

September 4, 2018

UFCW, Local 1400
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Attention: Mr. Norm Neault

Attention: Mr. Kevin C. Wilson, QC

Bainbridge Jodouin Cheecham
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401 – 261 First Avenue North
Saskatoon, Saskatchewan
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Attention: Mr. Gary L. Bainbridge, QC

Dear Messrs. Neault; Wilson, and Bainbridge:

Re: LRB File Nos. 081-14 – *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Saskatoon Co-operative Association Limited, and United Food and Commercial Workers, Local 1400* – Application for Clarification and Direction

[1] On July 24, 2018, this Board comprised of Members, Laura Sommervill and Kent Kornelsen, and myself as Vice-Chairperson, issued extensive Reasons for Decision respecting the substantive issues raised in this application. We found that a successorship had occurred in the circumstances of this case, and directed that a vote by secret ballot of all employees employed at Saskatoon Co-operative's Circle Drive Store on the date of the Board's Order be conducted in order to decide whether UFCW, Local 1400 or RWDSU should be the exclusive bargaining agent for those employees. See: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Saskatoon Co-operative Association Limited, and United Food and Commercial Workers, Local 1400*, 2018 CanLII 68443 (SK LRB) [*Saskatoon Co-operative*]. The Board is informed this vote is scheduled to take place on September 28, 2018.

[2] In the course of its Reasons for Decision, the Board crafted an unusually detailed Order. One of the terms of this Order was intended to provide representatives of UFCW, Local 1400, the opportunity to attend at the Circle Drive Store to meet with employees to discuss the benefits of selecting that union as their collective bargaining agent. This particular term reads as follows:

***THAT** prior to the conduct of the vote taking place by way of secret ballot representatives of UFCW shall be permitted one (1) on-site meeting with the employees at the Circle Drive Store at a time convenient to the management of that store. The management shall not unreasonably fail*

to co-operate with the representatives of UFCW in facilitating such a meeting[.]

[3] Subsequent to the release of those Reasons for Decision, Mr. Norm Neault, President of UFCW, Local 1400 contacted this Board seeking clarification respecting this particular term. Mr. Neault's correspondence to the Board's Registrar dated August 22, 2018 sets out the substance of UFCW, Local 1400's request. Mr. Neault wrote in part:

Please request the Board, in the above matter, to reconvene as soon as as possible to clarify [the term of the Board's Order] pertaining to an onsite meeting with the employees of the Saskatoon Coop Circle Park Store. It is my understanding UFCW is to meet with employees on an individual basis during working hours on company time and not on days off. UFCW Representatives make them self [sic] available to employees at a time convenient to the management, for communication in a suitable place in the store as to create minimum disruption. UFCW is afforded only one on-site meeting with each employee, and that management shall not unreasonably fail to co-operate with the representatives of UFCW in facilitating such a meeting.

I have been informed by the employer their interpretation of the access meeting is a one hour meeting for all employees to attend if they so wish to do so at a time arranged by the management of that store. My understanding is that RWDSU is being allowed unfettered access to all employees at the store during working hours as they so choose, through a voluntary recognition agreement contrary to SEA and not through the Board's decision.

[4] On August 31, 2018, in response to Mr. Neault's request, this panel of the Board convened a telephone conference call to consider UFCW, Local 1400's request. In addition to Mr. Neault who participated along with Ms. Lucia Flack Figueiredo, Mr. Kevin Wilson, QC participated on behalf of the Employer, and Mr. Gary Bainbridge, QC participated on behalf of RWDSU.

[5] During the course of this telephone conference call, Mr. Neault reiterated much of what had been set out in his letter of August 22. He explained that it was UFCW, Local 1400's position that its representatives needed to have access to the Circle Drive Store to meet with employees on an individual basis during their regular hours of work. In order to communicate with all employees, union representatives would have to attend at the Circle Drive Store a number of times. When asked by the Board how many times, Mr. Neault stated he did not know, but he knew that one (1) occasion was plainly insufficient.

[6] Both the Employer and RWDSU opposed any alteration of the Board's Order. They submitted that the term at issue was relatively straightforward, and UFCW, Local 1400 was now attempting effectively to appeal the Board's Order. In their submission, the term permitting UFCW, Local 1400 access to the Circle Drive Store in conjunction with an additional term that the Employer provide to UFCW, Local 1400 a list of the names of current employees as well as their contact information was sufficient to ensure that it had the ability to communicate adequately with all eligible voters.

[7] At the conclusion of the telephone conference call, the Board reserved. For reasons that follow, we have concluded that the disputed term of the Order is straightforward and, accordingly, reject UFCW, Local 1400's request that we alter it.

[8] To begin, the Board accepts that we have very limited scope to revise an Order which has already been issued. Section 6-113 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 appears to confine such after-the-fact revision to correcting "any clerical error in any order or decision made by the board or any officer or agent of the board". Apart from this, the only legitimate mechanism for changing a board order is by means of an application for reconsideration or an application for judicial review. See generally: *Amalgamated Transit Union, Local 615 v Saskatoon (City)*, 2017 SKCA 96, at para. 47.

[9] In the Board's opinion, the term of our Order for which UFCW, Local 1400 seeks clarification is without ambiguity. As mentioned in the course of the telephone conference call, the Board's intent was that there be one (1) meeting of all employees eligible to vote collectively to hear from that union's representatives. It was never intended nor do we think it reasonable to interpret the disputed term as sanctioning individual meetings with each of those employees.

[10] The Board's Reasons for Decision in this matter, particularly at paragraph 198, make it plain that we crafted our Order to facilitate as best as possible all eligible voters receiving sufficient information so as to "be in a position to make a fully informed selection of a collective bargaining agent". See: *Saskatoon Co-operative, supra*, at paragraph 198. In our view, this objective can be met through a combination of the methods identified in that particular paragraph.

[11] We understand UFCW, Local 1400's concern that RWDSU enjoys regular access to employees at the Circle Drive Store. This is because RWDSU currently represents those employees. Should UFCW, Local 1400 believe that RWDSU is acting unlawfully or in some way interfering improperly in this vote, it has legal options it can exercise if it so chooses. However, it is not an issue which the Board can address on an application of this kind.

[12] In conclusion, UFCW, Local 1400's request that the Board revise the disputed term of its Order is denied. The Board expects that the parties will now be in a position to negotiate an arrangement which complies with its original Order.

[13] This is a unanimous decision of the Board.

Yours very truly,

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