

October 16, 2017

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Canadian Union of Public Employees
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Attention: Mr. Larry Kowalchuk

Attention: Mr. Sachia Longo

City of Regina
City Solicitors' Office
2476 Victoria Avenue
P.O. 1790
Regina, Saskatchewan
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Attention: Mr. James McLellan

Dear Messrs. Kowalchuk; Longo, and McLellan:

Re: LRB File Nos. 034-15; 035-15 & 037-15 – *CB, HK and RD v Canadian Union of Public Employees, Local 21; Canadian Union of Public Employees, and the City of Regina* – Employee-Union Dispute

[1] This matter appeared on the Motions Day Agenda for October 10, 2017. Earlier on October 3, 2017, the Board had issued extensive Reasons for Decision respecting the substantive issues presented in these three (3) applications¹. The parties had agreed to bifurcate the proceedings, and to proceed with a hearing on remedial issues, if and when it became necessary to do so. The proceeding on October 10 was to schedule dates for just such a hearing.

[2] On October 10, 2017 Mr. Kowalchuk, counsel for the three (3) applicants appeared in person before the Board comprised of Members John McCormick and Allan Parenteau, and myself as Vice-Chairperson. Both Mr. Longo and Mr. McLellan participated by telephone.

[3] At that time, in addition to scheduling dates for the remedies hearing, Mr. Kowalchuk raised two (2) additional matters. First, he sought a direction from the Board that his clients be given access to the audio recording of the hearing on the substantive issues that took place in July 2016. He undertook on behalf of his clients that if granted, this recording would not be copied or transcribed.

¹ *CB, HK & RD v Canadian Union of Public Employees, Local No. 21, CUPE National, and the City of Regina*, LRB Files No. 034-15; 035-15 & 037-17 dated October 3, 2017.

[4] Mr. McLellan on behalf of the City of Regina submitted that if the Board was prepared to permit Mr. Kowalchuk's clients access to the audio recording the other parties to the hearing, including his client, should also receive copies of those recordings presumably on the same terms and conditions that would be imposed on Mr. Kowalchuk's clients.

[5] The second issue related to medical evidence that Mr. Kowalchuk anticipated calling in the course of the hearing on remedial issues. He asked the other parties to consent to receiving formal medical reports without requiring the Applicants to have the doctors in question also appear in person for purposes of cross-examination. He did not specifically ask the Board to rule on his request; rather, he only sought the concurrence of the other counsel. After some discussion, it was agreed that Mr. Kowalchuk's request should be deferred until the medical reports in question were prepared, and in the hands of Mr. Longo and Mr. McLellan.

[6] As a result, this letter will only address Mr. Kowalchuk's request for access to the audio recording of the proceedings in July 2016 which are currently held by the Board.

[7] Neither *The Saskatchewan Employment Act*, SS 2013, c S-15.1 nor *The Saskatchewan Employment (Labour Relations Board) Regulations* requires the Board to record proceedings before it or to retain copies of any audio recording that is made. *The Evidence Act*, SS 2006, c E-11.1, in subsection 29(1) authorizes a tribunal such as this Board to make a sound recording of evidence in a particular matter; however, it is permissive and does not compel it. For many years now it has been the Board's practice to record most, but not all, of the proceedings that take place before it.²

[8] From the beginning, this Board has held firmly to a policy that audio recordings of proceedings before it will not be disseminated either to the parties involved or to members of the general public. There are a variety of reasons motivating such a policy, both philosophical and practical. Hearings before the Board are, with rare exceptions, open and members of the public are at liberty to attend them, should they be interested in a particular matter. Furthermore, parties to a particular proceeding or their counsel may obtain a written transcript of the proceeding prepared by a qualified court transcriptionist. Mr. Kowalchuk cited no case, nor was I able to find one, where this Board handed over an audio-recording of a proceeding to counsel, with or without stipulations.³

[9] Mr. Kowalchuk argued that the cost of preparing a transcript of the hearing in July 2016 was prohibitive, and an exception should be made in this case. He stated that allowing his clients to listen to the tapes could shorten the hearing on the remedial issues.

² Not all labour relations boards follow the practice of this Board. For example, it appears that the Ontario Board does not make audio recordings of its proceedings. See e.g.: *Hyuk Kim (Tony) v KGIC Inc*, 2016 CanLII 78198 (ON LRB), and *Fontaine v Norbord Industries Inc.*, 2002 CanLII 28227 (ON LRB).

³ The only Saskatchewan case raising a similar issue that the Board was able to locate was *Battlefords Tribal Council Inc (c.o.b. Battlefords Tribal Council) v Federation of Saskatchewan Indians Inc.*, 2008 SKQB 65. There an application for access to the audio recording of a chambers application was denied. The approach adopted by the Queen's Bench in *Battlefords Tribal Council* was endorsed by the Saskatchewan Court of Appeal in *Phillips Legal Professional Corporation v Vo*, 2017 SKCA 58, at paras. 86-88.

[10] The Board accepts that having a written transcript prepared can be a costly endeavour, sometimes exceedingly so. Yet, cost is a concern in all matters, and the expense to a party of obtaining a transcript cannot, in and of itself, be a reason to depart from the Board's long-standing policy.

[11] In this case, two (2) of the Applicants attended almost all of the proceedings. The third Applicant was unable to participate fully due to a medical condition. This is not a case where the parties are completely unfamiliar with what transpired at the hearing. While the Board accepts that memories fade over time, not so much time has elapsed that these individuals can have forgotten what evidence was lead or which witnesses testified. Indeed, if this was a principal concern then Mr. Longo and Mr. McLellan, neither of whom participated in the July 2016 hearing, would have greater claim to obtaining a copy of the audio-recording than the Applicants.

[11] In conclusion, this case presents no factor which persuades the Board that it should depart from its long-standing policy prohibiting the release of an audio-recording. Accordingly, Mr. Kowalchuk's request is denied.

Yours very truly,

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