SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicant v MOBILE CRISIS SERVICES INC., Respondent

LRB File No. 055-19; June 28, 2019

Vice-Chairperson, Barbara Mysko; Board Members: Mike Wainwright and Hugh Wagner

For the Applicant Union: Samuel Schonhoffer
For the Respondent Employer: Jaime Carlson

Preliminary issue – Board's jurisdiction – Clause 6-111(1)(o) of The Saskatchewan Employment Act – Board's power to summarily refuse to hear a matter that is not within the jurisdiction of the Board – Board dismisses application on a summary basis.

Essential nature of dispute – Grievance settlement agreement – Agreement characterized as collective bargaining agreement – Subsection 6-45(1) of The Saskatchewan Employment Act – Essential nature of dispute is the interpretation, application or alleged contravention of agreement – Matter within exclusive jurisdiction of arbitrator – Board lacks jurisdiction to hear the application.

REASONS FOR DECISION

Background:

[1] **Barbara Mysko, Vice-Chairperson:** These are the Board's Reasons for Decision on a preliminary matter pertaining to the Board's jurisdiction over the Union's Application.

[2] On March 11, 2019, the Saskatchewan Government and General Employees' Union [the "Union"] filed an unfair labour practice application [the "Application"] alleging that Mobile Crisis Services Inc. [the "Employer"] breached the terms of a Grievance Settlement Agreement for Unjust Discipline [the "Agreement"]. The Union submits that the Employer has been or is engaging in an unfair labour practice (or contravention of the Act) within the meaning of sections 6-7, 6-41, and 6-62(1)(r) of *The Saskatchewan Employment Act* [the "Act"].

[3] The Union's Application alleges an unfair labour practice on the basis of the following facts:

1. The employer has breached the agreed to terms of the Grievance Settlement Agreement for Grievance # 2017 087 003R – Unjust Discipline

2. In January, 2019 – the said agreement was signed agreeing to reimburse the grievor, Cindy Rope, for 8 days of her suspension and to amend the disciplinary letter.

3. On February 13th, the grievor received reimbursement for only 4 days.

[4] On March 22, 2019, the Employer filed a reply to the Application in which it denied having breached the terms of the Agreement. It relies on the following facts in its reply:

(a) The Union filed grievance # 2017 087 003R – Unjust Discipline on December 15, 2017. It related to the grievor being disciplined with a suspension of 30 days.

(b) After going through the grievance process, the parties entered into a Grievance Settlement Agreement in January 2019. The Grievance Settlement Agreement states "The Employer agrees to reimburse [the grievor] for 8 days of her suspension and to amend the disciplinary letter dated December 5, 2017 to accord with the suspension agreed to between the parties in this agreement."

(c) The grievor, a monthly salaried employee, was reimbursed for 8 pro-rated days of her monthly salary and the disciplinary letter dated December 5, 2017 was amended. Whereas initially the disciplinary letter stated the grievor was suspended between December 6, 2017 and January 6, 2018 inclusive, the amended letter states that the suspension ran from December 6, 2017 to December 29, 2017.

(d) As a result, the Employer followed the Grievance Settlement Agreement.

[5] On the date of the hearing set aside for this Application, after having reviewed the materials filed by the parties, the Board raised a jurisdictional question with the parties. The Board asked the parties to address the issue before the Board, and then requested written submissions outlining their respective positions. The parties filed written briefs, and books of authorities, further to the Board's request, all of which the Board has reviewed and found helpful.

Argument on Behalf of the Parties:

[6] According to the Union, the parties' negotiation was entirely captured in written correspondence between the parties. The parties were negotiating a settlement of the grievance on the basis of working days. No other interpretation is sustainable or even reasonable. The Employer's conduct is a violation of the duty to bargain in good faith and is a violation of section 6-41 of the Act, which prohibits breaches of a collective agreement.

[7] The Union says that the grievance settlement agreement is a collective agreement for purposes of Part VI of the Act. The Board must exercise its supervisory jurisdiction over this Application on the basis of the Employer's obligation to negotiate in good faith. It is not accurate to characterize the Application as predominantly entailing the interpretation and enforcement of a written agreement.

[8] The Employer acknowledges that it has a duty to bargain in good faith while settling disputes or grievances of employees covered by the collective agreement. More specifically, it acknowledges that it had a duty to negotiate in good faith in relation to the settlement of this particular grievance.

[9] However, the Employer says that the primary issue raised by this Application is the interpretation of the Agreement. The Agreement covers a matter that was grieved under the processes available in the collective agreement and so it is those processes, along with the interpretation and application of the Agreement that are central to this dispute. By relying on section 6-41 of the Act, the Union acknowledges that the parties are bound by the collective agreement and it is the meaning, application or alleged contravention of the collective agreement that is the essence of the dispute.

Relevant Statutory Provisions:

[10] The following provisions of the *Act* are applicable:

> ***Interpretation of Part***
> ***6-1****(1) In this Part:*
> *(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;*
> *(ii) putting the terms of an agreement in writing if those terms were arrived at in negotiations or are required to be inserted into a collective agreement by this Part;*
> *(iii) executing a collective agreement by or on behalf of the parties; and*
> *(iv) negotiating from time to time the settlement of disputes and grievances of employees covered by a collective agreement or represented by a union;*
> *…*

Good faith bargaining

6-7 *Every union and employer shall, in good faith, engage in collective bargaining in the time and in the manner required pursuant to this Part or by an order of the board.*

Parties bound by collective agreement

6-41*(1) A collective agreement is binding on:*

(a) a union that:

(i) has entered into it; or

(ii) becomes subject to it in accordance with this Part;

(b) every employee of an employer mentioned in clause (c) who is included in or affected by it; and

(c) an employer who has entered into it.

(2) A person bound by a collective agreement, whether entered into before or after the coming into force of this Part, must, in accordance with the provisions of the collective agreement:

(a) do everything the person is required to do; and

(b) refrain from doing anything the person is required to refrain from doing.

(3) A failure to meet a requirement of subsection (2) is a contravention of this Part.

(4) If an agreement is reached as the result of collective bargaining, both parties shall execute it.

(5) Nothing in this section requires or authorizes a person to do anything that conflicts with a requirement of this Part.

(6) If there is any conflict between a provision of a collective agreement and a requirement of this Part, the requirement of this Part prevails.

Unfair labour practices – employers

6-62*(1) It is an unfair labour practice for an employer, or any person acting on behalf of the employer, to do any of the following:*

(r) to contravene an obligation, a prohibition or other provision of this Part imposed on or applicable to an employer.

[…]

Arbitration to settle disputes

6-45*(1) Subject to subsections (2) and (3), all disputes between the parties to a collective agreement or persons bound by the collective agreement or on whose behalf the collective agreement was entered into respecting its meaning, application or alleged contravention, including a question as to whether a matter is arbitrable,are to be settled by arbitration after exhausting any grievance procedure established by the collective agreement.*

(2) Subsection (1) does not prevent the director of employment standards as defined in Part II or the director of occupational health and safety as defined in Part III from exercising that director's powers pursuant to this Act.

(3) Without restricting the generality of subsection (2), the director of employment standards may issue wage assessments, issue hearing notices, take action to collect outstanding wages or take any other action authorized pursuant to Part II that the director of employment standards considers appropriate to enforce the claim of an employee who is bound by a collective agreement.

Powers re hearings and proceedings

6-111*(1) With respect to any matter before it, the board has the power:*

(o) to summarily refuse to hear a matter that is not within the jurisdiction of the board;

Analysis:

[11] Clause 6-111(1)(o) of the Act provides the Board with the power to summarily refuse to hear a matter that is not within its jurisdiction. It reads:

> ***6-111****(1) With respect to any matter before it, the board has the power:*
> *(o) to summarily refuse to hear a matter that is not within the jurisdiction of the board;*

[12] This clause grants the Board the power to ensure that its resources are reserved for the hearing of matters that fall within its jurisdiction. It may also, indirectly, promote access to justice by severing an adjudicative dead end, and re-directing the parties' focus toward more constructive avenues. The Board has generally been reluctant to summarily dismiss an application for lack of jurisdiction, except for in the clearest of cases. The Board has determined that this is one of those cases.

[13] In some cases, it is necessary for the Board to receive evidence on the underlying application prior to making a jurisdictional determination. Whether the Board may effectively rely on its summary power, without receiving evidence, is to be assessed on the basis of a particular case, taking into account the relative clarity and complexity of the issues as disclosed by the pleadings and the parties' submissions. In the present case, the Board has decided that it is appropriate to consider the jurisdictional question, on the basis of the materials before the Board. These materials consist of the Union's Application, the Employer's Reply, and the related oral arguments and written submissions.

[14] Bastarache and LeBel JJ for the Supreme Court, in *Dunsmuir v New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9 (CanLII) ["*Dunsmuir*"], defined the term "jurisdiction", as it is applied in the present context. Elson J in *Mosaic Potash Esterhazy Limited Partnership v Unifor Local 892*, 2015 SKQB 391 (CanLII) ["*Mosaic*"], at paragraph 37, quotes this definition:

> *59 … "Jurisdiction" is intended in the narrow sense of whether or not the tribunal had the authority to make the inquiry. In other words, true jurisdiction questions arise where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter. The tribunal must interpret the grant of authority correctly or its action will be found to be ultra vires or to constitute a wrongful decline of jurisdiction.*

[15] The central inquiry, therefore, on a jurisdictional matter is whether the Board's statutory grant of power gives it the authority to decide the underlying matter before it.

[16] The key for the Board is in defining the essence of the underlying matter, or "the essential character of the dispute": *Weber v Ontario Hydro*, [1995] 2 SRC 929, 1995 CanLII 108 ["*Weber*"]. The essential character of the dispute is what drives the Board's determination as to the appropriate forum for the dispute. As the majority in *Weber* observed:

> *54 This approach does not preclude all actions in the courts between employer and employee. Only disputes which expressly or inferentially arise out of the collective agreement are foreclosed to the courts: Elliot v. De Havilland Aircraft Co. of Canada Ltd. (1989), 32 O.A.C. 250 (Div. Ct.), at p. 258, per Osler J.; Butt v. United Steelworkers of America, supra; Bourne v. Otis Elevator Co., supra, at p. 326. Additionally, the courts possess residual jurisdiction based on their special powers, as discussed by Estey J. in St. Anne Nackawic, supra.*

[17] In *Québec (Commission des droits de la personne et des droits de la jeunesse) v Québec (Attorney General)*, [2004] 2 SCR 185, 2004 SCC 39 (CanLII), ["*Québec"*], the Supreme Court set out the necessary analytical steps for determining the appropriate forum in a given case. The Saskatchewan Court of Appeal considered whether the Board had applied the *Québec* framework in *Saskatoon City Police Association v Saskatoon Board of Police Commissioners*, 2015 SKCA 35 ["*Board of Police Commissioners*"]. *Board of Police Commissioners* concerned the jurisdiction of the Board to hear and determine an unfair labour practice claim arising out of an agreement negotiated in the context of a discipline proceeding.

[18] At paragraph 44 of *Board of Police Commissioners*, Klebuc J recited the analytical approach outlined at paragraphs 7, 8, 9, 10, and 15 of the Supreme Court's decision in *Québec*:

> *7 There is no easy answer to the question of which of two possible tribunals should decide disputes that arise in the labour context where legislation appears to permit both to do so. As explained in Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 S.C.R. 929, three outcomes are possible.*
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> *8 The first possibility is to find jurisdiction over the dispute in both tribunals. This is called the "concurrent" jurisdiction model. On this model, any labour dispute could be brought before either the labour arbitrator or the courts or other tribunals.*
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> *9 The second possibility is the "overlapping" jurisdiction model. On this model, while labour tribunals consider traditional labour law issues, nothing ousts the jurisdiction of courts or other tribunals over matters that arise in the employment context, but fall outside traditional labour law issues.*
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> *10 The third possibility is the "exclusive" jurisdiction model. On this model, jurisdiction lies exclusively in <u>either</u> the labour arbitrator <u>or</u> in the alternate tribunal, but not in both.*
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> *…*

> *15 This question suggests two related steps. The first step is to look at the relevant legislation and what it says about the arbitrator's jurisdiction. The second step is to look at the nature of the dispute, and see whether the legislation suggests it falls exclusively to the arbitrator. The second step is logically necessary since the question is whether the legislative mandate applies to the particular dispute at issue. It facilitates a better fit between the tribunal and the dispute and helps "to ensure that jurisdictional issues are decided in a manner that is consistent with the statutory schemes governing the parties", according to the underlying rationale of Weber, supra; see Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners, 2000 SCC 14 (CanLII), [2000] 1 S.C.R. 360, at para. 39.*
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> *[Emphasis in original]*

[19] The Union has not filed a grievance in this case. Instead, it "has elected to rely on the process of the Board". The Union says that the absence of a parallel proceeding weighs in favor of the Board taking jurisdiction of the Application. It should go without saying that a party does not, by opting for one forum over another, unilaterally grant its preferred forum with the jurisdiction to hear its case. Nor is the Board deciding as between two fora which is the most appropriate. The question before the Board is whether it has jurisdiction to decide the underlying matter, not whether it is the more appropriate forum for deciding that question.

[20] In addressing that question, the Board relies on the analytical framework outlined in *Québec*. Applying that approach, the Board reviews, firstly, the relevant legislation to determine its grant of jurisdiction. The Union has brought this Application pursuant to sections 6-7, 6-41, and 6-62 of the Act. There is no question that the Board has jurisdiction over matters that engage its supervisory jurisdiction over good faith collective bargaining, or over unfair labour practices alleging the Employer contravened an obligation, a prohibition or other provision of Part VI.

[21] The Board notes, however, that the Union has characterized the Agreement as a collective agreement, and has grounded its unfair labour practice in that depiction. Therefore, the Board must heed the direction given by subsection 6-45(1), as follows:

> ***Arbitration to settle disputes***
> ***6-45****(1) Subject to subsections (2) and (3), all disputes between the parties to a collective agreement or persons bound by the collective agreement or on whose behalf the collective agreement was entered into respecting its meaning, application or alleged contravention, including a question as to whether a matter is arbitrable, are to be settled by arbitration after exhausting any grievance procedure established by the collective agreement.*

[22] To the extent that the essential character of a dispute is the meaning, application or alleged contravention of a collective agreement, that matter is to be settled by arbitration after exhausting the established grievance procedure.

[23] Richards C.J.S., for the Saskatchewan Court of Appeal in *Lapchuk v Saskatchewan (Highways)*, 2017 SKCA 68, confirmed that section 6-45 suggests an exclusive jurisdiction, as follows:

> *[16] In Weber v Ontario Hydro, the Supreme Court adopted what it called the "exclusive jurisdiction" model for determining the effect of final and binding arbitration clauses like s. 6-45. Under this approach, an employee must proceed by arbitration rather than the courts to resolve a workplace dispute. It holds that the courts lack jurisdiction to entertain a dispute that arises out of the collective agreement, subject only to a residual discretionary jurisdiction in courts of inherent jurisdiction to grant relief not available under the statutory arbitration scheme.*
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> *[17] The Supreme Court has also made it clear that a dispute will be held to come under the collective agreement if it does so either expressly or inferentially. The determining factor is the essential character of the dispute, not the legal packaging in which it is presented. See: New Brunswick v O'Leary at para 6; Regina Police Assn. Inc. v Regina (City) Board of Police Commissioners, 2000 SCC 14 (CanLII) at para 25, [2000] 1 SCR 360.*

[24] Where an applicant brings a legitimate unfair labour practice application that engages issues of the meaning of a collective bargaining agreement, about which a grievance has been filed, the jurisdiction of the Board and an arbitrator may be concurrent. Where jurisdiction is concurrent, the question before the Board is whether to defer the matter to a more appropriate forum. If the Board determines that it is the more appropriate forum, it may then interpret a collective agreement in the context of, for example, a valid unfair labour practice application. There are many examples in which the Board has done just that, and properly so.[1] The availability of concurrent jurisdiction, however, should not encourage applicants to re-package a matter, properly framed as a question of interpretation, as an unfair labour practice, and in so doing, expect to engage the Board's jurisdiction.

[25] The determinative factor is the essential character of the dispute, and not the legal packaging in which it is presented. If the Board determines that the essential character of the dispute is the meaning, application, and alleged contravention of the collective agreement, then it is of no consequence that the Union has represented the dispute as something other than the

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[1] See, for example, *Varsteel Ltd. v USW, Local 5917*, 2018 CarswellSask 561; *United Steel, Paper and Forestry, Local 1-184 v Premier Horticulture Ltd*., 2019 Carswell Sask 24.

meaning, application, and alleged contravention of the collective agreement. Simply defining a dispute as an unfair labour practice does not make it so.

[26] Although the Union alleges a breach of a "collective agreement", it has formulated its Application as an unfair labour practice on the basis of bad faith bargaining. Indeed, the Board has an important role to play in supervising the process of collective bargaining between the parties. This is a key objective of the Act. As the Board explained in *Saskatchewan Crop Insurance Corp. v SGEU*, 2017 CarswellSask 413, 4 CLRBR (3d) 122:

> *30 Collective bargaining is one of the underlying objects of the SEA and its various provisions. The Board must be diligent to insure that its role in sponsoring and fostering collective bargaining is maintained. If, as alleged by SGEU, the discipline was an attempt to disrupt or influence the collective bargaining process, the Board cannot ignore such activity and defer its jurisdiction over such an important aspect of the labour relations scheme set out in the SEA to another forum.*

[27] The duty to bargain in good faith is not restricted to the conduct of the parties at the bargaining table during collective agreement negotiations: *Moose Jaw (City) and Moose Jaw Firefighters' Assn., Local 553, Re*, [2016] SLRBD No 16, 2016 CarswellSask 392 ["*Moose Jaw Firefighters*"]. Furthermore, the duty extends beyond "the mere processing of grievances": *Saskatoon (City) v C.U.P.E., Local 59*, [2009] SLRBD No 36, 2009 CarswellSask 882 ["*City of Saskatoon*"].[2]

[28] However, it is not the purpose of the Board's supervisory function to ensure a substantive result in collective bargaining. As then Vice-Chairperson Schiefner explained in *Service Employees International Union (West) v Saskatchewan Association of Health Organizations*, 2014 CanLII 17405, at paragraph 131:

> *The function of this Board is to ensure that the parties engage in a process of collective bargaining; that they agree to meet; that they come to the bargaining table prepared to enter into a collective agreement and/or resolve the issues in dispute between the parties through collective bargaining; that their negotiators have authority to bind their principals; that they explain their proposals and disclose relevant and necessary information that could affect their collective bargaining relationship; and that they not misrepresent the facts or their proposals to the other party. See: Saskatchewan Government Employees' Union v. Government of Saskatchewan and the Honourable Bob Mitchell, [1993] 1st Quarter Sask. Labour Rep. 261, LRB File No. 264-92. Simply put, it is the responsibility of the Board to ensure that the parties engage in a process of collective bargaining; it is not the function of this Board to ensure that a particular substantive result is achieved or avoided through collective bargaining. [Emphasis in original]*

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[2] *Saskatoon (City) v C.U.P.E., Local 59*, [2009] SLRBD No 36, 2009 CarswellSask 882 ["*City of Saskatoon*"] at para 64.

[29] The Board must apply the *Québec* framework to determine the essential character of the dispute. In so doing, the question before the Board is whether the essential nature of this dispute relates to the meaning, application or alleged contravention of the Agreement, characterized as it is, as a collective agreement. The Board will apply that framework in turn.

[30] The pleadings disclose what is a straightforward dispute. The Union states that the Employer breached the Agreement, by reimbursing the grievor for the equivalent of four, instead of eight, working days. The Employer says that it did not breach the Agreement, because it is required to reimburse the grievor for only four days under the Agreement, and no more. Taken together, the pleadings raise a dispute pertaining to an alleged breach based on differing interpretations. This is not a case, as in *Québec*, where "[e]veryone agrees on how the agreement, if valid, should be interpreted and applied".[3] The basis for assessing the breach turns, by necessity, on the meaning of the Agreement.

[31] The Union attempts to re-formulate the dispute to bring it within the jurisdiction of the Board. It says, for example, that it would be satisfied if the Board simply made a determination allocating blame for the mistake that occurred. But if the Board "simply" made an assignment of blame, it would have to do so while drawing conclusions about the meaning of the Agreement, and assessing an alleged contravention thereof.

[32] In its argument, the Union alleges that the Employer has made a mistake and that, instead of acknowledging the mistake and discussing the matter, has refused to sit down with the Union. If this is the case, the alleged "mistake" is a "mistake" as to meaning. This is just another way of saying that the Union disagrees with the Employer's interpretation. Granted, it may be that the Union interprets the Agreement through the lens of the parties' negotiating history. But the Union's reliance on extrinsic evidence for interpretative purposes does not transform what is essentially a dispute about interpretation into a dispute over good faith bargaining.

[33] If, in the Union's estimation, the Agreement can be interpreted only through the presentation of extrinsic evidence, it is up to an arbitrator to assess the relevance and admissibility of that evidence as a part of his or her determination of the meaning, application or alleged contravention of the Agreement. An arbitrator may consider extrinsic evidence as an aid to interpretation, for example, where the words to be construed are ambiguous. In other words, if

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[3] *Québec* at para 24.

the negotiating history, or other evidence, informs the meaning of the Agreement, then the act of assessing the admissibility of and then reviewing the extrinsic evidence, for that purpose, falls squarely within the arbitrator's interpretative exercise.

[34] The Union's pleadings suggest that it is more concerned with the substantive result of collective bargaining than with the process. The Union implies otherwise but its argument to this effect is internally inconsistent and unpersuasive. The Union argues that the Employer's proposals misled the Union but, once the Employer discovered "it mistakenly negotiated a different deal than it wanted, it 'doubled-down'". It says further that there is an executed agreement, "the terms of which are being ignored"[4] and that it is asking the Board to decide who is to blame for "this mistake as to what the agreement was about".[5]

[35] Finally, the Union claims it is seeking a remedy notwithstanding enforceability, and that it is concerned about "the Employer's conduct…whether or not the agreement means *what it should mean*". However, the only conduct depicted in the Application is the Employer's alleged breach of the terms of the Agreement. There is no way to reconcile these allegations other than to conclude that the Union's concern is strictly confined to what it believes was a contravention of the Agreement.

[36] The Union also states that there "could be a real question" as to whether an Agreement was entered into. This appears to be an effort, by the Union, to situate the Application within the jurisdiction of the Board. It stands in direct contrast with the allegation that the Employer has breached the existing Agreement. Either the Union is relying on its interpretation of the Agreement or it is not. It is clear that it so relies.

[37] The Union draws an analogy to ratification or repudiation cases. In support of this analogy, it cites the Ontario Board's decision in *Fashion Craft Kitchens Inc. v C.J.A., Local 3054*, 1979 CarswellOnt 1254, [1979] OLRB Rep 967, [1980] 1 Can LRBR 21. There, the Ontario Board observed at paragraph 23, that, "reneging on an agreement or promise made in bargaining is a breach of section 14 of the Act whenever it is done in furtherance of a party's unlawful intention to make no collective agreement, or has the predictable effect of destroying the framework for decision making at the bargaining table". This observation highlights the problem with the Union's analogy. The Application alleges that the Employer "breached the agreed to terms of the

[4] *Union Brief* at para 41.
[5] *Ibid* at para 37.

Grievance Settlement Agreement". Any alleged misunderstanding arises in the context of a signed Agreement, subject to a dispute as to meaning, not in the context of a failure to ratify or execute an agreement.

[38] A similar theme arises in the remaining cases relied upon by the Union. In *Moose Jaw Firefighters*, the City negotiated a dispute without the proper authority from City Council. The Board held that the City's actions constituted an unfair labour practice. In the current case, the Union says that the Employer has refused to be bound by the Agreement. The Union argues that this is no different than settling without proper authority. The Board disagrees.

[39] In *City of Saskatoon*, the City claimed that the Union repudiated its agreement about retroactive pay. The Board was being asked to determine if the parties had reached an agreement and if so, whether the Union's repudiation of the agreement contravened the Act.[6] The Union claimed that it was simply attempting to assert the provisions of the collective agreement.[7]

[40] Unlike the current case, the issue in *City of Saskatoon* was the Union's refusal to execute the agreement. On the substantive determination, the Board determined that the Union had recanted its position and refused to execute, taking steps through the grievance procedure to suggest an alternative interpretation as to how the retroactive payments should be made. It was only after the City had expended considerable sums in making retroactive payments that the retraction occurred.

[41] In *C.U.P.E. v Potashville School Division No. 80*, 2000 CarswellSask 907, [2000] Sask LRBR 231, 2000 CLLC 220-063 ["*Potashville*"], the employer maintained that a tentative agreement had been achieved but was subject to ratification by each party. Prior to ratification, the employer realized that there had been a misunderstanding between the parties. The Board had to consider whether the failure of the employer to ratify the agreement was for good and sufficient reason.

[42] The Union says that it has withdrawn its grievance and cancelled the arbitration dates, due to the settlement, and has thereby "exhausted" the arbitrator's jurisdiction. Further, "it is not clear that the grievance procedure is available given the passage of time and the fact that SGEU is seeking the enforcement of the negotiations." According to the Union, this provides greater

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[6] *City of Saskatoon* at para 35.
[7] *Ibid* at para 32.

reason for the Board to take jurisdiction over the matter. It cannot be the case that where parties settle a grievance, there is no available process for assessing compliance with the terms of the settlement. When the parties settle a grievance, the jurisdiction to assess compliance belongs to an arbitrator. The Board's jurisdiction does not arise, or expand, because the Union wishes to make it so.

[43] Based on the foregoing, the Board concludes that this matter is sufficiently clear to decide to summarily dismiss for want of jurisdiction. Ultimately, the essential character of the matter does not fall within the jurisdiction of this Board.

[44] In deferring a matter, this Board has in the past adjourned *sine die* with the proviso that the relevant application may be renewed by either party on notice to the other side should there be outstanding issues not resolved by the grievance process. However, in those matters the Board is not making a final determination declining jurisdiction over the matter in dispute, but is deferring a matter, over which there is true concurrent jurisdiction, in case it remains unresolved.

[45] The essential character of the dispute does not engage the jurisdiction of the Board, and on this basis, the Application is dismissed.

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

DATED at Regina, Saskatchewan, this **28th** day of **June, 2019.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson