Saskatchewan
Labour Relations Board

SEIU-WEST, Applicant v. VARIETY PLACE ASSOCIATION INC., Respondent

LRB File No. 098-17; July 6, 2017

Chairperson, Kenneth G. Love, Q.C.; Members: Bettyann Cox and Laura Sommervill

For the Applicant:	Kevin Wilson, Q.C. and Amy Gibson
For the Respondent:	Drew S. Plaxton, Q.C.

Interim Relief – Union applies for interim relief requesting the Board declare a lock out by the Employer unlawful – Board considers usual factors in respect of interim relief.

Interim Relief – Board considers whether arguable case exists and balance of labour relations harm - Board finds arguable case to be determined – Board considers labour relations harm – Board finds the labour relations harm favours the *status quo* that the lockout remain in effect principally due to potential impact on residents of the locked out facility.

Interim Relief – Board also considers its jurisprudence which suggests that full and final relief should not be given on an interim basis - Board reviews facts and determines that the interim relief sought in this case would amount to a granting of full and final relief.

Practice and Procedure – Both parties make argument to the Board that Affidavit evidence presented to the Board offended both section 15 of the Board Regulations and Practice Note #1 issued by the Board – Board cautions regarding use of Affidavit material which is not based on facts known to the affiant.

Costs – Employer requests costs to be awarded against Union – Board reviews its jurisprudence regarding awards of costs – Board determines award of costs not appropriate in this case.

REASONS FOR DECISION

Background:

[1] **Kenneth G. Love, Q.C., Chairperson:** This is an interim application by SEIU-West (the "Union") requesting that the Board declare unlawful, a lock-out notice given by Variety Place Association Inc. (the "Employer"). The interim application was filed in conjunction with an Unfair Labour Practice application[1] made by the Union against the Employer, which application requested similar relief to that claimed in the interim application. Both applications were filed with the Board on May 31, 2107, claiming a breach of section 6-62(1)(r) of *The Saskatchewan Employment Act,* SS 2013, c S-15.1 (the "*SEA*").

[2] The Employer is a non-profit community based organization, licensed through Community Living Service Delivery, a branch within Disability Programs of the Ministry of Social Services. In addition to other services, the Employer operates group homes, for twenty (20) mentally and physically challenged adults in Outlook, Saskatchewan. The Union represents the employees of the Employer for collective bargaining.

The Lockout:

[3] The Union and the Employer were engaged in collective bargaining towards a renewal of their Collective Bargaining Agreement which expired on August 31, 2013. Negotiations towards the renewal agreement stalled over monetary issues and the parties sought the assistance of a conciliator, Mr. Kenton Emery, Senior Labour Relations Officer with the Ministry of Labour Relations and Workplace Safety.

[4] Mr. Emery was unable to guide the parties to a resolution. He advised the Minister of Labour Relations and Workplace Safety of that fact on April 26, 2017. The cooling off period required by s. 6-33(5) of *SEA*, Mr. Emery noted in his letter to the Minister, would expire on May 10, 2017 at midnight.

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[1] LRB File No. 097-17

[5] The Union held a strike vote among its members. The Union advised the Employer on May 1, 2017 that union members had endorsed strike action and that the Union would provide appropriate notice prior to any job action being taken. The Union also advised that no strike action would be taken prior to the expiry of the cooling off period at midnight, May 10, 2017.

[6] Ms. Angela Knapik, the Executive Director of the Employer, deposed that she took steps to ensure that the contingency plan, which the Employer had on file, were updated for each participant[2] at the various homes operated by the Employer. She deposed as follows:

> *20. In light of the impasse reached in bargaining, and the Union's strike vote, in or around early May, 2017, I sent a letter to each of the participant's families notifying them of the possibility of strike action in the near future. The purpose of the correspondence was to ensure that the contingency plans on file for each participant was up to date and accurate. …*
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> *21. Variety Place participants regularly go home to visit their family for weekends, extended visits and holidays. In light of the letter sent in early May, 2017 to parents of participants, I contacted or was contacted by the family members of all of the participants in the Group Homes. I was informed by many family members that they would feel more comfortable if the participants came home or were moved to another location in light of the possible job action. Family members of participants have the right to take participants home at any time. Variety Place is required to accommodate these requests.*

[7] Ms. Knapik also deposed that between May 12 to 18, 2017, (5) five participants left Variety Place at the request of their families, some of which had pre-planned holidays at home with their families over the long weekend in May, 2017.

[8] On May 18, 2017, at 1:04 PM, the Union served strike notice on the Employer. That strike notice read, in part, as follows:

> *This letter serves as notice the SEIU-West members employed at Variety Place will take job action beginning any time after 48 hours from the time and date of delivery of this letter. These actions will include withdrawal of specific services and may, at any time, include a complete withdrawal of all services. Further notice of job action and withdrawal of services may or may not be provided….*

[9] Ms. Knapik deposed that she advised participants' family members of the receipt of the strike notice. Those participants who were already at home with their families indicated

[2] This is the terminology used by the Employer with respect to its residents in the group homes which they operate.

to her that they wished to have the participants remain at home until the issue was resolved. She also began steps to be ready to implement the contingency plans for each participant.

[10] Ms. Knapik also instructed her legal counsel to provide a lockout notice to the Union. That notice was given by their counsel to the Union via personal delivery to the Union's Saskatoon office on May 19, 2017 at 12:22 PM. Notice was also provided to the Minister of Labour Relations and Workplace Safety around the same time. Initially there was some confusion as to the time of delivery of the Employer's lockout notice, but Mr. McConnell, the Union's Northern Negotiating Officer, confirmed receipt of the notice on that date and time in his second affidavit.

[11] The lockout notice read, in part, as follows:

> *Pursuant to s. 6-34 of The Saskatchewan Employment Act, we are hereby giving notice of lockout commencing any time after 48 hours from the time and date of delivery of this letter. This places Variety Place Association Inc. in a position to take any form of lockout action permitted by The Saskatchewan Employment Act from or after that time. The lockout will affect the following Variety Place Association Inc. locations:*
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> 1. *Variety Place Day Program Building/SARCAN Depot – 600 Conquest Ave. West, Outlook SK S0L 2N0*
> 2. *Perry House Group Home – 806 Conquest Ave, East, Outlook SK S0L 2N0*
> 3. *Harris House Group Home – 520 Thomson St., Outlook SK S0L 2N0*
> 4. *Latimer House Group Home – 603 Aspen Drive, Outlook SK S0L 2N0*

[12] Ms. Knapik also deposed that between May 18 and May 21, 2017, a further (15) fifteen participants left the Group Homes of the Employer in accordance with requests from their families.

[13] The Employer locked out the employees of the various Group Home facilities outlined in its lockout notice at approximately 3:30 PM on May 21, 2017. Employees of the SARCAN Depot were locked out on May 23, 2017 at approximately 8:30 AM.

[14] A second lockout notice was provided to the Union on May 23, 2017 which noted that the lockout would take effect from and after May 25, 2017 at 12:00 PM. This notice was delivered to the Union's Saskatoon office by personal service on May 23, 2017 at 11:49 A.M. A copy of the second notice was also provided to the Minister of Labour Relations and Workplace

Safety. Ms. Knapik deposed that this notice was provided "out of an abundance of caution" because the Union had raised issues with both the delivery of the first notice and the content of that notice.

Issue to be Determined:

[15] This is an interim application. Accordingly, the issue for the Board to consider is whether or not it is appropriate for the Board to issue an interim Order as requested by the Union pending the hearing of its Unfair Labour Practice application. The application engages the Board's authority under section 6-103(2)(d) of the *SEA*.

[16] The Employer also raised an issue with respect to certain aspects of the Union's Affidavits which were filed. The Employer argued some of the statements in the Affidavits were not in accordance with section 15(2) of the Board's Regulations with respect to interim applications and Affidavits filed in support. The Employer says that many of the Union's Affidavits fail to provide evidence based on the affiant's own personal knowledge and should be struck out.

[17] In response to the Employer's application regarding the Union's Affidavits, the Union countered that there were aspects of the Employer's Affidavits that had similar defects. The Union also requested those provisions be struck from the Employer's Affidavits.

[18] The Employer also requested that we award costs against the Union for bringing this application.

Union's arguments:

[19] The Union provided the Board with a Summary of Authorities as well as a Book of Authorities which we have reviewed and found helpful. The Union submitted that the test on interim injunctions as postulated by the Board required that it show (1) that the main application has raised an arguable case of a potential violation of the *SEA* and (2) that the balance of convenience favours granting of an interim injunctive relief pending a hearing of the main application.

[20] There is no dispute between the parties regarding the Board's jurisprudence concerning interim applications. The Union's argument focused upon the establishment of an

arguable case that the lockout notice was defective and could not be cured by the second lockout notice.

[21] The Union also argued that the balance of convenience favoured the granting of an injunction. The Union argued that there was serious harm inflicted by the lockout on employees, participants, and members of the community in Outlook, all of whom were impacted negatively by the lockout of the employees.

[22] The Union's argued that its Affidavits did not offend the Board's Regulations or were saved by section 15(3) of those Regulations and offered that the Employer's Affidavits suffered from a similar condition.

[23] In respect of the claim of costs by the Employer, the Union took the position that such an award, even if the Board had the authority to award costs, was not appropriate.

Employer's arguments:

[24] The Employer provided the Board with a written Brief of Law, as well as a Book of Authorities which we have reviewed and found helpful. The Employer concurred with the Union in the test enunciated by the Board for the granting of interim relief.

[25] The Employer argued that there was no arguable case based upon its assertion that the case authorities relied upon by the Union had subsequently been overruled by the Board. Similarly, the Employer argued that the balance of convenience favoured not granting interim relief.

[26] On the issue of the Sffidavit evidence, the Employer argued the requirements of section 15(2) of the Board's regulations which require that every affidavit filed pursuant to clause (1)(b) must be confined to those facts that the applicant or witness is able of the applicant's or witness's own knowledge to prove. The Employer argued that numerous provisions of the Affidavits submitted by the Union failed to provide such facts.

[27] The Employer argued that if we conclude that there is no arguable case before us and hence no basis for the application to have been made, that the Employer is greatly disadvantaged over the Union in access to resources and that the Board should consider this

inequality and provide some compensation to the Employer in having to meet this application unnecessarily.

Analysis:

The Nature of Interim Relief

[28] The test for determining if interim relief should issue was set out by the Board in *Hotel Employees Union, Local 206 v. Canadian Income Properties Real Estate Trust*[3] as follows:

> *The Board is empowered under ss. 5.3 and 42 of the Act to issue interim orders. The general rules relating to the granting of interim relief have been set down in the cases cited above. Generally, we are concerned with determining (1) whether the main application reflects an arguable case under the Act, and (2) what labour relations harm will result if the interim order is not granted compared to the harm that will result if it is granted. (see Tropical Inn, supra, at 229). This test restates the test set out by the Courts in decisions such as Potash Corporation of Saskatchewan v. Todd et al., 1987 CanLII 4918 (SK CA), [1987] 2 W.W.R. 481 (Sask. C.A.) and by the Board in its subsequent decisions. In our view, the modified test, which we are adopting from the Ontario Labour Relations Board's decision in Loeb Highland, supra, focuses the Board's attention on the labour relations impact of granting or not granting an interim order. The Board's power to grant interim relief is discretionary and interim relief can be refused for other practical considerations.*

[29] The Board also set out restrictions on the issuance of interim relief in its decision in *Hotel Employees and Restaurant Employees Union, Local 206 v. Chelton Suites Hotel (1998) Ltd.*[4], when it said:

> *The Board has enunciated certain policies which help serve to curtail the numbers of applications for interim relief. For example, the necessity for interim relief must be urgent, and, generally, the relief that may be granted will not have the practical effect of granting what the applicant might hope to obtain on the main application: see, Retail, Wholesale and Department Store Union, Local 455 v. Tai Wan Pork, Inc., LRB File No. 076-00*

[30] Also, in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Saskatchewan Indian and Gaming Authority Inc.*[5], the Board said at paragraph [21]:

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[3] [1999] Sask. L.R.B.R. 190, LRB File No. 131-99 at p. 194
[4] [200] Sask. L.R.B.R. 304, LRB File Nos. 091-00, 110-00, 125-00, 139-00, 144-00 & 145-00
[5] [2003] CanLII 62861 (SKLRB), LRB File Nos. 067-03, 068-03 & 069-03

> *[21] The Board has set out restrictions as to when interim relief should be granted. The Board has held that the necessity for interim relief must be urgent and that the interim relief power should be used in a preservative manner. When interim relief is granted, the Board's goal is to restore the status quo as much as possible pending the determination of the final application(s). As stated earlier, based on the facts of this case, there is no urgency requiring that relief be granted on an interim basis. The applicants, as evidenced by their actions, did not see the necessity for interim relief until over two months had passed following Mr. Lyons' dismissal/lay-off and until approximately five months had passed since Mr. Schmidt became involved in the RWDSU organizing drive.*

[31] While these decisions were made pursuant to the provisions of *The Trade Union Act*[6], there is no difference between the authority granted to the Board to grant interim relief which was found in section 5.3 of *The Trade Union Act* and the authority provided in section 6-103(2)(d) of the *SEA*. That jurisprudence remains relevant to this proceeding.

Should Interim Relief be Granted?

Has the Union demonstrated an Arguable Case?

[32] The parties diverge as to whether or not the union has an arguable case that the lockout notice did not comply with section 6-34 of the *SEA*. That provision provides as follows:

> *6-34 No strike is to be commenced and no lockout is to be declared unless the union or employer:*
>
> *(a) gives the other party at least 48 hours' written notice of the date and time that the strike or lockout will commence; and*
> *(b) promptly, after service of the notice, notifies the minister of the date and time that the strike or lockout will occur.*

[33] The Union interprets this provision as requiring the Employer to provide a Notice which specifies precisely the time and date when the lockout will commence, not merely, as was done in the first lockout notice, provide notice that a lockout may commence upon the expiry of 48 hours from the time and date of the service of the notice.

[6] R.S.S. 1978 c. T-17 (now repealed)

[34] The Employer takes a more generous interpretation of this provision arguing that the provision merely requires that it provide a cooling off period of 48 hours between the time notice is given and the time that the lockout occurs.

[35] In support of its view, the Union cites the definition of "lockout" as contained in section 6-1(1)(m) of the *SEA*. It argues that this definition defines a lockout to include "the closing of all or part of a place of employment". It argues that the Employer began closing the facilities prior to the expiry of the 48 hour notice when (5) five participants left between May 12 to 18, 2017 prior to the service of the first lockout notice.

[36] The Employer counters that the participants who left between May 12 to 18, 2017 left due to prior arrangements with their families or they left voluntarily due to the potential for disruption by a strike, Notice of which had been served by the Union. The Employer argues that it did not begin to evacuate participants or have them cared for by their families until after the first lockout notice had been given.

[37] The Union also relies upon this Board's decisions in *Federated Co-operatives Limited v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, Local 540*[7], *Retail Wholesale and Department Store Union, Local 454 v. Bi-Rite Drugs Ltd.*[8] and *Retail, Wholesale and Department Store Union, Local 454 v. Westfair Foods*[9] in support of its argument that section 6-34 of the *SEA* requires that the notice of strike or lockout must contain a precise date and time after which the strike or lockout is to occur.

[38] The Employer counters this argument by the Union saying that the authorities relied upon by the Union were distinguishable or were overruled by the Board in its decision in *Potash Corp of Saskatchewan Inc. (RE:)*[10]. The Employer argued that the Potash Corp/ decision established that the Notice must provide a "cooling off" period of at least 48 hours before a strike or lockout can commence. The Employer also argued that the Notice given was similar to the form utilized by the Union to provide its strike notice to the Employer.

[39] The Employer also argued that if there was any defect in the first Notice, that defect had been cured by the second Notice. The Union countered with an argument that the flawed Notice could not be cured by the giving of a second Notice.

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[7] [1984] October Sask. Labour Rep. 43
[8] [1987] March Sask. Labour Rep. 35
[9] [1993] 2nd Quarter Sask. Labour Rep. 100

[40] The Union also provided additional arguments to buttress its case, most of which were refuted by the Employer.

[41] At this stage of the proceedings, we are not tasked with the determination of which of the arguments might prevail. Our sole determination at this stage is to determine if an arguable case has been made by the Union. From the discussion above, it is clear that there are cogent and reasoned arguments to be made by both sides which will be determined in the actual hearing of this matter. The Board does not assess the strength of the arguments at this stage, but merely needs to insure that there is a case to go forward.

Balance of Labour Relations Harm

[42] The second part of the test for injunctive relief which asks the Board to determine whether or not the balance of convenience favours the issuance of an interim Order. This aspect of the inquiry is analogous to the test for injunctive relief utilized by the superior courts in the civil context. In *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Aaron's Furniture*[11], at paragraph [26], said:

> *This factor [i.e. balance of convenience] is similar to the requirement that an applicant for interim relief must show that the labour relations harm in not issuing the interim order outweigh the labour relations harm in issuance of the requested order. At common law, this is generally regarded as the requirement to show irreparable harm if the interim order is not made.*

[43] The Union argued that the employees of the Employer, members of the community in Outlook, and participants are being injured as a result of the lockout by the Employer. It argued that employees would be required to subsist on what they may receive for strike pay during the dispute. The Union also argued that economic activity in Outlook would be impacted by the strike as employees had less money to spend and the Employer would be curtailing expenditures with no participants at the home. Most importantly, it noted that the participants were adversely impacted as a result of the removal of them from their safe environment and the break from their normal routine.

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[10] [2001] SLRBD No. 95
[11] [2016] CanLII 1307 (SKLRB)

[44] The Employer countered that there was no element of harm to the Union which could not be fairly addressed if they are required by the Board to wait until the full hearing of the matter. They argued that the Union failed to provide any factual basis for any prejudice which may result if the interim Order is not made. The Employer argued that the focus for the Board should be on harm as between the employees and the Employer, not members of the general public who may be inconvenienced or the impact on the participants.

[45] The nature of the labour relations harm cited by the Union is one of the negative effects when the economic tools of strike or lockout are resorted to by a Union or the Employer. Strikes and Lockouts are not surgical tools. They are blunt instruments used to bludgeon the other side of a labour dispute into capitulation. By their very nature, they have adverse economic and labour relations consequences to the Employer, the employees and the community.

[46] The harm alleged by the Union would occur whether the Union itself went on strike or whether they were locked out. It is difficult for the Board to accept Union complaints of economic consequences to employees resultant from the lockout when, apparently, they were prepared to invoke those same economic consequences themselves by virtue of the strike notice that they served on the Employer. There is little comfort that can be taken from the fact that the Union did not follow through with its threatened strike and withdrew its notice insomuch as the employees appeared to be willing to accept the economic cost that would be occasioned should they actually take strike action. That economic cost would be born by themselves, by the Employer and the community of Outlook.

[47] As for the participants, they appear to be the pawns on this chessboard. As the Affidavits from caregivers, adoptive parents and parents of the participants attest, the care and disruption suffered by these individuals is an overarching concern. It was certainly a concern of the Employer when they updated contingency plans, when advised of the possibility of strike action, as well as when they became more proactive after strike notice was served.

[48] The potential disruption to the participants is one of the reasons why the Board declines to make the interim Order requested. It does not seem to be an appropriate resolution if the interim Order was granted, and the participants returned to the facility, only to be again disrupted by another strike or lockout. That is more so when we consider that the any labour

relations harm (wage loss) done to the employees, should the lockout notice be determined to have been improper, can be compensated for if necessary.

[49] The potential harm that may result to the participants, and the fact that employees can be made whole should the Unfair Labour Practice application prevail, in our opinion, tilts the playing field towards interim relief not being granted in this case.

Other Concerns

[50] The Board is also concerned, for other reasons, about granting interim relief in this case. As noted above, the Board has enunciated certain policies which help to curtail the numbers of applications for interim relief. For example, the necessity for interim relief must be urgent, and, generally, the relief that may be granted will not have the practical effect of granting what the applicant might hope to obtain on the main application.

[51] The relief sought by the Union in its interim application is effectively the same as the relief sought in the Unfair Labour Practice application, which is yet to be heard. Its prayer for relief in the interim application merely repeats the requested relief sought in the Unfair Labour Practice application. As noted by the Board in *Retail, Wholesale and Department Store Union, Local 455 v. Tai Wan Pork Inc.*[12]

> *If an interim Order was granted by the Board, the remedial consequences of the main application would be complete, except perhaps for an assessment of some aspects of the monetary claim. This result dissuades the Board from proceeding solely on the basis of affidavit material and brief oral arguments. The issues are more complex both factually and legally and deserve a full hearing before remedial relief of this magnitude is granted. [Emphasis added.*

[52] The case presented to the Board here is on all fours with the above statement from *Tai Wan Pork Inc*. The effect of the Board granting the interim relief sought would provide full remedial relief to the Union on the basis of an interim application based on Affidavit evidence and without a determination of the underlying issues advanced by the Union and the Employer, with respect to the merits of the case.

[12] LRB File No. 076-00, [2000] S.L.R.B.D. No. 21

[53] For these reasons, the application for interim relief is dismissed.

Issues related to the Affidavit Evidence

[54] It is not necessary for the Board to deal with these issues in this decision given, the result which is set out above. However, for the purposes of guidance to the labour relations community, it is, important to emphasize the requirements set out in section 15 of the Board's Regulations concerning the use of affidavits in interim proceedings.

[55] Section 15(1) requires that evidence on interim applications[13] be provided by way of affidavit. Those affidavits are required by subsection (2) to be "confined to those facts that the applicant or witness is able of the applicant's or witness's own knowledge to prove". This precludes affiants from speculating in their affidavits based on hearsay or their "information or belief".

[56] Subsection (3) provides for some relief from these stringent requirements only if the Board is satisfied that it is appropriate, "because of special circumstances" to admit affidavit evidence on the basis of "information and belief".

[57] The Board has not had occasion to define when it is appropriate or when they may be satisfied that special circumstances would permit affidavits based on information and belief[14]. It has, however, on numerous occasions struck all or portion of affidavits provided on interim applications for failure to comply with the requirements of the Regulations.

[58] In *the Evraz Wasco Pipe* decision, at paragraphs 20, the Board made the following comments:

> *As noted in Health Sciences, supra, the "special circumstances" exception to the personal knowledge requirement for affidavits submitted on interim relief applications is new and its meaning has not been the subject of any prior decision of this Board. Its interpretation was not argued in depth by the parties at the hearing. As a consequence, the Board must be cautious not to establish new principles in the absence of full argument and legal briefing. At the very least, however, to qualify as "special circumstances" under subsection 15(3) of the Regulations the party seeking to tender the affidavit in dispute has to demonstrate that there are legitimate and persuasive reasons why the individual*

[13] The Application would be in Form 12 to the Regulations
[14] See *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union v. Evraz Wasco Pipe Protection Corporation* [2016] CanLII 98635 (SKLRB)

> *possessing personal knowledge of the matters attested to is unavailable to file an affidavit on his or her behalf.*

[59] Neither the Union nor the Employer provided any legitimate or persuasive reasons why the person having personal knowledge of the matters attested to, was unavailable to file an Affidavit on his or her behalf. As a result, and absent any "special circumstances", the Board would be required to strike any affidavit or portion thereof which does not comply with section 15 of the Regulations. Had that been necessary, we would have done so in this case.

Should Costs be Awarded?

[60] Vice-Chair Mitchell recently dealt with the issue of costs in *Lynden Lund v. West Yellowhead Waste Resource Authority Inc., and Government of Saskatchewan, Executive Director of Occupational Health and Safety*[15]. In that decision, at paragraph [69], the Board concluded:

> At the outset, it is settled that the Board possesses the authority to award costs in certain cases, see especially: *Stewart v Saskatchewan Brewers' Bottle & Keg Workers, Local Union No. 340*, [1996] Sask LRBR 386, LRB File No. 025-95 ["*Stewart*"], and, most recently, *Hartmier v Saskatchewan Joint Board Retail Wholesale and Department Store Union and Retail, Wholesale and Department Store Union, Local 955*, LRB File Nos. 226-14 & 016-15, 2017 CanLII 20060 (SK LRB), at paras. 236ff. Yet, in practice, costs are rarely awarded. As the Board observed in *Rattray v Saskatchewan Government and General Employee's Union*, LRB File No. 011-03, 2003 CanLII 62853 (SK LRB) at paragraph 13, "requests for costs are made so often and awards for costs are made so infrequently."

[61] While the appeal under consideration was heard by the Board pursuant to its authority under section 4-8(2) of the *SEA*, the Board in that decision considered its powers granted by the *SEA* in respect of its ability to award costs.

[62] The Employer's request for costs in this case was premised upon its arguments that the Union had no arguable case and was wasting both the Employer's time and resources as well as the Board's time and resources. However, as noted above, the Board has not made any determination as to the merits of the Union's case and will not do so on an interim

[15] [2017] CanLII 30151 (SKLRB)

application. Accordingly, there is nothing unusual in this interim application which would justify any award of costs at this stage.

[63] As the Board stated in *Stewart*, *supra*, at 395:

> *In this connection, it is perhaps helpful to think of legal expenses in terms other than the notion of "costs" as it is understood in connection with proceedings in civil courts. For reason which have been alluded to earlier, this Board has never considered it appropriate to award costs in that sense of the term as part of the determination of applications under The Trade Union Act.*

An award of costs following the cause, *i.e.* costs awarded to the successful party in a particular case – so common in civil courts like the Queen's Bench – is unknown in proceedings before this Board. This Board, when costs are awarded, does so pursuant to its authority to make parties whole and to compensate them from costs unnecessarily incurred as a result of a breach of some provision of the *Act*.[16]

[64] For these reasons, the Employer's request for costs is rejected.

DATED at Regina, Saskatchewan, this **6th** day of **July, 2017.**

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson

[16] See *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 179 v. Monad Industrial Constructors Inc. and Construction Workers Union (CLAC), Local 151* [2013] CanLII 83710 (SKLRB)