MOOSE JAW FIREFIGHTERS' ASSOCIATION NO. 553, Applicant v CITY OF MOOSE JAW, Respondent

LRB File No. 092-18 & 100-18; October 2, 2019

Vice-Chairperson, Barbara Mysko; Board Members: Aina Kagis and Mike Wainwright

For the Applicant: Crystal L. Norbeck, Samuel I. Schonhoffer
For the Respondent: John Saunders

> **Unfair Labour Practice Application – Collective bargaining – Duty to bargain in good faith – Clause 6-62(1)(d) of The Saskatchewan Employment Act – Employer declared positions redundant following adjournment of amendment hearing – The City failed to give the Association an opportunity to respond to the decision and reassess its position – The City's conduct breached its duty to bargain in good faith.**
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> **Duty to bargain in good faith – Duty to disclose – Duty to disclose *de facto* decisions – Corresponding obligation to provide an opportunity to respond – Provide an opportunity to consider the change and to respond in good faith bargaining.**
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> **Management rights – Management has the right to organize its workforce subject to requirements of *bona fides*, good faith, and terms of collective agreement – Duty to bargain is not a duty to agree – Failing agreement in negotiations, absent anti-union animus or lack of *bona fides*, City may implement decision.**
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> **Clauses 6-62(1)(a), 6-62(1)(b), and 6-62(1)(g) – Association alleges that the City acted in a retaliatory or discriminatory fashion, and/or interfered with the formation or administration of the Association – The evidence does not disclose a breach of clauses 6-62(1)(a), 6-62(1)(b) or 6-62(1)(g).**
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> **Remedy – Seek to place parties in position but for the breach – Board grants declaration, reinstatement pending good faith negotiations, and Order to post Reasons – Request for damages and costs denied.**

REASONS FOR DECISION

Background:

[1] **Barbara Mysko, Vice-Chairperson:** These are the Board's Reasons for Decision in relation to an unfair labour practice application brought by the Moose Jaw Firefighters' Association

No. 553 [the "Association"] against the City of Moose Jaw [the "City"], filed with the Board on April 4, 2018. The Association is certified as the bargaining agent for all full-time firefighting personnel employed by the City, subject to certain exceptions.[1] In the Application, the Association cites clauses 6-62(1)(a), 6-62(1)(b), 6-62(1)(d), 6-62(1)(e), 6-62(1)(g), and 6-62(1)(r) of *The Saskatchewan Employment Act* [the "Act"].

[2] In brief, the Association alleges that the City committed an unfair labour practice by eliminating the Assistant Chief ["AC"] positions after discovering, in a hearing before this Board, that it would not be successful in persuading the Board to exclude the positions from the bargaining unit. After so discovering, the amendment hearing was adjourned. Instead of negotiating the reinstatement of the AC positions into the bargaining unit, as the Association had expected, the City eliminated them entirely.

[3] The hearing of this Application took place on May 23, 24, and July 4, 2018 before then Vice-Chairperson Graeme Mitchell, Q.C., and panelists Aina Kagis and Mike Wainwright. A related application for interim relief, filed by the Association on April 17, 2018, was withdrawn on the first day of the hearing.

[4] Vice-Chairperson Mitchell was appointed as a Judge of the Court of Queen's Bench on September 21, 2018. The parties agreed that the existing Chairperson or new Vice-Chairperson could review the audio recording and issue a decision on the matter in conjunction with the other two members of the original panel. This is that decision.

[5] These Reasons provide the Board's conclusions based on clauses 6-62(1)(a), 6-62(1)(b), 6-62(1)(d), and 6-62(1)(g) of the Act. In the hearing, the Association focused its arguments on clause 6-62(1)(d), and to a more limited extent on clauses 6-62(1)(a), 6-62(1)(b), and 6-62(1)(g). The Association did not pursue an argument in relation to clauses 6-62(1)(e) or 6-62(1)(r).

Argument on Behalf of the Parties:

The Association

[6] The Association argues that the City had a well-established duty to bargain the fate of the AC positions, and after the adjournment, it had a duty to bargain the reintegration of the AC

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[1] Board Order in LRB File No 094-89, dated January 8, 1965 (amended December 2, 1970 and June 23, 1989).

positions into the bargaining unit. The obligation to bargain collectively extends to mid-term bargaining, and specifically to the resolution of grievances and disputes. A party can trigger the duty through its conduct in a dispute. While the Association concedes that the City has management rights that, in normal circumstances, would allow it to declare a position redundant, it must exercise those rights in good faith. Prior to disclosing its decision, the City had given no indication that the AC positions could or would be eliminated. The City unilaterally imposed a result that was inconsistent with its earlier positions, and its arguments before the Board. The City's actions constitute retaliation and bad faith bargaining.

[7] By conducting itself in this fashion, the City has discriminated against the incumbent ACs and against employees who "would be able to move into those high officer positions". The City has interfered with the Association. The City should be ordered to bargain in good faith over the reinstatement of the ACs into the bargaining unit.

The City

[8] The City argues that it has the ability to make changes to the organization of its work force as long as it does so in good faith, for business efficiency purposes, and not for the purpose of undermining the collective agreement. Granted, the duty to bargain in good faith extends to negotiating the resolution of grievances and disputes. But the City engaged in good faith negotiations. The Association has suffered no harm. The individuals who occupied the AC positions were returned to the bargaining unit. The City is under no legal obligation to maintain positions that it does not need.

[9] The City denies the Association's allegations pursuant to clauses 6-62(1)(a), 6-62(1)(b), and 6-62(1)(g) of the Act. The Association has failed to demonstrate that the City violated clause 6-62(1)(a) by acting in a retaliatory manner. The City has not interfered with the formation or administration of a trade union pursuant to clause 6-62(1)(b). Finally, the City has not discriminated against members of the Association, used coercion or intimidation, or acted in a manner to discourage membership in the Association, contrary to clause 6-62(1)(g).

Evidence:

[10] As much of the factual background is not in contention, the parties tendered a joint book of exhibits, for which the Board is grateful. The Board will proceed to summarize the facts, as disclosed by the joint book of exhibits, the witness testimony, and the remaining exhibits.

[11] The dispute revolves around the creation and eventual elimination of the AC positions. The Board Order, dated June 23, 1989, describes the appropriate unit of employees for purposes of collective bargaining as follows:

> *…all full-time fire fighting personnel and full time civilian Alarm Room Operators employed by the City of Moose Jaw, in the Province of Saskatchewan, except the Fire Chief, Deputy Fire Chief and Office Manager…*

[12] The collective bargaining agreement, dated October 2, 2015, provides:

2. ***EMPLOYEES INCLUDED UNDER THE TERMS OF THIS AGREEMENT***

(1) This Agreement shall be deemed to include and apply to all full-time Firefighters, full-time Fire Alarm Room Operators (Dispatchers) and Mechanic, as defined by Order of the Labour Relations Board dated January 8th, 1965, as amended December 2nd, 1970, and June 23rd, 1989, except the Fire Chief, Deputy Fire Chiefs and **Administrative Assistant/Public Education Officer***, whose duties shall be Firefighting, Fire Prevention, Fire Protection, Rescue, Emergency Measures, Emergency Medical Services and any other duties of an emergent nature traditionally within the ambit of Firefighting, Fire Prevention and Fire Protection.*

[…]

15. ***PROMOTIONS***

(8) (a) If a job classification becomes redundant, the employee concerned having qualified in such classification, would maintain the pay scale of such classification for one (1) year and then would revert to the classification as their seniority and qualifications would determine.

(b) The employee concerned shall maintain seniority within that classification for any future vacancy that may be created.

32. ***RESIGNATIONS, DISMISSALS, DEMOTIONS AND SUSPENSION***

…

(2) In the event the City should inaugurate a policy of staff reduction, the following conditions shall apply:

(a) Any employees with the least seniority shall be laid off first;

(b) Any employee so laid off will not lose their seniority, provided they return to work immediately if called;

(c) In case vacancies on the staff arise while the layoff continues, employees so laid off will be given first opportunity in respect to same, in the order of their seniority at the time of layoff, subject to passing a satisfactory medical examination and to availability for service.

…

42. ***MANAGEMENT RIGHTS***

The Association agrees that it is the exclusive right of the City to manage the affairs of the City and to direct its working force, subject to its observance of the terms and conditions of this Agreement.

[13] On November 6, 2015, following the passage of a Personnel Committee motion that same day, the City notified the Association by letter that it intended to create a new set of positions known as Assistant Chiefs ["ACs"]. The letter states,

> *A final round of positional restructuring was approved by the Personnel Committee of City Council. Fire Administration is immediately prepared to pursue the creation of four (4) Assistant Fire Chief positions and to immediately work to fill these positions. Preference will be given to qualified and capable internal employees wherever possible. As a result, the Platoon Commander positions will be deemed redundant and left vacant. This letter serves as formal notification of our intent to exclude the positions of Assistant Chief from the Moose Jaw Firefighters Local 553 bargaining unit to an Out-of-Scope position, effective immediately upon their date of hire.*

[14] On November 17, 2015, the City provided the Association with a copy of the motion adopted by City Council:

> *"THAT the Personnel Committee directs the Fire Administration to pursue the creation of four (4) new Assistant Fire Chief positions, and to immediately work to fill those positions; and*
>
> *That the Personnel Committee directs that the Platoon Commander positions be deemed redundant."*

[15] As of November 27, 2015, the Association took the position that on the "face of the job description" the ACs "may not properly fall out of scope". On December 16, 2015, the City wrote to the Association indicating its intent to apply for an amendment, clarifying that, although the job postings had been made, the City had no intention of filling the AC positions until the scope issue was determined.

[16] On December 16, 2015, the Association advised the City it was grieving the City's decision to create the AC positions without first seeking an order from the Board.

[17] Around this time, the parties had an ongoing dispute in relation to Alarm Room Operators and the Mechanic position. In July 2015, the City had terminated four Alarm Room Operators. The Association brought a related unfair labour practice (LRB File No 219-15) alleging that the City had reneged on an agreement to provide the affected employees with enhanced severance payments.

[18] On January 27, 2016, the City filed an application to amend the scope of the bargaining certificate, requesting that four newly created AC positions be excluded from the bargaining unit,

on the basis of the managerial and/or confidentiality exclusion.[2] In its application to amend, the City indicated that it had determined that the AC positions were in the "best interests of the efficient operation of the Fire Department".[3]

[19] On June 17, 2016, the Board issued its Reasons in LRB File No 219-15 finding that the City committed an unfair labour practice contrary to clauses 6-62(1)(d) and 6-62(1)(r) of the Act.

[20] On July 7, 2016, the parties entered into Minutes of Settlement, agreeing to settle a number of issues, including the Alarm Room Operators' grievance, the Fire Hall Mechanic position, and the City's application to amend. On the first two issues, four Lieutenant positions were to be eliminated and four new Captain positions created, for a total of eight Captains. The parties agreed that the Captain positions were in-scope. The City agreed to an enhanced severance payment for the Alarm Room Operators. The Association agreed to withdraw the Fire Hall Mechanic grievance and the Alarm Room Operators' grievance, and admitted that the Office Manager position was an out-of-scope position.

[21] On the last issue, the Association agreed that the AC positions would be excluded from the scope of the bargaining certificate on a one year, provisional basis from the date that the position was filled. The employees accepting the temporary out-of-scope positions would have reversion rights, would continue to pay Association dues, and would be subject to a one-year probationary period. The parties agreed to sign an irrevocable election "covering the IAFF 553 bargaining unit".

[22] The City proceeded to fill the AC positions with four Association members, starting on October 1, 2016, and filling the last remaining position in or around May, 2017.

[23] The application to amend was scheduled to be heard on February 27 and 28, 2018, but on the second day, the Board made observations which led the parties to believe that the City would be unsuccessful in having the positions excluded. Following a discussion with the Board, the parties met and the Association provided the City with a proposal for a consent order, including the following:

- The Office Manager would be out-of-scope;

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[2] LRB File No 010-16.
[3] Application to Amend, Schedule "A", at para 8.

- The Public Education Officer/Administrative Assistant would be out-of-scope;
- The Association "would like to see" three officers per platoon;
- The four individuals would become Platoon Commanders, Battalion Chiefs, or another senior officer position above Captain, and would be paid at 130%;
- The Association would commit to negotiating a change from seniority based selection to merit based selection, but if voted down by the membership, seniority would prevail and individuals selected based on seniority would revert back to previously held positions;
- The Association would recommend status quo to the membership.

[24] Following this proposal, the parties went back to the Board to seek a *sine die* adjournment, for the purpose of discussing a possible consent order. The Board granted the adjournment.

[25] There is no conclusive evidence that the City specifically asked for a proposal or agreed to the proposal in principle.

[26] According to the Association's Application, the purpose of the adjournment was to allow the parties to deal with these outstanding items:

- *The City was to prepare a consent order based on the Association's agreement to exclude two positions, unrelated to the ACs, from the bargaining unit;*
- *The parties would engage in discussions on how to better integrate the ACs into the bargaining unit. Issues such as seniority and who would ultimately fill the positions needed to be sorted out as part of a permanent arrangement for the bargaining unit as a whole.*[4]

[27] On March 9, 2018, the Fire Chief, "FC Montgomery", wrote to the Association indicating that he had no authority to do anything without the approval of City Council. On March 12, 2018, the Association wrote back indicating that its membership was in favour of the seniority based promotions. It reiterated its earlier position on the remaining issues, omitting any mention of status quo. On March 13, 2018, FC Montgomery repeated that he had no authority to do anything without approval from City Council, advising that for "the time being it will be status quo". Further:

> *A meeting needs to occur between Personnel Committee and City Administration, once that has occurred I will contact the Association Executive.*

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[4] *Application* at para 7.

[28] The aforementioned meeting was held on March 26, 2018. The Association wrote to FC Montgomery on March 27 requesting an update. In reply the next day, FC Montgomery advised that the Personnel Committee had decided to declare the AC positions redundant, and had decided that the Moose Jaw Fire Department structure would consist of eight Captains, with a Captain at each Fire Hall and two Captains per Platoon. The City was "willing to look at an increased index rate for one of the Captains", if the Association was agreeable. On April 4, 2018, Crocker wrote in reply, asking for the plan for the Acting ACs.

Fire Chief Rod Montgomery ["FC Montgomery"]

[29] The City of Moose Jaw is serviced by two fire stations, known as the North Hill and South Hill stations, and four platoons. The City has a contract with 15 Wing Moose Jaw to provide structural firefighting services. The contract began in 2000 and has required a roughly similar response complement throughout, consisting of five individuals. The City also has a contract with rural municipalities.

[30] The firefighters that are subject to this Application are referred to as either "suppression" or "leadership" firefighters. Leadership, or "officers", are both in-scope and out-of-scope.

[31] FC Montgomery reviewed the history of department composition prior to and after 1989. Officer roles have consisted of the Chief, Deputy Chief, Lieutenant, Captain, Platoon Commander, and ACs. The history of the department has seen multiple combinations of one, two or three officers minimum per platoon at any given time, and six or seven minimum suppression firefighters per platoon.

[32] There used to be a Mechanic, but after the incumbent passed away in 2015, the functions were contracted out and the position remained vacant. The Administrative Assistant/Public Education Officer and the Office Manager (which amounted to a name change for an Alarm Room Operator) were excluded from the bargaining unit around July 2016. Other positions have been declared redundant, left vacant or excluded from the bargaining unit over time. At some point there was a decision to reduce the minimum number of suppression firefighters by four through attrition, to begin in 2015.

[33] FC Montgomery described the plan to create the AC positions. There would be one AC per platoon for a total of four. The ACs' shifts would rotate with the assigned platoon. FC Montgomery wanted to ensure that there were out-of-scope officers assigned to shifts, to

guarantee effective management of staff, assist with operational, human resources and labour relations matters, and to allow for members with authority to serve “24/7”. At the same time, the Platoon Commander and the Lieutenant positions would be declared redundant. Four additional Captains would be created.

[34] The ACs would be filled by merit and would be phased in. When the four individuals were chosen to fill the positions, the number of firefighters per platoon (in suppression and leadership) remained the same. By the time the one-year period had closed, the Association advised the City that it had observed the ACs and did not believe that they were properly out-of-scope. The parties agreed that the application to amend should be reactivated. The Association and the City entered into settlement discussions, culminating in a settlement offer from the Association.[5] The matter was not settled.

[35] When the City learned that the amendment application was going to be unsuccessful, it decided to go back to the drawing board. FC Montgomery felt that it was necessary to scrutinize the actual needs of the service area. He observed that the City of Moose Jaw is largely residential. The span of control and level of need have remained unchanged. He reviewed the officer/firefighter complement in other service areas and determined that the City may be “overcharging citizens for what they need”. In his view, the two officer model meets the needs of the City.

[36] The Personnel Committee had created the AC positions. Therefore, FC Montgomery had to “get their thoughts” before he “could enter into any form of dialogue”. He prepared an eight-page report, plus appendices, consisting of five options for the Committee to consider at its meeting on March 26. The report, being confidential, was not disclosed to the Association.

[37] The Personnel Committee reviewed the report and passed its resolution. While the ACs would be declared redundant, certain functions would revert back to the current out-of-scope positions and other duties would be passed down to the bargaining unit. The new position of Senior Captain would assume the same functions as the former Platoon Commander. The only difference between the Captain and the Senior Captain was that the Senior Captain took on these added responsibilities:

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[5] Counsel for the Association objected to the City’s leading of evidence related to the Association’s settlement offer in relation to the application to amend. The Board ruled that the basic evidence about whether there was a settlement discussion was permitted but not the details of what was proposed.

> *Modifies shift schedules, prepares vacation requests/schedules and plans and supervises the work of assigned personnel. Ensures the appropriate level of staff as determined by Fire Department Policy or as directed by the Chief and/or their designate.*

[38] When FC Montgomery heard that the Association intended to file an unfair labour practice application, he called a meeting. Ultimately there were two meetings, held on April 3 and 4. The Association filed this Application on April 4, 2018. On April 16, FC Montgomery wrote to the Association suggesting that the City would like to have further discussions about increasing the index for one of the Captains. The Association replied, proposing that the shifts remain "status quo" with three officers per shift pending a decision on the Application. There was another meeting on April 27, 2018. The City provided the job descriptions for the Shift Captain and Senior Captain positions to the Association. FC Montgomery described the Association's safety concerns as a generalized concern for the number of "eyes" but without specifics as to particular issues that might arise.

[39] On April 27, 2018, the City wrote to the Association to request feedback about the job descriptions provided, including in relation to safety concerns. On May 4, 2018, the Association responded that it could not comment as the City had not provided a proposed rate. The Association was reserving "the right to raise [safety] concerns at a later date". FC Montgomery's response, on May 7, 2018, was: "let's assume that the Captain rate is 120/123% and the Senior Captain rate is 127/130%." He requested specifics of any safety concerns that the Association may have. There was no response to this letter.

[40] FC Montgomery testified at length about discussions and events that took place after the Application was filed, including in relation to certain exhibits that were filed as a part of the parties' joint book of exhibits.

Matt Crocker ["Crocker"]

[41] Crocker is the President of the Association.

[42] Crocker understood that, in creating the AC positions, the City was essentially attempting to reduce the number of in-scope officers. He was involved in negotiating the settlement agreement, dated July 7, 2016. During those negotiations there was no discussion about what would happen if the AC positions were determined to be in-scope. He understood that if the Association did not agree to the AC positions being out-of-scope, the City "would come after" the other officers. This was a concern because of the new supervisory provisions in the Act, which

might have affected existing collective agreements. To protect the Captains and Lieutenants, the parties signed an irrevocable election.

[43] Crocker's understanding was that, during the one-year period, the Association would determine if the duties were out-of-scope, and then force a hearing on the issue, if necessary. If the City was unsuccessful, the officer positions would return to the bargaining unit, resulting in three in-scope officers per platoon.

[44] Following the amendment hearing, the Association understood that it would be negotiating the reintegration of the four ACs into the bargaining unit. The initial proposal was intended to keep two of the four, who were not senior, in the top spots. After providing the initial proposal, the Association gave the City some time to consider it. Between February 28 and March 9, there was no discussion with the City. When the Association's membership voted in favor of seniority, the Association wrote to the City with an update, as normal.

[45] When Crocker was advised of the decision, he felt like he had been "hit in the face with a brick". The ACs represented a renamed position. By renaming and then eliminating them, the City reduced the officer per platoon ratio without negotiating. Crocker was unaware of any planned restructuring.

[46] The City finally produced the two job descriptions 60 days after the hearing and 30 days after the announcement of the redundancy decision. Crocker was unable to comment on the job descriptions without an associated wage rate. FC Montgomery's reply, suggesting that Crocker should "assume" a pay rate, was not a proposal.

[47] Crocker spoke to the Blue Card system, which supported the Association's safety concerns with the two officer model. In this respect, Crocker spoke specifically to a business plan authored by FC Montgomery. Counsel for the City objected to this evidence. The Board agrees that very little can be drawn from the business plans. Although they formed a part of the agreed book of exhibits, the Association could have put the business plans to FC Montgomery while he was on the stand, which it did not.

[48] Finally, counsel for the Association objected to the general admission of evidence that disclosed privileged communications, privilege that was not explicitly waived, and to the admission of evidence in the form of testimony from counsel. The Board has not considered

privileged communications or other information, unless properly tendered in evidence before the Board.

Relevant Statutory Provisions:

[49] The following provisions of the Act are applicable:

> ***6-1****(1) In this Part:*
> *…*
> *(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;*
>
> ***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.*
>
> ***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:*
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> *(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Part;*
>
> *(b) subject to subsection (3), to discriminate respecting or interfere with the formation or administration of any labour organization or to contribute financial or other support to it;*
> *…*
>
> *(d) to fail or refuse to engage in collective bargaining with representatives of a union representing the employees in a bargaining unit whether or not those representatives are the employees of the employer;*
> *…*
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> *(g) to discriminate with respect to hiring or tenure of employment or any term or condition of employment or to use coercion or intimidation of any kind, including termination or suspension or threat of termination or suspension of an employee, with a view to encouraging or discouraging membership in or activity in or for or selection of a labour organization or participation of any kind in a proceeding pursuant to this Part;*
> *…*

Analysis:

[50] The Association bears the onus to prove the requisite elements of the unfair labour practice on a balance of probabilities. To satisfy that onus, the evidence presented must be "sufficiently clear, convincing, and cogent".[6]

[51] The Association argues that the City has committed an unfair labour practice pursuant to clauses 6-62(1)(a), 6-62(1)(b), 6-62(1)(d), and 6-62(1)(g) of the Act. The Board will consider each of those clauses, in turn. Given the focus of the parties' arguments on the duty to bargain in good faith, the Board will begin its analysis with clause 6-62(1)(d).

Has the City violated clause 6-62(1)(d) by failing to bargain in good faith with the Association?

[52] At the outset, it is useful to describe the role of the Board when reviewing the conduct of the parties in collective bargaining. The Board has held that the following statement accurately summarizes the state of the law in this area:

> *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…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 the Board to ensure that a particular substantive result is achieved or avoided through collective bargaining.*
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> *[Emphasis added; citation omitted, and emphasis in original.]*[7]

[53] To be sure, the Board's role is to supervise the process of collective bargaining, to ensure that the parties engage in that process, *in good faith*.

[54] Voluntariness is at the core of collective bargaining. The Board must try to facilitate and promote the parties' ability and willingness to negotiate the resolution of their own disputes. The Board's primary role is to monitor the process of collective bargaining, and not to assess the

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[6] *Zalopski v Canadian Union of Public Employees, Local 21*, 2017 CanLII 68784 (SK LRB) ["*Zalopski*"] at para 43, citing *F.H. v McDougall*, 2008 SCC 53, [2008] 2 SCR 41 at paras 49, 52.
[7] See, 2014 CanLII 17405 (SK LRB) at para 131, reversed by *SEIU-West v Saskatchewan Association of Health Organizations*, 2015 SKQB 222 (CanLII), then reversed in part by *Cypress (Regional Health Authority) v Service Employees' International Union-West*, 2016 SKCA 161 (CanLII). Cited in *Moose Jaw Firefighters' Association Local 553 v Moose Jaw (City),* 2016 CanLII 36502 (SK LRB) ["*Moose Jaw (2016)*"].

content or the merits of the parties' proposals. The Board may consider the content of proposals in an effort to determine whether a party is engaging in surface bargaining or whether the employer, for example, is seeking to undermine the union as exclusive bargaining agent by making a patently unpalatable offer. In these cases, the proposal may indicate whether a party is acting in good faith. Nonetheless, the Board's focus is the process of collective bargaining, not the result.

[55] To assess whether the City breached a duty to bargain in good faith, the Board must first determine whether a duty exists, in these circumstances. There can be no failure to comply with the duty bargain in good faith, and thus no violation of clause 6-62(1)(d), unless there is a duty on the City to bargain in good faith with the Association, in the circumstances of the present case.

[56] The Association does not allege that the City breached its duty to negotiate a collective bargaining agreement during the open period, but instead suggests that the City breached a duty to bargain in relation to specific positions, mid-contract. As there are limits on the duty to bargain in mid-contract circumstances, it is necessary for the Board to determine whether there is a duty, in this case, that fell within those limits.

[57] In *Canadian Union of Public Employees, Local 600-3 v Government of Saskatchewan (Community Living Division)*, 2009 CanLII 49649 (SK LRB), the Board outlined the limits of the duty, as applicable to cases in which the parties have reached a collective agreement, and the open period is not in effect. In these cases, the parties may deal with emergent issues in the following ways:

> *(a) by virtue of the "technological change" provisions of s. 43 of the Act;*
>
> *(b) by virtue of a re-opener provision in the collective agreement;*
>
> *(c) by voluntary agreement to re-negotiate between the parties; or*
>
> *(d) by submission by way of the grievance procedure where the issue impacts the already agreed upon provisions of the collective agreement.*[8]

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[8] *Canadian Union of Public Employees, Local 600-3 v Government of Saskatchewan (Community Living Division, Department of Community Resources)*, 2009 CanLII 49649 (SK LRB) at para 26.

[58] The Board has found that there is a duty to bargain the settlement of disputes and grievances, arising from the definition of collective bargaining contained in the Act. Subclause 6-1(1)(e) sets out the definition of collective bargaining:

> ***6-1****(1) In this Part:*
> *…*
> *(e) "collective bargaining" means:*
> *…*
> *(iv) negotiating from time to time the settlement of disputes and grievances of employees covered by a collective agreement or represented by a union;*

[59] In *Moose Jaw Firefighters' Association Local 553 v Moose Jaw (City),* 2016 CanLII 36502 (SK LRB) ["*Moose Jaw (2016)*"], at paragraph 92, the Board confirmed that the duty to collectively bargain applies to "disputes". To this effect, the Board cited its previous decision in *Saskatchewan Union of Nurses v Regina Qu'Appelle Health Region*, 2007 CanLII 68774 (SK LRB), at paragraph 63:

> *In our view, it is apparent that the duty applies to a much broader scope of the party's conduct. It applies not only to the processing of grievances but also to discussions for the resolution of "disputes" which may or may not be "grievances." The word "dispute" in s. 2(b) would otherwise be redundant.*

[60] Furthermore, when the duty to bargain is triggered, parties are required to bargain in good faith. Section 6-7 of the Act makes this clear:

> ***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.*

[61] The good faith component of the duty to bargain is well-established. In assessing the existence and the content of the duty, the Board is guided by the Supreme Court of Canada's observations, via Cory J., in *C.A.S.A.W. Local 4 v Royal Oak Mines*, [1996] 1 SCR 369 (SCC) ["*Royal Oak*"], cited by the Board in *Moose Jaw (2016)*, at paragraph 100:

> *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.*
>
> *[emphasis added]*

[62] The duty to enter into bargaining in good faith is judged on a subjective basis: in the circumstances of this Application did the City enter into bargaining in good faith? The question of whether a party made reasonable efforts to bargain is judged on an objective basis:[9] Did the City make a reasonable effort to bargain, taking into account comparable standards and practices? These are two separate requirements. If the Association demonstrates that the City has failed on either count, then a breach may be made out.

[63] Furthermore, in relation to the public sector, the duties of governments, including the obligation to manage public monies, do "not detract from the general proposition that governments and their representatives are expected to live up to the legal requirements imposed upon them as employers".[10] While the process of obtaining instructions for negotiating purposes may be more onerous, a public sector employer, acting in the role as employer, remains subject to the principle of good faith collective bargaining.

[64] Taking these principles into account, the Board will now turn to its analysis of the current case.

[65] Central to the Board's determination is whether there is a dispute between the parties, as contemplated by subclause 6-1(1)(e)(iv) of the Act and whether there is a duty to collectively bargain in relation to the settlement of that dispute. In this case, the genesis of the alleged dispute can be traced to the creation of the AC positions as a means of replacing the Platoon Commander positions with out-of-scope managerial positions. In creating the AC positions, the City had a duty to bargain the exclusion of those positions from the bargaining unit.[11] In the absence of an agreement, the City was required to make an application for an amendment of the certification

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[9] *Moose Jaw (2016)* at para 119.
[10] *Moose Jaw (2016)* at para 102.
[11] See, for example, *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Saskatchewan Gaming Corporation (Casino Regina)*, 2004 CanLII 65624 (SK LRB).

order. The parties settled that dispute, for a period of one year, and then reactivated the amendment hearing.

[66] Following the adjournment of the amendment hearing, was there still a dispute between the parties? Certainly, the question remained as to how to organize the department, and specifically how to reintegrate the incumbents of the AC positions into the bargaining unit. As a result of the amendment hearing, and the resulting adjournment, the fate of the incumbent individuals was a matter that fell to be negotiated.

[67] The Association characterizes the dispute as a dispute over the reintegration of the AC positions. Following the adjournment, the Association believed that the reintegration of the AC positions remained on the table. The City had given the Association no reason to think otherwise. It characterized the creation of the positions as part of a "final reorganization". The City led the Association to believe that the positions were integral to its reorganization. Since their creation, there was no material change in the circumstances of the business that would necessitate making those positions redundant.

[68] The City disagrees with the Association's characterization. There could not have been an outstanding dispute about the AC positions, because the City's management rights are "absolute", subject to the terms and conditions of the collective agreement, *bona fides*, and good faith. Until this time, the City had never undertaken to maintain the AC positions, and certainly not if they were deemed in-scope. The parties had never discussed what would happen if the City lost the amendment hearing. The Association was a sophisticated party with a long standing relationship with the City. It would have been aware that the City's management rights allowed it to make decisions on redundancies.

[69] The Board finds that the dispute is properly understood, not in reference to the specific goals that the parties sought to achieve or the positions that the parties are taking, but in reference to the terms and conditions of employment for the members of the Association. The outstanding issue, and therefore dispute, relates to the terms and conditions of employment for the members who were impacted by the creation, and then, the out-of-scope placement of the AC positions.

[70] The question, then, is whether the City failed to negotiate in good faith in relation to that dispute.

[71] As the Board observed in *University of Saskatchewan and University of Saskatchewan Faculty Association*, [1990] Spring Sask Labour Rep 30, LRB File No. 280-88,[12] while much of the case law deals with the duty to bargain in good faith in the context of collective agreement negotiations, "the general principles are no less applicable to negotiations for the settlement of disputes and grievances of employees". In either case, parties are expected to meet and enter into full, frank, and rational discussions with the mutual intention of resolving the dispute before them. Conduct which is designed to frustrate that objective will be found to be a breach of the Act.

[72] The Board must assess the totality of circumstances in determining whether there has been a failure to bargain in good faith. In *S.U.N. v Regina Qu'Appelle Health Region*, 2007 CarswellSask 822, the Board made note of the following principles, as outlined in *G.C.I.U., Local 34-M v Southam Inc.* (2000), [2000] Alta LRBR 177, 2000 CarswellAlta 1670, 63 CLRBR (2d) 65 (Alta LRB):

> *78 In Southam, supra, referred to by the Employer, the Alberta Labour Relations Board provides a useful summary of principles to be considered, many of which are consistent with the case law in Saskatchewan. After stating that the parties must respect the objectives of the statute, including the recognition of the union, the full and rational discussion of the issues and the making of serious efforts to reach a collective agreement, the Alberta Board outlined several principles concerning the duty to bargain in good faith at paragraph 46, some of which include the following:*
>
> *• Parties have a duty to make solicited disclosure to each other of information that is necessary to understand a position or formulate an intelligent response ...*
> *. . .*
> *• Parties must not deliberately misrepresent material facts. Misrepresentation is the "antithesis of good faith" ...*
>
> *• Parties may not refuse to meet before positions have been thoroughly explored, and they must meet through representatives who are equipped to engage in the full and rational discussion that the duty demands.*
> *. . .*
> *• An employer may not engage in "surface bargaining," in which an outward willingness to observe the form of collective bargaining masks an intention to avoid entering a collective agreement at all. Tactics that may be indicative of surface bargaining include: reneging on positions already agreed to with no compelling reason; and "receding horizon" bargaining, in which new issues or proposals are unjustifiably introduced late in the bargaining ...*
> *. . .*
> *• The duty to engage in rational discussion means that parties must be willing to explore the issues brought to the table. They have a duty to explain the rationale for their positions, particularly on issues that are central to negotiations or where significant changes to existing terms and conditions are sought ...*
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> *[case references omitted]*

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[12] *University of Saskatchewan and University of Saskatchewan Faculty Association*, [1990] Spring Sask Labour Rep 30, LRB File No. 280-88 at 37, as cited in *S.U.N. v Regina Qu'Appelle Health Region*, 2007 CarswellSask 822 at para 67.

[73] The Board has made clear that the duty to bargain in good faith extends to disputes that engage the terms and conditions of employment. For instance, in *Moose Jaw (2016)*, the Board held the Employer to a duty to bargain in good faith in relation to issues arising from the terminations of four employees. The parties had reached a consensus on a resolution of an enhanced severance payment, but without explanation, City Council rejected a proposal recommended by its representatives, and reneged on a proposal its representatives had previously accepted.[13]

[74] In deciding whether the City had a duty to bargain in good faith, the Board relied on *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Regina Exhibition Association Limited*, [1993] 4th Quarter Sask Labour Rep 216, another termination case, in which the Board explained:

> *… The general obligation to bargain which is imposed upon an employer by the certification order is not, as counsel acknowledged, limited to the negotiation or administration of a collective agreement. It embraces all aspects of the relationship between an employer and employees which may affect their terms and conditions of employment.*
>
> *In this connection, it is hard to imagine an event which may more dramatically affect the terms and conditions of employment of an employee than the termination of that employee…* [14]

[75] Guided by the foregoing conclusions, the Board found that it was incumbent upon the City "to attempt to negotiate with the Association acting on behalf of those employees…in good faith".

[76] In the current case, did the City satisfy its duty to bargain in good faith? To be clear, the Board's role is restricted to supervising the process of collective bargaining, to ensure that the parties engaged in that process, in good faith. The Board is not charged with assessing the merits of the redundancy decision, *per se*, but is restricted to reviewing the City's conduct to assess whether it negotiated in good faith.

[77] To be sure, an employer possesses the power to make certain organizational changes, a power that flows from its responsibility to manage the business:

> *It is an almost perpetual condition of the industrial environment that work requirements are in a state of flux. Variations in demands, changes in production requirements, and pressures to improve the efficiency of performance are commonplace in virtually all industrial establishments. It is axiomatic that the presence of such competitive pressures*

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[13] *Moose Jaw (2016)* at paras 134, 135.
[14] *Moose Jaw (2016)* at para 93, citing *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Regina Exhibition Association Limited*, [1993] 4th Quarter Sask Labour Rep 216.

> *and technological advances will have a direct and immediate impact on the existing organization and makeup of the workforce. And when confronted by the intrusion of such external forces, management will commonly perceive the need to reorganize its methods of production. This it may do, depending upon the nature of the exigency, in several ways. For example, management might determine to assign certain aspects of its work to persons or firms outside of the bargaining unit; to reorganize the work processes within the bargaining unit; to reallocate personnel by way of transfers, promotions, demotions, layoffs; or to establish new, or alter existing, working hours, shifts and overtime schedules. From management's perspective, depending upon the prevailing circumstances, any of these responses would be within their competence. Indeed, prior to the establishment of a collective bargaining relationship, it could be said that management's initiative to respond to changing needs of this nature was limited only by its resources and other pragmatic considerations. […]*
>
> *Indeed, it is now generally conceded that whether or not an express provision giving management the power to initiate such changes is included in the agreement, management nevertheless possesses this power or ability to initiate such changes. Very simply, arbitrators have recognized that such authority flows from management's responsibility to manage the enterprise.*
>
> *[citations removed]*[15]

[78] However, management rights do not exist in a vacuum. When an employer's actions intersect with a process of collective bargaining, its conduct is subject to scrutiny to the extent necessary to ensure that it engaged in the collective bargaining process, in good faith. The Board will proceed to scrutinize the City's conduct in this case.

[79] First, FC Montgomery's primary impetus for undertaking a review of the positions was the Board's *de facto* decision at the amendment hearing. Granted, FC Montgomery rightly assumed that he needed a mandate to be able to discharge the duty to bargain in good faith. He did not want to make the same misstep he had made previously. But the City's previous reorganization was, ostensibly, "final". The Association reasonably believed, despite the history of reorganizations, that the AC positions were important to the department's functioning, and that the negotiations would proceed on that basis, or at least on the basis of a three-officer model.

[80] In the meantime, the Association bided its time, eagerly anticipating the results of the March 26 meeting so that it could dive into negotiations in earnest. As far as the Association was aware, nothing had changed, except for the Board's *de facto* decision. The Association was taken by surprise when it learned that the negotiating "mandate" was actually an altered negotiating landscape. After the City Council meeting, and without notice to the Association, suddenly the

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[15] Donald J.M. Brown & David M. Beatty, *Canadian Labour Arbitration*, 5th ed (Toronto: Thomson Reuters Canada), Online: Westlaw NEXT Canada at 5:0000.

Association was in the position of having to negotiate the terms and conditions of its members, in the absence of the AC positions.

[81] The parties had a longstanding relationship, and they had worked tirelessly to establish trust. Trust was not easy to come by. The City's sudden decision, after so many months of negotiating, settling, and then litigating re-opened an old wound. The City acted in a piecemeal fashion, step by step, unravelling the composition of the bargaining unit. That is not to say that the City's conduct was pre-meditated. But it was, at the very least, fickle.

[82] Once he had embarked on the reconsideration, what more could FC Montgomery, or the City, have done in the circumstances? The City suggests that FC Montgomery was compelled to return to City Council to obtain a mandate, because absent a mandate, he would have been negotiating in bad faith. Also, it is unlikely that an ultimatum would have promoted a particularly civil negotiating environment.

[83] However, the Association argues that the duty to bargain in good faith includes a duty to disclose relevant information. This Board recognized and described the duty to disclose in collective bargaining, in *SEIU (West) v SAHO*, 2014 CanLII 17405 (SK LRB) ["*SEIU (West) v SAHO*"]:

> *[134] The final observation that we would like to make regarding collective bargaining is that the duty to bargain in good faith also imposes certain peripheral obligations on an employer, including the duty to disclose pertinent information during the course of collective bargaining. The duty imposed on employers to make disclosure was succinctly described by this Board in Saskatchewan Government Employees' Union v. Government of Saskatchewan, (1989), 5 C.L.R.B.R. (2nd) 254, [1989] Winter Sask. Labour Rep. 52, LRB File Nos. 245-87 & 246-87, as follows:*
>
>> *It requires the union and the employer to make every reasonable effort to conclude a collective bargaining agreement, and to that end to engage in rational, informed discussion, to answer honestly, and to avoid misrepresentation. More specifically, it is generally accepted that when asked an employer is obligated:*
>>
>> *(a) to disclose information with respect to existing terms and conditions of employment, particularly during negotiations for a first collective bargaining agreement;*
>>
>> *(b) to disclose pertinent information needed by a union to adequately comprehend a proposal or employer response at the bargaining table;*
>>
>> *(c) to inform the union during negotiations of decisions already made which will be implemented during the term of a proposed agreement and which may have a significant impact on the bargaining unit; and*

> (d) *to answer honestly whether it will probably implement changes during the term of a proposed agreement that may significantly impact on the bargaining unit. This obligation is limited to plans likely to be implemented so that the employer maintains a degree of confidentiality in planning, and because premature disclosure of plans that may not materialize could have an adverse effect on the employer, the union and the employees.*

[84] The Association relies on a decision of the Alberta Labour Relations Board in *Shepherd's Care Foundation and A.U.P.E., Re*, 2016 CarswellAlta 796, [2016] Alta LRBR 33 ["*Shepherd's Care*"], citing *CUPE, Local 30 v Edmonton (City)*, [1995] Alta LRBR 102 at 110. In the latter case, the Alberta Board describes the duty to disclose:

> *The duty to bargain involves an obligation to meet, to bargain in good faith, and to make every reasonable effort to enter into a collective agreement. Part of the obligation to bargain in good faith is the requirement to disclose pertinent information so that both parties can intelligently appraise proposals. This blends with and promotes the goal of full and open discussion between the parties.*
>
> *A duty to disclose information typically arises in two cases. In the first, the union requests relevant information at the bargaining table, thereby creating an obligation on the employer to respond honestly. …*
>
> *The second case arises where the employer makes a de facto decision that will have a significant impact on the employees in the unit. Such a decision creates an affirmative duty on the employer to disclose that decision to the union in negotiations, even though the union has not asked about it.*
>
> *[citations removed]*

[85] In collective bargaining, the parties are expected to engage in full, rational, and informed discussion about the relevant issues. To promote such discussion, the Board must recognize a duty, in some cases, to provide unsolicited disclosure. An employer is required to disclose decisions already made, or *de facto* decisions, that may have a major impact on the bargaining unit. As explained in *C.E.P., Local 255G v Central Web Offset Ltd.*, [2008] Alta LRBR 289, at paragraph 139,"[t]o not disclose a management decision with a major impact on the bargaining unit is tantamount to a misrepresentation".[16] In cases involving a duty to provide unsolicited disclosure, timely disclosure is paramount.

[86] This duty is applicable both to decisions impacting negotiations for the conclusion of a collective agreement, and to decisions with a major impact on the terms and conditions of employment of certain employees, over which there is an ongoing or impending negotiation. The

[16] As cited in *Shepherd's Care Foundation and A.U.P.E., Re,* 2016 CarswellAlta 796, [2016] Alta LRBR 33 at para 17.

purpose of the duty to disclose is to ensure that, when negotiating the terms and conditions of employment, the opposing party has pertinent information, and based on that information is equipped to fully assess the impact of any proposals. An unrestricted duty to disclose information about the possibility of organizational changes, or about a party's proposals to its instructors, may invite evaluation of organizational imperatives and undermine confidentiality in organizational planning. For these reasons, a party is not generally entitled to information about a management decision, in advance, or in order to bargain the merits of that decision.

[87] The Association argues that the duty to disclose must be interpreted in a manner that is consistent with the duty to bargain in good faith. The duty to bargain in good faith promotes full, frank, and rational discussions over the subject-matter in dispute.

[88] For this proposition, the Association relies on the Alberta Board's decision in *IAFF, Local 255 v Calgary (City)*, 2000 CarswellAlta 1677. There, the Alberta Board applied the duty to disclose, in the context of the duty to bargain in good faith. The Board found that the department had advised the union that no changes were contemplated for a couple of years after being asked specifically whether the employer intended to make any changes to the officer structure during the anticipated term of the collective agreement, which the parties were bargaining.[17] The union reasonably relied on that information both in bargaining and outside of bargaining.

[89] In that case, the Board found that the City faced advances from the union that it saw as undesirable and which would cost more money. It implemented an organizational change after giving the union a commitment to the contrary and at a point when the union had already tabled its proposals. "This did not enable the Union to respond to the change or to alter its bargaining proposals to deal with the change".[18] The Alberta Board's decision is in line with the duty to disclose relevant information, so as to ensure that the parties understand the negotiating landscape.[19]

[90] However, in *Shepherd's Care*, the Alberta Board found that where there is a duty to disclose, mere disclosure is insufficient. The duty to disclose entails a corresponding obligation

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[17] At paras 48, 56.
[18] At para 58.
[19] The Alberta Board also found, separately, that the City altered the terms and conditions of certain employees, without the consent or the involvement of the union. That aspect of the case was decided in the context of the statutory freeze that applied when notice to bargain is served.

to provide a union with an opportunity to digest the information provided and respond to it in bargaining:

> *[19] Given that the purpose of disclosure is to promote informed bargaining around significant decisions, it is not surprising that the jurisprudence requires more than mere disclosure. When employers disclose significant decisions after notices to bargain have been served, unions must be provided with an opportunity to digest the information disclosed and to respond to it in bargaining with the employer before the employer communicates its decision directly to the affected employees (see: Re Brewers' Distributor Ltd., [2000] Alta. L.R.B.R. 298 ("Brewers'") at paras. 55 and 56). […]*

[91] The Board in *Shepherd's Care* was less concerned with determining, for purposes of delineating the breach, a point in time when the managerial decision was made, and more concerned with the employer's failure to provide the union with sufficient time to consider and then respond to the decision.

[92] In this case, the City disclosed its decision in a timely fashion, once it was made, and provided the necessary information to understand the coming changes. The Association was able to alter its bargaining proposals in relation to the incumbents' reintegration. It was not able to digest this new information and reconsider its position on the scope question. Under these circumstances, should the City have provided an opportunity to the Association to adjust its position on the issue of scope, prior to the implementation of its decision? In considering this question, the Board has assessed whether requiring such an opportunity: (1) is the same as requiring negotiations about the redundancy decision itself, or, (2) is incongruous with the law on the duty to disclose.

[93] The purpose of the duty to disclose, and the corresponding obligation to provide an opportunity to respond, is to promote informed bargaining around changes that will have a significant impact on the bargaining unit. To allow an employer to automatically implement its decision, without discharging its corresponding obligation, renders the duty meaningless. The redundancy decision has the potential to have a significant impact on the bargaining unit. The Association operated, over a significant period of time, under a reasonable apprehension about the importance of the AC positions. The Association formulated its negotiation, advocacy, and overall representational strategy around that apprehension. By the time it learned of the redundancy decision, it was no longer able to adjust that strategy or reassess its bargaining position on scope. While the City did not implement its decision, it was treated as a *fait accompli* in the context of negotiations.

[94] The City's decision to revisit the creation of the positions, despite a prior, consistent characterization of the positions as part of an organizational imperative, was prompted by the Board's *de facto* decision. This conduct was entirely contrary to the Association's reasonable expectations, given the parties' bargaining history. It disclosed a lack of organizational planning and reliability that eroded trust. The City's conduct was such that the Association could not reasonably rely on its representations about its own organizational needs.

[95] The result of this approach was a shifting negotiating landscape that impaired collective bargaining in relation to the terms and conditions of employment. In this respect, the Board finds that the City did not, in good faith, enter into the process of collective bargaining over the terms and conditions of employment for the Association's members. The City should have either: undertaken to gain a better appreciation of its organizational imperatives throughout the negotiation process, to ensure that it was sufficiently informed to enable it to engage meaningfully in a process of good faith collective bargaining; or, it should have provided the Association with an opportunity to respond to the changes and reconsider its position on the scope question prior to implementation.

[96] The Board is not suggesting that the City is required to bargain the redundancy decision, but rather, that it is required to bargain about the terms and conditions of employment for the Association's members, in an atmosphere of candor about the City's organizational imperatives, or lack thereof. This conclusion acknowledges the reality of the existing negotiations, and breathes life into the duty to disclose.

[97] To be clear, this is not a conclusion on the *bona fides* of the City's decision to declare the positions redundant or a finding that the City is required to negotiate the merits of a new organizational imperative. The City's actions failed to meet the Association's reasonable expectations about the underlying premise of the negotiations. Accordingly, the City had a duty to allow the Association time to digest the changes, and adjust the positions it had been taking all along. If, through the Association's response, the City then saw fit to adjust its own decision, so be it. The duty to bargain is not a duty to agree. If the negotiations between the two parties failed, the City remained free, absent anti-union animus or *mal fides*, to proceed with its decision.

[98] Nor is this a pronouncement that the City has an obligation to disclose to the Association its proposals to the Personnel Committee. In the circumstances of this case, when the City made its *de facto* decision, it should have given the Association time to digest that change, reassess its

position, and respond to the change through bargaining. That does not mean that it had to disclose its proposals, but it does mean that the City had to give the Association an opportunity to respond to the change and reassess its positions.

[99] The Board is not persuaded by the City's "clean hands" argument about the Association's safety concerns. While the Association did not always assume the moral high ground, its conduct is properly assessed on the backdrop of the circumstances that led up to it.

Did the City Breach clauses 6-62(1)(a), (b) and (g)?

[100] The Board agrees with the Association that an employer may be found to have committed an unfair labour practice by taking actions, even if those actions would otherwise fall within their management rights, for the purpose of avoiding their collective bargaining obligations. Examples include promoting employees for the purpose of avoiding the terms and conditions of the collective bargaining agreement: *Lumber & Sawmill Workers' Union, Local 2995 v Rexwood Products Ltd.*, 1987 CarswellOnt 1189 (Ont LRB)); creating positions for the purpose of moving employees out of the union: *Manitoba Pool Elevators v Canada (Labour Relations Board)*, 1980 CarswellNat 746, 1980 CarswellNat 747, [1981] 1 Can LRBR 44); and subcontracting to avoid collective bargaining obligations: *Intermountain Industries Ltd. and CJA, 29 Locals, Re*, 1974 CarswellBC 574, [1975] 1 Can LRBR 257 (BC LRB) ["*Intermountain Industries*"].[20]

[101] Of particular relevance, the Association relies on *Intermountain Industries*, in which the B.C. Board decided,

> *56 In dealing with the first matter, the question is not whether Intermountain does have the freedom to stay in business or to go out of business; rather, the issue to be decided is the motivation which he has for his decision and whether or not that motivation brings him into conflict with the requirements of the Code. Dealing with Section 3(2)(a) "no employer... shall refuse to employ...any person...because the person is a member...of a trade union", in this case McLeod indicated to the Board in the hearing preceding Peck's decision that if he was required to deal with the Union, he would choose to go out of business. He stated his intention boldly and honestly, and following the receipt of the Board's decision, he immediately carried out his threat — to go out of business. There is no question in the minds of the Board that his motivation for going out of business was to avoid the effect of the original order by Peck that he would have to comply with the collective agreement by accepting union carpenters referred to him by the Union. Since it was his motivation, the Board finds that he has violated the Code for going out of business for that reason. Whether or not this was the sole reason, the facts indicate that this was the primary motivating factor, and that is sufficient. The Board will assess this allegation in turn.*

[20] All cases relied upon by the Association.

[102] The Association also relies on the B.C. Board's decision in *Northern Health Authority and IUOE, Local 882, Re*, 2013 CarswellBC 3215, [2014] BCWLD 299, in which the employer was found to have been motivated in part by anti-union sentiment in implementing a replacement to a boiler system that resulted in the displacement of certain bargaining unit members. The subsequent posting of positions was done in a manner to ensure that union members would be "hard pressed to apply for them if at all" and to compel certain employees to "refrain from continuing to be members of the Union".

[103] In relation to clauses 6-62(1)(a), (b) and (g), the Association argues that the City eliminated the AC positions for the purpose of retaliating against the Association for exercising its rights and for successfully opposing the City's amendment application. Clause 6-62(1)(a) reads:

> *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:*
>
> > *(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Part;*

[104] To assess an allegation under clause 6-62(1)(a), the Board considers the likely or probable effect of the conduct on the employees, assuming that the employees are possessed of reasonable intelligence, resilience and fortitude.[21] This is an objective test. The question is whether the City's conduct had the likely effect of interfering with, restraining, intimidating, or coercing an employee or employees in the exercise of a right conferred by Part VI. If the Board is satisfied that the likely effect of the conduct would have been to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of protected rights, a breach is established.

[105] In this respect, the pertinent questions are: Would an employee of reasonable intelligence and fortitude be impacted, in the manner contemplated by clause 6-62(1)(a), as a result of the City's conduct? If so, what rights were the employees trying to exercise? It seems clear that the Association, on behalf of the employees, was attempting to defend its position with respect to the placement of the AC positions. It is also clear that the Association, on behalf of the employees, was attempting to negotiate terms and conditions of employment. Meanwhile, the employees were exercising their right to be represented by the Association in the defense of that position and the negotiation of the terms and conditions of their employment.

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[21] See, for example, *Comfort Cabs Ltd and USW, Re*, 2014 CanLII 63998, 2014 CarswellSask 233 at paras 64-65; *Service Employees International Union (West) v Saskatchewan Association of Health Organizations*, 2014 CanLII 17405 (SK LRB) at para 98.

[106] The Association argues that the City's conduct was taken for the purpose of retaliating against the Association for exercising its rights and for successfully opposing the amendment application. The City's conduct has rendered moot the legitimate exercise of the employees' rights in defending the amendment application, thereby undermining the employees' confidence in the Association, the collective bargaining process, and "in the exercise of rights". Ordinary Association members are left with the impression that the City can use its superior position to annul their collective efforts.

[107] The Association distinguishes the present case from *New Westminster (City) and City Fire Fighters' Union, Local 256, Re*, 2005 CarswellBC 4480 ["*New Westminster*"]. In that case, the B.C. Board found that, in creating a genuinely out-of-scope replacement following an unsuccessful amendment application, the employer was not retaliating against the union but was simply exercising its rights under the Act. The Board agrees that *New Westminster* is distinguishable. In *New Westminster*, the employer maintained its business case for an out-of-scope position. Here, the City reconsidered its business case immediately after the amendment hearing.

[108] The Board does not find that the City has restrained, threatened, intimidated or coerced an employee in the exercise of any right conferred by Part VI. The Board does not find that the City acted out of anti-union animus. While it had a duty to negotiate, the City brought the amendment application and the Association "successfully" defended it. While the success was short lived, the employees were not restrained in the exercise of their right to defend their position before the Board. The employees may question whether to defend their rights to a newly created position, in the future, but any future proceeding is simply too remote to ground a finding that the City intimidated the employees in the manner contemplated by the Act.

[109] The remaining issue is interference. There is no doubt that the probable effect of the City's conduct, assuming that the employees are possessed of reasonable intelligence, resilience and fortitude, is that the employees would have been discouraged from pursuing union representation on issues involving the terms and conditions of their employment. But is this sufficient? The City cites *United Food and Commercial Workers, Local 1400 v Calokay Holdings Ltd.*, 2016 CanLII 74282 (SK LRB), a case that involved forcible removal, as an example of the proper application of clause 6-62(1)(a). Surely, forcible removal is not the threshold. But neither is discouragement, in the absence of intent. The Board concludes that the City's actions, although discouraging, were

not such that the City interfered with the employees' rights to representation in the negotiation of the terms and conditions of their employment.

[110] The Board has reached this conclusion, fully aware of Crocker's testimony to the effect that, after the redundancy decision was communicated, the members questioned the purpose of negotiating at all "if the City could just do whatever it wanted".

[111] Clause 6-62(1)(b) reads:

> *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:*
>
> > *(b) subject to subsection (3), to discriminate respecting or interfere with the formation or administration of any labour organization or to contribute financial or other support to it;*

[112] Clause 6-62(1)(b) prohibits employer interference with the formation or administration of a trade union.[22] The Board in *SEIU (West) v SAHO* considered its previous jurisprudence with respect to the application of section 11(1)(b) of *The Trade Union Act*, the predecessor provision:

> *[118] Section 11(1)(b) of The Trade Union Act has been considered by this Board on relatively few occasions. In Saskatchewan United Food and Commercial Workers, Local 1400 v. Federated Co-operatives Ltd, [1985] May Sask. Labour Rep. 30, LRB File No. 213-83, the Board described the legislative purpose of this provision as follows:*
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> > *Section 11(1)(b) of The Trade Union Act prohibits an employer from interfering with the formation or administration of any labour organization. The Canada Labour Relations Board considered the phrase "interference with the formation or administration of a trade union" as it appears in Section 184(1)(a) of The Canada Labour Code in National Association of Broadcasting Employees and Technicians v. A.T.V. New Brunswick Limited (C.K.C.W.-T.V.) 1979 3 CLRB 342 and stated at p. 346-7:*
> >
> > > *The administration of the union. This is directed at the protection of the legal entity, and involves such matters as elections of officers, collection of money, expenditure of this money, general meetings of the members, etc. In a word, all internal matters of a trade union considered as a business. This is to assure that the employer will not control the union with which it will negotiate and thus assure that the negotiations will be conducted at arm's length.*
> > >
> > > *A union's right to discipline its own members is as much an administrative function of the union as the election of its officers. Section 11(1)(b) prohibits an employer from interfering with that function. Interference could occur in a number of ways. Some of the most obvious include, for example, attempting to bribe, intimidate or improperly influence witnesses or union officials involved in discipline proceedings.*
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> *[119] This definition was quoted with approval by this Board in Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Westfair Foods Ltd. and United Food*

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[22] *Cypress Regional Health Authority v SEIU-West*, 2016 CarswellSask 791, 2016 SKCA 161 at para 108.

> *and Commercial Workers Union, Local 1400, [1995] 3rd Quarter Sask. Labour Rep. 140, LRB File Nos. 246-94 and 291-94. The Board further commented on the legislative purpose of s. 11(1)(b) as follows:*
>
> > *In our view, this passage suggests the appropriate focus for this section. We see it as intended to protect the integrity of the trade union as an organization, not to speak to all of the types of conflict which may arise between a trade union and an employer in the course of their dealings. Insofar as meetings between an employer and employees are permissible – and we have outlined the perils which they face on other grounds – it is to be expected that they will be planned by the employer so that the persuasive impact of the information conveyed will be maximized. This in itself, however annoying, does not constitute "interference with the administration" of a trade union within the meaning of Section 11(1)(b).*
>
> *[120] In Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Canada Safeway Limited, et. al., [1995] 3rd Quarter Sask. Labour Rep. 170, LRB File No. 093-95, this Board adopted the above descriptions of the legislative purpose of s. 11(1)(b) and came to the following conclusions with respect to the application of this provision:*
>
> > *We have stated above our view that not every instance of employer conduct which has an effect which is not expected, welcomed or approved of by a trade union constitutes "interference" of a kind which is prohibited under Section 11(1)(b). This comment seems equally applicable to an allegation of an infraction of Section 11(1)(b). In the relationship between a trade union and an employer, there will be many occasions when the strategy pursued by the union does not have the anticipated result, or the union must make concessions in the face of the superior bargaining power of the employer. This is the nature of collective bargaining. It cannot be the case that every action of an employer which does not serve the best interests of the trade union can be viewed as an infraction of Section 11(1)(b). As we indicated in the cases cited above, this provision must, in our view, be taken to govern conduct which threatens the integrity of the trade union as an organization, or creates obstacles which make it difficult or impossible for the trade union to carry on as an organizational entity devoted to representing employees.*

[113] According to the Board in *SIEU (West) v SAHO*, clause 6-62(1)(b) is about the formation or administration of a trade union. It is intended to protect the integrity of the trade union as an organization. On review, in *SEIU-West v Saskatchewan Association of Health Organizations*, 2015 SKQB 222 (CanLII), the Court found, at paragraph 57:

> *The board decided that s. 11(1)(b) related only to the protection of unions as an independent legal entity, and went on to say at para. 123 that "the fact that the views and opinions being expressed by SAHO and the respondent employers made the jobs of the applicant trade unions more difficult" could not amount to a violation of s. 11(1)(b). That it concluded the independence of the union was not adversely affected by the respondents' conduct is not unreasonable, but it does leave open the question of whether an employer making the union's life difficult can ever be the subject of an unfair labour practice as the Board has stated such submission does not belong in either s. 11(1)(a) or s. 11(1)(b).*

[114] The matter was not considered on appeal.

[115] The Board must interpret clause 6-62(1)(b), taking into account the ordinary meaning of the words of the provision in the context of the Act as a whole, and, more particularly, in the context of Part VI. The Board must be guided by the objective of the Act in conferring rights to individuals in relation to their employment and the right to collective bargaining. The Board must give the legislation a generous and purposive interpretation.

[116] Clause 6-62(1)(b) prohibits discrimination respecting or interference with the formation or administration of any labour organization. Unlike similar provisions in other jurisdictions, this provision does not explicitly prohibit discrimination respecting the representation of employees by a union.[23] If it were not for clause 6-62(1)(a), this would represent a serious lacuna in the Act. However, clause 6-62(1)(a) ensures that employees' rights to union representation are protected.

[117] The Board is not persuaded that the City's actions amount to discrimination respecting or interference with the Association, in the manner contemplated by clause 6-62(1)(b) of the Act. This includes consideration of the Association's independence and its less fatal "difficulties", as signaled the Court of Queen's Bench. The City has not created obstacles which make it difficult or impossible for the Association to carry on as an organizational entity.

[118] Lastly, the Association relies on clause 6-62(1)(g), which reads:

> *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:*
>
> > *(g) to discriminate with respect to hiring or tenure of employment or any term or condition of employment or to use coercion or intimidation of any kind, including termination or suspension or threat of termination or suspension of an employee, with a view to encouraging or discouraging membership in or activity in or for or selection of a labour organization or participation of any kind in a proceeding pursuant to this Part;*

[119] The Association draws an analogy to the Board's decision in *Starbucks Coffee Canada Inc. v RWDSU*, 2008 CarswellSask 956 (SK LRB), in which the Board found a violation of section 11(1)(e) of *The Trade Union Act* after the employer denied employees the right to transfer stores, a right which they had previously enjoyed. The Board found that the employer discriminated against the employees because they were exercising their rights under the Act.[24]

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[23] See, *Alberta Labour Code*, RSA 2000, c L-1, ss 148(1) and *Labour Relations Act, 1995*, SO 1995, c 1, s 70.
[24] At para 19.

[120] The Association states that clause 6-62(1)(g) applies to discriminatory treatment generally, quite apart from cases of individual discipline. According to the Association, the discriminatory treatment, here, is the elimination of the AC positions.

[121] Clause 6-62(1)(g) requires that the Board find that the City made the redundancy decision "with a view to encouraging or discouraging membership in or activity in or for or selection of a labour organization or participation of any kind in a proceeding pursuant to this Part". It is analytically useful to break this down.

[122] Did the City make the decision with a view to encouraging or discouraging membership in the Association? The Board finds that it did not. There is no evidence that the City's decision was taken with a view to encouraging or discouraging membership in the Association. Was the City's decision taken with a view to encouraging or discouraging activity in or for or selection of the Association? No. There is no evidence to support this conclusion.

[123] Did the City take actions with a view to discouraging participation in a proceeding pursuant to Part VI? No, it did not. The City was dissatisfied with the outcome of the amendment application. It decided to take matters into its own hands. But the City's conduct is not equivalent to taking actions with a view to discouraging participation in a proceeding. Any future proceeding, of a similar nature, is simply too remote.

Remedy:

[124] The Association has sought the following remedies:

- *A declaration of an unfair labour practice(s) as committed by the City;*
- *An Order that the City cease and desist committing unfair labour practices;*
- *An Order placing the Association in the position it would have been had it not been for the unfair labour practice, restoring the Assistant Chief position within the bargaining unit;*
- *An Order that the City negotiate in a fair and good faith manner;*
- *An Order requiring a copy of the Board's Order and Reasons for Decision in a conspicuous place in the workplace;*
- *An Order requiring the City to post a written apology to the Association;*
- *An Order for damages to the Association for the expenses incurred;*
- *An Order for damages to the Association for the abuse of process committed by the City;*
- *An Order for other damages to be claimed in a hearing of this matter; and*
- *Such further and other relief as may be requested and otherwise as this Board deems just and reasonable.*

[125] In determining the proper remedy, the Board has a broad discretion. In the exercise of that discretion, it must seek to place the parties in the position they would have been in, but for the commission of the unfair labour practice.[25] There must also be a rational connection between the breach, its consequences and the remedy ordered. Further, the goal of the remedy should be to ensure collective bargaining and promote a healthy relationship between the parties, and should not be punitive in nature.[26]

[126] What was the position of the parties but for the unfair labour practice? Absent the breach, the Association would have had the opportunity to adjust its position on scope, with an understanding of the City's organizational imperatives, or lack thereof. Therefore, the Board sees fit to reinstate the AC positions into the bargaining unit pending good faith collective bargaining about the terms and conditions of employment for those employees impacted by the Board's *de facto* decision. As previously stated, if the parties do not agree, absent anti-union animus and *mal fides*, the City will be entitled to implement its decision.

Written Apology

[127] The Association has asked that the City post a written apology to the Association as a remedy for the breach in this case. In the Board's opinion, an involuntary, written apology has little value other than to publicly shame the City, which is of no assistance in re-establishing a healthy working relationship for the purpose of good faith bargaining. For this reason, granting this remedy would fail to serve a valid labour relations purpose, under the circumstances.

Costs

[128] The Association's request for damages for "expenses incurred" conflates damages with costs. To be sure, the Association suggests that, in the unusual circumstances of this case, the Board should be persuaded to order the extraordinary remedy of costs. The City's conduct has resulted in extraneous proceedings, which have been costly and resource-intensive for the Association and the Board.

[129] In seeking costs, the Association relies on the decision of the B.C. Labour Relations Board in *Northern Health Authority and IUOE, Local 882, Re*, 2013 CarswellBC 3215, [2014] BCWLD 299. There, the Board held that there is authority for awarding costs when a party has incurred

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[25] *Moose Jaw (2016)* at para 140 citing *Swift Current (City) v International Association of Fire Fighters, Local 131*, 2014 CanLII 76050 (SK LRB) at para 60.
[26] *Moose Jaw (2016*) at para 140.

"useless or extraordinary costs" due to the other party's misconduct.[27] The Association also relies on *United Association of Journeyman & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 179 v Monad Industrial Constructors Inc.*, 2013 CanLII 83710 (SK LRB) ["*Monad*"].

[130] In *Monad*, the respondent had failed to take any steps to amend the certification order or bring a successorship application, and had failed to comply with the statutory requirement to file a collective agreement. Absent that information, the applicant union had organized the workplace and brought a certification application. The Board found that it was appropriate to make the applicant whole due to the respondent's failure to comply with the legislation.

[131] An award of costs is discretionary. This Board exercises restraint in awarding costs, and generally requires each party to bear its own costs in the proceedings. In exceptional and compelling circumstances in which the unreasonable conduct of one party compounds the complexity of the proceedings, there may be a basis for ordering costs. Such an order is not intended to provide full compensation for expenses, but instead to compensate for the breach of the statutory duty. It is an equitable, rather than punitive, remedy. For the following reasons, the Board is not persuaded that costs are appropriate in these circumstances.

[132] Although the City's conduct breached the duty to bargain in good faith, its actions were not pre-meditated or motivated by anti-union animus. Following the expiry of the settlement agreement, the City chose to pursue the amendment application. The hearing ended earlier than expected, due to the City's willingness to accept the message that it received. The City did not unduly extend the length of that hearing. This is not to condone the City's conduct overall, but to conclude only that an award of costs is inappropriate.

Damages for Abuse of Process and "Other Damages to be Claimed in a Hearing of this Matter"

[133] The Association seeks damages for "the abuse of process committed by the City". The Association does not set out a principled argument based on the common law doctrine of abuse of process, but instead allows the facts to speak for themselves.

[134] Clause 6-104(2)(e) of the Act gives the Board authority to order the payment of damages:

[27] At para 40.

(e) fixing and determining the monetary loss suffered by an employee, an employer or a union as a result of a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board by one or more persons, and requiring those persons to pay to that employee, employer or union the amount of the monetary loss or any portion of the monetary loss that the board considers to be appropriate;

[135] An award of damages is discretionary. As with all remedies, the purpose is to place the wronged party in the position that party would have been in, but for the breach. There must also be a rational connection between the breach, its consequences and the remedy ordered. And, the remedy should seek to ensure collective bargaining and promote a healthy relationship between the parties. It should not be punitive.

[136] The Board has the power pursuant to clause 6-103(2)(c) to make any orders that are ancillary to the relief requested if the board considers that the orders are necessary or appropriate to attain the purposes of the Act. The Board has the authority to determine its own procedures and to make orders to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. However, for the reasons already stated, the Board does not find that the City's actions amount to an abuse of its process. The Board declines to order damages on this basis.

[137] For the foregoing reasons, the Board makes the following Orders:

- A declaration that the City has committed an unfair labour practice by failing to negotiate in good faith in relation to the terms and conditions of employment of the Association's members;
- An Order that the Assistant Chief positions are reintegrated into the bargaining unit pending good faith negotiations on the terms and conditions of employment for employees impacted by the Board's *de facto* decision;
- An Order that the City post a copy of the Board's Order and Reasons for Decision in a conspicuous place in the workplace for a period of 60 days.

[138] The Board is grateful to counsel for the extensive briefs of law and books of authorities, all of which the Board has read and considered.

DATED at Regina, Saskatchewan, this **2nd** day of **October, 2019.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson

DISSENT

[139] With respect, I disagree with the majority's decision in LRB File No. 092-18.

[140] Paragraph 97 of the decision succinctly sets out the basis of my disagreement:

[141] *[97] The City's actions failed to meet the Association's reasonable expectations about the underlying premise of the negotiations. Accordingly, the City had a duty to allow the Association time to digest the changes, and adjust the positions it had been taking all along. If, through the Association's response, the City then saw fit to adjust its own decision, so be it. The duty to bargain is not a duty to agree. If the negotiations between the two parties failed, the City remained free, absent anti-union animus or mal fides, to proceed with its decision.*

[142] The City's decision to make the Assistant Chief positions (ACs) redundant does not, in my view, allow the Association to "adjust the positions it had taken all along." In fact, the City's decision removes the cornerstone of the Association's position - that the ACs were in-scope positions. The Association can no longer "adjust" that position; it can only negotiate the reintegration of specific members into the bargaining unit from the now non-existent AC positions.

[143] The City's failure to bargain in good faith irretrievably taints any decision arising from the failure and in my view, renders the redundancy decision null and void. Therefore, the City's decision, by virtue of having been tainted by bad faith conduct once, cannot ever be "absent ... *mal fides".* The majority's decision in effect absolves the City of its bad faith conduct by contemplating a situation in which the City could "proceed with its decision" unchanged, i.e. still resting on a foundation of bad faith conduct.

[144] As noted in the Reasons, paragraph 78, management rights, notwithstanding their broad scope and applicability, are subject to considerable scrutiny when they are exercised at an intersection with collective bargaining. The intersection here is with the City's bad faith conduct, which therefore justifies the Board fettering the City's management rights.

[145] Accordingly, I would have ordered that any further discussion of reorganizing the Moose Jaw Fire Department be deferred until the parties have both negotiated the integration of the Assistant Chief positions AND the incumbents into the bargaining unit and have had an actual opportunity to live with and consider the effects of the amended staff configuration.

Aina Kagis, Labour Relations Board Member representing Unions