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Dear Mr. Matkowski and Ms. Anderson:

Re: LRB File No. 020-19 - North Battleford Community Safety Officers Association v City of North Battleford

OVERVIEW

[1] North Battleford Community Safety Officers Association ["Association"] is the certified bargaining agent for the community safety officers employed by the City of North Battleford ["City"], pursuant to Order of this Board dated September 21, 2017[1].

[2] On January 30, 2019, the Association filed an Unfair Labour Practice Application ["Application"] alleging a refusal or failure to engage in collective bargaining in contravention of section 6-7 and clause 6-62(1)(d) of *The Saskatchewan Employment Act* ["Act"]. On February 12, 2019 the City requested particulars of the claim and production of supporting documentation, stating that they were necessary before it could prepare its Reply. The Association's response, on February 14, 2019, was that the Application set out sufficient particulars.

[3] The City's application for particulars and production of documents came before the Chairperson of the Board for decision on February 19, 2019. It cites clauses 6-111(1)(a) and (b) of the Act as authority for the Board[2] to grant the requested Orders:

> **Powers re hearings and proceedings**
> 6-111(1) With respect to any matter before it, the board has the power:
>
> (a) to require any party to provide particulars before or during a hearing or proceeding;
>
> (b) to require any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing or proceeding;

[1] LRB File No. 007-17.
[2] The Chairperson is authorized to exercise this power pursuant to Board Resolution.

[4] The City argues that the requested information is necessary for it to know the case it needs to meet. It states that as the City's bargaining committee has changed, this impacts the City's ability to "even guess" about certain allegations in the Application. It referred the Board to paragraphs 17 to 21 of *SEIU-West v Voyager Retirement V Genpar Inc.*, 2016 CanLII 79627 (SK LRB) ["*SEIU West*"] in support of its application. The following comments are particularly relevant here:

> [17] In *P.A. Bottlers Ltd.*, for example, the Board stated at paragraphs 5 to 8:
>
> > *5. In [Saskatchewan Joint Board Retail, Wholesale and Department Store Union v WaterGroup Companies Inc., [1993] 1st Quarter Sask. Labour Rep. 252], the Board commented on the place of particulars in connection with the proceedings of the Board, at 257:*
> >
> > > *To this statement of the Board's long-standing practice on the issue, the Board would like to add that the need for particulars in the originating documents is especially important before tribunals like the Labour Relations Board which employ a summary procedure that does not provide for examinations for discovery or pre-hearing disclosure, and that permits relatively little time to prepare a defence. If the Board's hearings are to be conducted in accordance with the basic requirements of natural justice, a respondent is entitled to, and the Board must require, reasonable clarity and particularity in the originating documents.*
> >
> > *Failure to provide reasonable particulars in the initial application would justify the Board in dismissing the application, adjourning the application pending the provision of particulars, or proceeding with any part of the application which has been particularized and refusing to proceed with the remainder. It is absolutely no answer for an applicant to argue that the respondent "knows what the case is about." As part of a fair hearing, the respondent is entitled to have the allegations against it particularized in writing. It should not be forced to guess which of its interactions with the applicant are the subject of the application.*
> >
> > *6. The Board has thus made it clear that it is necessary for an applicant to state with some precision the nature of the accusations which are being made, both in terms of the specific events or instances of conduct which are considered objectionable, and of the provisions of the Act which have allegedly been violated. The Board has linked this requirement with the capacity to provide a fair hearing to a respondent.*
> >
> > *7. On the other hand, the Board must balance the requirement for a fair hearing with other values which are also of pressing importance to the Board, including those of expedition of the hearing of applications, and maintaining relative informality in Board proceedings. Whatever might be the case in a civil court, the nature of the proceedings before this Board cannot accommodate extensive pre-hearing or discovery processes without running the risk that the ability to respond in a flexible and timely way to issues which arise in the time-sensitive context of industrial relations will be seriously impaired.*
> >
> > *8. We do not interpret the requirement for the provision of sufficient particulars, in any case, to contemplate a complete rehearsal of evidence and argument in exchange between the parties prior to a hearing. What is necessary is that an applicant make it clear what conduct of the respondent is the subject of their complaint and how this conduct, in the view of the*

> *applicant, falls afoul of the Act. In assessing the degree to which an applicant has met this requirement, the Board must be guided not only by our desire to ensure a fair hearing but by the demands placed upon us by the objectives of efficacy and timeliness in our proceedings.*

[18] In *Saskatchewan Abilities Council*, the Board had before it an application by the Employer for further particulars respecting allegations made by the Union that a member of the Employer's management team, Mr. Paul Jasper, had uttered "anti-union comments" to a Union member, and had "coerc[ed] and intimidat[ed]" one of its' shop stewards. The Employer wanted better particulars of those alleged incidents. The Union opposed this application saying no further particulars were warranted.

[19] The Board stated in respect of the Employer's request as follows:

> *27 Given only the information contained in paragraph 4 of the application, it may not be possible for Mr. Jaspar to identify the material transactions or statements. The description of the statements as "anti-union" and "intimidating and coercive" with nothing further is simply too vague. What one person perceives to be intimidating may leave no impression on the memory of another, and further reasonable detail is required in order for the Employer to identify the crucial statements. With respect to paragraphs 4(d), 4(e) and 4(f) of the application, this must include the time when and place where the statements were made and the conversation took place with as much exactitude as possible, and a reasonably clear and concise description of the nature and content of the impugned statements themselves to the degree necessary to enable identification of the transactions in question.*

[5] The City noted, relying on the comments in paragraph 17, that it is no answer for the Association to argue that the City knows what the case is about. It states that it should not be forced to guess what conduct the Association considers objectionable.

[6] It referred to the so-called *Air Canada* criteria relied on in *SEIU-West*, in support of its application for production of documents, and argues that it has met all of these criteria:

[13] The *Air Canada* criteria are six-fold and provide as follows:

> *1. Requests for production are not automatic and must be assessed in each case;*
> *2. The information requested must be arguably relevant to the issue to be decided;*
> *3. The request must be sufficiently particularized so that the person on whom it is served can readily determine the nature of the request, the documents sought, the relevant time-frame and the content;*
> *4. The production must not be in the nature of a fishing expedition; that is, the production must assist a complainant in uncovering something to support its existing case;*
> *5. The applicant must demonstrate a probative nexus between its positions in the dispute and the material being requested;*
> *6. The prejudicial aspect of introducing the evidence must not outweigh the probative value of the evidence itself, regardless of any possible "confidential" aspect of the document.*

[7] The City also referred the Board to *Prairie Arctic Regional Council of Carpenters, Drywallers, Millwrights v Ellisdon Corporation Re*, 2014 CarswellSask 741 (SK LRB).

[8] The Association's response to the application was succinct. What the City is requesting is evidence, not particulars. The Application provides enough information to allow the City to know the case it must meet.

ANALYSIS AND DECISION

[9] Based on the Board's previous decisions that have examined the issue of particulars, the question here is: has the Association made it clear what conduct of the City is the subject of their Application and how this conduct contravenes section 6-7 and clause 6-62(1)(d) of the Act. The answer to this question is yes. As the case law requires, the Association has made clear the time when and place where the statements and conduct complained of occurred. The allegations against the City are particularized in writing and stated with sufficient precision for it to know the specific events and conduct that are considered objectionable by the Association, which provisions of the Act have allegedly been contravened and how the conduct complained of contravenes those provisions. A reasonably clear and concise description of the conduct has been provided, to the degree necessary for the City to identify the conduct in question. The Association is not required to provide a detailed rundown of the evidence it will provide at the hearing.

[10] In considering applications for particulars, the Board must balance the requirement for a fair hearing with other important requirements such as expediting the hearing of applications and maintaining relative informality in Board proceedings. To extend the reach of clause 6-111(1)(a) of the Act to the degree requested by the City would not maintain this balance, despite the City's suggestion that the matter be scheduled for hearing even before it has filed its Reply. A review of the Application provides the reader with a clear understanding of what the matter is about and why the facts referred to make the cited sections of the Act applicable. The City is entitled to know, in general terms, what is alleged against it. The Application provides it with the information to which it is entitled.

[11] The application for particulars also asks what remedy the Association is seeking. During the hearing the City acknowledged that the remedy requested is set out in paragraph 1 of the Application.

[12] The application for production of documents is a reasonable request that satisfies the *Air Canada* criteria. Such documents should be exchanged as a matter of practice in preparation for a hearing. Receipt of these documents is not required before a Reply can be filed.

[13] The City's Reply was due on February 13, 2019, ten business days after the Application was filed on January 30, 2019. The Board Registrar has already granted an extension of that deadline to February 21, 2019. Accordingly, a further lengthy extension is unnecessary.

[14] For the purposes of the Unfair Labour Practice Application, LRB File No. 020-19, the following Orders will issue:

(a) The application by the City for particulars is dismissed;
(b) The City is ordered to file its Reply by 12:00 noon February 25, 2019;
(c) The Association is ordered to disclose to the City any documents in their possession, that were not provided to them by the City, that provide evidence of the claims made in paragraphs 3(l), (n) and (p) of the Unfair Labour Practice Application.

[15] The Unfair Labour Practice Application will be placed on the March 2019 Motions Day agenda to be scheduled for an expedited hearing.

Yours truly,

Susan C. Amrud, Q.C., Chairperson
Labour Relations Board