MOOSE JAW FIREFIGHTERS' ASSOCIATION LOCAL 553, Applicant v. THE CITY OF MOOSE JAW, Respondent

LRB File No. 219-15; June 17, 2016
Vice-Chairperson, Graeme G. Mitchell, Q.C.; Members: John McCormick and Allan Parenteau

For the Applicant: Crystal L. Norbeck
For the Respondent: Edward J. O'Dwyer

Unfair Labour Practice – Failure to Bargain in Good Faith – Statutory Interpretation – Sections 6-1(1)(e) and 6-62(1)(d) of *The Saskatchewan Employment Act* – Duty to Bargain in Good Faith applies to all aspects of collective bargaining under Part VI – Duty to Bargain in Good Faith applies to negotiations for settling disputes between Employer and Union.

Unfair Labour Practice – Failure to Bargain in Good Faith – Board reviews jurisprudence respecting mandate and sufficient authority to bargain collectively in the public sector.

Unfair Labour Practice – Failure to Bargain in Good Faith – Employer rejects Union's settlement proposal after agreeing to an earlier offer of settlement – Employer returns to Union with its original offer which was less than the Union's earlier settlement offer.

Unfair Labour Practice – Remedy – Board applies usual remedy which is to place parties in the position that they would have been in, had the failure to bargain in good faith not occurred – Board directs parties to return to collective bargaining.

REASONS FOR DECISION

OVERVIEW

[1] Moose Jaw Firefighters' Association Local 553 (the "Association") brings this application under section 6-62(1) of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1 (the "*SEA*") alleging the City of Moose Jaw (the "City") committed an unfair labour practice when

in July 2015, it terminated four (4) full-time civilian Alarm Room Operators[1] in its employ. The Association is the certified bargaining agent for all full time fire-fighting personnel employed by the City including the four (4) dispatchers by virtue of an Order of this Board dated June 23, 1989.[2]

[2] The Association's principal complaint is that the City reneged on an agreement to provide these individuals with enhanced severance payments after the Association acceded to the City's request, made at the time of their termination, that an out-of-scope office manager position be created. The City disagrees. It asserts that no formal agreement with the Association had been achieved. Rather, the City maintains that only a proposal had been arrived at which its' representatives agreed to present to City Council for its approval. This approval failed to materialize.

[3] It is apparent to the Board that the resolution of this application turns, in large measure, on the extent of the City's representatives' authority to agree to the final proposal on the question of enhanced severance to be paid to the four (4) dispatchers, presented by the Association on August 12, 2015.

[4] These Reasons explain why the Board unanimously concludes the Association satisfied its burden to prove on a balance of probabilities that the City committed an unfair labour practice in its dealings with the Association at the time of, and following, the dispatchers' termination. In particular, the Board finds the City breached its duty to bargain in good faith by rejecting the proposed settlement reached with the Association on August 12, 2015, and returning with its original offer for enhanced severance payments.

FACTUAL BACKGROUND

[5] The hearing of this application took place on March 28 & 29, 2016 in Regina. Two witnesses testified on behalf of the Association: Gordon Hewitt, President of the Association, and William Howes, currently the Association's Vice-President. Three (3) witnesses testified on

[1] Throughout these proceedings the Alarm Room Operators were referred to as "dispatchers". Accordingly, this term will be adopted in these Reasons for Decision.
[2] See: LRB File No. 094-89. The only persons excluded from this bargaining unit are "the Fire Chief, Deputy Fire Chief and Office Manager".

behalf of the City: Fire Chief ("FC") Rodney Montgomery, Deputy Fire Chief ("DFC") Brian Wilson and Al Bromley, Director of Human Resource Services for the City.

[6] This matter has its genesis in a decision taken by City of Moose Jaw Council ("City Council") to stream-line operations in various facets of City administration, including the Moose Jaw Fire Department. On July 16, 2015, City Council passed a resolution directing City officials to terminate the four (4) dispatchers and immediately transfer all fire dispatching services to the Provincial Emergency Communications Centre in Prince Albert, Saskatchewan.

[7] Later that same day, FC Montgomery telephoned Mr. Hewitt at his home. He advised Mr. Hewitt that he wished to meet with him and other members of the Association's Executive Committee the next morning to discuss City Council's decision. He did not explicitly advise Mr. Hewitt of the substance of City Council's Resolution, although Mr. Hewitt strongly suspected it related to the continued employment of the four (4) dispatchers.

[8] The next morning Mr. Hewitt asked FC Montgomery to postpone the meeting until the following Monday, July 20, 2015 because certain other members of the Association's Executive Committee were either away or unavailable. FC Montgomery declined Mr. Hewitt's request, and the meeting proceeded at approximately 11:00 a.m. that morning.

[9] As what transpired at this meeting and other subsequent meetings is central to the resolution of this application, it is important we review the discussions and negotiations that took place at those times in some detail.

The Meetings of July 17, 2015

[10] In actual fact, three (3) separate meetings took place on July 17, 2015.

[11] At the first meeting, FC Montgomery together with DFC Wilson met with Mr. Hewitt, Ms. Catherine Goudie, the dispatcher on duty that morning and Mr. Dale Nash, a member of the Association who was also working that day. Mr. Hewitt had invited Ms. Goudie to attend this meeting in order to take notes of the discussion.

[12] FC Montgomery announced that City Council had decided to terminate the employment of the four (4) dispatchers. He read from the formal termination letter prepared for each of the dispatchers, copies of which were entered into evidence. This letter stated that the

dispatchers would be terminated effective September 11, 2015; they would be paid out the statutory notice period to which they were entitled under the *SEA*, and the City would offer to them an enhanced severance payment. FC Montgomery advised that the City proposed to pay an additional three (3) months' severance to each of the dispatchers regardless of years of service (the "enhanced severance payment").

[13] Finally, FC Montgomery advised that the City hoped to establish an out-of-scope position of Office Manager ("OM"). The penultimate paragraph of the termination letter described this proposal as follows:

> *In addition, we wish to advise that the City will be engaging in discussions with the Association regarding the possibility of creating a new non-union Office Manager position.* ***If the City and the Association are able to reach agreement on this matter, and a non-union Office Manager position is posted, you (and your former colleagues in dispatch) will be invited to apply. Of course, the City may not proceed in this manner if it is unable to obtain the Association's consent to the non-union position, and in any event cannot guarantee that an offer of employment will be made to any job applicant****.* [Emphasis added.]

[14] Mr. Hewitt testified that this was the first time he learned not only about the immediate termination of the four (4) dispatchers but also the City's proposal to create the OM position. He expressed his dismay to FC Montgomery about the situation as well as the Association's disappointment at not being advised of these developments sooner.

[15] At this meeting, FC Montgomery also presented Mr. Hewitt with a Memorandum of Settlement which purported to resolve the issues of statutory notice period payments, the enhanced severance payments and the OM position. This Memorandum stated in one of its preamble clauses that:

> *[T]he parties wish to enter into a final and binding settlement of all matters in dispute related to the corporation's decision to contract out its dispatch operations, including the termination of the current Alarm Room Operators' employment with the City and the creation of an out-of-scope Office Manager position*

This document contemplated that all parties – the City, the Association and all four (4) dispatchers – would agree to its terms and execute it. Ultimately, the version of the Memorandum of Settlement presented to Mr. Hewitt on July 17, 2015 was never executed by anyone.

[16] A second meeting followed shortly after the conclusion of the 11:00 a.m. meeting. Mr. Hewitt described it as "a closed door meeting" in the Platoon Commander's office, attended only by FC Montgomery, DFC Wilson and himself. Again, Mr. Hewitt took this opportunity to express his disappointment and disapproval to management.

[17] The third and final meeting took place in the afternoon of July 17, 2015. The three (3) other dispatchers were asked to come to the Fire Hall in the afternoon. There in Mr. Hewitt's presence, FC Montgomery advised each of them of their immediate termination and read to them the contents of the termination letter. Altogether four (4) dispatchers were immediately affected by City Council's decision to terminate them:

- Catherine Goudie – 26 years, 7 months service;
- Sherry Clemens – 26 years, 1month service;
- Linda Kennedy – 20 years, 6 months service, and
- Canada Woodley – 12 years, 10 months service.

[18] At the time of the dispatchers' termination, Linda Kennedy was on long-term disability; however, the other three were on active duty with the City. The City proposed to acknowledge her special circumstances by paying out eight (8) weeks' severance as required under the *SEA*[3] and then permitting her to return to long term disability provided she still qualified for these benefits at the end of the statutory notice period.

[19] Despite the difference in years of service and personal circumstances of the four (4) dispatchers, the Memorandum of Settlement stipulated that a lump sum payment of three (3) months' wages less lawful deductions would be paid "to each of the Affected Employees". From the outset, the City appeared unwilling to deal individually with each dispatcher in a way that would accommodate their particular situation.

[20] This aspect of the City's position greatly disturbed Mr. Hewitt and the Association. In a private meeting with the dispatchers following their session with FC Montgomery, he advised them that the Association would seek legal advice about how the City had handled their termination.

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[3] The *SEA*, section 2-60(1) stipulates that employees who are being terminated and have more than ten (10) years of continued service are to be given a minimum of 8 weeks written notice. All of the dispatchers qualified for this notice period.

The Meeting of July 20, 2015

[21] The City and the Association convened another meeting on July 20, 2015. At this meeting, the City was represented by FC Montgomery, DFC Wilson and Al Bromley. The Association's Executive was out in full force with Mr. Hewitt, William Howes, the Association's Vice-President and Matt Crocker, Secretary of the Association, in attendance. While the witnesses agreed on the general outline of what transpired at this meeting, differing perspectives respecting their effect began to emerge.

[22] Mr. Hewitt again reiterated the Association's displeasure at how the matter had been handled. FC Montgomery agreed that it could have been handled better. Mr. Hewitt then inquired if the proposed enhanced severance of three (3) months per dispatcher was open to negotiation. FC Montgomery replied that it might be.

[23] The focus of the discussion then turned to the Memorandum of Settlement which had been presented to the Association, and the City's desire to create an out-of-scope OM position. Mr. Howes testified that the City suggested that if the OM position was filled by one of the terminated dispatchers, there would be an additional severance payment which might be available for distribution among the other three (3) dispatchers, provided everyone executed the Memorandum of Settlement. However, FC Montgomery testified that if any variation in the severance package was being contemplated, it would have to go back to the City Manager – Mr. Matthew Noble – for approval.

[24] Mr. Bromley's evidence differed slightly from that of Mr. Howes and FC Montgomery. He advised them that City Council's primary objective was to avoid incurring legal expenses and, in order to do so, it needed to settle all outstanding issues namely, the creation of the out-of-scope OM position and the quantum of the enhanced severance payments. In particular, he advised that to shield the City from future liability flowing from these terminations, it was essential that all parties sign the Memorandum of Settlement.

[25] Mr. Bromley testified the City believed it to be advantageous if one of the dispatchers assumed the OM role. It would offer continued employment to that dispatcher and the City would have an experienced employee in the position. He indicated that the City's negotiating team was constrained by the mandate of three (3) months' enhanced severance

given to it by City Council. Any proposal over and above this amount, in his view, would have to be taken back to City Council's Personnel Committee for its consideration and approval.[4]

[26] It was also at this meeting that the discussion turned to whether the severance payments would be provided by way of either a single payout or by salary continuance. As well, the Association raised the possibility of there being what was described as a "a collective pool" of money. By that, the Association meant that if one of the dispatchers was successful in the competition for the OM position, the enhanced severance payment to which this individual would have been entitled to receive could be distributed among the three other dispatchers.

[27] At the conclusion of the meeting, Mr. Bromley indicated that he would forward to Mr. Hewitt and the Association a formal proposal respecting the OM position.

The "Scope Exclusion Intent" Letter of July 21, 2015

[28] This proposal was presented to the Association in a letter to Mr. Hewitt dated July 21, 2015 and signed by Mr. Bromley. It was intended to serve as "formal notification" of the City's intention to create the OM position and "to exclude this position from the [Association] to an Out-of-Scope position effective immediately upon their date of hire."[5]

[29] To this letter was appended a formal position description which itemized such matters as the position's duties and responsibilities, and the qualifications the incumbent must possess to serve in this capacity. This particular document signed by various City officials including Mr. Bromley, FC Montgomery and the City Manager's delegate, was also dated July 21, 2015. As Mr. Bromley expressly stated in the letter the tasks which would be assigned to position demonstrate it is "clearly an Out-of-Scope management role".

[30] FC Montgomery left for vacation that same day. Despite his absence, representatives from the City and the Association's Executive Committee continued to hold discussions in an attempt to resolve the issues of the OM position and the appropriate severance for the four (4) dispatchers.

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[4] When asked by the Board who comprised the Personnel Committee, Mr. Bromley testified that the full Council acted as the Personnel Committee. He advised that all deliberations and decisions of the Personnel Committee were made *in camera*.

[5] Exhibit A-5, at 1, paras. 1, 2.

The Meetings of July 29 & 30, 2015

[31] At these two meetings, Gordon Hewitt, William Howes and Matt Crocker represented the Association, while DFC Wilson and Al Bromley represented the City. Now that the City's formal proposal for the out-of-scope OM position had been presented to the Association, further discussion ensued as to its implications.

[32] Mr. Bromley indicated that the City wanted to move expeditiously on this proposal, so it was important for the Association to provide its response as soon as possible. Mr. Hewitt indicated that the Association wanted the issues of enhanced severance payments for the various dispatchers and the OM position delinked. Mr. Bromley rebuffed this request. He indicated that all the parties including the four (4) dispatchers had to execute the Memorandum of Settlement or there could be no agreement. However, he suggested that if one of the dispatchers was the successful candidate for the OM position, it might create a "pool" of money which could be distributed among the other dispatchers to enhance their severance payments.

[33] Mr. Hewitt testified that the Association worried about the potential for a duty of fair representation claim being brought by one or more of the dispatchers. It was for this reason that the Association wanted to be certain it did everything to represent their members' interests. Mr. Bromley advised the Association if they all failed to agree, the City would hold the money in reserve to cover any legal costs which might be incurred if a grievance was filed, or an application to the labour relations board commenced, as a consequence of these terminations.

[34] In this meeting, Mr. Hewitt raised for the first time the Association's willingness to discuss the possibility of agreeing to the creation of the OM position on a provisional basis for one year. Mr. Bromley expressed the City's openness to exploring this option.

[35] The next day – July 30 – the same individuals re-convened. At the outset, Mr. Hewitt reiterated the Association's strong desire that the issues of the enhanced severance and the OM position be separated. Again, Mr. Bromley rejected this request. In his words, the creation of the OM position and filling it was "a critical piece" of the settlement of these issues. Furthermore, he indicated that from the City's perspective the timeline for achieving this objective was tight. He also reminded the Association's representatives that the City was providing each of the dispatchers with eight (8) weeks of pay in lieu of notice without acknowledging the City was statutorily required to do so in accordance with the *SEA*.

[36] The discussion then turned to the severance issue. The City initially offered a payment of 1.5 weeks/year of service. However, this was quickly withdrawn when the Association demonstrated to Mr. Bromley and DFC Wilson this offer would result in a payment which amounted to less than the three (3) months' enhanced severance payments originally presented in the Memorandum of Settlement.

[37] The City's representatives then advised that they were authorized to offer to the Association severance payments in the amount of 1.78 weeks/year of service. As DFC Wilson testified this amount was "roughly equivalent" to the three (3) months' severance payment. Mr. Bromley indicated that, if accepted, this amount would be a lump sum payment exclusive of the eight (8) weeks the City was statutorily required to pay.

[38] Mr. Hewitt responded by saying that the Association's Executive Committee wished to consult with the affected dispatchers before any position was taken. He further stated that from the Association's perspective an offer of 2.5 weeks/year of service was more reasonable taking into account the lengthy tenure of these four (4) dispatchers.

[39] This meeting concluded with no resolution on either the OM position or the quantum of the enhanced severance payments. At its conclusion, no further meetings were scheduled, although Mr. Hewitt advised the City's representatives that the Association was prepared to meet again provided the City had "a fair severance package" to discuss.

The Meeting of August 12, 2015

[40] This particular meeting proved critical in moving the resolution of the issues forward. By this time, FC Montgomery had returned from his vacation leave on August 10, 2015. He candidly testified that upon his return it appeared that during his absence both sides had reached in his words, "some type of agreement" respecting a pool of money which could be distributed among the dispatchers provided there was agreement on the creation of the OM position and the position's incumbent was one of the terminated dispatchers. He emphasized, however, that these meetings which he did not attend were "without prejudice" and the parties had not "landed on a concrete plan".

[41] At this meeting, Mr. Hewitt, and Mr. Howes represented the Association while FC Montgomery, DFC Wilson and Mr. Bromley represented the City.

[42] At the beginning of the meeting, Mr. Hewitt announced that the Association would agree to the OM position on a provisional basis for one (1) year. There was, however, still no agreement on the enhanced severance payments nor was the City now prepared to separate the two issues.

[43] With that, the discussion turned to the question of the enhanced severance. Mr. Hewitt proposed an enhanced severance package of 2.5 weeks/years of service. Mr. Bromley testified that either he or DFC Wilson indicated this proposal considerably exceeded the financial mandate which City Council had given to them. He stated that if the Association remained wedded to this proposal the City would have to return to its initial offer of three (3) months. The parties would be at impasse. In his testimony, Mr. Hewitt confirmed that the City's representatives were very clear that this proposal was, in his words, "not doable".

[44] The parties returned to discussing the 1.78 weeks/year of service formula. They discussed including pension benefits of 8% on top of this amount, as well as career counselling and résumé development for the affected dispatchers. At this point in the meeting, the parties recessed to allow the City's representatives to consult with the City Manager, Mr. Matthew Noble, and obtain further instructions. As City Manager, Mr. Noble was authorized to approve the proposals being discussed.

[45] When the meeting resumed, Mr. Bromley advised that the City was prepared to agree to this proposal. Mr. Hewitt responded by offering another proposal. The Association would be willing to sign off on enhanced severance payments of (2) two weeks/years of service without any pension benefits, payable in one lump sum payment. Such a settlement, the Association believed, would be acceptable to the dispatchers, and the Association was prepared to agree to it on their behalf. Mr. Howes, the Association's Vice-President, testified that calculations done by the Association estimated that this proposal would cost the City approximately $5,100 more than the proposal just agreed to by the City.

[46] Mr. Bromley testified that if the Association had agreed to the 1.78 weeks/year of service and 8% pension benefit formula, a tentative agreement would have been achieved subject to ratification by City Council's Personnel Committee. Nevertheless, he stated that that FC Montgomery, DFC Wilson and he believed the proposal just put forward by the Association was a reasonable one. He made it clear to the Association that the proposal would have to be

taken back to the City Manager for approval. On behalf of the City's representatives, he undertook to do so.

[47] Both Mr. Hewitt and Mr. Howes acknowledged that this proposal had to be taken back to the Personnel Committee. Yet, they both expressed the view that this was merely a formality, that this proposal fell within the City representatives' ostensible mandate and the Personnel Committee likely would accept it. Otherwise, Mr. Hewitt asked rhetorically, why would the City's representatives be prepared to consider it and agree to take it forward.

[48] Sometime after this meeting, the City's representatives presented the Association's proposal to Mr. Noble for his assessment and approval. Rather than give his approval, however, Mr. Bromley testified that Mr. Noble advised him to present this proposal with a recommendation to the Personnel Committee. In accordance with this direction, FC Montgomery prepared a report for the Personnel Committee recommending the 2 weeks/year of service formula as a way to resolve the enhanced severance payment issue for the four (4) dispatchers. The Personnel Committee did not consider FC Montgomery's report until August 24, 2015. DFC Wilson candidly testified that this almost two (2) week delay occurred because the Personnel Committee needed to know the Association's decision on the OM position before deciding whether or not to accept FC Montgomery's recommendation respecting the enhanced severance payment formula.

The Memorandum of Agreement

[49] In the meantime, the City prepared a Memorandum of Agreement memorializing at least part of the understanding achieved by the City and the Association at the August 12th meeting.[6] FC Montgomery presented this document to Mr. Hewitt for his signature on August 18, 2015.

[50] The Memorandum of Agreement opens with three (3) prefatory clauses, the third one reads as follows:

[6] Paragraph 8 of the Memorandum of Agreement provided that it is "made without prejudice or precedent to the rights of the Employer or the Union in any other matter and will not be referred to or relied on in any other matter or for any purpose whatsoever." In light of the fact this Memorandum was included in the Respondent's Book of Documents submitted at the hearing, the Board will ignore this paragraph.

> **And Whereas** the parties wish to enter into **a binding agreement of all matters in dispute related to the creation of an out-of-scope Office Manager position**[.] [Emphasis added.]

[51] It then sets out that the four (4) dispatchers were to be terminated effective September 11, 2015 (paragraph 1); the City will post a "vacancy for a new non-unionized position titled "Office Manager" on or before August 18 (paragraph 3); this position "shall be initially posted as a 1 year term position" (paragraph 3), and should one of the terminated dispatchers obtain employment as the OM, her "entitlement to Salary Continuance and Benefits Continuance, as a result of the alarm room position termination, shall immediately cease" regardless of the date she commenced such employment" (paragraph 6).

[52] Mr. Hewitt testified that he was working in the fire-hall on the morning of August 18, 2015 when he was approached by FC Montgomery. FC Montgomery presented him with the Memorandum of Agreement and asked him to execute it on behalf of the Association. Mr. Hewitt looked at the document quickly and then signed it. He testified that upon reviewing the document he assumed that one of the dispatchers would be the successful candidate in the competition.

[53] FC Montgomery then forwarded the Memorandum of Agreement on to the City's senior executives. The City Clerk, Mr. Myron Gulka-Tiechko, executed it on August 19, 2015 and the Mayor, Ms. Deb Higgins, on August 24, 2015.

[54] As stipulated in the Memorandum of Agreement, the City posted the job notice for the OM position and on August 19, 2015, FC Montgomery and DFC Wilson conducted interviews for this position. As events unfolded, Ms. Catherine Goudie, the dispatcher with the longest tenure, secured the position and commenced employment as the OM on August 20, 2015. In accordance with paragraph 6, the salary continuance and enhanced severance payments to which she would otherwise be entitled ceased. The Association believed this amount could now be added to the collective pool of money available for increasing the severance payments offered to the three (3) other dispatchers.

[55] City Council's Personnel Committee met *in camera* on August 24, 2016. At the meeting, FC Montgomery presented his report recommending the two (2) weeks/year of service formula but much to his surprise the Personnel Committee rejected it and instead instructed the City's representatives to return to the Association with the original offer of three (3) months

enhanced severance payment to each terminated dispatcher. Indeed, each of the City's witnesses testified as to their disappointment with the Personnel Committee's decision.

The Meeting of August 25, 2016

[56] The final formal meeting respecting the termination of these dispatchers described in the evidence took place on August 25, 2015, one day after the Personnel Committee's decision. FC Montgomery and DFC Wilson represented the City at this meeting, while Mr. Hewitt and Mr. Howes represented the Association.

[57] FC Montgomery advised Mr. Hewitt and Mr. Howes that the Personnel Committee had rejected the two (2) weeks/year of service formula. Instead, the Personnel Committee instructed the City's representatives to return to the Association with the City's original offer, and not the 1.78 weeks/year of service plus 8% pension entitlement they had agreed to at the August 12, 2015 meeting.

[58] Mr. Hewitt testified that he expressed the Associations' deep disappointment at what had transpired, and advised the City's representatives that the Association would be seeking legal advice on its available options. He refrained from saying anything about the Association's belief that the City reneged on a deal. The meeting ended shortly after it began.

Subsequent Noteworthy Events

[59] On September 8, 2015, the Association, on behalf of the three (3) dispatchers, filed formal grievances respecting the City's refusal to treat each case separately and alleging this deprived them of the seniority benefits flowing from the collective agreement.

[60] The final communication from the City's representatives came in a "without prejudice" letter from Mr. Bromley to Mr. Hewitt dated December 8, 2015. It repeated the City's original offer to resolve these terminations. Mr. Bromley testified that the letter was sent to provide the Association with one final opportunity to settle this dispute. In it, the City indicated that this offer would expire at midnight on December 18, 2015.

[61] By a letter dated December 18, 2015, Mr. Hewitt on behalf of the Association advised Mr. Bromley that they were not prepared to settle on those terms.

[62] Apart from these terse communications, there have been no further attempts by either side to resolve the question of severance for the three (3) terminated dispatchers with the unfortunate result that apart from statutorily required severance payments in lieu of notice, these individuals have received no further monies from the City relating to their terminations.

ISSUES

[63] Two issues fall to be decided in this matter:

- Did the City commit an unfair labour practice in its dealings with the Association respecting the termination of the four dispatchers? If so, in what way?
- If the City did commit an unfair labour practice, what remedy should this Board award to the Association?

RELEVANT STATUTORY PROVISIONS

[64] In its formal application, the Association invoked the following sections of the *SEA*: sub-sections 6-62(1)(a); 6-62(1)(d); 6-62(1)(e); 6-62(1)(r), and "all other sections of the [*SEA*] that may apply".

[65] The invoked provisions read as follows:

> ***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:*
>
> > *(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten, coerce an employee in the exercise of any right conferred by this Part;*
> > *. . . . . .*
> >
> > *(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;*
> >
> > *(e) to refuse to permit a duly authorized representative of a union with which the employer has entered into a collective agreement or that represents the employees in a bargaining unit of the employer to negotiate with the employer during working hours for the settlement of dispute and grievances of:*
> > > *(i) employees covered by the agreement; or*
> > > *(ii) employees in the bargaining unit.*
> >
> > *. . . . . .*

> *(r) to contravene an obligation, a prohibition or other provision of this Part imposed on or applicable to an employer.*
>
> *(2) Clause (1)(a) does not prohibit an employer from communicating facts and its opinions to its employees.*

[66] Two other provisions of the *SEA* are also relevant. Section 6-7 contains the statutory obligation of both unions and employers to bargain collectively in good faith. It reads as follows:

> ***6-7*** *Every union and employer shall, on good faith, engage in collective bargaining at the time and in the manner required pursuant to this Part or by an order of the board.*

[67] The term "collective bargaining" is defined in subsection 6-1(1)(e) as follows:

> *(e) "collective bargaining" means:*
> *(i) negotiating in good faith with a view to the conclusion of a collective agreement or its renewal or revision;*
> *(ii) putting the terms of an agreement in writing if those terms were arrived at in negotiations or are required to be inserted into a collective agreement by this Part;*
> *(iii) executing a collective agreement by or on behalf of the parties; and*
> *(iv) negotiating from time to time the settlement of disputes and grievances of employees covered by a collective agreement or represented by a union[.]*

ARGUMENT OF THE PARTIES

The Association's Arguments

[68] Ms. Norbeck on behalf of the Association stated at the outset that there did not appear to be any serious disagreement between the parties regarding the essential facts relevant to this matter. She asserted it was only on July 17, 2015 that the Association first learned of the termination of the four (4) dispatchers and the City's desire to create the OM position. At that time the City's representatives presented the proposal to create this position, they also proposed to resolve these matters by paying each of the dispatchers three (3) months' additional salary over and above the statutory notice period for these individuals of eight (8) weeks as required under section 2-60(1) of the *SEA*. She insisted that from the very beginning, and over the Association's objections, the City conducted all negotiations as if these two issues were linked. It was only after the Association agreed to the creation of an out-of-scope OM position on a provisional basis and executed the Memorandum of Agreement on August 18, 2015 that the City was interested in discussing a potential settlement to the severance issue.

[69] Ms. Norbeck further submitted that with the Association's agreement to the OM position and the incumbent being one of the terminated dispatchers, the City got exactly what it desired, namely an out-of-scope position and an employee who had already considerable work experience in the fire-hall. Yet, the Association achieved nothing by agreeing to the City's proposal. The Association's Executive believed that at the conclusion of the August 12th meeting, it had an agreement with the City to offer the dispatchers' an enhanced severance payments equal to 2 weeks/year of service in return for the Association's agreement to the creation of the OM position.

[70] She identified various indicia of the City's conduct which the Association asserts constitute unfair labour practices. These may be summarized as follows:

- *Failing to advise the Association of the City's intention to create an out-of-scope OM position before informing the four (4) dispatchers directly;*
- *Failing to negotiate an enhanced severance package individually with each dispatcher which would take into account their different levels of seniority; different ages, and different personal circumstances;*
- *Effectively linking the issue of enhanced severance payments for the dispatchers, and, more particularly, quantum, to the Association's approval of the out-of-scope OM position;*
- *Requiring all of the dispatchers and the Association to accept the City's original proposal before it could be deemed to be settled;*
- *Resiling from a proposal acceptable to both sides after resolution had been achieved on the out-of-scope OM position, and*
- *Failing to provide the City's representatives with the requisite authority to negotiate a resolution of the termination dispute between the City and the Association.*

[71] Finally, she submitted that in the event the Board sustains the Association's allegations against the City, it seeks the following remedial orders[7]:

- *That the City cease and desist committing the unfair labour practices in dealing with the dispatchers and the Office Manager position;*
- *A declaration that the City reneged on its agreement with the Association;*
- *That the City negotiate in a fair and good faith manner and present only those who have the authority to negotiate on behalf of the City;*

[7] See especially: The Association's Brief of Law and Argument dated March 29, 2016 at para. 39.

- *That the decision and resulting Order be posted in the workplace and delivered to the dispatchers, and*

- *Such further and other relief the Board deems just.*

The City's Arguments

[72] Mr. O'Dwyer, on behalf of the City, opened by concurring with Ms. Norbeck that little disagreement exists between the parties about the salient facts. He stated that the "overarching theme" in these proceedings, quite simply, "is of two (2) parties at the table attempting to reach a deal".

[73] Turning then to the specific allegations advanced by the Association, he submitted that it had failed to satisfy its burden to prove a violation of section 6-62(1)(a) of the *SEA*. In particular, he noted this sub-section primarily deals with employer speech which could be shown "to interfere with, restrain, intimidate, threaten or coerce" an employee. Mr. O'Dwyer contended that there is a paucity of evidence to support this claim and, as a consequence, it should be dismissed.

[74] Respecting the Association's allegations that the City breached subsection 6-62(1)(b), Mr. O'Dwyer made two (2) submissions. First, he suggested that Ms. Norbeck did not assert a violation of this provision in the Association's formal unfair labour practice application so to allow the Association to advance this claim now would improperly enlarge the scope of its application. Second, and in the alternative, Mr. O'Dwyer submitted that the City's actions did not come close to the kind of employer conduct this particular subsection is intended to capture. He relied heavily on the Board's interpretation of this provision offered in *Service Employees International Union (West) v. Saskatchewan Association of Health Organizations et al.*[8]("*SAHO*"). He particularly emphasized Vice-Chairperson Schiefner's statement found at paragraph 123 that subsection 62(1)(b) seeks to prohibit employer conduct which could be characterized as "threats to the survival or independence of a trade union."

[8] LRB File Nos. 092-10, 099-10 & 105-10, 2014 CanLII 17405 (SK LRB), reversed *SEIU-West v Saskatchewan Association of Health Organizations*, 2015 SKQB 222 *per* Laing J. An appeal from this latter ruling was heard by the Saskatchewan Court of Appeal on March 17, 2016: *Cypress Regional Health Authority et al. v SEIU-West; Saskatchewan Association of Health Organizations et al. v Saskatchewan Government and General Employees' Union*, CACV 2757. Judgment was reserved.

[75] In Mr. O'Dwyer's submission the Association's application should be resolved under subsection 6-62(1)(d) of the *SEA* the provision which makes it an unfair labour practice for an employer "to fail or to refuse to engage in collective bargaining with representatives of a union representing the employees in a bargaining unit".

[76] On this aspect of the application, he made two alternative submissions. First, he submitted that with the recent enactment of the *SEA*, the duty to bargain in good faith no longer applies in cases such as this one. His argument is that when the new statute came into force the Saskatchewan Legislature removed the requirement of bargaining in good faith from all matters except the negotiation of a collective bargaining agreement. He maintained this interpretation follows from the way subsections 6-1(1)(e) and 6-62(1)(d) of the *SEA* were drafted and subsequently enacted. These legislative changes must, in his submission, mean something.

[77] Second, in the event the Board rejects this argument, Mr. O'Dwyer submitted that the Board ought to follow its previous rulings under the former *Trade Union Act*[9] (the "*TUA*"). He maintained that even when applying the principles announced in those authorities, the Association failed to prove that the City committed any unfair labour practices.

[78] In Mr. O'Dwyer's view, the central issue which lies at the heart of this dispute is what was the authority or mandate given by the City to its representatives to settle the issue of the termination of the four (4) dispatchers?

[79] The City submitted that its representatives had a clear mandate of three (3) months enhanced severance payment for each affected dispatcher. This was the offer presented to them and to the Association at the outset. Mr. O'Dwyer acknowledged there was a "domino effect" between achieving consensus on the OM position and the possible resolution of the enhanced severance payments issue. However, he submitted that the evidence did not support a finding that the City committed any unfair labour practices for the following reasons:

- *The City's representatives believed they had the authority to agree to the proposal made at the August 12th meeting that the dispatchers receive enhanced severance payments equal to 1.78 weeks/year of service plus 8% pension entitlement. It was for this reason that they agreed to it at that time.*

- *The City's representatives did not believe they had the authority to agree to the Association's subsequent proposal of 2 weeks/year of service with no pension*

[9] *The Trade Union Act*, R.S.S. 1978, c. T- 17 as amended.

entitlement. For this reason, they believed it was necessary for them to seek further authorization from City Council's Personnel Committee.

- *The City's representatives did not think that the Association believed there was an agreement after the August 12th meeting.*

- *The Memorandum of Agreement executed by the Association on August 18, 2015, made no reference to the resolution of the enhanced severance payment issue. The two issues though related were not linked throughout this process in any real way.*

- *The Association benefitted from this Memorandum of Agreement. First, the OM position was a one year provisional out-of-scope position contrary to the City's desire for a permanent out-of-scope position. Furthermore, one of the Association's affected members won the competition.*

- *Although this issue was not expressly raised in the Association's application, the City's representatives possessed sufficient authority to negotiate a settlement of the enhanced severance issue. Only when they concluded that the August 12th proposal fell outside the parameters of this authority did they advise the Association it was necessary for them to obtain further authorization from City Council's Personnel Committee.*

[80] As it was the City's position that it committed no unfair labour practice, it maintained that the Association's application should be dismissed. The City made no specific submissions respecting a remedial order in the event the Board should find against it.

ANALYSIS

[81] Unlike many Canadian labour relation statutes, the *SEA* provides an exhaustive list of illegal conduct which if proved constitute unfair labour practices. Ms. Norbeck relied specifically upon subsections 6-62(1)(a), (b), (d) and (e). As the bulk of both parties' submissions focused on subsection 6-62(1)(d), the Board will begin its analysis by addressing the application of that particular subsection to the facts of this case. However, before turning to this issue it is important to establish which party bears the onus in unfair labour practice applications such as this one.

Onus

[82] There was no disagreement between the parties that the Association bears the burden to prove the allegations of an unfair labour practice on a balance of probabilities. This

means the Association must demonstrate to the Board that it was more likely than not the City failed to negotiate in good faith a resolution of the terminations of these dispatchers.[10]

Did the City's Representative's Actions Violate Subsection 6-62(1)(d) of the *SEA*?

[83] For ease of reference the text of this particular provision is repeated here:

> ***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;*

Does the Duty to Bargain in Good Faith Apply to this Matter?

[84] Prior to addressing the substance of this issue, it is necessary to address the City's opening argument that the duty to bargain in good faith in these circumstances has been removed in the *SEA*. It is maintained that under the *TUA* such a requirement existed, however, this requirement disappeared when the *SEA* came into force. To understand the City's position, it is necessary to compare the relevant sections of the two statutes. For ease of comparison, the following chart sets out the text of the relevant sections of the *TUA* and the *SEA*. The language in question is bolded.

***TUA*, s. 11(1)(c); 2(b)**	***SEA*, s. 6-62(1)(d); 6-1(1)(e)**
It shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer: . . . . . . (c) to fail or refuse to bargain collectively with representatives elected or appointed, not necessarily being the employees of the employer, by a trade union representing the majority of the employees in an appropriate unit[.]	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 representative of a union representing the employees in a bargaining unit whether or not those representatives are the employees of the employer.
2(b) "bargaining collectively" means	(e) "collective bargaining" means:

[10] See especially: *F.H. v McDougall*, 2008 SCC 53, [2008] 3 SCR 41, at para. 49 *per* Rothstein J. ("In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred." [Emphasis added.])

negotiating in good faith with a view to the conclusion of a collective bargaining agreement, or a renewal or revision of a bargaining agreement, the embodiment in writing or writings of the terms of agreement arrived at in negotiations or required to be inserted in a collective bargaining agreement by this Act, the execution by or on behalf of the parties of such agreement and the negotiating from time to time for the settlement of disputes and grievances of employees covered by the agreement or represented by a trade union representing the majority of employees in an appropriate unit[.]	(i) **negotiating in good faith with a view to the conclusion of a collective agreement or its renewal or revision;** (ii) putting the terms of an agreement in writing if those terms were arrived at in negotiations or are required to be inserted into a collective agreement by this Part; (iii) executing a collective agreement by or on behalf of the parties; and (iv) negotiating from time to time the settlement of disputes and grievances of employees covered by a collective agreement or represented by a union[.]

[85] The City argues that in the *TUA* the duty to bargain in good faith applies to all aspects of collective bargaining as defined in section 2(b) of that statute. However, the argument goes, section 6-1(1)(e)(i) of the *SEA* effectively segregates the duty to bargain in good faith to only those negotiations seeking to conclude "a collective agreement or its renewal or revision".

[86] This argument raises a pure question of statutory interpretation. The contemporary legal approach to interpreting legislation is well known having been announced and applied by the Supreme Court of Canada in numerous recent cases. It involves examining "the words of a statute in their entire context and in their grammatical and ordinary sense, in harmony with the statute's schemes and objects"[11]. When carrying out this task "it must be borne in mind that every statute is deemed remedial and is to be given 'such fair, large and liberal construction and interpretation as best ensures the attainment of its objects'"[12].

[87] The modern rule of statutory interpretation is contextual. In *Bell ExpressVu Limited Partnership v Rex*[13], for example, Iacobucci J. for the Court reminded us that the proper interpretation of the provision in question cannot be founded solely on the basis of its text. Rather, the words of the provision being scrutinized must be considered within the context of the legislation as a whole.[14]

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[11] *Krayzel Corp. v. Equitable Trust Co.*, 2016 SCC 18 *per* Brown J. See also: *Heritage Capital Corporation v Equitable Trust Co.*, 2016 SCC 19, at para. 27; *Alberta Union of Provincial Employees v Lethbridge Community College*, 2004 SCC 28, [2004] 1 S.C.R. 727, at para. 25 *per* Iacobucci J. See also: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *Bell ExpressVu Limited Partnership v Rex*, [2002] 2 S.C.R 559, at para. 26, and *Barrie Public Utilities v Canadian Cable Television Association*, [2003] 1 S.C.R. 476, at para. 20.

[12] *Krayzel Corp.*, *ibid.* referencing *Interpretation Act*, R.S.C. 1985, c. I-21, s. 12. *The Interpretation Act, 1995*, S.S. 1995, c.I-11.2, s. 10 is to similar effect.

[13] *Supra* n. 11.

[14] *Ibid*., at para. 27.

[88] When this modern, contextual approach to statutory interpretation is applied here, the City's argument quickly unravels principally for two reasons. First, as can be seen from the chart above, the language of the *TUA* and the *SEA* is virtually identical. To be sure, the text of subsection 6.1(1)(e) of the *SEA* has been modernized somewhat and organized to comport with contemporary plain language drafting protocols. That said, when the two provisions are scrutinized closely there is no discernible substantive difference between them. The fact that unlike section 2(d) of the *TUA*, subsection 6.1(1)(e) is divided into further sub-paragraphs is of no moment. As well, these various subparagraphs are conjunctive which makes the City's argument even more tenuous than it might first appear.

[89] Second, a contextual reading of subsection 6.1(1)(e) requires that due regard be given to the legislative objectives of the *SEA* and, more particularly, Part VI. The *SEA* is "an omnibus statutory creation relating not just to management/union relations but to all matters affecting employment."[15] Part VI is intended to govern how all manner of industrial relations are to be conducted in Saskatchewan. And, as Chairperson Love very recently observed, the "duty to bargain in good faith is one of the paramount provisions of the *SEA*"[16]. This view is consistent not only with foundational Supreme Court jurisprudence[17] but also a lengthy line of decisions from this Board too numerous to list here.

[90] Lest there be any doubt that the duty to bargain in good faith has been imported into the *SEA*, it is removed entirely by section 6-7 which reads as follows:

> *6-7 Every union and employer shall, in good faith, engage in collective bargaining in the time and in the manner required pursuant to [Part VI] or by an order of the board.*

Had the Legislature intended to limit bargaining in good faith only to negotiations of a collective bargaining agreement, its renewal or revision, it would not have included a general provision reinforcing the statutory obligation that <u>all</u> collective bargaining conducted under Part VI must be conducted in good faith.

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[15] *CLR Construction Labour Relations Association of Saskatchewan v The International Association of Heat and Frost Insulators and Asbestos Workers, Local 119*, 2014 SKQB 318, at para. 1.
[16] *CLR Construction Labour Relations Association of Saskatchewan Inc. v International Association of Heat and Frost Insulators and Asbestos Workers, Local 119*, LRB File No. 094-15, 2016 CanLII 30542, at para. 44 (SK LRB).
[17] See especially: *Royal Oak Mines Inc v Canada (Labour Relations Board)*, [1996] 1 S.C.R. 369.

[91] Taking into account these various interpretive principles and applying section 6-7 of the *SEA*, it is plain that collective bargaining in all its forms must be conducted in good faith. As a consequence, the interpretation which the City urges this Board to give to subsection 6-62(1)(d) is without merit.

What Principles Govern Collective Bargaining in this Application?

[92] The bargaining which took place in this case and which the Association asserts amounted to an unfair labour practice focused on attempting to achieve an acceptable resolution of the City's termination of the four (4) dispatchers. Subsection 6-1(1)(e)(iv) defines "collective bargaining" to include negotiations for the purpose of settling disputes of employees represented by a union. This Board has long accepted that this language which migrated from section 2(b) of the *TUA* should not be read restrictively. To cite but two examples, in *Saskatchewan Union of Nurses v Regina Qu'Appelle Health Region*[18] the Board stated:

> *The Employer argued that the duty to bargain in good faith as it relates to the negotiations for the resolution of disputes and grievances only applies in circumstances where the one party has refused to follow the grievance procedure or, in essence, repudiates the relationship itself…Although we agree that that illustrates one example where the Board might find a violation of s. 11(1)(c) [of the TUA, the equivalent of section 6-62(1)(d), SEA], s. 2(b) cannot be read in such a restrictive manner. In our view, it is apparent that the duty applies to a much broader scope of the party's conduct. It applies not only to the processing of grievances but also to discussion of "disputes" which may or may be not "grievances." The word "dispute" in s. 2(b) would otherwise be redundant.*[19] *[Emphasis added, citations omitted.]*

[93] Earlier, this Board in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Regina Exhibition Association Limited*[20] had considered the question of an employer's duty to negotiate the resolution of a dispute in good faith. At issue there was whether an employer had committed an unfair labour practice when its' representative refused to meet with an employee and his union representatives shortly after the employee had been terminated. For present purposes the germane aspect of the Decision relates to the possible operation of section 11(1)(c) in those circumstances, even though the Union did not advance this ground in its formal application. The Board stated as follows at page 224:

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[18] LRB File No. 133-05, [2007] S.L.R.B.D. No. 23
[19] *Ibid.*, at para. 63.
[20] [1993] 4th Quarter Sask. Labour Rep. 216, LRB File Nos. 256-93 to 260-93.

> *It is our view, however, that this conduct may nonetheless have constituted an unfair labour practice under Section 11(1)(c). The general obligation to bargain which is imposed upon an employer by the certification order, is not, as counsel acknowledged, limited to the negotiation or administration of a collective agreement. It embraces all aspects of the relationship between an employer and employees which may affect their terms and conditions of employment.*
>
> *In this connection, it is hard to imagine an event which may more dramatically affect the terms and conditions of employment of an employee than the termination of that employee, and it is our view that it is the responsibility of the Union to represent an employee in this context. [Emphasis added.]*

[94] These *obiter* comments accurately describe the circumstances of this application. The City terminated four (4) employees with lengthy and, by all accounts, exemplary service records. It was incumbent upon the City's representatives, therefore, to attempt to negotiate with the Association acting on behalf of those employees a mutually acceptable resolution of those terminations. Furthermore, this Board's jurisprudence is clear that when doing so the City has the obligation to conduct those negotiations in good faith.

[95] The Board turns now to the question of whether the City complied with this obligation.

[96] In his oral submissions, Mr. O'Dwyer placed great reliance on the Board's recent decision in *SAHO*[21]. There, Vice-Chairperson Schiefner acknowledged that that this Board's established practice in enforcing the duty of all parties to bargain in good faith "has historically been one of measured restraint"[22]. Over the years, he explained, the Board came to recognize "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."[23]

[97] Vice-Chairperson Schiefner then identified the Board's principal concerns when reviewing the conduct of the various parties – in this case the employer –when an unfair labour practice is brought under now section 6-62(1)(d) of the *SEA*. He stated:

> *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*

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[21] *Supra* n. 8.
[22] *Ibid.*, at para. 129.
[23] *Ibid*.

> *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…Simply put, it is the responsibility of the Board to ensure that the parties engage in a process of collective bargaining; it is <u>not</u> the function of the Board to ensure that a particular substantive result is achieved or avoided through collective bargaining.*[24] *[Emphasis added; citation omitted, and emphasis in original.]*

[98] On judicial review the Saskatchewan Court of Queen's Bench set aside the Board's decision in *SAHO* almost entirely[25]. It does not follow, however, that the analysis set out in the previous paragraph is discredited. It is important to recognize that the application for judicial review in that case focused primarily on the issue of SAHO'S communications with its employees, and the application of section 11(1)(c) of the *TUA* to allegations that SAHO bargained directly with its employees who were represented by a bargaining agent. The Queen's Bench judge did not impugn the Board's general statements respecting the operative legal principles. Rather, he faulted the Board for paying only "lip service to its prior jurisprudence"[26] and failing to "utilize it in its application of the issues raised by the applications before it."[27]

[99] The Board concludes that Vice-Chairperson Schiefner's statement of legal principles in *SAHO* accurately summarizes the current state of law. Indeed, Ms. Norbeck acknowledged as much in her oral reply submissions. Therefore, the Board proceeds to decide the Association's unfair labour practice application with those principles in mind.

[100] As well, the Board is mindful of the oft-quoted description of bargaining in good faith laid down by the Supreme Court in *Royal Oak Mines Inc.*[28] Referring to then section 50 of the *Canada Labour Code*[29] which for all intents and purposes is similar in effect to section 6-7 of the *SEA*, Cory J. for the majority opined:

> *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*

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[24] *Ibid*., at para. 131.
[25] 2015 SKQB 222, at para. 74.
[26] *Ibid*., at para. 73.
[27] *Ibid*.
[28] *Supra* n. 17.
[29] R.S.C. 1985, c. L-2, as amended.

> *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.*[30]

[101] The Board agrees with counsel that the resolution of this aspect of the Association's unfair labour practice application turns in large measure on the question of the City's representatives' mandate and the degree of autonomy those individuals enjoyed when meeting with the Association's representatives in the summer of 2015 in an attempt to negotiate a mutually agreeable settlement to the dispatchers' terminations.

[102] There is not a great deal of guidance from this Board or other Canadian labour relations boards – or, for that matter, courts – respecting what constitutes an adequate mandate given to public sector collective bargaining agents. To be sure, this issue becomes somewhat complicated when the employer is a duly elected government. Governments have an over-arching legal and constitutional duty to govern responsibly in the best interests of all citizens. The multifaceted duties fulfilled by governments acting *qua* legislator include the significant obligation to manage public monies in as responsible a manner as possible. At the same time, Canadian governments at all levels employ a vast number of public sector employees. When a government is acting *qua* employer, it is not exempt from legal responsibilities assigned by statute to public and private employers within its jurisdiction. This reality is manifested, for example, in section 1-3 of the *SEA* which explicitly binds the Crown in right of Saskatchewan. Contextual considerations may tailor some of those responsibilities *qua* employer to take into account the unique nature of government.[31] However, as should become apparent this is often more a matter of nuance, and does not detract from the general proposition that governments

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[30] *Ibid*., at 396-7, paras. 41-42. See also: *Health Services and Support – Facilities Subsector Bargaining Association v British Columbia,* [2007] 2 S.C.R. 391, 2007 SCC 27, at paras. 98-107.

[31] For an illustration of this reality, see: *Newfoundland (Treasury Board) v. N.A.P.E*., [2004] 3 S.C.R. 381, 2004 SCC 66, at paras. 94-95 *per* Binnie J.

and their representatives are expected to live up to the legal requirements imposed upon them as employers.

[103] The present matter is complicated further by the fact that the roles of City Council as legislator, *i.e.* exercising its responsibility and authority to enact by-laws and regulations governing operations within the City of Moose Jaw, and as employer are significantly blurred. This is because all members of City Council also comprise the City Council's Personnel Committee. This is somewhat unusual and may result in the loss of a necessary level of objectivity which City Council could otherwise bring to bear when scrutinizing recommendations from its Personnel Committee were it not duplicative of City Council's membership. The Board does not intend these comments as a criticism of how City Council has chosen to structure its organization. Rather, it simply underscores the need for City Council to be vigilant to ensure it remains objective and reasonable when considering a recommendation from the Personnel Committee, or members of its senior administration, respecting important labour relations issues such as the termination of long time employees.

[104] Turning to the many authorities cited by counsel during oral argument, three of them helpfully consider the question of what may qualify as an adequate mandate in the context of public sector collective bargaining. We undertake below a brief review of those cases in chronological order. The first in time is *Saskatchewan Government Employees' Union v Government of Saskatchewan, The Honourable Bob Mitchell and The Honourable Ed Tchorzewski* ("*SGEU*")[32].

[105] This case arose in the context of a protracted series of collective bargaining negotiations between the Government of Saskatchewan and one of its public sector unions that straddled the 1991 Provincial General Election which saw the election of a new government lead by Premier Roy Romanow. Many months later, still no collective agreement had been achieved. This lack of progress prompted SGEU to bring a number of unfair labour applications against the new government. One of them related to the issue under consideration here, namely the inadequacy of a financial mandate and the lack of authority given to the Government's bargaining team to engage in meaningful collective bargaining with SGEU. The Board sustained this particular application.

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[32] [1993] 1st Quarter Sask. Labour Rep. 260, LRB File No. 264-92, [1993] S.L.R.B.D. No. 20.

[106] Initially, the Government through its representatives indicated that "there would be no wage increase over a one-year agreement"[33]. Shortly after this announcement, SGEU left the bargaining table. Several months later, in October 1992, the chair of the Government's bargaining committee indicated to SGEU that the Government was now willing to demonstrate flexibility on both the issue of compensation and the issue of the length of the agreement. On the basis of these representations, SGEU agreed to return to the table. However, before negotiations could resume, the Government's representative reversed himself and advised that he was no longer authorized to make any wage offers. SGEU then served a strike notice.

[107] This Board considered the issues presented in that unfair labour practice application to be so significant they warranted convening a five-member panel to adjudicate them. On the particular issue of the change in mandate and the lack of adequate authority to bargain, the Board determined that the Government's actions were neither unlawful nor motivated by anti-union animus. Nevertheless, Chairperson Bilson concluded:

> *We have no doubt that [the Government's representative] was sincerely of the belief in October that he could hold out the possibility of flexibility on the wage issue if the Union returned to the bargaining table; we also accept the sincerity of the distress he expressed when he communicated with the Union that his mandate had been withdrawn. It is not, of course, a failure to bargain per se when a party to collective bargaining withdraws one position and substitutes another, but in this case, the Employer bargaining committee does not seem to have been supplied with sufficient information or authority to enable them to devise a coherent bargaining strategy or to place a change of position such as that made in October in the context of such a strategy.*
> *. . . .*
>
> *We therefore find that the Employer was guilty of an unfair labour practice in that they failed to provide their representatives on these two occasions with plenary power to proceed to the conclusion of a collective agreement. It should be stressed that we are not suggesting that the requirement of approval or consultation is itself an unfair labour practice, nor that the informal exchanges which took place between the parties by telephone should be discouraged. The representatives of the parties at the bargaining table are simply that – representatives – and it is to be expected that they will obtain instructions and approval from their principals. The Union itself had a complicated method for obtaining such instructions and approval, and the parties to any negotiations must be prepared to accommodate such a process. <u>It is necessary, however, for bargaining representatives to come to the table armed with sufficient information and authority that they can engage in meaningful bargaining</u>. In our view, on two occasions mentioned above, that was not true of the Employer representatives in this case.*[34] *[Emphasis added.]*

[33] *Ibid*., at 265.
[34] *Ibid*., at 272, 273.

[108] The second case is *University of Regina Faculty Association v Saskatchewan Indian Federated College* ("*URFA*")[35]. Although this case did not involve a governmental entity, it did take place within the context of a large public institution with a similar organizational structure to, and experiencing similar financial constraints as, governments. For this reason a number of parallels may be drawn between it and the current application before us.

[109] The unfair labour practice application in *URFA* emerged following a lengthy period of negotiations between URFA and the Saskatchewan Indian Federated College at the University of Regina, now First Nations University of Canada. The objective of those negotiations was to conclude the first collective bargaining agreement for that institution. Representatives of each party worked over many months to achieve consensus on a collective agreement to take back to their principals. A tentative agreement was reached but when it went to the College's President, as a first step in the ratification process, he raised a number of concerns and sought to have those provisions revisited at the bargaining table. One of the provisions which gave the President pause related to the faculty salary grid, particularly, the article which stipulated that within four years the College's faculty members would achieve parity with salaries paid to faculty members at the University of Regina.

[110] Subsequently, URFA commenced an unfair labour practice application alleging that the College's failure to submit the agreement to the College's Board of Directors for ratification violated section 11(1)(c) of the *TUA*. The Board found a violation of this provision had been established but for reasons different than those advanced by URFA. It determined that the College failed to bargain in good faith because the College's representatives "did not enjoy the authority to conclude a collective agreement at the bargaining table"[36].

[111] This Board acknowledged that the College's organizational structure was multi-layered, that its day-to-day management would be conducted by senior administrative officers who were ultimately accountable to the College's Board of Governors for their decisions and actions. However, Chairperson Bilson underscored the fact that although the Board of Governors did not participate directly in the negotiation of a collective agreement, nevertheless,

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[35] [1995] 1st Quarter Sask. Labour Rep. 139, LRB File No. 217-94, [1995] S.L.R.B.D. No. 5
[36] *Ibid*., at 156.

"it is the Employer as an entire corporate entity which has the legal obligation to bargain with the Union"[37].

[112] The Board went on to state a number of propositions which are salient to the current application. First, it accepted that parties at the table are expected to compromise and may be "called upon to give up certain things in order to gain something else"[38]. Yet, in order to make such choices they must be in possession of "complete information about the position of their opposite numbers"[39].

[113] Second, this sharing of information is critical in circumstances where, as in this case, a tentative agreement is reached which will then be reviewed by senior administrators and, ultimately, the Board of Governors for final approval. In *URFA* this did not happen with the result that the "Union had played all of their cards without knowing completely the position the Employer would eventually take"[40] .

[114] Third, the Board clarified that the collective bargaining process encompasses not only what transpires at the bargaining table but also any stages of subsequent review by the parties' principals leading to, and including, ratification. All these steps "must also be carried out in compliance with the duty to bargain [in good faith]"[41]. However, this does not mean, as URFA argued, that ratification will follow in all cases. Rather the Board ruled:

> *The Union is in error in arguing that an employer will always be in breach of the duty to bargain if they seek to reopen discussion on particular issues or do not forward an agreement for ratification within a particular period. It is our view that the Union was legitimately concerned when the agreement which they interpreted as bringing this set of negotiations nearly to an end merely raises the curtain on a number of further stages of bargaining…The Employer was bound, however to ensure that the committees at the bargaining table could reach an agreement, an agreement which – barring some political catastrophe of an unexpected kind – could reasonably be counted on to be acceptable to the principals on both sides. This was an assumption about the process which the Union was entitled to make. If the Employer envisaged a substantially different process, they had an obligation to make that clear at a much earlier stage. [Emphasis added.]*[42]

[115] The final case to be considered is *SAHO*. It involved a number of applications alleging that SAHO committed various unfair labour practices during the 2008 round of collective

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[37] *Ibid*., at 157.
[38] *Ibid*.
[39] *Ibid*.
[40] *Ibid*.
[41] *Ibid*., at 158.

bargaining in the provincial public health sector. Bargaining took place over a period of 23 months and culminated in a memorandum of agreement dated August 13, 2010. The only aspect of this extensive Decision we review here pertains to the issues of the alleged insufficiency of the mandate provided to the SAHO bargaining committee and insufficient authority to bargain. It should be noted that these particular aspects were not addressed by the Queen's Bench judge in his decision.

[116] At the outset of bargaining Ms. Susan Antosh, then President of SAHO, received from the Government what was described as "an economic mandate". This did not take the form of a range of specific wage increases. Rather it is described in the Decision as "the total amount of money (or "cash") that was available for settlement of these particular collective agreements, together with limits in funding for particular years (or "lift") during the life of the collective agreements"[43]. In other words, SAHO's bargaining team had a large pool of money to bring with them to the table; however, the Board also accepted SAHO's evidence that it would be challenging for health sector employers "to provide optimal health care services within the limits of their available funding."[44]

[117] The nub of this aspect of the unfair labour practice application alleged that SAHO's bargaining team lacked sufficient authority to engage in meaningful collective bargaining because they had to seek further instructions from their principals numerous times before they could respond to the many additional requests made by health sector union as the bargaining process unfolded. The Board found that such consultation was legitimate and did not constitute an unfair labour practice. It wholly distinguished the process in *SAHO* from that rejected by this Board earlier in *SGEU*[45]. Vice-Chairperson Schiefner explained why as follows:

> *In the present case, we are satisfied that SAHO had sufficient information and clear authority to enter into collective agreements with the applicant trade unions; albeit within specified parameters. We are also satisfied that SAHO had the authority to bind the respondent employers within the parameters of the authority that it received. The duty to bargain in good faith does not require negotiators to have an unrestricted authority to bind. If the proposals being made during collective bargaining exceed the authority granted to a negotiator, it is entirely permissible for that negotiator to indicate as much and seeking further instructions. We saw nothing in the evidence that indicated that SAHO's negotiators did not have authority to bind, within the parameters of the authority delegated to them. The fact that they were repeatedly required to seek*

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[42] *Ibid*.
[43] *Supra* n. 8, at para. 21.
[44] *Ibid.*, at para. 22.
[45] *Supra* n. 32.

> *instructions during the 2008 Round is not indicative of a lack of authority. It is merely evidence that limits had been placed on their authority, which is not inconsistent with the duty to bargain in good faith. Finally, the evidence demonstrated that SAHO's negotiators agreed to numerous proposals that were later adopted by the respondent employers. Ultimately, the parties agreed on the whole of three (3) collective agreements that were ratified by the respondent employers.*[46]

[118] These three decisions demonstrate that the issues of an adequate mandate and sufficient authority to bargain are often inter-related and fact-driven. It is clear, we conclude, that the mandate provided to parties by their principals should furnish negotiators with a sufficient degree of flexibility to craft a potential settlement of the dispute in question. As well, when consensus is achieved and what remains is approval and ultimately ratification, all participants in those processes are expected to act in good faith. Barring an unforeseen intervening event such as "a political catastrophe of an unexpected kind"[47], ratification should normally follow. At the very least it should mean that a party will not retreat from an offer it had earlier accepted, and return to the table with a lesser one.

Application of the Principles to the Association's Unfair Labour Practice Application

[119] We turn now to an analysis of the Association's allegations of unfair labour practice against the City as measured against the principles identified above. When making this assessment it is important to keep in mind that the analysis involves a subjective/objective standard as explained in *Royal Oak Mines*[48]. The duty to bargain in good faith is to be judged on a subjective basis, in other words in the circumstances of the application in question did the party engage meaningfully in collective bargaining? The question of whether a party made reasonable efforts to bargain is to be judged on an objective basis.

[120] The Board concludes that in the circumstances of the application before us, the Association has demonstrated on a balance of probabilities that the City committed an unfair labour practice by failing to engage in meaningful collective bargaining with them in an attempt to arrive at a mutually acceptable resolution of this dispute. For the following reasons, we find the City violated subsections 6-7 and 6-62(1)(d) of the *SEA*.

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[46] *Supra* n. 8, at para. 148.
[47] *URFA*, *supra* n. 35, at 159.
[48] *Supra* n. 28.

[121] First, from the evidence presented at the hearing, it is apparent the mandate City Council gave to its representatives was limited: enhanced severance payments of three (3) months' salary to each of the affected dispatchers, and agreement from the Association for the creation of a permanent out-of-scope OM position. Simply put, City Council kept its representatives on a fairly short leash throughout the bargaining process. In and of itself, a limited mandate is not an indication of failing to bargain in good faith. However, its impact on the over-all bargaining process must be assessed to determine whether a limited mandate negated a meaningful process of collective bargaining.

[122] One of the central expectations of all parties participating in a collective bargaining process is that they will commit to "honestly striv[ing] to find a middle ground between their opposing interests"[49]. However, here the City's representatives placed themselves in a position where finding such middle ground proved to be next to impossible. For one thing, the City's initial offer presented to the Association and the dispatchers on July 17, 2015 was in effect its' final offer. The quantum of the severance its representatives offered was the top of their financial mandate. This left little, if any, room for further negotiations respecting the issue of enhanced severance payments to the affected dispatchers.

[123] Second, the evidence indicated that while the issues of the enhanced severance payments and the OM position were not formally linked they were always discussed in tandem. Indeed, the Board accepts Mr. Bromley's evidence that it was important for the City to learn of the Association's position respecting the City's proposal as soon as possible as it might influence the City's position on the enhanced severance payments question. Despite the existence of the Memorandum of Settlement which the City maintained had to be executed by all parties to the dispute including the dispatchers, this is not a case like *Canadian Union of Public Employees, Local 3078 v Board of Education of the Wadena School Division No. 46 of Saskatchewan*,[50] cited to us by Ms. Norbeck. There the employer was found to have committed an unfair labour practice by insisting that all items must be resolved as a package. Yet, these two issues were treated as being connected with resolution of the OM position having in Mr. O'Dwyer's words a "domino effect" on the enhanced severance payments issue.

[124] The evidence further indicated the Association believed that if it was possible to find consensus on the OM position, movement would be forthcoming from the City respecting the

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[49] *Ibid*., at para. 41, and *BC Health Services*, *supra* n. 30, at para. 101.
[50] LRB File No. 188-03, 2004 CanLII 65618 (SK LRB).

enhanced severance payments. It was for this reason that on August 12, 2015, the Association agreed to the OM position being a provisional one. While the City did not get entirely what it wanted, namely a permanent OM position, it achieved most of what it was looking for with the real possibility that this provisional position would likely evolve into a permanent one.

[125] From the Association's perspective, resolution of the OM position held out hope that if one of the terminated dispatchers was hired to fill this position – an eventuality which came to pass when Catherine Goudie became the successful candidate – this would allow for movement by the City on the enhanced severance payment front. Its agreement was motivated in large measure by the hope that there would be a pool of money, into which the payment initially earmarked for Ms. Goudie would now be deposited, available for distribution among the other dispatchers in a manner which might in some small way take into account their particular personal circumstances.

[126] Third, the Association's optimism was nurtured by the discussions which took place at the critical August 12th meeting and more particularly by the role played by the City Manager, Mr. Matthew Noble – albeit off-stage – in those discussions. It was during this meeting that the formula of 1.78 weeks/year of service plus 8% pension entitlement as a possible settlement was arrived at, and the City's representatives at that meeting – FC Montgomery, DFC Wilson and Mr. Bromley – broke off discussions to seek further instructions from the City Manager. The evidence disclosed that the representatives were concerned that this proposal exceeded their financial mandate and for this reason sought clarification from Mr. Noble, who was described to us as the sole direct employee of City Council and their immediate supervisor. The evidence further disclosed that Mr. Noble authorized them to accept this proposal as a potential resolution of this dispute.[51]

[51] It was not made clear during the hearing from where Mr. Noble's authority to give such a direction arose; however, in the City's Book of Documents introduced into evidence at the commencement of the hearing can be found City of Moose Jaw Bylaw No. 5175 entitled "A Bylaw of the City of Moose Jaw to Provide For the Administration of the Municipal Corporation and To Set Forth the Duties and Powers of Designated Officers". This bylaw pertains to the Office of the City Manager. In particular, subsection 7(1)(m) clothes the City Manager with authority to direct collective bargaining "within the mandate established by the Personnel Committee" and to "act as the agent of City Council in collective bargaining with unionized employees". These provisions appear to give Mr. Noble the requisite authority to have approved the proposal presented to him on August 12, 2015.

Although the introduction of this bylaw into evidence did not strictly comply with *The Evidence Act*, SS 2006, c E-11.2, s. 44(2), the Board is prepared to accept its authenticity without more formal proof. The fact that counsel for the City of Moose Jaw included this bylaw in the City's Book of Documents is sufficient.

[127] When the City's representatives returned to the meeting to advise the Association that they agreed to that proposal, the Association's representatives presented another one – 2 weeks/year of service with no pension entitlements. Again the City's representatives indicated that in their view this new proposal fell outside their mandate and would require them to seek further instructions and approval from the City Manager. However, the evidence was uncontroverted that they expressed the view to the Association's representatives that they believed this proposal to be fair and reasonable and one they could recommend to their principals.

[128] For its part, the Association's representatives advised the City that it could accept this proposal on behalf of its members and resolve the matter.

[129] At the conclusion of this meeting, it was left that the City representatives would recommend this proposal to the City Manager and seek his approval.

[130] Fourth, a number of days later on August 18, 2015 and with no decision from the City on the final proposal discussed at the August 12th meeting, FC Montgomery presented to Mr. Hewitt, the Association's President, a Memorandum of Agreement memorializing the agreement reached respecting the OM position. As noted above, the third clause in the preamble read as follows:

> ***And Whereas*** *the parties wish to enter into* ***a binding agreement of all matters in dispute related to the creation of an out-of-scope Office Manager position****[.] [Emphasis added.]*

[131] The City argued that this Memorandum was intended to resolve only the issue of the OM position. It was not intended to address the still outstanding issue of enhanced severance payments to the other dispatchers. Yet, the Association viewed this Memorandum as a signal the City would likely accept its proposal from the August 12th meeting. In our view, this was not an unreasonable assumption to make. The fact that Mr. Hewitt signed this document without obtaining confirmation of the City's response to the Association's enhanced severance proposal placed the Association in exactly the same position as the union in *URFA*, namely it "had played all of [its] cards without knowing completely the position the Employer would eventually take".[52]

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[52] S*upra* n. 35, at 153.

[132] Fifth, the evidence disclosed that following the August 12th meeting, the City's representatives, as promised, took the proposal back to the City Manager. The City Manager instructed them to present this proposal to the Personnel Committee with a recommendation. DFC Montgomery did exactly that, he prepared a report recommending that City Council accept the August 12th enhanced severance payment proposal. The City's representatives candidly testified that they were surprised when on August 24, 2015, the Personnel Committee and, ultimately, City Council rejected their recommendation, and instructed them to return to the Association with the City's original, namely three (3) months' salary for each dispatcher. (The date is propitious because it demonstrates that City Council waited until it had obtained Mr. Hewitt's signature on the Memorandum of Agreement and Ms. Goudie was employed as the OM, before it took any decision respecting the August 12th proposal.)

[133] Sixth, City Council's Personnel Committee not only rejected the Association's August 12th proposal, it reneged on the offer its representatives had earlier agreed to that same day, namely an enhanced severance payment for the three (3) dispatchers of 1.78 weeks/year of service plus 8% pension entitlement. At the end of the day, the City obtained most, if not all, it wanted, namely an out-of-scope OM position. However, the Association achieved little, if anything, from the collective bargaining process. To be sure, one of the terminated dispatchers was hired to occupy the OM position, yet nothing was gained in respect of the other dispatchers.

[134] The Board is of the view that when viewed globally the bargaining process in this case is not an example of "hard bargaining" as it is commonly understood. Rather, the Board finds the City "exploit[ed] a position of strength in a way which goes beyond anything which can be characterized as bargaining in good faith."[53] The participants at the table had arrived at consensus on how the enhanced severance payment issue might be resolved. Both sides recognized that the proposal had to be taken back to City Council and to the Association's affected members respectively; however, at that time the Association advised the City's representatives that it could obtain the consent of its members. As this Board in *URFA* explained the duty to bargain in good faith applies to all participants in the bargaining process which, in this case, includes the Personnel Committee and City Council. Ultimately and without explanation, City Council rejected a proposal recommended to it by its representatives who were at the bargaining table, a proposal which was only marginally more costly than the one those representatives accepted on August 12, 2015.

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[53] *Ibid*., at 153.

[135] To make matters worse, City Council reneged on a proposal its representatives had earlier accepted and, instead, directed those representatives to present the original offer of three (3) months enhanced severance payment as its final offer. Taking all of these factors into account, it appears to us that the following statement of the Board in *URFA* is apposite:

> *The Employer was bound, however to ensure that the committees at the bargaining table could reach an agreement, an agreement which – barring some political catastrophe of an unexpected kind – could reasonably be counted on to be acceptable to the principals on both sides.*

[136] The Board hastens to add it does not impute ill will or anti-union animus to the City's representatives who participated in this process. Indeed, no evidence was presented that could support such a finding. However, this Board's jurisprudence is clear that a finding of improper motives on the part of an employer is not an essential element of an unfair labour practice under subsection 6-62(1)(d) of the *SEA*, see *e.g.*: *Regina Qu'Appelle Health Region*[54], at para. 80, and *URFA*[55], at 152.

[137] Accordingly, for these reasons the Board finds that the City committed an unfair labour practice contrary to subsections 6-62(1)(d) and 6-62(1)(r) by violating section 6-7 of the *SEA*.

Other Provisions Invoked by the Association

[138] The Applicant invoked other grounds to support its claim that the City committed an unfair labour practice in these circumstances. One of these grounds raised an allegation of direct bargaining with the Association's members. In view of the Board's finding under section 6-7 and subsection 6-62(1)(d), and in view of the fact it was not pressed by the Association's counsel at the hearing, the Board has determined it is not necessary for us to address these additional arguments.

Remedy

[139] In the event, the Board found an unfair labour practice had occurred the Association sought an order for the following relief:

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[54] *Supra* n. 18.
[55] *Supra* n. 35.

- *That the City cease and desist committing the unfair labour practices in dealing with the dispatchers and the Office Manager position;*
- *A declaration that the City reneged on its agreement with the Association;*
- *That the City negotiate in a fair and good faith manner and present only those who have the authority to negotiate on behalf of the City;*
- *That the decision and resulting Order be posted in the workplace and delivered to the dispatchers, and*
- *Such further and other relief the Board deems just.*

[140] It is well-established that when structuring a remedy, the Board's over-arching goal "is generally to place the parties into the position they would have been but for the commission of the unfair labour practice."[56] This means the remedy crafted must seek to achieve "a labour relations purpose, that is, generally speaking, to insure collective bargaining and foster[] a good and long term relationship between the parties to the dispute."[57]

[141] In tailoring a remedy to the particular circumstances of this case it is important to take into account that the workplace involved here is a small one, and the City's representatives, most notably FC Montgomery and DFC Wilson, work very closely with all members of the Association. As well, Ms. Norbeck for the Association made it clear that the Association was not seeking any order that could be described as punitive in nature.

[142] Accordingly, the Board orders:

- That the City cease and desist committing an unfair labour practice in addressing the issue of severance for the terminated dispatchers, and
- That the City resume collective bargaining with the Association in good faith in an attempt to resolve the outstanding issues relating to the terminated dispatchers.

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[56] *City of Swift Current v International Association of Fire Fighters, Local 1318*, LRB File No. 008-14, 255 C.L.R.B. (2d) 32, 2014 CanLII 76050 (SK LRB), at para. 60.
[57] *Ibid*. To similar effect, see also: *Regina Qu'Appelle Health Region*, *supra* n.18, at para. 107ff and the authorities cited there.

[143] This Board remains seized of this matter should the parties wish to make further submissions respecting remedies.

[144] In conclusion, the Board thanks counsel for their helpful presentations and legal submissions. They were of great assistance to us in arriving at our decision.

DATED at Regina, Saskatchewan, this **17th** day of **June, 2016.**

LABOUR RELATIONS BOARD

Graeme G. Mitchell, Q.C.
Vice-Chairperson