



Government  
of  
Saskatchewan

Saskatchewan Labour Relations Board

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March 31, 2017

U.F.C.W, Local 1400  
1526 Fletcher Road  
SASKATOON, SK  
S7M 5M1

Charles Amissah-Ocran  
Barrister & Solicitor  
759 Milton Avenue  
MILTON, ON  
L9T 6B3

Attention: Sachia Longo

Dear Sirs:

**RE: LRB File No. 233-16**

**Background:**

1. The United Food and Commercial Union, Local 1400 (the “Union”) was certified on May 4, 2015, to represent persons employed by Neptune Security Services Ltd. (the “Employer”), except the manager and persons above the rank of manager. The Board’s Order certifying the Union to represent those persons directed that Neptune Security Services Inc. bargain collectively with the Union with respect to those persons.
2. Some minimal bargaining took place, but on September 15, 2015, the Union says that the bargaining broke down. The Union attempted to restart the bargaining, but was unsuccessful.
3. On or about June 29, 2015, the Employer unilaterally reduced the wages of Kathleen Evancio from \$13.00 to \$12.50 per hour. Then, on or about July 25, 2016, the Employer unilaterally reduced the wages of Stephen Sutton from \$12.50 to \$12.00 per hour.

4. Additionally, the Employer failed to accurately and consistently pay Kathleen Evancio proper overtime pay, nor did it pay her regularly.

**Non-attendance at the Hearing of this matter**

5. A hearing in respect of this matter was set by the Board, with the participation of counsel for the Employer for March 21 & 22, 2017. On the morning of March 21, 2017, the Board was contacted by a representative of the Employer and its counsel with two requests. First, it asked the Board to serve upon the Union a collection of documents which it sought to rely upon and secondly there was a presumption made by the callers that they could conduct the hearing by telephone conference.
6. The Board convened on March 21, 2017 and included the Employer representative and his counsel by telephone. The Board advised the Employer and his counsel that they would not be permitted to appear by telephone as it was necessary for them to provide *viva voce* evidence and documents to support any position which they may allege. The Board determined to adjourn the hearing to the following day to allow the Employer and its counsel to attend the hearing in person and to introduce evidence as required.
7. The following day, the Board convened without the Employer or its counsel being present. They were again contacted by telephone. When contacted they confirmed that they had determined not to attend the hearing.
8. The Board had advised the Employer and its counsel that by failing to appear at the hearing, the Board would have no alternative but to grant the Union's application. The Board gave the opportunity to the Union and to the Employer and its counsel to address them with respect to the remedies sought by the Union.

**Position of the Parties regarding Remedy**

9. The Union took the position that the Board should grant the whole of the remedies sought by the Union as follows:

- (a) An order or orders determining that the Employer and/or its agent(s), or person(s) acting on its behalf, and each of them have engaged in Unfair Labour Practices and/or violations of the Act and such orders as may be just requiring the said persons to refrain from same;
- (b) An order that the Employer reinstate the regular wage rate and compensate employees for any monetary loss suffered;
- (c) That the Board remain seized with respect to any issues that arise in relation to the calculation and payment for the monetary loss suffered including payment of pre-judgement interest; and
- (d) Such further and other orders as may seem just to this Honorable Board.

10. The Employer took the view that the higher wages paid to Ms. Evancio and Mr. Sutton were an error that had been corrected and the wage rates established where they should have been. The Employer also argued that the Employer should not have been named as Neptune Security Services Inc. but should have been named as 9191950 Canada Inc.

**Decision:**

11. The Union's application is granted in full. Section 6-62(1)(n) and section 6-62(1)(d) are very clear in their application to the present situation. Those 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:*

.....

*(d) to fail or refuse to engage in collective bargaining with representatives of a union representing the employees in a bargaining unit whether or not those representatives are the employees of the employer.*

.....

*(n) before a first collective agreement is entered into or after the expiry of the term of a collective agreement, to unilaterally change rates of pay, hours of work or other conditions of employment of employees in a bargaining unit without engaging in collective bargaining respecting the change with the union representing the employees in the bargaining unit.*

### **Failure to Bargain Collectively**

12. The Union alleges that no collective bargaining has occurred since September 15, 2015. No issue was taken by the Employer with respect to this allegation. The only issue which the Employer seemed to be fixated upon was the change of the name of the Employer to 9191950 Canada Inc.
13. In the Union's application by Ms. Figueiredo, she swears that on or about July 15, 2016, she sent an email to the Employer in an attempt to restart bargaining. She also deposes that "[D]espite numerous emails and phone calls, the Employer has refused to resume bargaining".
14. The application clearly establishes a breach of section 6-62(1)(d) of the *Act*. An appropriate order directing the parties to negotiate will accompany these letter reasons.

### **Unilateral Change in Terms and Conditions of Employment**

15. In respect of the allegations of improper reduction in pay to Ms. Evancio and Mr. Sutton, the Employer's Reply stated that the employees were paid correctly. In the argument made regarding remedy, they argued that the initial payment was an error. In the reply which was filed, the Employer noted that it was paying 4% of salary in lieu of holiday pay. It was pointed out to the Employer that *The Saskatchewan Employment Act*<sup>1</sup> provides that an employee is entitled to receive 3/52 of his or her salary in lieu of vacation pay (approximately 5.77%). On being advised of this statutory requirement,

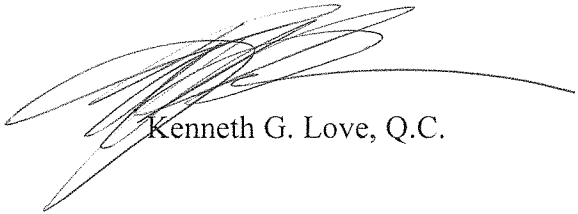
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<sup>1</sup> Section 2-27

the Employer undertook to recalculate employee's pay in accordance with the statutory requirement.

16. The allegations of Unfair Labour Practice are established here. Accordingly, the Union's application under section 6-62(1)(n) is granted. An appropriate order will accompany these letter reasons.
17. The Board will remain seized of matters related to the calculation of the amounts due to Ms. Evancio and Mr. Sutton.
18. A copy of these Reasons shall be posted in the workplace, for a period of ninety (90) days, at a prominent location so as to be available to all employees of the Employer covered by the certification order.

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.

Enclosure