contained in its final offer to UFCW as soon as possible (we are aiming for the first payday in August.) You will receive the lump sum payment (1.5% of your 2013 earnings), and the pay increases as outlined in previous communications to Securitas employees.*
>
> *If you have any questions, please contact Perry Clarke at 204-391-1838, Area Vice President, Western Canada (Prairies & BC), or John Coletti, Vice President, Human Resources at 416-774-2540 or 416-624-3133.*

[13] Finally, the third thing that happened in response to the Employer's termination of the voluntary recognition agreement was that the Union conducted an organizing drive of the affected employees. On August 6, 2014, the Union filed a certification application with the Board seeking to certify the security employees working at the Rocanville potash mine. See: LRB File No. 172-14. The Employer had approximately 25 employees working at this workplace and, following a successful representational vote, the Union was certified to represent these employees on September 26, 2014. On August 18, 2014, the Union filed a certification application seeking to also certify the employees working at the Legacy project. See: LRB File No. 187-14. There were approximately 37 employees working at this workplace and, again following another successful representational vote, the Union was certified to represent these employees on September 26, 2014. No certification application was received by the Board for the security employees working at the Poplar River Power Plants.

[14] It should be noted that the Employer was unable to obtain replacement dental coverage for the affected employees prior to August 6, 2014 (when the Union filed its first certification application). Mr. Clark testified that, after the Employer received a copy of the Union's first certification application, the company concluded that it would be inappropriate for it to continue in its search for replacement dental coverage for the affected employees. The Employer expected to deal with the provision of dental coverage and other terms and conditions of employment for the affected employees in collective bargaining with the Union.

[15] No evidence was tendered as to which, if any, of the affected employees suffered a loss as a result of the absence of dental coverage or the quantum of such losses.

[16] On September 30, 2014, the Union sent a letter to the Employer seeking to commence collective bargaining with respect to the employees of the Employer working at the Rocanville potash mine. A similar letter was sent to the Employer with respect to the employees

working at the Legacy project. Initially, it was the Union's desire to negotiate a joint collective agreement for both workplaces. However, the Employer declined this request and the parties agreed to negotiate separately for these two (2) workplaces.

[17] At this point in time, both the Union and the Employer were aware that the Employer's contact for security services at the Rocanville potash mine was scheduled to expire in less than a month (i.e.: on October 31, 2014). While the Employer had bid on another project for this workplace, at this point it had not heard if it had been successful in obtaining that contract. Furthermore, the contract on which the Employer had bid was not for security services but rather emergency medical services. Ms. Figueiredo testified the Union wanted to recommence collective bargaining as soon as possible for two (2) reasons; firstly, because there was still a possibility that the Employer might get another contract; and secondly, if the Employer did not get another contract, the Union wanted to negotiate a workplace adjustment plan or terms dealing with the end of a contract. The Employer, on the other hand, took the position that the parties should just wait and see. The Employer did not see much utility in negotiating a collective agreement for a workplace where the employer had no employees. However, on October 17, 2014, the Union insisted on compliance with s. 6-24(a) of *The Saskatchewan Employment Act* requiring the Employer to commence collective bargaining within twenty (20) days after the issuance of a certification Order. The Employer acquiesced and suggested the date of October 21, 2014 for collective bargaining. The Union agreed.

[18] In the past, Ms. Figueiredo had been the Union's lead negotiator for the Employer's employees and it was the Union's intention that Ms. Figueiredo would again be the lead negotiator for the affected employees, with selected members of the bargaining unit making up the Union's bargaining team. On October 21, 2014, Ms. Figueiredo was unavailable. As a consequence, the Union sent Mr. Neault and Mr. Steward. Mr. Neault testified that he and Mr. Steward had full authority to bargain on behalf of employees working at the Rocanville potash mine. The Union prepared proposals for a new collective agreement and presented those proposals to the Employer on October 21, 2014.

[19] In past negotiations, Mr. Clark and Mr. Coletti had been the Employer's lead negotiators. For the two (2) newly certified workplaces, it was the Employer's intention that Mr. Clark and Mr. Coletti would be joined by Ms. Duerr and that these three (3) individuals would make up the Employer's bargaining team. However, neither Mr. Clark nor Mr. Colette was

available for the October 21, 2014 meeting. As a result, Ms. Duerr went to the meeting on her own. While Ms. Duerr had been on the Employer's bargaining team in the past, she had not been a lead negotiator. As a consequence, Ms. Duerr only had limited authority to engage in collective bargaining on October 21, 2014. Her authority was limited to providing the Union with the Employer's collective bargaining proposals. If any issues or clarification was required by the Union, Ms. Duerr was to contact either Mr. Clark or Mr. Colletti to get further instructions.

[20] On October 21, 2014, the Union was upset that neither Mr. Clark nor Mr. Colletti was present for collective bargaining. After the parties exchanged their respective proposals, the Union wanted to review and discuss the specifics of the Employer's proposal. Ms. Duerr did not explain the Employer's proposals in detail other than she did indicate that these proposals were essentially the same as the Employer had previously presented when the parties were engaged in province-wide bargaining in July of 2014. On October 21, 2014, the Union also wanted to discuss a workplace adjustment plan and/or proposals dealing with the potential loss of the Employer's contract at the Rocanville potash mine. However, Ms. Duerr indicated to the Union that she did not have authority to negotiate a workplace adjustment plan on the Employer's behalf. The Union's bargaining team left the October 21, 2014 meeting disappointed as they wanted to fast track collective bargaining negotiations for the employees working at Rocanville.

[21] In cross-examination, both Mr. Clark and Mr. Colletti were pressed as to why they did not attend the October 21, 2014 bargaining session. Both of these individuals indicated that, in light of the probability that the Employer was not going to get a new contract at Rocanville, they did not believe that collective bargaining was necessary. However, they also accepted that, if the Union wanted to commence bargaining, the Employer would cooperate. To prepare for the October 21, 2014 meeting, the Employer's bargaining team reviewed their previous bargaining proposals and made a set of new proposals specific to a single bargaining unit for just the employees working at the Rocanville potash mine. As was noted, the Employer's proposals were essentially the same as the Employer had previously presented to the Union when the parties were bargaining on a provincial-wide basis back in July of 2014.

[22] Ms. Duerr was authorized to present the Employer's revised proposals to the Union on October 21, 2014. Both Mr. Clark and Mr. Colletti readily admitted that the Employer plan going into the October 21, 2014 meeting was to have Ms. Duerr present the Employer's

proposals and to continue collective bargaining at a later date after they had an opportunity to review the Union's proposals.

[23] Both Mr. Clark and Mr. Colletti testified that the first day of collective bargaining with respect to the employees working at the Legacy project commenced on October 14, 2014. Ms. Figueiredo was also not available on this day. As a consequence, Mr. Kurmey attended this collective bargaining session on her behalf. At this meeting, the parties exchanged their collective bargaining proposals but did not engage in further bargaining that day. Mr. Clark and Mr. Colletti testified that they both assumed that the October 21, 2014 session would be the same, with the parties merely exchanging proposals on the first day of collective bargaining and then "bargaining" at a subsequent meeting.

[24] It should be noted that the October 21, 2014 meeting was the only collective bargaining session that took place with respect to the security employees working at the Rocanville potash mine. No further dates were asked for, suggested or agreed to by either of the parties. The Employer's contract for the provision of security services at the Rocanville potash mine expired on October 31, 2014 and the Employer was unsuccessful in obtaining a new contract at this particular workplace. At the time of the hearing, the Employer had no employees working at the Rocanville potash mine.

[25] In addition, at the time of the hearing, the Employer had also lost its contract at the Legacy project and these employees had been laid off as well.

Relevant statutory provision:

[26] The relevant provisions of *The Saskatchewan Employment Act* include the following:

> ***6-62****(1) It is an unfair labour practice for an employer, or any person acting on behalf of the employer, to do any of the following:*
>
> *. . .*
>
> *(d) to fail or refuse to engage in collective bargaining with representatives of a union representing the employees in a bargaining unit whether or not those representatives are the employees of the employer;*
>
> *. . .*

> *(n) before a first collective agreement is entered into or after the expiry of the term of a collective agreement, to unilaterally change rates of pay, hours of work or other conditions of employment of employees in a bargaining unit without engaging in collective bargaining respecting the change with the union representing the employees in the bargaining unit;*
>
> *. . .*
>
> *(7) No employer shall be found guilty of an unfair labour practice contrary to clause (1)(d), (e), (f) or (n):*
>
> *(a) unless the board has made an order determining that the union making the complaint has been named in the certification order as the bargaining agent of the employees; or*
>
> *(b) if the employer shows to the satisfaction of the board that the employer did not know and did not have any reasonable grounds for believing, at the time when the employer committed the acts complained of, that:*
>
> *(i) the union represented the employees; or*
>
> *(ii) the employees were actively endeavouring to have a union represent them.*

Argument on behalf of the Applicant Union:

[27] As indicated, the Union took the position that the Employer had committed two (2) violations of *The Saskatchewan Employment Act*. Firstly, the Union asserted that the Employer violated s. 6-62(1)(d) of the *Act* by coming to the bargaining table on October 21, 2014 with no intention of entering into a collective agreement or attempting to resolve the issues in dispute between the parties. The Union argues that the Employer's lack of intention is evident in the fact it sent a representative that had no authority to bargain. The Union also points to the Employer's proposals, which it described as merely "*slapped together*" from the old agreement. Counsel on behalf of the Union argued that this evidence supports a finding that the Employer did not come to the table on October 21, 2014 with a good intention (i.e.: the requisite desire to conclude a collective agreement with the Union).

[28] Secondly, the Union takes the position that the Employer violated s. 6-62(1)(n) of the *Act* by unilaterally changing an existing practice or policy which was in force prior to the Union's certification application. The Union notes that the affected employees were receiving dental benefits prior to the Employer's termination of their voluntary recognition agreement. The Union also notes that the Employer promised to replace these benefits "*without any interruptions*" and that there would be a "*speedy transition*" to a new dental plan. However, the

Union argues that, once the Union filed its certification application, the Employer reneged on its promise and refused to obtain replacement dental coverage. The Union argues that the Employer's unilateral decision to not obtain replacement dental coverage following the Union's certification application represented a violation of the statutory freeze.

[29] By way of remedy, the Union seeks declaratory relief. However, with respect to the alleged violation of the statutory freeze, the Union also seeks monetary compensation for any employee who lost benefits or coverage. The Union asks this Board to retain jurisdiction and to deal with the quantification of any losses arising out of the Employer's alleged misconduct in subsequent proceedings.

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

Argument on behalf of the Respondent Employer:

[31] The Employer, on the other hand, took the position that it did not violate any provision of *The Saskatchewan Employment Act* in any of the actions it took or its dealings with the Union.

[32] With respect to collective bargaining on October 21, 2014, the Employer argues that it merely followed the previous pattern of collective bargaining, wherein the parties would exchange (sometimes explain) their proposals on the first day of collective bargaining but not engage in actual bargaining until after they had each had an opportunity to review the other's proposals. The Employer takes the position that there is no basis in the evidence to suggest that it did not have the requisite intention to engage in collective bargaining and/or to conclude a collective agreement with the Union. Finally, the Employer argues that there was no requirement on it to negotiate a workplace adjustment plan because the loss of its contract either at Rocanville potash mine or at the Legacy project was not a technological or organizational change within the meaning of s. 6-56 of the *Act*.

[33] With respect to the dental plan, the Employer argues that, immediately upon learning that the Union had filed a certification application, it complied with the statutory freeze and halted its efforts to implement a replacement dental plan. The Employer argues that, if it had unilaterally obtained replacement dental coverage, the Union could also have argued that the

Employer had violated the statutory freeze. The Employer's position was that it anticipated that dental coverage would be the subject of collective bargaining and did not want to take unilateral action without first negotiating with the Union. To which end, the Employer notes that dental coverage was part of the Union's collective bargaining proposals, with the Union wanting employees covered by the Union's group benefits program.

[34] The Employer asks that the Union's application be dismissed. Counsel on behalf of the Employer filed a brief of law, which we have read and for which we are thankful.

Analysis:

[35] The Board is required to make two (2) determinations in these proceedings:

1. Did the Employer fail or refuse to engage in collective bargaining with the Union as required by s. 6-62(1)(d) of the *Act*?

2. Did the Employer unilaterally change the conditions of employment for the affected employees without engaging in collective bargaining with the Union contrary to s. 6-62(1)(n) of the *Act*?

Refusal or failure to engage in collective bargaining:

[36] This Board reviewed its jurisprudence with respect to the duty to bargain in good faith in its decision in *Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, et. al.*, (2014) 242 C.L.R.B.R. (2nd) 44, 2014 CanLII 17405 (SK LRB), LRB File Nos. 092-10, 099-10 & 105-10. While the Board was considering s. 11(1)(c) of *The Trade Union Act*, R.S.S. 1978, c.T-17 (now repealed) in that decision, the analysis of the Board as to the meaning, content and purpose of the duty to bargain in good faith is equally applicable to s. 6-62(1)(d) of *The Saskatchewan Employment Act*:

> ***The Board's Jurisprudence with respect to the Application of s. 11(1)(c):***
> *[127] The duty to bargain in good faith was well described in 1996 by the Supreme Court of Canada in its decision in Royal Oak Mines Inc. v. Canada (Labour Relations Board) and Canadian Association of Smelter and Allied Workers, Local 4, [1996] 1 S.C.R. 369, 1996 CanLII 220 (SCC), 133 DLR (4th) 129. At paragraphs 41 and 42, the Court said:*
>
> > *Every federal and provincial labour relations code contains a section comparable to s. 50 of the Canada Labour Code which requires the*

> *parties to meet and bargain in good faith. In order for collective bargaining to be a fair and effective process it is essential that both the employer and the union negotiate within the framework of the rules established by the relevant statutory labour code. In the context of the duty to bargain in good faith a commitment is required from each side to honestly strive to find a middle ground between their opposing interests. Both parties must approach the bargaining table with good intentions.*
>
> *Section 50(a) of the Canada Labour Code has two facets. Not only must the parties bargain in good faith, but they must also make every reasonable effort to enter into a collective agreement. Both components are equally important, and a party will be found in breach of the section if it does not comply with both of them. There may well be exceptions but as a general rule the duty to enter into bargaining in good faith must be measured on a subjective standard, while the making of a reasonable effort to bargain should be measured by an objective standard which can be ascertained by a board looking to comparable standards and practices within the particular industry. It is this latter part of the duty which prevents a party from hiding behind an assertion that it is sincerely trying to reach an agreement when, viewed objectively, it can be seen that its proposals are so far from the accepted norms of the industry that they must be unreasonable.*

[128] Together, s. 11(1)(c) and s. 11(2)(c) impose companion obligation on both employers and trade unions in organized workplaces to bargain in good faith and to make reasonable effort to conclude a collective agreement. A secondary (but not less important) purpose of s. 11(1)(c) is to secure the union's position as the exclusive bargaining agent for organized workers and to compel the employer to negotiate with the union (as opposed to directly with the employees) in good faith with a view to conclusion of a collective agreement.

[129] While ss. 11(1)(c) and 11(2)(c) of The Trade Union Act clearly imposes a duty on the parties to bargain in good faith and makes it a violation of the Act to fail to do so, the practice of this Board in enforcing these obligations has historically been one of measured restraint. Simply put, the Board takes the position that it is not our role to supervise or monitor too closely the bargaining strategies adopted and employed by the parties provided that they genuinely engage in the process. This restraint has grown from the desire of the Board to permit the parties to define and develop their own collective bargaining relations and to avoid interference in the balance of economic power that may exist between the parties. See: Noranda Metal Industries Ltd. Canadian Association of Industrial, Mechanical and Allied Workers v. Noranda Metal Industries Limited, [1975] 1 Can. L.R.B.R. 145. See also: Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Western Grocers, A Division of Westfair Foods, [1992] 4th Quarter Sask. Labour Rep. 83, LRB File No. 168-92.

[130] The reality of collective bargaining is that it is a process of resolving conflict through conflict. While The Trade Union Act may regulate that conflict, it also contemplates that a power struggle may well occur between employers and trade unions. The purpose of collective bargaining is to bring the parties together in a setting where they can present their proposals, justify their positions, and search for common ground. Although the parties may have expectations that particular proposals will be agreed to, or that certain kind of concessions will never by asked of them, or that issues will be discussed in a particular order, or that a particular result will be achieved within a certain period of time, there is no guarantee that such will be the case. Each party has the right to attempt to achieve an agreement on terms that it considers advantageous and to adopt strategies intended to advance its own self interests. The parties also have the

> *right to hold firm in their respective positions. The results of collective bargaining flow from the skill of the negotiators, from the prevailing social and economic realities of the day, from the relative strength of the parties, and from their willingness to exercise their respective strength.*
>
> *[131] The function of this Board is to ensure that the parties engage in a process of collective bargaining; that they agree to meet; that they come to the bargaining table prepared to enter into a collective agreement and/or resolve the issues in dispute between the parties through collective bargaining; that their negotiators have authority to bind their principals; that they explain their proposals and disclose relevant and necessary information that could affect their collective bargaining relationship; and that they not misrepresent the facts or their proposals to the other party. See: Saskatchewan Government Employees' Union v. Government of Saskatchewan and the Honourable Bob Mitchell, [1993] 1st Quarter Sask. Labour Rep. 261, LRB File No. 264-92. Simply put, it is the responsibility of the Board to ensure that the parties engage in a process of collective bargaining; it is not the function of this Board to ensure that a particular substantive result is achieved or avoided through collective bargaining.*
>
> *[132] The parties are best able to fashion the terms of their relationship and, in the event of impasse in collective bargaining, each has recourse to economic sanctions. Each round of collective bargaining is a new beginning and many external factors can influence the relative economic power (or perception thereof) of the parties. As a consequence, this Board does not judge the "reasonableness" of the proposals advanced by the parties at the bargaining table unless we conclude that the proposals being advanced or the positions being taken by a party are indicative of a desire to subvert, frustrate or avoid the collective bargaining process. While holding firm on proposals or hard bargaining is permissible, surface bargaining or merely going through the motions of collective bargaining without any real intention of concluding a collective agreement is not consistent with the duty to bargain in good faith.*

[37] In our opinion, the evidence did not demonstrate a failure or refusal on the part of the Employer to engage in collective bargaining with the Union. The Union, as was its right, demanded that the parties commence collective bargaining within the time constraints set forth in s. 6-24(a) of the *Act*. The purpose of this provision is to enforce discipline upon the parties (typically employers) in a newly certified workplace to ensure that they commence collective bargaining on a timely basis. However, neither ss. 6-24(a) nor 6-62(1)(d) of *The Saskatchewan Employment Act* guarantee that a particular process will be followed once the parties commence collective bargaining. While the Union understandably wanted to fast tract negotiations with the Employer for the employees at the Rocanville potash mine site, the *Act* does not guarantee that such will be the case. There is no statutory authority upon which a trade union can demand that collective bargaining be concluded before a certain event, within a specified period of time or upon a timetable that it may desire.

[38] The Employer's actions were consistent with the pattern of bargaining that had occurred on October 14, 2014 and not inconsistent with the first day of bargaining in many organized workplaces. In some cases, the parties accomplish little more on the first day of collective bargaining than introductions and agreement on the basic rules for collective bargaining. While it is common for parties to exchange their bargaining proposals on the first day of bargaining, it is also common for parties to digest and evaluate the other's proposals before returning to the table. With all due respect to the Union's clear desire to fast track collective bargaining for the Rocanville employees, the parties only engaged in one (1) collective bargaining session and this one (1) session provided a wholly inadequate evidentiary foundation for the conclusion that the Employer's actions were contrary to the duty to bargain in good faith and/or that it was seeking to subvert or frustrate collective bargaining with the Union. In coming to this conclusion, a number of factors were influential.

[39] Firstly, the Employer prepared bargaining proposals for the Union and Ms. Duerr presented those proposals to the Union on October 21, 2014. We are not satisfied that the Employer's proposals were "*slapped together",* as suggested by the Union. The Employer's proposals were essentially the same as it presented to the Union on October 14, 2014 for the employees at the Legacy project. We saw nothing subversive or patently deficient in putting the same deal on the table for the Rocanville employees. It certainly does not provide an evidentiary foundation for the argument that the Employer was trying to avoid, frustrate or subvert collective bargaining. To the contrary, putting the previous provincial offer on the table advanced collective bargaining.

[40] Secondly, in light of the compressed timelines caused by the twenty (20) days statutory limit, it is difficult to draw an adverse inference from the failure of either Mr. Clark or Mr. Colletti to attend the meeting on October 21, 2014. Mr. Clark lives at and works out of Winnipeg, Manitoba and Mr. Collette lives at and works out of Toronto, Ontario. On the other hand, it was clear from the evidence that Ms. Duerr had limited authority on October 21, 2014 and that she was not prepared to deal with a number of the issues that the Union wanted to address, including a workplace adjustment plan and/or new "*end of contract*" provisions for the employees at Rocanville. The Union argues that, because Ms. Duerr did not have authority to deal with the issues that the Union wanted to discuss on October 21, 2014, the Employer did not come to the table with "*good intentions*".

[41] While the duty to bargain in good faith requires negotiators to have authority to bind their principals, it is not improper for a principal to place limits on the authority granted to its negotiators. As this Board noted in the *SEIU (West) v. SAHO, supra*, the duty to bargain in good faith does not require negotiators to have unrestricted authority. It is neither impermissible nor unusual for a negotiator to come to the table with limits on their authority and to seek further instructions during collective bargaining before they exceed the limits of their authority. Under the circumstances, we are not persuaded that the limited authority that Ms. Duerr had on October 21, 2014 resulted in a violation of *The Saskatchewan Employment Act*. While the Union may have desired that collective bargaining would have taken a different course on this day, we are not persuaded that the actions of the Employer on this; the first day of collective bargaining; were indicative of a failure or refusal to bargain in good faith.

[42] As this Board has previously noted, it is not our function to ensure that trade unions are able to achieve a particular substantive result in collective bargaining; rather it is the function of this Board to ensure that employers don't avoid, frustrate or subvert the process (intentionally or otherwise). While the duty to bargain in good faith requires employers to come to the table prepared to resolve issues in dispute through collective bargaining, it does not guarantee that a particular process will be followed. From the evidence, it was apparent that the Employer was neither willing nor prepared to fast track collective bargaining on October 21, 2014 as desired by the Union. However, in our opinion, the Employer had the right to digest and evaluate the Union's proposals before being called upon to negotiate with respect to either a new collective agreement or a workplace adjustment plan.

[43] Thirdly, while a new certification Order had been issued for the Rocanville employees, the parties were bargaining with respect to two (2) separate groups of employees following the issuance of two (2) new certification Orders. The first day of collective bargaining with respect to the Rocanville employees was essentially the same as the first day of collective bargaining for the employees at the Legacy project. On October 14, 2014, when dealing with the employees working at the Legacy project, the parties did little more than exchange proposals. It is difficult to reconcile how essentially the same conduct on the part of the Employer can represent a breach of the duty to bargain in good faith on one day but not the other.

[44] Finally, while Ms. Duerr testified that the Employer agreed to get back to the Union with additional dates for collective bargaining after the October 21, 2014 meeting, we were

not satisfied that failing to do so was indicative of bad faith on the Employer's part. By October 31, 2014, the Employer's contract at the Rocanville site had expired and all of the security employees working at that site had been laid off. After October 21, 2014, no one from the Union followed up with the Employer indicating any desire to continue collective bargaining or to discuss new "*end of contract*" provisions. To the contrary, rather than following up with the Employer, the Union filed the within application on November 14, 2014. As a result, this Board is called upon to determine if the Employer breached the duty to bargain in good faith on the first and only day of collective bargaining for this particular group of employees. In our opinion, the events that occurred on October 21, 2014 provide an inadequate foundation for a finding that the Employer failed to bargain in good faith.

Failure to obtain replacement dental coverage:

[45] As did its predecessor, *The Saskatchewan Employment Act* imposes a "*statutory freeze*" on an employer's relationship with its employees in a newly organized workplace until such time as collective bargaining can take place. Previously, this particular statutory freeze was set forth in s. 11(1)(m) of *The Trade Union Act*; now it is contained in s. 6-62(1)(n) of *The Saskatchewan Employment Act*. The two-fold purpose of the statutory freeze was well described by this Board in *Construction and General Workers' Union, Local 890 v. Brekmar Industries Ltd.*, [1993] 1st Quarter Sask. Labour Rep. 126, LRB File No. 113-92:

> *Section 11(1)(m) is not unique, as most jurisdictions in Canada impose a statutory freeze upon an employer's power to unilaterally change its employees' terms and conditions of employment during the period between certification and the conclusion of a first collective agreement. The wording of these provisions varies from jurisdiction to jurisdiction, but their twofold purpose is the same: first, to strike a balance between the need to provide a clearly identifiable point of departure for collective bargaining, while at the same time permitting the employer to manage its business; and second, to regulate the employer's right to change conditions of employment or withhold expected benefits (conduct which might not be caught by the other unfair labour practices) because of the effect this might have on the employees' enthusiasm for collective bargaining as a means of improving their working conditions. Unlike most of the unfair labour practices the employer's motivation is irrelevant under Section 11(m) (see: Brandt Industries Ltd. (1991) 4th Quarter, Sask. Labour Report, p. 81).*

[46] In *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Winners Merchants International L.P.*, 2005 CanLII 63021 (SK LRB), LRB File No. 071-05, Chairperson Seibel conducted a review of this Board's jurisprudence with respect to the purpose

of s. 11(1)(m) of *The Trade Union Act* and the Board's approach in defining and maintaining the status quo in a newly organized workplace:

> ***[26]*** *In Canadian Union of Public Employees, Local 4152 v. Canadian Deafblind and Rubella Association, [1999] Sask. L.R.B.R. 138. LRB File No. 095-98, the Board undertook a detailed historical review of its approach to the interpretation of s. 11(1)(m) of the Act, and clarified the principles involved. At 151, the Board referred to the purpose of what is often called the "statutory freeze" provision:*
>
> > *[54] The purpose of the statutory freeze provision is to maintain the prior pattern and structure of the employment relationship while collective bargaining takes place. It provides a solid foundation and point of departure from which to begin negotiations towards a first agreement, preventing unilateral changes to the status quo which might allow an unfair advantage to one party in the bargaining process.*
>
> ***[27]*** *However, the application of the provision is often not easy. In United Steelworkers of America v. Conservation Energy Systems Inc., [1993] 1st Quarter Sask. Labour Rep. 75, LRB File Nos. 215-92, 216-92 & 217-92, the Board observed as follows, at 78-79:*
>
> > *Attempts to determine the extent to which terms and conditions of employment should be seen as "frozen" during a period when there is no collective agreement in force, and what may be the practical significance of such a freeze, have given rise to a number of complications and uncertainties in the interpretation of the jurisprudence of this and other labour relations boards. The complexity of this picture is compounded when the parties have not yet reached a first collective agreement.*
> >
> > *The critical question then becomes what represents the status quo in the employment relationship which is to be preserved pending the conclusion of a collective agreement through bargaining between the employer and the union.*
> >
> > *It is relatively easy to state a rationale for the preservation of the status quo between the parties under these circumstances. During the period which follows certification, the union is in a vulnerable position. It has yet to demonstrate that it can use the status it has gained through employee support to obtain improvements in the position of those employees. The employer cannot be allowed to use advantages accrued from the lopsided balance of power which previously existed to punish employees for making the choice to support certification or to confer benefits on them in an attempt to show how little they need the union.*
> >
> > *It is more difficult to decide how this rationale applies to any given set of circumstances. An example of the complications which may arise is provided by the struggles which this Board has had with the question of whether an employer is entitled to give or withhold wage increases in the period before a collective agreement is concluded.*
>
> ***[28]*** *The Board then cited Crestline Coach, supra, as an example of the complications in application of the provision. And, at 79, the Board described what it perceived as the difference in the factual findings in Crestline Coach and Brandt Industries, supra, that led to the respective decision in each case:*
>
> > *More recently, in its decision in United Steelworkers of America v. Brandt Industries, LRB File Nos. 193-9[1] and 194-9[1], the Board drew a distinction*

> *between a wage increase, like that in the Crestline Coach case, which was arrived at on the basis of a unilateral and discretionary assessment related to each employee, and one which was made in accordance with well-established criteria and past practice. This latter finding of the Board is currently the subject of judicial discussion, but the point may be taken from these examples that the delineation of what constitutes the status quo may be a matter of some difficulty.*

[29] *In Canadian Deafblind, supra, the Board described the standard applied by labour boards to better define the limits of the otherwise unrestricted management rights of employers prior to certification. Referring to what is commonly called the "business as before" standard, the Board stated, at 151:*

> *[55] The "business as before" standard allows for sensitivity to the exigencies of carrying on the employer's business while preserving the stability necessary to ensure good faith bargaining. An employer must operate the business in accordance with the pattern established before the freeze. The right to manage the business is maintained, circumscribed only by the condition that it be managed as before the freeze.*

In that case, the Board also described, the modern application of this standard within the context of the "reasonable expectations of employees" test developed to clarify the "business as before" standard and accommodate those employee "privileges" enjoyed prior to certification and an employer's ability to react to first time or unexpected events following certification and before a collective agreement is achieved.

[30] *Canadian Deafblind, supra, followed upon the analysis made by the Board in its earlier decision in Brekmar Industries, supra, where the Board described in detail the jurisprudential development of the "reasonable expectations of employees," and, at 129, explained the result of this interpretation as follows:*

> *The result of this interpretation is that Section 11(1)(m) preserves not merely the terms and conditions of employment in effect at the moment of certification, but also the practices, policies and processes by which the employer operates. The employer's right to manage is maintained, qualified only by the condition that the business be managed as before. Generally, a departure from the pre-certification pattern is a prohibited change whereas a change consistent with these policies represents maintenance of the status quo as required by Section 11(1)(m).*

[47] While the above analysis was conducted with reference to s. 11(1)(m) of *The Trade Union Act*, in our opinion, this analysis provides helpful guidance in the application of s. 6-62(1)(n) of *The Saskatchewan Employment Act*. In particular we note that one (1) observation of Chairperson Bilson in *United Steelworkers of America v. Conservation Energy Systems Inc.,* [1993] 1st Quarter Sask. Labour Rep. 75, LRB File Nos. 215-92, 216-92 & 217-92, warrants repetition; namely, that it is far easier to articulate the policy rationale for imposing the "*statutory freeze*" than it is to apply that rationale to any given set of circumstances.

[48] The Union argues that the Employer's failure to obtain replacement dental coverage for the affected employees was a violation of the statutory freeze. The essence of the Union's argument was that, when the Employer promised to obtain replacement dental coverage (without interruption), dental coverage became part of the existing pattern of the employment relationship in the workplace (albeit a prospective element) and the Employer was required to follow through with that promise without delay. With all due respect, we are not persuaded by this argument for a number of reasons.

[49] Firstly, while this Board has recognized that, during the statutory freeze, employers may not withhold certain wage increases and/or other benefits and prospective promises, it has also recognized that not all wage increases, benefits and promises are treated the same when applying the statutory freeze. For example, in *United Steelworkers of America v. Crestline Coach Ltd.*, [1987] Nov. Sask. Labour Rep. 53, LRB File No. 132-87, this Board concluded that the employer had not breached the statutory freeze by failing to provide discretionary wage increases to its employees even though it had done so in the past based on the employer's evaluation of the work performance of its employees. On the other hand, in *United Steelworkers v. Brandt Industries Ltd.*, [1992] 4th Quarter Sask. Labour Rep. 81, LRB File Nos. 193-91 & 194-91, the Board held that an employer had breached the statutory freeze by failing to provide wage increases that were set forth in an "*Employee Information Booklet*" and, in the Board's opinion, constituted an "*unequivocal agreement on wage increases and the date on which they would become effective*".

[50] If anything, these two (2) cases illustrate the difficulty identified by Chairperson Bilson in the *Conservation Energy Systems* decision of defining those terms, conditions and prospective promises that form part of the status quo in a particular workplace which the statute seeks to preserve and in determining whether or not an employer has varied one of those terms, conditions and promises without first negotiating that variance. The statutory freeze was intended to be a shield; not a sword. It is a means of protecting employees from unilateral action by an employer in a newly organized workplace that might tend to discourage or influence enthusiasm for unionization and/or to require trade unions to negotiate for gains that had already been achieved in the workplace. However, unless prospective promises are clearly part of the historic pattern of the employment relationship, have the kind of unequivocal clarity that was the case in *Brandt Industries,* supra, and employees clearly expect the promise to come to fruition

during the statutory freeze, such matters are better left to collective bargaining and should not be the subject of intervention by this Board.

[51] In the present application, we were not satisfied that the Employer's promise had achieved the same kind of unequivocal clarity that was seen in the *Brandt Industries* decision. For example, if the Employer had obtained replacement dental coverage for the affected employees there would have been an equally valid basis for the Union to have argued that the Employer unilaterally changed a condition of employment and did so in advance of a specific proposal on that subject from the Union. While there is no doubt that the Employer clearly promised to obtain replacement dental coverage for the affected employees (without interruption), the means by which the Employer would do so had not yet been determined. The Union wanted the dental coverage to be provided through its group benefits plan. The Employer, on the other hand, was trying to obtain benefits from Manulife Insurance. Under these circumstances, we find it hard to fault the Employer for waiting to negotiate with the Union regarding the provision of dental coverage for the affected employees. This was clearly a subject of interest to the Union at the bargaining table. In our opinion, caution must be exercised by this Board in the application of s. 6-62(1)(n) of the *Act* in circumstances were either action or inaction on the part of an employer (prior to engaging in collective bargaining) could give rise to an alleged violation.

[52] Secondly, while the Employer clearly promised to obtain replacement dental coverage for its employees and was attempting to find a new carrier at the time the Union filed its certification application, we are not persuaded that the Employer's decision to abandon its efforts affected the *status quo* in the workplace. At the time the Union filed its certification applications, the affected employees (i.e.: the employees previously included within the voluntary recognition agreement) did not have dental coverage. They had a promise to obtain such coverage but the mechanics of how that coverage would be provided was yet not determined. In our opinion, the Employer's inaction (in failing to obtain replacement dental coverage) did not change the *status quo*. To the contrary, the Employer's inaction maintained the state of affairs that was in place for the Rocanville and the Legacy project employees. These employees had a promise of dental coverage with the means of providing that coverage yet to be determined. The Employer's inaction neither preferred nor disadvantaged those groups of employees seeking to be represented by the Union relative to the other affected employees (i.e.: the employees providing security at the Poplar River Power Plant).

[53] For these reasons, we were not satisfied that the Employer violated s. 6-62(1)(n) in failing to obtain replacement dental coverage. Simply put, we were not satisfied that the Employer inaction (i.e.: its failure to obtain such coverage) changed the *status quo* of the employment relationship. To the contrary, under these rather unique circumstances, we find that it was appropriate for the Employer to wait for collective bargaining before taking any further action on its promise to provide replacement dental coverage to its employees.

Conclusion:

[54] For the foregoing reasons, the Union's application must be dismissed.

[55] Board member Allan Parenteau concurs with these Reasons for Decision.

DATED at Regina, Saskatchewan, this **9th** day of **July, 2015.**

LABOUR RELATIONS BOARD

"Original Signed by"

Steven D. Schiefner,
Vice-Chairperson

DISSENT OF JIM HOLMES

[56] I have read the decision of the majority and, with respect, cannot agree.

[57] In my opinion, the evidence we heard shows an underlying lack of good faith on the part of the Employer.

[58] Chronologically, the first evidence is the Employer's letter of July 31, 2014. It is a letter that contains a strong anti-Union animus, some glaring omissions, and several comments that the Employer knew to be false. I have inserted into the letter, what I believe to be the Employer's omissions, anti-union animus and false statements.

IMPORTANT INFORMATION FOR EMPLOYEES

WORKING AT CORONACH (SASKPOWER), BETHUNE (K & S) & ROCANVILLE (PCS)

July 30, 2014

During the course of the Company's recent dealings with the Labour Relations Board, it has become apparent that the voluntary recognition of UFCW Local 1400 by Securitas Canada for some of the Saskatchewan work sites is no longer working, particularly under the new provincial legislation.

[OMISSION: The voluntary certification had worked and was working for the employees and the Union. It did not work for Securitas who wanted to force an employee vote on its last offer.]

The Legal Stuff*: Only employees who work "in and around Regina" or "within a 25 mile radius of Saskatoon" are covered by a labour relations board certification order. The law requires that they are unionized. All other employees were voluntarily recognized by Securitas Canada – the law does not require that they are unionized. They are only unionized if Securitas and UFCW agree that they will be.* **[Omission: Securitas does not agree the employees should be unionized; UFCW wanted them to continue to be unionized.]** *These other employees work at Coronach (SaskPower), Bethune (K & S) & Rocanville (PCS) – that's you!*

What Does All this Mean? *You will no longer be required to pay union dues and will not be covered by the expired collective agreement. If there is a strike called by UFCW Local 1400, the strike will not impact you, as you are not represented by UFCW. You can continue working. Given that you are no longer unionized, if you walk off the job at the urging of the union, Securitas will have to consider that as a resignation from your job. The union cannot fine you for continuing to work, since they cannot force you to go on strike.*

> ***What will the Union Do****? You can expect that UFCW will be contacting you and trying to fill you with fear and worry about this transition. They will try to get you to re-sign a union support card, so that they can once again collect union dues from you – of course, they will say that you need the union's protection from Securitas.*
>
> ***[Anti Union Animus: The Union's purpose in seeking support is only to collect dues.]***
>
> ***What Should You Do****? We encourage you to carefully and respectfully listen to what you are being told by everyone, and make your decision after seeing what happens during this transition period. There is no rush to join a union – you can do that anytime – but the union will want your money soon, so it will put pressure on you right away, and will likely say many things that will worry you (that are not really true).*
>
> **[Anti Union Animus: The repetition of the claim the Union is only interested in dues. Securitas predicts the Union will tell the employees many things that are "not really true," The Employer c had no knowledge the Union was or would tell the employees things "that are not really true." There was no evidence led by the employer in this hearing that the Union ever old the employees "things that are not really true."]**
>
> ***Our Promise to You****. We wish to reassure you that there will be no changes to the terms and conditions of your employment, except that you will not have to pay union dues* **[Omission: employees will not have a collective agreement nor union representation to enforce it]** *and there will be a speedy transition to a new dental plan. We have already talked to an insurer to arrange an equivalent dental plan to replace the UFCW plan, so that you continue to have dental coverage without any interruptions.*
>
> **[It was the evidence of John Colletti Vice President of Human Resources that it had taken 2 to 21/2 months to transition dental plans in British Columbia.]**
>
> ***What About the Pay Increases from Collective Bargaining?*** *Securitas Canada intends to implement the pay increases contained in its final offer to UFCW as soon as possible (we are aiming for the first payday in August.) You will receive the lump sum payment (1.5% of your 2013 earnings), and the pay increases as outlined in previous communications to Securitas employees.*
>
> *If you have any questions, please contact Perry Clarke at 204-391-1838, Area Vice President, Western Canada (Prairies & BC), or John Coletti, Vice President, Human Resources at 416-774-2540 or 416-624-3133.*

[59] The events that follow must be set in the context of the tone and contents of this letter.

[60] The Rocanville employees signed union cards and then, in the subsequent supervised vote, a majority supported the Union as their bargaining unit.

[61] The certification Order was issued on September 26, 2014. The certification Order was issued on September 26, 2014. On September 30, 2014, the Union served notice to bargain in accordance with the *Act*. The Union explicitly mentioned the Employer's obligation to commence bargaining within twenty (20) days of the certification Order.

[62] On October 17, 2014, the Union wrote to the Employer indicating its desire to negotiate a workplace adjustment because of the possibility of the Employer losing the Rocanville security contract.

[63] There was a flurry of emails on October 17, 2014, but there was no agreement on a date to begin negotiations.

[64] In the Majority Award records this is:

> *However, on October 17, 2014, the Union insisted on compliance with s. 6-24(a) of The Saskatchewan Employment Act requiring the Employer to commence collective bargaining within twenty (20) days after the issuance of a certification Order. The Employer acquiesced and suggested the date of October 21, 2014 for collective bargaining. The Union agreed.*

[65] The Employer did propose a meeting on October 21, 2014 at 2:00 pm. The majority award does not mention this proposal for a meeting came at 9:10 am on October 20, 2014.

[66] Again, from the Majority Award reads as follows:

> *However, they **(Coletti and Clarke)** also accepted that, if the Union wanted to commence bargaining, the Employer would cooperate.*

[67] My notes record Mr. John Coletti's testimony as "*if obligated would bargain*". One does not acquiesce or cooperate with an obligation.

[68] It is clear the Union had to scramble to meet the October 21, 2014 date. The Employer specifically referenced the absence on October 21, 2014 of Ms. Lucy Figueiredo, the lead bargainer for its Securitas Saskatchewan units. She was replaced by the Union's highest ranked officer in Saskatchewan, President Norm Neault. Mr. Neault had full authority to negotiate.

[69] The Employer representative, Ms. Michelle Duerr, testified she was directed to attend the October 21, 2014 session "likely the day before." She was clear she had no authority to do more than exchange proposals.

[70] I do agree with the majority that the Employer's proposals were not "slapped together" as alleged by the Union.

[71] I also agree with the majority that:

> *There is no statutory authority upon which a trade union can demand that collective bargaining be concluded before a certain event, within a specified period of time or upon a timetable that it may desire.*

[72] But there is a statutory requirement that the bargaining begin:

> **Commencing collective bargaining – first agreement**
>
> **6-24** Authorized representatives of the union and the employer shall:
>
> (a) meet within 20 days after the board issues a certification order or any other period that the parties agree on; and
>
> (b) commence collective bargaining with a view to concluding a collective agreement.

[73] Twenty (20) days from the issuance of the certification Order was October 16, 2014. October 20, 2014 was twenty (20) days from the Union's request to bargain.

[74] I would agree with the majority that the meeting on October 21, 2014 and the act of exchanging proposals, although much less than the Union expected, and arguably less than the circumstances demanded, could constitute the commencement of collective bargaining.

[75] But to meet the total requirements of this section and indeed of the *Act,* there must be a view to concluding a collective agreement. The simple exchange could not lead to an agreement. Even if the parties were in complete agreement on each of their proposals, it was the testimony of Ms. Duerr, Mr. Clarke and Mr. Colletti that she was the sole employer representative present and she had no authority to agree to anything.

[76] In order for the parties to fulfill its duty to bargain, there must be another meeting. And it was the testimony of Ms. Duerr that it was the Employer that committed to get back to the Union to set other dates. The Employer never did.

[77] On November 4, 2014, having not heard anything, the Union filed the Unfair Labour Practice application alleging failure to bargain.

[78] The Employer filed its reply on November 10, 2014.

[79] The most effective defense to an accusation of failure or refusal to bargain is to resume bargaining. When the Labour Relations Board hearing on this file began on March 16, 2015, the Employer still had not gotten back to the Union on dates to the discuss the proposals exchanged on October 21, 2014.

[80] When this Board reconvened on June 11, 2015, there had still been no resumption of bargaining.

[81] It is this failure to follow up with dates for bargain that constitutes the failure to bargain. Given the tone and misrepresentations of the Employer's July 30 letter, the failure to meet the statutory requirement to start bargaining within twenty (20) days, the scheduling of the first date with one (1) day notice and the decision not to keep the commitment to find other dates constitute a refusal to bargain.

[82] It has been suggested with the loss of the contract, there was no point to bargaining. If this was the reason, it is startling that the Employer made no attempt to keep the Union current with its bid for the renewal contract.

[83] It is true that the Union lost its bargaining power since its members could no longer withdraw their labour. But there were steps the parties could have taken to ease the transition. It might have been in the Employer's interest to preserve its reputation for keeping its commitments to its employees.

[84] More importantly the collective agreement that had covered these employees contains Article 11.15 Layoffs Due to Loss Of Contract Site that provides for recall or bumping into other sites subject to certain conditions. Since these provisions are governed by seniority, an employee needs to be a member of the Union to access them.

[85] The Union's proposal of October 21, 2014 contains improvements to this Article (renumbered 10.09). The Employer proposal of October 21, 2014 proposed no changes to this Article. The Parties could clearly have extended at the existing protection of this Article to the laid off employees if they had met again.

[86] The *Act* did not require the parties to agree to any of the others proposals but it did require them to make a sincere attempt to reach an agreement.

[87] The second Unfair Labour Practice was the Employer's discontinuance of the employees' Dental Plan.

[88] *The Saskatchewan Employment Act* provides:

> ***6-62****(1) It is an unfair labour practice for an employer, or any person acting on behalf of the employer, to do any of the following:*
>
> > *(n) before a first collective agreement is entered into or after the expiry of the term of a collective agreement, to unilaterally change rates of pay, hours of work or other conditions of employment of employees in a bargaining unit without engaging in collective bargaining respecting the change with the union representing the employees in the bargaining unit;*

[89] The conditions of the employees in question can be divided into two (2) time frames. Until July 30, 2014, prior to the withdrawal of the voluntary recognition, the employees were covered by the UFCW Dental Plan. The employer paid the premiums.

[90] On July 30, 2014, the employees' dental benefits were covered by an employer promise. "*... no changes to the terms and conditions of your employment....equivalent dental plan to the UFCW plan so you will continue to have dental coverage without any interruptions.*"

[91] In short, the terms of conditions of employment always contained the benefits equivalent to the UFCW Plan.

[92] The fact that the employer did not have an insurance carrier in place at the time of its promise, ("equivalent," "without any interruptions") speaks to the Employer's lack of honesty, but not its responsibility to provide the benefit.

[93] There were two (2) simple solutions to the Employer's lack of a current insurer. The simplest but arguably most expensive was to self-insure, to simply pay directly employee submitted claims in accordance with the terms of the UFCW Plan. Since there were twenty-six (26) Securitas employees at Rocanville, out of a total of 9,000 in Canada this would not be ruinous. It would only be necessary for the 2 – 2 1/2 months until coverage could be arranged (or the three (3) months until the site contract expired).

[94] The Employer could have also instructed employees to retain their receipts and negotiated retroactive coverage with the insurer.

[95] After the certification of the Union on September 26, 2014, there was a third option. The Employer simply needed to negotiate the inclusion of the Employees in the UFCW Plan. The *Act* does not require the Employer to conclude a collective agreement before making a change but only to engage in collective bargaining respecting the change.

[96] The Employer chose to do none of these things. It did not provide any dental benefits to its employees. The Employer broke both its promise of the July 30, 2014 letter and the law.

[97] The Employers argument for not honouring its commitment is not compelling. The existing condition was the benefits of the UFCW Plan; by the collective agreement until July 30, 2014 or by the promise on July 30, 2014.

[98] The certification of the Union did not bar the continuing provision of the Dental Plan since it was an existing condition of employment for the entire time.

[99] Even if the Employer genuinely believed finding a new insurance carrier constituted a change in working conditions, *The Saskatchewan Employment Act* does not prevent it from changing a condition of employment. The *Act* only requires the Employer bargaining collectively with the Union concerning that change.

[100] While the proposals of the Parties on October 21, 2014 suggest an agreement was possible, the Employer representative had no authority to agree to anything and those who did have that authority to bargain made no effort to do so.

[101] The evidence before this Board is the employees at the Rocanville site lost their employment through no fault of their own. They were exercising their rights under the laws of Saskatchewan and the Constitution of Canada.

[102] The Employer lost its contract at Rocanville by a fair competitive bidding process. But having lost the contract, it made no effort to lessen the impact on the employees, to provide the benefits it promised them, or to fulfill its obligations to bargain in good faith.

[103] It is unclear what concrete remedy this Board can now provide to the affected employees. We have been asked to retain jurisdiction in case there are outstanding dental claims. That appears reasonable to me.

[104] The Board should also make an Order declaring the Employer failed to bargain in good faith.

[105] In my opinion that this Board should clearly state that employers must meet the twenty (20) day requirement to begin collective bargaining. A simple exchange of proposals may constitute commencing collective bargaining. But the Board must be clear that an exchange is not sufficient to demonstrate bargaining in good faith. There must be meetings at which the parties can develop and amend their positions and a genuine attempt to reach a collective agreement. This does not mean the parties must follow any particular schedule after the first meeting or that they must sacrifice any particular position. But they must genuinely make the attempt.

[106] To not find an unfair labour practice of failing to bargain leaves the impression that a tardy and insincere attempt is sufficient for the purposes of the *Act.*

Jim Holmes,
Board Member

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant v. SECURITAS CANADA LIMITED, Respondent

LRB File No. 246-14; July 13, 2015
Vice-Chairperson, Steven D. Schiefner; Members: Jim Holmes and Allan Parenteau

CORRIGENDUM

[107] **Steven D. Schiefner, Vice-Chairperson**: Paragraphs 27, 32 and 33 of the Reasons for Decision in the within proceedings issued by the Board on July 9, 2015 contained errors. In paragraphs 3, 11, 12, 14, 19, 20, 21, 22, 23, 40, 58 and 75, the names of Mr. Perry Clarke and Mr. John Coletti were spelled incorrectly.

DATED at Regina, Saskatchewan, this **13th** day of **July, 2015**.

LABOUR RELATIONS BOARD

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Steven D. Schiefner,
Vice-Chairperson