SASKATOON CO-OPERATIVE ASSOCIATION LIMITED, Applicant v. UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Respondent

LRB File No. 197-17; January 8, 2018

Chairperson, Kenneth G. Love, Q.C.; Members: Aina Kagis and Michael Wainwright

For the Applicant:	Shannon Whyley
For the Respondent:	Dawn McBride and Rod Gillies

Unfair Labour Practice – Employer and Union engaged in collective bargaining for renewal contract – Union declares impasse and notifies Minister of Labour Relations and Workplace Safety – Employer alleges Unfair Labour Practice alleging that Union improperly filed Notice of Impasse resulting in a failure to bargain in good faith.

Jurisdiction of Board – Board considers its jurisdiction regarding Notice of Impasse and its authority under *The Saskatchewan Employment Act* concerning supervision of collective bargaining relationship – Board determines that essential character of dispute in relation to collective bargaining – Board assumes jurisdiction over the dispute.

Notice of Impasse – Board considers whether premature Notice of Impasse constitutes Unfair Labour Practice as a failure to bargain in good faith.

REASONS FOR DECISION

Background:

[1] The Saskatoon Co-operative Association Limited (the "Co-op") applied to the Board alleging that the United Food and Commercial Workers, Local 1400 ("UFCW") committed an unfair labour practice within the meaning of section 66-63(1)(c) of *The Saskatchewan Employment Act* (the *"SEA"*) by prematurely filing a notice of impasse pursuant to section 6-33 (1) of the *SEA*.

[2] The Co-op alleges that by prematurely filing the notice of impasse, UFCW failed in its duty to bargain in good faith as defined in section 6-1(1)(e)(i) of the *SEA*.

[3] UFCW also applied to have the Co-op's application summarily dismissed by the Board as raising no arguable case. At the hearing of the summary dismissal application on November 22, 2017, the Board orally dismissed the UFCW's application for summary dismissal.

Facts:

[4] The facts in this matter are not, except as otherwise noted herein, in dispute. The parties were engaged in the renegotiation of a collective bargaining agreement which had expired on November 19, 2016. Notice to renegotiate the agreement had been given and the parties commenced bargaining on April 10, 2017. They met for bargaining on April 12, 2017, May 24, 2017, May 26, 2017, June 5, 2017, June 7, 2017, July 4, 2017, August 23, 2017 and August 24, 2017. Additional bargaining dates had been set for September 19, 2017 and September 21, 2017.

[5] Some progress was made at these bargaining sessions, mainly with respect to contract language. The parties had agreed to defer monetary items until the contract language issues had been resolved.

[6] In July 2017, Ms. Lucy Figueiredo, Secretary-Treasurer for UFCW, joined the collective bargaining team for UFCW as the lead negotiator. She testified that she had considerable experience in collective bargaining with UFCW and that she believed a collective agreement should have been concluded by the time she joined the bargaining team. She testified that there were 85 bargaining proposals put forward by the Co-op and 117 proposals put forward by the Union. She also testified that she was not satisfied with the pace of the negotiations.

[7] Ms. Figueiredo also testified that she thought some progress had been made in July 2017, but that the meetings in August 2017 were not productive. She testified that in August 2017, the teams exchanged proposals. She testified that UFCW had taken considerable time to review the Employer's proposals and to respond to those proposals. She noted that there were eight (8) Employer proposals which she identified as items that would lead to a bargaining impasse.

[8] She testified that the bargaining was about "small stuff". As a result, she testified that she went from being frustrated to being very frustrated. She testified that during bargaining on August 23, 2017, she spoke of the parties being at impasse during the negotiating session.

[9] On August 24, 2017, the Co-op made a written bargaining proposal to UFCW at about 9:30 AM. UFCW made a counter proposal at about noon that day. At about 4:00 PM, the Co-op gave a verbal response to the UFCW proposal. In making its verbal response, Sharon Shultz, Human Resource Manager for the Co-op, who was also a member of the Co-op's bargaining team, testified that she felt progress was being made.

[10] After making the oral counter proposal, the Co-op negotiating team left the room to allow UFCW to consider the counter proposal. Sometime later, Ms. Figueiredo and Mr. Gillies, another member of the bargaining team, asked to have a "sidebar" meeting with the Co-op negotiators. At that "sidebar' meeting, UFCW advised the Co-op that they were declaring an impasse. Ms. Shultz testified that the Co-op negotiating team was shocked by the announcement. Ms. Shultz also testified that she believed that negotiations would continue on August 24, 2017 and on future dates already scheduled and that the parties were looking to schedule additional dates. She also testified that as at the August 24, 2017 bargaining meeting, the parties had not exchanged any monetary proposals[1] or made any final offers.

[11] On August 25, 2017, the Union wrote to the Minister of Labour Relations and Workplace Safety pursuant to section 6-33 of the *SEA* declaring an impasse and requesting that the Minister appoint a labour relations officer or special mediator to assist the parties to conciliate the bargaining between them.

[12] On September 6, 2017, the Minister of Labour Relations and Workplace Safety responded by appointing a Senior Labour Relations Officer to assist the parties. As a result of the appointment of the Senior Labour Relations Officer, the September bargaining dates were cancelled, and the parties arranged to meet with the Senior Labour Relations Officer and to seek his assistance in bargaining.

[13] On October 23, 2017, the Co-op filed an interim application to the Board seeking the Board make an interim Order preventing either party from engaging in a strike or lockout until a decision could be made in respect of this unfair labour practice application. The Board

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[1] *Apart from initial discussions had at the outset of bargaining when the parties determined to defer discussion of monetary items.*

declined to make such Order, offering instead an expedited hearing of the application which was heard by the Board on November 22 and 23, 2017.

[14] The Board heard testimony from two witnesses, Sharon Schultz and Lucy Figueiredo. Some of their testimony has been referenced above. Other aspects of their testimony will be referenced during the analysis portion of this decision as necessary.

Relevant statutory provision:

[15] Relevant statutory provisions are as follows:

> ***6-1****(1) In this Part:*
>
> *(a)* ***"bargaining unit"*** *means:*
>
> *(i) a unit that is determined by the board as a unit appropriate for collective bargaining; or*
>
> *(ii) if authorized pursuant to this Part, a unit comprised of employees of two or more employers that is determined by the board as a unit appropriate for collective bargaining;*
>
> *(b)* ***"certification order"*** *means a board order issued pursuant to section 6-13 or clause 6-18(4)(e) that certifies a union as the bargaining agent for a bargaining unit;*
>
> *(c)* ***"chairperson"*** *means the chairperson of the board appointed pursuant to subsection 6-93(2);*
>
> *(d)* ***"collective agreement"*** *means a written agreement between an employer and a union that:*
>
> *(i) sets out the terms and conditions of employment; or*
>
> *(ii) contains provisions respecting rates of pay, hours of work or other working conditions of employees;*
>
> *(e)* ***"collective bargaining"*** *means:*
>
> *(i) negotiating in good faith with a view to the conclusion of a collective agreement or its renewal or revision;*
>
> . . .
>
> ***6-33****(1) If an employer and a union are unable, after bargaining in good faith, to conclude a collective agreement, the employer or union shall provide a notice to the minister that they have reached an impasse.*
>
> . . .
>
> ***6-63****(1)It is an unfair labour practice for an employee, union or any other person to do any of the following:*
>
> *. . .*

> *(c) to fail or refuse to engage in collective bargaining with the employer respecting employees in a bargaining unit if a certification order has been issued for that unit;*

The Summary Dismissal Application:

[16] The summary dismissal application by the Union was dismissed orally at the hearing of this matter on November 22, 217. At that time, the Board undertook to provide reasons for that dismissal. These are those reasons.

[17] We were also provided written briefs and case authorities by both counsel, which briefs and case authorities we have reviewed and found helpful.

Analysis:

The Test for Summary Dismissal:

[18] There was no disagreement between the parties as to the proper test to be applied with respect to the application. That test was set out by the Board in its decision in *International Brotherhood of Electrical Workers, Local 529 et al v. KBR Wabi Ltd. et al.*[2] In that case, at paragraph [79] et seq., the Board set out the test as follows:

> ***[79]*** *Taking all of this into consideration, we adopt the following as the test to be applied by the Board on the exercise of its authority under s. 18(p) of the Act.*
>
> > *1. In determining whether a claim should be struck as disclosing no arguable case, the test is whether, assuming the applicant proves everything alleged in his claim, there is no reasonable chance of success. The Board should exercise its jurisdiction to strike on this ground only in plain and obvious cases and where the Board is satisfied that the case is beyond doubt.*
> >
> > *2. In making its determination, the Board may consider only the application, any particulars furnished pursuant to demand and any document referred to in the application upon which the applicant relies to establish his claim.*
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> ***[80]*** *However, the Soles case, supra, also provided for summary dismissal without an oral hearing pursuant to s. 18(q) of the Act. While we recognize that these two powers need not be exercised together, there are occasions when the Board may determine that a matter may be better dealt with through written*

[2] 2013 CanLII 73114 (SKLRB)

> *submissions, without an oral hearing. This was the procedure contemplated by Soles.*
>
> ***[81]*** *However, the utilization of the Board's powers under 18(p) and (q) has in our view, been confused and requires some further comment. In our opinion, the powers of the Board should be utilized seriatim rather than collectively. That is, when an application for summary dismissal is received by the Board and it is referred to an in camera panel or the Executive Officer of the Board, the first question to be determined is whether or not this matter is one that should be dealt with by the Board through written submissions rather than through an oral hearing process utilizing the Board's authority in s. 18(q). The second question, which is whether an arguable case exists or there is a lack of evidence, would then be dealt with either by way of written submissions or through oral argument at a hearing.*

[19] The Board most recently reviewed its authority to summarily dismiss applications in *Lyle Brady v. International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers, Local 771*[3]. In that case, the Board also relied upon its earlier jurisprudence in *KBR Wabi.* It noted that the power to summarily dismiss applications should be used only where it is "plain and obvious" that the application cannot succeed. It quoted from paragraphs [104] – [106] of *KBR Wabi* as follows:

> ***[****104] The Saskatchewan Court of Appeal in Sagon v. Royal Bank, in addition to establishing the test for striking statements of claim for disclosing no reasonable cause of action, cautioned that the Court's power to strike on this ground should only be exercised in "plain and obvious cases where the court is satisfied that the case is beyond doubt.*
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> *[105] In Odhavji Estate v. Woodhouse, the Supreme Court relied upon the test set out by Wilson J. in Hunt v. Carey Canada Inc. as follows:*
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> > *. . . assuming that the facts as stated in the statement of claim can be proved, is it "plain and obvious" that the plaintiff's statement of claim discloses no reasonable cause of action? As in England, if there is a chance that the plaintiff might succeed, then the plaintiff should not be "driven from the judgment seat". Neither the length and complexity of the issues, the novelty of the cause of action, nor the potential for the defendant to present a strong defence should prevent the plaintiff from proceeding with his or her case. Only if the action is certain to fail because it contains a radical defect . . . should the relevant portions of a plaintiff's statement of claim be struck out . . . .*
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> *[106] The Court then went on to say at paragraph 15:*
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> > *The test is a stringent one. The facts are to be taken as pleaded. When so taken, the question that must then be determined is whether there it is "plain and obvious" that the action must fail. It is only if the statement of*

[3] 2017 CanLII 68781 (SKLRB)

> *claim is certain to fail because it contains a "radical defect" that the plaintiff should be driven from the judgment. See also Attorney General of Canada v. Inuit Tapirisat of Canada, 1980 CanLII 21 (SCC), [1980] 2 S.C.R. 735.*

[20] The parties' fundamental disagreement with respect to the application relates to the need for the Board to determine the essential nature of the dispute between them. The Union takes the view that the Board should not undertake, nor does it have the jurisdiction, to review the decision made by the Union that the parties were at impasse or the decision of the Minister of Labour Relations and Workplace Safety in appointing a conciliator. On the other hand, the Co-op argues that the essential character of the dispute is the conduct on the part of the Union, which has high-jacked the collective bargaining process and which, it submits, is a failure to bargain in good faith. This dispute, in and of itself, gives rise to an arguable case before the Board.

[21] The Board certainly has the exclusive jurisdiction to hear and determine unfair labour practice applications[4]. It is not "plain and obvious" that the application by the Co-op alleging an unfair labour practice cannot succeed. In aide of its position, the Co-op has relied upon *City of Swift Current v. International Association of Fire Fighters, Local 1318*, where a somewhat similar issue was considered by the Board and found to be an unfair labour practice.

[22] For these reasons, we dismissed the application for summary dismissal. An Order dismissing that application will accompany these reasons.

Did the Union commit an Unfair Labour Practice?

Jurisdiction of the Board with respect to the Notice of Impasse?

[23] In *Swift Current Firefighters*, the City originally took the question of whether an impasse had occurred to the Court of Queen's Bench. In that instance, Madam Justice McMurtry determined that the question fell within the exclusive jurisdiction of this Board. The questions posed in that application to the Court were the following:

> *a. Does the Court have jurisdiction to hear these applications?*

[4] See *Tholl v. Saskatoon Co-operative Assn. [1983] 26 Sask. R., 149 DLR (3rd) 331*

> *b. Does the "opinion" of the party referring the negotiations to interest arbitration under section 9(4) of The Fire Departments Platoon Act have to be reasonably held?*
>
> *c. Was the opinion of the party referring the negotiations to interest arbitration under section 9(4) of The Fire Departments Platoon Act reasonably held in this case?*

[24] In her fiat issued on December 2, 2013, Madam Justice McMurty wrote:

> *In my view, the legislature did not intend the court to exercise original jurisdiction over issues arising out of collective bargaining between fire fighters, and only fire fighters, to the exclusion of all other workers in Saskatchewan.*
>
> *For these reasons, I find that the court does not have jurisdiction to deal with the cities' complaint and that it must be addressed in the first instance by way of an appropriate complaint to the SLRB under The Trade Union Act.*

[25] In her fiat, it appears that Justice McMurtry identified the essential character of the dispute as being a matter related to collective bargaining, which she considered to be within the jurisdiction of this Board and not the Court of Queen's Bench.

[26] The facts in the *Swift Current Firefighters* case also involved a notice of impasse issued by the Firefighters Union after limited collective bargaining between the parties. In that case as well, the notice of impasse was issued pursuant to *The Fire Platoon Act*[5] (repealed).

[27] The provisions of *The Fire Platoon Act* under consideration in that case were repealed and similar provisions included within the *SEA*[6]. Part VI is that part of the *SEA* from which this Board derives its authority.

[28] In the *Swift Current Firefighters* case, the issue, as here, was whether or not the Firefighters Union had, by its actions in serving notice of impasse, failed to bargain in good faith and thereby commit an unfair labour practice.

[29] In the *Swift Current Firefighters case*, for the reasons set out in that decision, the Board concluded that the Firefighters had not bargained in good faith contrary to the duty outlined in the *SEA*. At paragraph 53, the Board says:

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[5] RSS 1978 c. F-14
[6] Division 15 in Part VI of the *SEA*.

> *We find, therefore, that the Respondent failed in its duty to bargain in good faith with the Applicant by serving notice to refer the outstanding issues to arbitration rather than continuing to bargain.*

[30] The Board finds the reasoning in *Swift Current Firefighters* to be applicable in this case. Like that case, the Board is being asked to supervise the collective bargaining process and to determine if the UFCW committed an unfair labour practice in serving the notice of impasse. This was the same issue faced by the Board in *Swift Current Firefighters*. Accordingly, the Board finds that the essential nature of the dispute is whether or not an unfair labour practice has been committed.

[31] UFCW argued that the Board did not have any jurisdiction to review the decision by the Minister of Labour Relations and Workplace Safety. We agree with their submission in that regard. The Minister in section 6-33 of the *SEA* is constrained by the legislative directions contained in that section. Subsection (4) gives the Minister no option with respect to appointment of someone to mediate or conciliate the dispute. The Minister is required by the words "shall appoint" which are, by virtue of *The Interpretation Act,*[7] imperative. However, as noted above, the Board will not be reviewing the decision of the Minister, but rather whether or not an unfair labour practice has been committed by the UFCW.

The Duty to Bargain in Good Faith

[32] One of the primary underpinnings of the labour relations scheme set out in the *SEA* is the duty to bargain in good faith. The requirement to bargain in good faith is incorporated into the definition of collective bargaining in section 6-1(1)(e) of the *SEA*. A recent review of the Board's jurisprudence with respect to the duty to bargain in good faith can be found in the Board's decision in *SEIU (West) et al. v. S.A.H.O. et al.*[8]

[33] The duty to bargain in good faith was described by the Supreme Court of Canada in *Royal Oak Mines Inc. v. Canada (Labour Relations Board) et al.* [9] At pargraphs 41 and 42, the Court says:

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[7] SS 1995 c. I-11.2 s. 27(3)
[8] [2014] CanLII 17405 (SKLRB) at paras [126] – [134]
[9] [1996] 1 S.C.R. 369, 1996 CanLII 220 (SCC), 133 DLR (4th) 129.

> *Every federal and provincial labour relations code contains a section comparable to s. 50 of the Canada Labour Code which requires the parties to meet and bargain in good faith. In order for collective bargaining to be a fair and effective process it is essential that both the employer and the union negotiate within the framework of the rules established by the relevant statutory labour code. In the context of the duty to bargain in good faith a commitment is required from each side to honestly strive to find a middle ground between their opposing interests. Both parties must approach the bargaining table with good intentions.*
>
> *Section 50(a) of the Canada Labour Code has two facets. Not only must the parties bargain in good faith, but they must also make every reasonable effort to enter into a collective agreement. Both components are equally important, and a party will be found in breach of the section if it does not comply with both of them. There may well be exceptions but as a general rule the duty to enter into bargaining in good faith must be measured on a subjective standard, while the making of a reasonable effort to bargain should be measured by an objective standard which can be ascertained by a board looking to comparable standards and practices within the particular industry. It is this latter part of the duty which prevents a party from hiding behind an assertion that it is sincerely trying to reach an agreement when, viewed objectively, it can be seen that its proposals are so far from the accepted norms of the industry that they must be unreasonable.*

Did UFCW Commit an Unfair Labour Practice?

[34] In *Royal Oak*, the Supreme Court made a distinction between the duty to "enter into bargaining in good faith" which is to be measured on a subjective standard and the "making of a reasonable effort to bargain" which is to be measured on an objective standard. To illustrate the difference, the Court posed the following example:

> *It is this latter part of the duty which prevents a party from hiding behind an assertion that it is sincerely trying to reach an agreement when, viewed objectively, it can be seen that its proposals are so far from the accepted norms of the industry that they must be unreasonable.*

[35] Ms. Figueiredo testified that she was frustrated by the pace of collective bargaining. She testified that she had reviewed reports of other collective bargaining processes between the UFCW that she felt were similar and those processes took nowhere near as long as the bargaining process with the Co-op. In her testimony she identified (8) eight issues which, in her opinion were "hills to die on", that is, the Union would never be persuaded to change their view on those issues. When pressed, however, she did not identify any particular items that constituted "hills to die on".

[36] The testimony also established that the parties had not even given great consideration to monetary issues and were only discussing grammar and textual amendments.

One example of those amendments was a request from the Co-op that new articles in the collective agreement be set out in "bold text" to identify them as new. Surely, this is not a "hill to die on".

[37] The Union took the view that the determination of when an impasse had occurred should be subjective since the legislation used the words; "[I]f in the **opinion** of an employer or a union [emphasis added]…. The Co-op took the opposite view in that it argued that the opinion must be reasonably held, hence the test should be objective.

[38] As noted above, the Supreme Court in *Royal Oak* recommends that the determination of whether a reasonable effort has been made in collective bargaining should be measured on an objective standard.

[39] In *Swift Current Firefighters*, we came down in support of an objective standard. At paras [51] and [52], the Board says:

> *With respect, we must agree with the Applicant in their views. To adopt a subjective standard to such an important determination would, we submit, make the legislation meaningless insofar as any requirement to attempt to bargain collectively. The legislature, in enacting the Platoon Act cannot be considered to have put these provisions in legislation just to have them ignored by either party who, for whatever reason, reasonable or not, determines that it cannot or does not wish to bargain for the purposes of reaching a collective agreement.*
>
> *It is clear, from the clear meaning of the words that the legislature intended that the parties seek to resolve their differences by collective bargaining towards a renewal of their collective agreement. The Act provides for notice to bargain collectively, provides a default if either party refuses to bargain and finally, if an agreement cannot be achieved, for a referral to arbitration. Underscoring all of this is the requirement that the parties bargain collectively.*

[40] The scheme of the *SEA* with respect to collective bargaining is no different from that described in *Swift Current Firefighters*. Under the *SEA*, the parties must first seek to renew a contract through collective bargaining in good faith. If they are unable to resolve their agreement, there are options available to the parties to seek assistance in bargaining.[10]

[41] In her testimony, Ms. Figueiredo equated the serving of a notice of impasse to getting assistance with negotiation of the collective agreement. In her testimony, she had the

[10] See particularly Division 7 of Part VI

opinion that “if they can’t get movement on something it’s an impasse.” She also testified that there was “no shame” in saying the parties were at impasse.

[42] The notice of impasse forms an essential link in the collective bargaining system established by the *SEA*. That scheme begins with the requirement to bargain in good faith and the obligations upon the parties pursuant to that duty. The *SEA* provides for numerous opportunities for assistance for the parties in the form of a labour relations officer,[11] a special mediator,[12] or conciliation board.[13] If that process fails and the parties come to an impasse in discussions, s. 6-33 provides for the notice of impasse to be served on the Minister.

[43] The notice of impasse is the key to job action on the part of either the union or employer. The process entails one final opportunity to assist the parties to reach an agreement, failing which the parties may then serve notice of strike or lockout[14]

[44] These parties have a mature bargaining relationship. They have negotiated numerous collective agreements over the years. We do not have any testimony as to how those negotiations went, whether they needed assistance to reach an agreement, or if job action was required to reach an agreement. The fact remains, however, that they have been able in the past to negotiate collective bargaining agreements.

[45] This scheme supports our determination that the test for whether the parties are at impasse must be an objective one. If it were merely subjective there is a possibility that, as a standard negotiation tactic, one (or both) of the parties would, at the outset of bargaining determine that they would never get a collective agreement and were therefore at impasse. They would then serve a notice of impasse and frustrate the collective bargaining scheme set out in the *SEA*.

[46] This logic is also applicable when one party is frustrated by the collective bargaining process or the speed of the process and seeks to “jump start”[15] the process by filing a notice of impasse. Clearly that was not the intent of the collective bargaining scheme set out in the *SEA*.

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[11] s. 6-27
[12] s. 6-28
[13] s. 6-29
[14] s. 6-34
[15] *Our words, not those of the parties*

[47] If, as suggested by Ms. Figueiredo in her testimony, UFCW was just hoping to get assistance in bargaining there were two options. First, they could have insisted on more intensive bargaining or seek to move to monetary issues. Second, they could have obtained assistance by requesting it under the other provisions in Division 7 of Part VI.

[48] Looking at the matter objectively, the Board must conclude that the Union was not, by serving the notice of impasse, bargaining in good faith. The parties had a mature relationship. They had negotiated numerous agreements in the past. They had met on (8) eight occasions and had (2) two additional sessions scheduled. Ms. Schultz testified that the Co-op had been prepared to continue bargaining on August 24, 2017 until UFCW advised them that they considered the negotiations to be at impasse. UFCW had other reasonable alternatives to the issuance of the notice of impasse such as deferring the issues that were bogging them down and getting to the issues UFCW felt were important. Or, they could have sought assistance in other ways.

[49] On an objective standard, the decision to serve a notice of impasse was not, in the circumstances, reasonable on the part of UFCW. Viewed objectively, the negotiations may have been proceeding slowly, but they were not at the stage of impasse. That was particularly true insofar as Ms. Figueiredo was unable to provide details of any issue or issues on which impasse had been reached. Accordingly, we must find that the UFCW breached its duty to bargain in good faith contrary to section 6-63(1)(c) of the *SEA*.

Remedy for the Breach of the Duty to Bargain in Good Faith

[50] In its application, the Co-op asked for the following relief:

(a) A Declaration that the Respondent has been, or is engaging in, an unfair labour practice (or a contravention of *The Saskatchewan Employment Act*) within the meaning of section 6-2(1)(e)(i) and 6-63(1)(c) of *The Saskatchewan Employment Act;*

(b) A Declaration that the Respondent and the Applicant have not engaged in sufficient collective bargaining, nor are they at impasse, as required under section 6-33(1) of *The Saskatchewan Employment Act;*

(c) An Order requiring the Respondent to engage in collective bargaining;

(d) A Declaration that the Respondent's Notice of Impasse dated August 25, 2017 is invalid and is declared void and of no effect; and

(e) An Order that the Minister's appointment of Mr. Kenton Emery under section 6-33(2) of *The Saskatchewan Employment Act* is rescinded because the parties have not engaged in sufficient collective bargaining to fulfill the requirements of section 6-33(1); the Respondent has engaged in bargaining in bad faith; and the parties are not at true impasse as required by *The Saskatchewan Employment Act*.

[51] As in *Swift Current Firefighters*, the Co-op argued that the Board enjoyed considerable latitude to frame a remedy for the unfair labour practice. The Co-op argued that the Board enjoys the authority to quash the notice of referral to arbitration pursuant to its ancillary powers as set out in Section 6-103 of *The Saskatchewan Employment Act*.

[52] The Co-op also argued that, in the face of a finding that the Respondent had failed to bargain in good faith, the Board, nevertheless, has the authority to impose a remedy which is necessary to attain the purposes of the *Act*, "or that are incidental to the attainment of the purposes of the *Act*".

[53] The Co-op further argued, relying upon, *inter alia*, *Royal Oak Mines v. Canada (Labour Relations Board)*[16] and *Burkart v. Dairy Producers Co-operative Limited,*[17] that the Board had broad remedial authority to ensure that the current negotiation process could continue.

[54] Where the Board finds an unfair labour practice has been committed, the usual remedy is to place the parties in the position they would have been but for the commission of the unfair labour practice. In so doing, the Board takes into consideration that any remedy must have a labour relations purpose, that is, generally speaking, to ensure collective bargaining occurs and that a good long-term relationship is maintained between the parties.

[55] The Board concurs with the Co-op and is of the view that the parties should return to the bargaining table to continue to negotiate for the renewal of their agreement. If progress in

[16] [1996] 1 S.C.R. 369

bargaining has occurred while the Minister's Senior Labour Relations Officer was assisting the parties, that will, we think, be helpful.

[56] It is trite to say that the best agreement is a negotiated agreement. Hopefully the additional time which this matter has taken to resolve, and the assistance of the Senior Labour Relations Officer, have better focused the negotiations and the parties may reach an agreement without further difficulty. By placing the parties back to the situation that was in effect prior to the serving of the Notice of Impasse, the parties will continue to have that referral available as well as access to the strike and lockout provisions of the *SEA* should that ultimately be necessary.

[57] Accordingly, the Board Orders as follows:

1. THAT there will be a declaration by this Board that UFCW has committed an unfair labour practice contrary to section 6-63(1)(c) by serving Notice of Impasse pursuant to section 6-33 when there was no reasonable belief that the parties were at impasse;

2. THAT the parties are hereby instructed to continue collective bargaining towards conclusion of a renewed collective agreement; and

3. THAT the Notice of Impasse served by the UFCW is hereby declared to have been served improperly on the Minister of Labour Relations and Workplace Safety and is therefore invalid and of no effect.

[58] An appropriate Order will accompany these reasons. This is a unanimous decision of the Board.

DATED at Regina, Saskatchewan, this **8th** day of **January**, **2018.**

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson

[17] [1991] 87 Sask. R. 241