



Government
of
Saskatchewan

Saskatchewan Labour Relations Board

1600, 1920 Broad Street
Regina, Canada S4P 3V2

Tel – (306)787-2406

Fax – (306)787-2664

www.sasklabourrelationsboard.com

March 31, 2017

Plaxton Jensen
Barristers & Solicitors
500, 402 – 21st Street
SASKATOON, SK
S7K 0C3

MLT Aikens
Barristers & Solicitors
1500, 410 – 22nd Street
SASKATOON, SK
S7K 5T6

Attention: Ms. Heather M. Jensen

Attention : Mr. Robert Frost-Hinz

Dear Sir and Madam:

RE: LRB File No. 201-16

Background:

1. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the “Union”) was certified to represent “all taxi drivers employed by Regina Cabs, except those persons who own, control, or lease two or more taxi cabs, dispatchers, office personnel, supervisors and management above the rank of supervisors”. The Board’s Order certifying the Union to represent those persons was dated March 23, 2015 and directed that Arch Transco Ltd. operating as Regina Cabs (the “Employer”) collectively bargain with the Union with respect to those persons.
2. The Union and Employer met to bargain on numerous occasions, but those sessions were not fully productive and a first collective agreement was not achieved. The Union sought assistance from the Minister of Labour Relations and Workplace Safety pursuant to section 6-27 of *The Saskatchewan Employment Act* (the “SEA”). In response to that request, the Minister appointed a labour relations officer to assist the parties. The labour relations officer was not able to get the parties to a first collective agreement.

3. The Union then applied to the Board for assistance in reaching a first collective agreement pursuant to section 6-25 of the *SEA*. Upon receipt of that application, the Board required the parties to request that the Minister again appoint a labour relations officer or special mediator to assist the parties. The Minister again provided the assistance of a labour relations officer who was again unsuccessful in bringing the parties to a resolution.
4. More than 120 days elapsed from the date the labour relations officer was appointed by the Minister to assist the parties. The Union then requested the Board to either:
 - (i) conclude, within 45 days after the date of the order, any terms or terms of the first collective agreement between the parties; or
 - (ii) order arbitration by a single arbitrator to conclude, within 45 days after the date of the order, any term or terms of the first collective agreement.
5. A Board panel heard from the parties on March 27, 2017 to hear argument from the parties with respect to the Union's request. After hearing from the parties, the Board has determined, for the reasons which follow, to appoint Mr. Marshall Hamilton as a single arbitrator to hear and determine the issues and to conclude the term or terms of a first collective agreement between the parties.

Position of the Parties regarding Remedy

6. The Union took the position that the Board should appoint an arbitrator to hear and determine the term or terms of the first collective agreement. The Union argued that the Board did not, at the present time, have the necessary resources to properly and effectively deal with the matter within the 45 day timeline provided for in the statute.
7. The Union noted that the Board had previously undertake the establishment of a first collective agreement itself, relying upon its extensive experience rather than someone

independent of the Board. The Union argued that the Board did not have any special knowledge with respect to the taxi industry.

8. The Employer took the opposite view to that espoused by the Union. The Employer argued that the Board did possess special knowledge of the taxi industry. In addition, the Employer argued that there were some nuances with respect to the certification order, something with which the Board should be involved.
9. Additionally, the Employer noted that section 6-25 of the *SEA* was somewhat ambiguous in its meaning and application which was something which the Board should address.

Decision:

10. The Board acknowledges the cogent arguments made by both parties. However, on balance, the Board adopts the position espoused by the Union. The choice between whether or not the Board undertakes to resolve the first collective agreement or whether an arbitrator is better suited to hear and determine the matter becomes a weighing of the factors noted by the parties in their arguments. First, the Board must consider its resources and the need to provide the parties with a timely result within the timelines established by the *SEA*.¹
11. While the 45 day timeline was also contained within the former *Trade Union Act*² that statute provided that the 45 day time period did not begin to run until after the Board had undertaken to conclude the terms of a first collective agreement. While in practice, this may not have been much of a distinction, the new requirement which focuses on the date of the Order by the Board can significantly shorten the timeline, since under the former *Act* the 45 day period could be considered to have commenced only following a hearing or

¹ See section 6-25(6)(b)

² See Section 26.5(6)

hearings by the Board and its undertaking, as a result, to conclude the terms of the collective agreement.

12. The Board has a busy schedule of other hearings and matters which require its attention. That busy schedule, combined with the busy schedules of counsel and others who will be required to attend any hearing to determine the term or terms of a first collective agreement mitigates towards the appointment of someone independent of the Board who can devote sufficient time and effort to the establishment of a first collective agreement for the parties.
13. Expertise of the Board versus an independent arbitrator is also a factor to be considered. The taxi industry, and particularly the negotiation of collective agreements in that industry, does not follow the norm for negotiation of collective agreements. That being said, however, there is no particular level of expertise within the Board in relation to the negotiation of such agreements. Negotiation of collective agreements (or first collective agreements) is not a skill set that the Board routinely exercises. The Board is generally not involved in the negotiation of collective agreements nor their interpretation. Certainly, members of the Board have considerable experience with respect to both negotiation and interpretation of collective agreements since they were appointed to the Board as a result of this experience either on the Union side or the Employer side.
14. While this is an important factor to be considered, we believe that by the appointment of an arbitrator who was a former member of the Board will capture the experience necessary to satisfy this requirement. Mr. Hamilton is not merely a labour arbitrator, but his someone who has sat at the bargaining table on many occasions.
15. The Board's Order appointing Mr. Hamilton as a single arbitrator is attached. We are of the unanimous view that this appointment will better assist the parties in concluding a first collective agreement in a timely fashion. He has considerable bargaining experience and is a former member of the Board.

16. In order to assist the arbitrator, this Order also directs the parties to provide a list of outstanding issues in a timely fashion so that the arbitrator is fully aware, at the outset, of the issues which need to be addressed in the first collective agreement. The Board is also setting out below all of the contact information for Mr. Hamilton as well as counsel for the parties in order that communication will be facilitated.

Mr. Marshall Hamilton

P.O. Box 25
Silton, SK
S0G 4L0
(306)530-6975 (Cell)

Email: marshall.hamilton@sasktel.net

Counsel for the Union

Plaxton Jensen
Barristers & Solicitors
500, 402 – 21st Street
SASKATOON, SK
S7K 0C3

Attention: Ms. Heather M. Jensen
(306) 653-1500
Email: hmjensen@plaxtonlaw.com

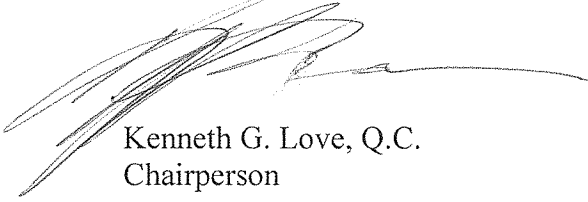
Counsel for the Employer

MLT Aikens
Barristers & Solicitors
1500, 410 – 22nd Street
SASKATOON, SK
S7K 5T6

Attention : Mr. Robert Frost-Hinz

(306) 975-7100
Email: rfrost-hinz@mlt.com

Yours truly,

A handwritten signature in black ink, appearing to read 'Kenneth G. Love', with a long horizontal flourish extending to the right.

Kenneth G. Love, Q.C.
Chairperson

KL/cp

Enclosure