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Dear Mr. Westfield, Mr. Sawatsky, Mr. Judd and Ms. Saxberg:

RE: LRB File No. 144-16; Employee-Union Dispute Application
LRB File No. 147-16; Employee-Union Dispute Application
LRB File No. 148-16; Employee-Union Dispute Application
Westfield, Sawatsky, Judd, Employees v. Saskatoon Public School Board of Saskatoon School District No. 13

Background:

1. Mr. Rob Westfield, Mr. Dan Sawatsky and Mr. Gary Judd (the "Applicants") applied to the Board seeking a remedy against The Canadian Union of Public Employees, Local 2669 (the "Union") under section 6-58 of *The Saskatchewan Employment Act*

(the "*Act*"). By its decision[1] dated January 17, 2017 the Board found that the Union did not properly represent the Applicants. A hearing regarding the appropriate remedy to be granted was held by conference call on March 17, 2017. At that hearing, I, sat alone pursuant to Section 6-95(3) of *The Saskatchewan Employment Act*.

Position of the Parties regarding Remedy

2. The Applicants took the position that they should be compensated for their time and effort related to the prosecution of the complaint against the Union. They quantified this as being $150.00 related to a hall rental to discuss the application with other employees impacted by the grievance which had been filed but was later withdrawn by the Union. 6 days for each of them (18 days in total) in respect of preparation for the hearing and in compilation of materials misplaced by the Union related to the proposed grievance. Finally they asked to be compensated for the 2 days of the hearing in respect of which they were required to take vacation leave from the employer.

3. The Union argued that the only appropriate remedy in this case was the issuance of a declaration which would recognize and validate the employees' position with respect to the application and the Union's conduct. They argued that the Union had already taken remedial action to insure a proper appeal mechanism under the local union bylaws. The Union also argued that it was within its right to withdraw the grievance, which was done in accordance with the then procedures related to that grievance.

Decision and Remedy

4. The Union pointed out in its written brief filed in response to this application that the Board jurisprudence suggests that remedial relief should strive to rectify or counteract the labour relations consequences of any transgression. It pointed to the

[1] [2017] CanLII 6026 (SKLRB)

Board's decision in *Amalgamated Transit Union, Local 615 v. Saskatoon (City)*[2] wherein the Board made the following comments regarding remedy:

> *Notwithstanding the apparent broad discretion granted to this Board in awarding remedial relief, a review of this Board's jurisprudence illustrates that a number of guiding principles have been established by the Board. In addition, a number of restrictions have been imposed by the Courts. See: Amalgamated Transit Union, Local 588 v. Firstbus Canada Limited, (2007) 145 C.L.R.B.R. (2d) 124, 2007 CanLII 68764 (SK LRB), [2007] Sask. L.R.B.R. 783, LRB File No. 082-07. In our opinion, the following restrictions and principles must guide our actions in granting remedial relief:*
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> 1. *In fashioning and awarding remedial relief, the Board strives to rectify or counteract the labour relations consequences of the transgressions of an offending party. Simply put, the goal of the Board is to place an injured party, to the extent possible, in the position that they would have been but for the breach or violation of the Act. See: Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Loraas Disposal Services Ltd. [1998] Sask. L.R.B.R. 556, LRB File No. 208-97, 227-97 & 234-97 to 239-97.*
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> 2. *Any remedial relief awarded by the Board must clearly fall within the scope of authority delegated to the Board by statute. See: Royal Oak Mines Ltd. v. Canadian Labour Relations Board and Canadian Association of Smelter and Allied Workers, Local 4, [1996] 1 S.C.R. 369, 1996 CanLII 220 (SCC).*
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> 3. *There must be a rational connection between the breach, its consequences and the remedy imposed by the Board. See: Royal Oak Mines, supra.*
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> 4. *The remedy should foster and support healthy labour relations in the workplace. See: Loraas Disposal Services, supra.*
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> 5. *The remedy must not be punitive in nature. See: Royal Oak Mines, supra.*
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> 6. *The remedy must not infringe the Canadian Charter of Rights and Freedoms. For example, a remedy should not require a*

[2] [2014] CanLII 76049 (SKLRB)

party to make statements that they do not wish to make. See: Royal Oak Mines, supra.

5. Keeping these principles in mind, I have concluded that the proper remedy in this case would be the following:

    1. That the Union issue a public apology to the Applicants and all other employees potentially members of the class that was intended to be benefited by the withdrawn grievance. Such apology shall be sent by email to those employees who can be identified by the union as being entitled to receive the apology and whose email contact information they have. In addition, the apology shall be posted for a period of not less than one month on the Union's website along with a link to the Board's decisions in respect of these matters.

    2. That the Applicants' be compensated for the 2 days for which they were required to take vacation time to attend Board hearings related to this matter calculated based upon their average daily salary rate for the days on which they attended hearings.

6. The first element of this remedial order is intended to show respect to the Applicants who persisted in their attempt to have the withdrawal of the grievance brought before the Board. It was a selfless act on their part and was intended to benefit not only them, but also those employees who were potentially impacted by the grievance.

7. This element of the remedial order is also intended to replace a declaration by the Board as suggested by the Union. A declaration is merely a pyric victory when a proper recognition of the Union's wrongdoing is necessary.

8. The second element of the remedial order is intended to compensate the Applicants' for their sacrifice of holiday entitlements to attend the Board's hearings. As they were successful, they should not have to bear the penalty of having reduced holiday entitlements because of their efforts on behalf of themselves and their co-workers.

9. We have not ordered any of the other elements of the remediation sought by the Applicant's. The evidence adduced in the hearing established that the hall rental was incurred for two purposes. The first was a discussion of the grievance, but the second was to test the waters to determine if there was any interest among the employees to break away from the Union and to seek to replace the union by another union of the employee's choosing. This second purpose was in no way related to the matters raised in the application and we have no evidence to justify the ordering of the recouping of this cost.

10. Similarly, there is no evidence to support the claim of 18 days spent in preparation for the hearing and gathering information claimed to have been lost by the Union. There was no suggestion that this preparation and information gathering was done using vacation days, but appears to have been done after normal working hours or on weekends. Nor was there any evidence to show how the time spent was related to the application to the Board. Accordingly, we decline to make any order in respect of this alleged time spent.

11. An Order directing the remedy set out above will accompany these letter reasons.

Yours truly,

Kenneth G. Love, Q.C.

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Enclosure