CLR CONSTRUCTION LABOUR RELATIONS ASSOCIATION OF SASKATCHEWAN INC., Applicant v INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2038, Respondent

LRB File No. 117-18; August 22, 2019

Vice-Chairperson, Barbara Mysko; Board Members: Aina Kagis and Ken Ahl

Counsel for the Applicant:	Dwayne Chomyn
Counsel for the Respondent:	Crystal L. Norbeck

Unfair Labour Practice Application – Clause 6-63(1)(h) and section 6-70 of *The Saskatchewan Employment Act* – Representative Employer Organization – Exclusive bargaining agent – Registration/accreditation system.

Practice and procedure – Application for dismissal on basis of timeliness – 90-day period – Delay not excessive – Minimal prejudice – Attempts to resolve underlying issue by alternative means – Countervailing considerations apply – Unfair labour practice application allowed despite delay.

Application for deferral to grievance/arbitration – Section 6-45 of *The Saskatchewan Employment Act* – Three-stage test to determine appropriateness of deferral – Interpretation of collective bargaining agreement necessary – Arbitration may resolve dispute – Board defers to grievance/arbitration process.

REASONS FOR DECISION

Background:

[1] Barbara Mysko, Vice-Chairperson: These are the Board's Reasons for Decision in relation to a preliminary application. The underlying dispute relates to an enabling agreement negotiated between the International Brotherhood of Electrical Workers, Local 2038 [the "Union"] and Chemco, for work on SaskPower's construction of the Chinook Power Station in Swift Current.

[2] Chemco was the successful bidder for electrical work on the project. CLR Construction Labour Relations Association ["the CLR"] brought an application for an order that the Union had committed an unfair labour practice, contrary to clause 6-63(1)(h) and section 6-70 of *The Saskatchewan Employment Act* [the "Act"]. The unfair labour practice application was filed with the Board on May 23, 2018.

[3] The Union then brought a preliminary application ["Application"] on two bases.[1] First, the substance of the unfair labour practice application entails the "meaning, application or alleged contravention" of a collective agreement, and should therefore be resolved through the grievance arbitration process pursuant to section 6-45 of the Act. For this reason, the Union seeks a deferral of the CLR's application, in the event that the Board does not dismiss it for reasons of its second argument. Second, the application relates to an enabling agreement between the Union and the unionized employer which was concluded in 2017. According to the Union, a CLR representative confronted the Union about the agreement on December 5, 2017, well before the commencement of the 90-day period, prescribed in subsection 6-111(3) of the Act.

[4] The hearing of this Application took place on September 13, 2018 before then Vice-Chairperson Graeme Mitchell, Q.C., and panelists Aina Kagis and Ken Ahl. Vice-Chairperson Mitchell was appointed as a Judge of the Court of Queen's Bench on September 21, 2018. Failing agreement by the parties to either of the alternative options, the Board scheduled a new hearing date for June 11, 2019. With the new hearing date approaching, the parties later agreed that the Chairperson or Vice-Chairperson could review the audio recording and issue a decision on the matter in conjunction with the other two members of the panel.

[5] The parties filed written submissions, presented evidence, and made oral submissions, all of which the Board has reviewed and found helpful in its deliberations. At the outset of the hearing, the parties advised the Board that they were filing a number of documents by consent, for which the Board is grateful.

[6] The Board will proceed to deal with the issue of delay (or timeliness) and then deferral, as a determination on the question of delay could dispose of the matter entirely. The Board will refer to the potential arbitration panel as the "arbitrator" throughout these Reasons.

---

[1] Both the underlying unfair labour practice application and the preliminary application are referred to as LRB File No 117-18.

Argument on Behalf of the Parties:

Timeliness - The Union

[7] The Union relies on section 6-111(3) of the Act to request a dismissal on the basis of delay. It says that a CLR representative was informed of the enabling agreement on December 4, 2018, and it was the negotiation of that agreement and the Union's refusal to disclose its terms, that forms the basis of the unfair labour practice claims. The Union cites five guidelines set out by the Alberta Labour Relations Board in *Toppin v U.A. Local 288,* [2006] Alta LRBR 31 ["*Toppin*"], and adopted by this Board, the application of which should persuade the Board to dismiss the underlying application.

[8] The Union states that the CLR is a sophisticated party who should be held to a high standard of diligence in pursuing applications before the Board in a timely fashion. There is nothing significant to explain or justify the delay. Furthermore, the operation of the provisions had been a matter in contention well before the current incident. Besides, the CLR's case is lacking in merit.

Timeliness - The CLR

[9] The CLR agrees that the crux of the complaint deals with the enabling process but, argues that it is a principled complaint pertaining to "the Union's failure to recognize the role of the CLR in that process as the representative employers' organization [the "REO"] and its operating outside of the registration system".[2] This is an ongoing issue.

[10] In this case, the CLR made several requests over a period of months for information about the enabling agreement. The Union made clear by letter dated April 20, 2018 that it was refusing the CLR's request, and it is at that point that the 90-day period began to run. Prior to that date, the CLR had no knowledge about the enabling terms and conditions. In the alternative, if the CLR did file the application after the 90-day period, it should not be punished for its conciliatory approach, but should instead be allowed to proceed: *Re Saskatchewan Polytechnic*, [2016] SLRBD No 22.

[2] *CLR Brief* at para 13.

Deferral - The Union

[11] The Union suggests that the Board should follow its long-standing process of deferring to the grievance process on the basis that the essential nature of the complaint arises out of the Collective Agreement, and complete relief can be obtained through that avenue. The dispute arises out of an arrangement between the Union and Chemco – an arrangement about which another unionized employer, and party to the Collective Agreement, has taken issue. The enabling agreement, which is at the center of the dispute, is clearly contemplated by the Collective Agreement. The dispute is not about the CLR's status or about a refusal by the Union to bargain collectively. Instead, it is about the proper interpretation of the Collective Agreement.

[12] The dispute also requires a determination of whether it can even be resolved by the grievance process. The Collective Agreement can provide a suitable remedy, and can serve to determine whether the enabling provisions are adequate to serve the interests of all the parties.

Deferral - The CLR

[13] The CLR suggests that a deferral is inappropriate under the circumstances, as demonstrated by the application of the three-stage test, consisting of the following questions:

1. Is the dispute the same dispute?
2. Can the grievance process resolve the dispute?
3. Can the grievance process provide a suitable remedy?

[14] According to the CLR, its application is properly distinguished from a related application made by PCL. The CLR's application pertains to the Union's failure to engage the CLR in the enabling process, the consequent breach of section 6-70 of the Act, and the unique jurisdiction of this Board to oversee the collective bargaining relationship.

[15] Lastly, the CLR states that the grievance process cannot resolve the substance of the dispute before the Board, as that dispute relates to the enabling process and the role of the CLR as the REO, a matter over which an arbitrator has no jurisdiction. Nor is it possible for an arbitrator to provide a remedy respecting a breach of clause 6-62(1)(h) or section 6-70, arising from the Union's actions.

Evidence:

[16] The Board will proceed to summarize certain, salient points of the documents entered as evidence on the consent of the parties. Contained throughout the documents are references to Maurice Kovatch ["Kovatch"], the Business Manager for IBEW 2038, and Warren Douglas ["Douglas"], the Executive Director of the CLR. The Board will then summarize the testimony about the surrounding events.

Minister's Order to Determine the Electrical Trade Division, December 2, 1992 and Board Order, April 29, 2014; LRB File No 066-16 (U1):

[17] The Order of the Board, dated December 2,1992 determines an Electrical Trade Division and finds that the International Brotherhood of Electrical Workers has established the right to bargain collectively on behalf of the unionized employees in the sectors as described. The Board Order, dated April 29, 2014, orders that the Construction Labour Relations Association is the Representative Employers' Organization for the electrical trade division except for Powerline Transmission.

Provincial Electrical Agreement (U2):

[18] This is the Provincial Electrical Agreement, effective January 11, 2015, set to expire on April 30, 2017, as between the unionized employers on whose behalf the CLR has entered into the agreement, and IBEW 529 and 2038 ["Collective Agreement"].

[19] Article 2:01 of the Collective Agreement provides:

> *2:01 This Agreement to be in full force and effect from January 11, 2015 to April 30, 2017. However, this Agreement may be amended in part or in whole by negotiations at any time by mutual consent of both Parties.*
>
> *The Parties further agree that they may, by mutual consent, negotiate special conditions for special jobs during the life of this Agreement.*

[20] Article 14:00 sets out the grievance procedure established through the Collective Agreement. "Grievance" is defined:

> *14:01 "Grievance" means any difference between the persons bound by this Agreement concerning the interpretation, application, operation, or any alleged violation thereof; and "Party" means one of the Parties to this Agreement.*

[21] Appended to the Collective Agreement are a number of forms, including one entitled "enabling clause information sheet" and marked as appendix "G" ["Form 'G'"]. In the top half of the form, is the sentence: "Please accept this as a request to bid the project outlined herein under the terms of the enabling provisions of the Saskatchewan Provincial Electrical Agreement currently in force."

Email, December 5, 2017, from Douglas to Sam Emke ["Emke"] at PCL (U3):

[22] This email reads:

> *The only records that the CLR has from 2038 enabling relates to the Enbridge Line 3 project. This enabling notice was sent out on June 1, 2017.*
>
> *I have confirmed that to date, our offices have not received any notice of enabling from 2038 relating to the Chinook power station project.*
>
> *Nevertheless, I will follow up with 2038 and see if what you say is true.*

Letter, December 6, 2017, from Douglas to Kovatch (U4):

[23] Douglas states, in part:

> *While a concern about our market price is equally shared by the CLR and our signatory contractors, what is more concerning is that:*
>
> 1. *The union is working around the CLR and potentially undermining our bargaining rights.*
> 2. *This activity violates the spirit and intent of the registration collective bargaining system in the province.*
> 3. *It appears that the union is picking and choosing individual signatory contractors to give favourable enabling terms, thereby effectively choosing winners and losers in the tendering process amongst the signatory contractors.*
>
> *[…]*
>
> *I am also concerned that if 2038 continues to operate in this fashion, potentially pitting signatory contractor against signatory contractor, we (the CLR, individual contractors and the union) will end up in more costly litigation, which none of us need. I would prefer to work this out ourselves.*

Letter, December 6, 2017, from Emke to Kovatch (U5):

[24] Emke wrote to communicate that he had learned that Kovatch was not willing to share the enabling details and that unions who are engaged in enabling are required to communicate their enabled provisions through the CLR to ensure that all contractors are on a level playing field.

Letter, December 18, 2017, from Kovatch to Douglas (U6):

[25] In this letter, Kovatch states:

> *Contrary to your assertion that IBEW 2038 advised you that it had enabled on signatory contractor for the Swift Current power station project, in fact, we did not admit to enabling any contractors whatsoever. However, IBEW 2038 admitted to you that it was aware that the bidder's list was by invitation only and that the only signatory contractor on that list was Chemco. It is true that the remaining bidders on that bidder's list were CLAC contractors. PCL was not on the bidder's list as a signatory contractor, but their CLAC representative, James Gold, as present at the mandatory meeting.*
> *[…]*
> *At no time did PCL Intracon (the signatory entity) send IBEW 2038 the Form "G" requesting enabling. In fact, had they forwarded the Form "G" as per the normal course, IBEW 2038 would have been happy to consider enabling PCL Intracon. IBEW 2038 is very interested in signatory contractors being competitive in their bids and this applies to all signatory contractors. IBEW 2038 did not pick and choose. There was only one signatory contractor on the "invite only" bidder's list. If PCL Intracon had indeed intended to bid on the project and wished for an enabling agreement, it could have forwarded the Form "G" to the IBEW 2038 offices, just like any other signatory contractor. They did not do so.*
>
> *It is important to note that IBEW 2038 did not have an enabling agreement in place on the date we spoke. We can however, advise that Chemco had forwarded the Form "G" seeking enabling and IBEW 2038 has entertained and granted that request. While you have suggested that the IBEW 2038 has worked around the CLR and potentially undermined the CLR's bargaining rights, we suggest otherwise. The CBA specifically addresses enabling and allows the union and the contractor to enter into such arrangements. Form "G", the document agreed to by the CLR, does not include any provision for the CLR's involvement. It is prepared by the contractor and presented to the unions. We query, however, did you send a similar letter to Chemco for their involvement in the potential breach, as you've suggested?*
>
> *[…]*
>
> *We agree litigation would be costly and our preference would be to avoid any further litigation. We can also agree that this matter is best worked out amongst ourselves but we do not include the non-signatory PCL entity as one of the parties to any such discussions. …Further, we do not intend to respond to Mr. Emke's letter of December 6, 2017, copied to you.*
>
> *[…]*

Email, December 19, 2017, from Douglas to Kovatch (U7):

[26] Via this email, Douglas invited Kovatch out for lunch for the following day, but the lunch did not occur on that date.

Email, January 29, 2018, from Jim Rawlings ["Rawlings"] to Douglas (U8):

[27] On this date, Rawlings forwarded an email he had sent to Kovatch attaching a completed enabling form for the Rocanville project.

Email, February 1, 2018, from Douglas to Kovatch (U9):

[28] In this email, Douglas advised that he had been made aware of the Union providing enabling or potential enabling on two projects, plus commercial sector enabling. He went on:

> *As stated in my letter of December 6, I would like to see if CLR and Local 2038 can work out a reasonable solution to the enabling process. I would prefer to start the discussions with just you and me in the room, as others (from both sides) may add some distractions to the discussions.*
>
> *Please get back to me as soon as possible with some suggested dates and times for the 2 of us to talk.*
>
> *If I don't hear from you in a [sic] the near future, I may be forced to launch some more formal processes, which both of us agree in our respective letters of December 6 and 18th that we would prefer to avoid.*

Email, February 6, 2018, from Douglas to "Electrical Contractors" (U10):

[29] Douglas wrote to provide notice to electrical contractors that the Union had offered enabling on the Rocanville project, attaching the signed Form "G". Douglas wrote that it is the CLR's practice to share the information with active employers in the trade division, being that it is not aware of which contractors are tendering bids.

Warren Douglas Calendar (U11):

[30] The calendar noted the date of the lunch meeting between Kovatch and Douglas, being February 6, 2018.

Email, February 9, 2018, from Emke to Kovatch (U12):

[31] Emke emailed Kovatch to provide information about PCL's grievance:

> ***PCL is filing the following grievance.***
>
> ***Re: Grievance against IBEW 2038 in regard to the Chinook Power Station Project***
> ***Company/Employer Name:*** *PCL Intracon Power Inc. (PCL)*
> ***Union:*** *International Brotherhood of Electrical Workers Local 2038*
> ***Site:*** *Chinook Power Station*
> ***Articles of the Collective Bargaining Agreement (CBA) Violated:*** *Article 2.01, Appendix G and any other relevant provisions of the CBA*
> ***CBA dated:*** *January 11, 2015 covering the period to April 30, 2017*
> ***Nature of the Grievance:***
> *Local 2038 has negotiated special conditions with respect to the Chinook Power Station Project in violation of the terms of the Collective Bargaining Agreement.*
> ***Relief requested:***
> - *A declaration that Local 2038 has violated the CBA.*
> - *Damages be awarded to PCL as a result of the violation.*
> - *Such further and other relief as may be considered appropriate.*

Email, February 22, 2018, from Douglas to Kovatch (U13):

[32] Douglas wrote to Kovatch, in this email:

> *Following up on our discussion of February 6th regarding enabling offered by 2038. You have had a bit of time to think here, do you have a suggested path forward?*
>
> *Also, Please [sic] send me the details of the enabling that was provided to Chemco for the Chinook power station project.*

Email, April 12, 2018 and attached letter, dated April 12, 2018, from Douglas to Kovatch (U14):

[33] Kovatch wrote to Douglas, referring to a hallway discussion on March 28:

> 1. *You indicated that, contrary to what I had been advised by others, while the Local was dealing with differing requests for enabling for a project from different contractors, the Local had not yet awarded the enabling on that project and that if it chose to do so, it would offer the same deal to contractors contemplating bidding that work.*
> 2. *You understood the CLR's position and indicated that you were willing to work with us to resolve the issue and include the CLR in the enabling process.*
>
> *I have been awaiting your follow up on this and have since noted that the Local has yet to provide the requested information regarding the Chinook Power Station Job (a.k.a. Swift Current power station), which I had requested both in person on February 6th, 2018 and via email on February 22nd, 2018. After further review, it appears that the local is simply ignoring my repeated requests.*
>
> *The CLR is now formally requesting that Local 2038 provide copies of all approved enabling requests from January 1 2017 until now and going forward, outlining: 1) the project, 2) the detailed enabled terms and conditions and 3) the contractors who were notified of such enabled terms and conditions. Kindly provide this to me by the end of business on Friday April 20th, 2018.*
>
> *It is unfortunate that it appears that, based on the union's approach to this situation, the CLR will have no other option but to launch a formal legal challenge on this matter. I look forward to your reply and hopefully true willingness to bring this matter to a mutually beneficial resolution.*

Email, April 20, 2018, attaching letter dated April 13, 2018, from Kovatch to Douglas (U15):

[34] Kovatch wrote to Douglas stating:

> *Regarding your letter dated April 12, 2018 requesting all enabling requests, approved by me, from January 1st to present. I believe you are looking specifically for the enabling at Chinook Power Station. As I've previously stated, we don't believe that you have any need of that information since we were satisfied that no other union contractors were bidding or eligible to bid that work. As well, that job has been awarded already and don't see the significance of providing the details to you.*
>
> *Can you please explain why you need that information?*

[35] Although the Board has not quoted each and every word of the aforementioned documents, it has reviewed all of the documents in full.

Maurice Kovatch ["Kovatch"]

[36] The Union called Kovatch as its sole witness.

[37] Kovatch described certain events related to bidding on a project for the Chinook Power Station, which was an open site. The Union received an enabling request from one of the signatory contractors, Chemco. Kovatch explained that the Union does not "offer" enabling, but rather, the contractor assesses its needs, and then makes the request of the Union, which the Union evaluates. There were four bidders on the project, one of which was PCL. The Union decided to enable Chemco for purposes of the bid.

[38] Douglas reached out to Kovatch in or around December 5, 2017 to inquire whether enabling had taken place, and to ask for a copy of the enabling document. A meeting was held. At the meeting, Kovatch advised that he would provide the requested information upon receipt of the name of a contractor that was eligible to bid under its union arm. Kovatch was concerned about releasing the information to PCL, a contractor who was operating through both a CLAC and a building trades arm. CLAC was already on site, and Kovatch wanted to ensure that PCL was bidding under the building trades arm before providing the requested information. On cross, Kovatch allowed that the meeting got heated and that Douglas accused the Union of working around the CLR.

[39] Kovatch assumed that if PCL viewed the information, they would be able to adjust their bidding accordingly, to its advantage. He felt that this was unfair. Kovatch stated that, as far as he knew, Chemco was the only union bidder and so was the only contractor entitled to the enabling information.

[40] Kovatch testified that, by the time of the December 18 letter he had not completed Chemco's enabling agreement. This contradicts Kovatch's statements in the letter, to the effect that "Chemco had forwarded the Form "G" seeking enabling and IBEW 2038 has entertained and granted that request". On February 6, 2018, Kovatch and Douglas went for the long-awaited lunch, described as Douglas' "treat". They discussed the issue of enabling, the challenges with ensuring that members continue to obtain jobs, and the pressures that Douglas was experiencing

from the contractor side. On cross, Kovatch acknowledged that, at the end of the meeting he had agreed to think about “it”, although it was unclear what “it” was.

[41] Kovatch explained Rawling’s correspondence to Douglas. It is not Kovatch’s responsibility to provide enabling information to the CLR. There is certainly nothing in the Collective Agreement that creates such an obligation.

[42] Kovatch explained that if contractors choose to provide enabling information to the CLR, that is their choice. If there were other union bidders, within the knowledge of the parties, the Union would have shared the requested information. Granted, the Union bargains with Douglas and the CLR. Kovatch would allow that much.

[43] On cross, Kovatch acknowledged that he did not respond to the February 22 email, but could not recall why not. If anything, it was not a deliberate omission. Kovatch and Douglas again spoke after a meeting in or around March 28, 2018. As for the letter dated April 20, 2018, Kovatch denied that he sent it at the last possible opportunity.

[44] Kovatch agreed that no files had been destroyed or witnesses lost (through relocation or final departure) in the interim period.

[45] Kovatch could not recall the exact date that he signed the enabling for Chemco, but it was sometime after December 18, whether in December 2017 or January 2018, but not after January.

Warren Douglas [“Douglas”]

[46] The CLR called Douglas as its sole witness.

[47] The CLR is the representative employer organization for approximately 16-18 trade divisions, negotiating collective agreements on behalf of contractors in the industry. The industry is complex, transient, and consists of a variety of bargaining relationships. There are single and multi-trade contractors, as well as exclusively union, mixed union, and non-union companies. Practices, such as site visits, have evolved such that contractors are often unaware of who is involved in the bidding process. By extension, the CLR only rarely has knowledge of the bidding process on a specific job.

[48] When asked at what point Douglas became aware of the timing of the finalization of the enabling agreement, Douglas explained that he had learned of it that day, at the hearing.

[49] Douglas talked about the various interactions with Kovatch in late 2017 and early 2018. He saw the December 18 letter as positive, and even conciliatory, and so he invited Kovatch to lunch in an effort to find some common ground. But then, in mid-January Douglas had a conversation with a commercial contractor who explained that he had been working with the Union and "regularly" "getting enabling". On January 29, Douglas received an email, sent by a contractor, about the Union enabling the Rocanville project.

[50] By February 22, he understood that the Union had provided enabling to Chemco, but was unaware of the terms and conditions. He wanted to give Kovatch time to come up with options, as the issue was not isolated to the Chinook project. Douglas felt like Kovatch was stringing him along, and the reply on February 20 felt like more of the same. Kovatch seemed to be focusing on Chinook, while ignoring the context and all of the higher level conversations, to avoid resolving the bigger issue.

[51] According to Douglas, Article 2:01 is the closest reference in the Collective Agreement to the issue involving the enabling agreements.

[52] On cross, Douglas described an earlier instance in which the Union was dealing directly with a contractor on enabling. On re-exam, Douglas explained that the incident took place around May 2017 and that the contractor provided the enabling form to the CLR. He tried to verify with the Union whether the details were accurate, but when Kovatch did not reply, he shared the information, copying Kovatch. At the time, he took this as a one-off situation.

[53] He acknowledged that on December 4 he had received a call from a PCL representative. He could not recall if on December 5 he had asked whether the Union deals directly with contractors on enabling. In mid-January Douglas was advised of a variety of enabling relationships in the commercial sector but did not file unfair labour practice applications in relation to those circumstances. He has been trying to seek a resolution to the problem, and by February 1, he realized that it was becoming a larger issue, even a pattern of behavior.

[54] Douglas was concerned that the Union was circumventing the CLR's bargaining rights, and acknowledged that his very first letter raised the issue of litigation. He acknowledged that the Union's position has not changed since its letter of December 18.

[55] Finally, he acknowledged that certain forms, appended to the Collective Agreement, are not received by the CLR on a regular basis, and that the CLR does not take the position that it is entitled to those forms.

Relevant Statutory Provisions:

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

> ***6-45****(1) Subject to subsections (2) and (3), all disputes between the parties to a collective agreement or persons bound by the collective agreement or on whose behalf the collective agreement was entered into respecting its meaning, application or alleged contravention, including a question as to whether a matter is arbitrable, are to be settled by arbitration after exhausting any grievance procedure established by the collective agreement.*
> *[…]*
>
> ***6-63****(1) It is an unfair labour practice for an employee, union or any other person to do any of the following:*
> *[…]*
> *(h) to contravene an obligation, a prohibition or other provision of this Part imposed on or applicable to a union or an employee.*
>
> ***6-70****(1) When an employers' organization is determined to be the representative employers' organization for a trade division:*
> *(a) the representative employers' organization is the exclusive agent to engage in collective bargaining on behalf of all unionized employers in the trade division;*
> *(b) a union representing the unionized employees in the trade division shall engage in collective bargaining with the representative employers' organization with respect to the unionized employees in the trade division;*
> *(c) a collective agreement between the representative employers' organization and a union or council of unions is binding on the unionized employers in the trade division;*
> *(d) no other employers' organization has the right to interfere with the negotiation of a collective agreement or veto any proposed collective agreement negotiated by the representative employers' organization; and*
> *(e) a collective agreement respecting the trade division that is made after the determination of the representative employers' organization with any person or organization other than the representative employers' organization is void.*
> *(2) If an employers' organization is determined to be the representative employers' organization for more than one trade division, only the unionized employers in a trade division are entitled to make decisions with respect to negotiating and concluding a collective agreement on behalf of the unionized employers in that trade division.*
> *(3) Subsection (1) applies to the following:*
> *(a) an employer who subsequently becomes a unionized employer in a trade division;*
> *(b) a unionized employer who subsequently becomes engaged in the construction industry in a trade division.*
> *(4) A unionized employer mentioned in subsection (3) is bound by any collective agreement in force for a trade division at the time the employer:*
> *(a) becomes a unionized employer in a trade division; or*
> *(b) becomes engaged in the construction industry in a trade division.*

(5) Notwithstanding subsection (1), a unionized employer is responsible for settling disputes mentioned in section 6‑45.

***6‑65** In this Division:*
[…]
*(d) "**representative employers' organization**" means an employers' organization that:*
(i) is the exclusive agent to engage in collective bargaining on behalf of all unionized employers in a trade division; and
(ii) if applicable, may be a bargaining agent to engage in collective bargaining on behalf of unionized employers that are parties to a project agreement;
*(g) **"unionized employee**" means an employee who is employed by a unionized employer and with respect to whom a union has established the right to engage in collective bargaining with the unionized employer;*
*(h) "**unionized employer**", subject to section 6‑69, means an employer:*
(i) with respect to whom a certification order has been issued for a bargaining unit comprised of unionized employees working in a trade for which a trade division has been established pursuant to section 6‑66; or
(ii) who has recognized a union as the agent to engage in collective bargaining on behalf of unionized employees working in a trade for which a trade division has been established pursuant to section 6‑66.

***6‑111**[…]*
(3) Subject to subsection (4), the board may refuse to hear any allegation of an unfair labour practice that is made more than 90 days after the complainant knew or, in the opinion of the board, ought to have known of the action or circumstances giving rise to the allegation.
(4) The board shall hear any allegation of an unfair labour practice that is made after the deadline mentioned in subsection (3) if the respondent has consented in writing to waive or extend the deadline.

Analysis:

Onus of Proof:

[57] The Union bears the onus of demonstrating that the application for dismissal or deferral should be granted: *Mosaic Potash ULC (Re),* [2016] SLRBD No 32, at paragraph 12 ["*Mosaic Potash*"]. On the issue of timeliness, the Union bears the evidentiary burden to demonstrate that the respondent has surpassed the 90-day period. Once that onus is met, the CLR bears the evidentiary burden of demonstrating that there are countervailing considerations that justify the Board exercising its discretion to allow the application outside of the 90-day period: *Re Swift Current (City)*, [2014] SLRBD No 4, at paragraph 29 ["*Swift Current*"].

Timeliness:

[58] In determining whether the application should be dismissed for want of timeliness, the Board is bound by subsections 6-111(3) and (4) of the Act, which read:

> ***6-111****[…]*
> *(3) Subject to subsection (4), the board may refuse to hear any allegation of an unfair labour practice that is made more than 90 days after the complainant knew or, in the opinion of the board, ought to have known of the action or circumstances giving rise to the allegation.*
>
> *(4) The board shall hear any allegation of an unfair labour practice that is made after the deadline mentioned in subsection (3) if the respondent has consented in writing to waive or extend the deadline.*

[59] The Board is guided by the established case law interpreting and applying subsections 6-111(3) and (4) of the Act. Then Vice-Chairperson Mitchell considered the legal principles underlying these subsections in *Mosaic Potash*, citing and adopting the Board's decision in *Saskatchewan Polytechnic Faculty Association v Saskatchewan Polytechnic*, [2016] SLRBD No 22; 2016 CanLII 58881 ["*Sask Polytechnic*"]. In *Sask Polytechnic*, the Board outlined the following "salient principles", at paragraph 18:

- *Applications alleging an unfair labour practice must be filed within 90 days after the applicant knew or ought to have known about the misconduct giving rise to the allegation (ss.6-111(3)).*
- *The 90 day limitation period reflects the fact that time is of the essence in addressing labour relations disputes and timely resolution of such disputes is essential to ensuring amicable labour relations in Saskatchewan (Dishaw, at para. 36; Peterson, at para. 29; SGEU, at paras. 13-14).*
- *It is important to identify with precision when the 90 day limitation commences. Typically, the alleged misconduct will be founded upon a particular fact situation and the clock starts running from that date (SGEU, at para. 29).*
- *A complaint may be based on a "continuing policy or practice rather than a discrete set of events". This fact makes it more difficult to ascertain the commencement of the 90 day limitation period and may make it easier to justify a delay (Toppin, at para. 29; SGEU, at para. 30).*
- *The Board will adjudicate applications filed outside the 90 day limitation period provided the other party consents or otherwise waives the application of the limitation period (ss. 6-111(4)).*
- *Where no such consent or waiver is given, the Board possesses discretion to adjudicate the application (ss. 6-111(3); SGEU, at para. 24).*
- *When exercising this discretion, the Board should apply the non-exhaustive list of counter-vailing factors identified in Toppin (SGEU, at paras.26-27; Toppin, at para. 30)*
- *Prejudice is presumed in all late filings; however, if actual prejudice could result from hearing the application it will be dismissed.*

[60] The Board will proceed to apply these principles to the facts of this case.

[61] The first question is, when did the 90-day period begin to run? The language in subsection 6-111(3), which is pertinent to this analysis, reads: “is made more than 90 days after the complainant knew or, in the opinion of the board, ought to have known of the action or circumstances giving rise to the allegation”. The question, therefore, is when did the applicant, being the CLR, know or ought to have known of the action or circumstances giving rise to the allegation? In considering this question, the Board makes a prerequisite determination, that is, what is the action or circumstance giving rise to the allegation?

[62] The CLR’s allegation is that the Union committed an unfair labour practice, pursuant to clause 6-63(1)(h) of the Act, by contravening “an obligation, a prohibition or other provision of this Part imposed on or applicable to a union or an employee”. The obligation allegedly contravened is found in section 6-70, which establishes that the REO is the exclusive agent to engage in collective bargaining on behalf of all unionized employers in the trade division and that the union representing the unionized employees in the trade division shall engage in collective bargaining with the REO with respect to the unionized employees in the trade division.

[63] According to the CLR, the core dispute pertains to the Union’s failure to recognize the CLR as the exclusive bargaining agent on behalf of the unionized employers in the trade division. The underlying facts are those related to the Chinook project, but the issue is more principled, and it is ongoing. The Union has demonstrated a pattern of dealing directly with contractors to enter into enabling agreements. As far as the Chinook project is concerned, the CLR did not know until the date of the hearing when exactly the Union enabled Chemco. There were a number of communications around the issue from December 2017 until shortly before the Application was filed, in an attempt to resolve the issue outside of the litigation process.

[64] The issue, from the CLR’s perspective, may be grounded on principle, but it arises from facts, and the underlying facts comprise the Chinook job, the related enabling agreement, and Kovatch’s position on providing the information. The consequent question, therefore, is when did the CLR know or ought to have known, about the enabling agreement and Kovatch’s position on providing information about same? This date will be referred to the commencement date, for the purpose of commencing the 90-day period.

[65] According to the CLR, the commencement date is April 20, 2018, the date of the letter in which Kovatch indicates that, as “previously stated”, the Union did not believe that the CLR would have any need of the Chinook enabling information. Predictably, the Union suggests that the

commencement date is much earlier, either at the beginning of December or, at the latest, on December 18, 2017, which is when Kovatch's letter set out the Union's position. In that letter, Kovatch wrote that he had not previously admitted to "enabling any contractors whatsoever" but could "advise that Chemco had forwarded the Form "G" seeking enabling and IBEW 2038 has entertained and granted that request."

[66] The Board has considered the evidence and selected December 18, 2017 as the commencement date for the 90-day period. It was on this date that Kovatch advised Douglas that Chemco had forwarded the Form "G" and the Union had granted that request. As further support for the Board's finding, the past tense is used throughout the letter to refer to the enabling process in issue. Kovatch, in his testimony, suggests that he may have signed the enabling form after December 18, and possibly in January. As is not uncommon, Kovatch's testimony is not as reliable as the text of the letter, especially given his uncertainty about the exact date. It is therefore likely that the enabling agreement had already been signed by December 18.

[67] As of December 18, the Union was communicating its position in relation to the CLR's involvement in these particular circumstances. Kovatch stated that it had granted Chemco's request, Form "G" "does not include any provision for the CLR's involvement", and that it "takes issue with the enabling information being shared with non-signatory contractors". Albeit, Kovatch makes some statements that seem to muddy the waters. For example, he suggests that, at the time of the phone call, Chemco and the Union had not reached an agreement, which could reasonably have been taken to suggest that circumstances had changed and that Kovatch was amenable to exploring solutions, as it was not his "intention to exclude the CLR from the enabling process".

[68] Nonetheless, it should have been clear to the CLR at this point that the Union had either entered into the enabling agreement with Chemco, while deliberately not providing that information to the CLR, or had decided to communicate to the CLR that it had done so, and was therefore setting out its position. Whether the Union did or did not *intend* to exclude the CLR, does not change the fact that it had. Kovatch's seeming willingness to enter into discussions with Douglas does not change the nature of the concerns; it merely suggests that the parties explored alternative avenues for resolving them. Lastly, even if the Board preferred Kovatch's testimony about finalizing the agreement later, it could choose a date later than December 18, 2017 only by overlooking the core issue in this dispute, which is the Union's resistance to providing information about the enabling agreement. Due in part to that resistance, there is no precise finalization date

before the Board. Given Kovatch's refusal to provide the requested information, and Douglas' suggestion that he was being strung along, the CLR's argument may be taken to suggest that the limitation period could extend indefinitely. This is the case, in part, because there is little to distinguish what the CLR ought to have known on December 18 from what it ought to have known on April 20, the CLR's suggested date.

[69] For these reasons, the Board determines that the 90-day period began to run on December 18, 2017. With December 18, 2017 having been held as the commencement date, it is clear that the application should have been filed with the Board no later than March 19, 2018. The application, having been filed on May 23, 2018, has therefore been filed over nine weeks late.

[70] Subsection 6-111(3) is clearly a permissive and therefore discretionary provision. Therefore, the next question is whether the Board should exercise its discretion pursuant to subsection 6-111(3) to hear the application despite finding that it was filed after the 90-day period had expired.

[71] The Board starts with the premise that labour relations prejudice is presumed in all cases of delay. Certainly, labour relations prejudice is always a concern. As demonstrated in *Sask Polytechnic*, a case in which the delay totaled only five weeks, an applicant may be given more leniency when there is only slight delay, especially absent specific evidence of litigation prejudice.[3] While the delay in the current case is lengthier, it does not approach the ten-month delay in *Mosaic Potash*, which necessitated "compelling reasons" but still fell short of "extreme".[4] The Board notes further that, as of the date of the hearing, no evidence had been lost due to demise or destruction. The passage of time does not appear to have undermined the Union's ability to mount a defense to the CLR's application.

[72] The next factor relates to whether the applicant is a sophisticated party, in the context of labour relations matters. If sophisticated, there is further reason to expect diligence from the applicant in pursuing the application. The Board accepts that the CLR is a sophisticated party. The CLR should have been aware of the relevant timelines. It should have been aware that the window was closing, even while it was attempting to resolve the matter through alternative means.

---

[3] See, para 25.
[4] At para 24.

It could have filed an application with the Board to put the Union on notice prior to the expiry of the 90-day timeline. On the other hand, the surprise occasioned by the application was likely minimal given the recurring warning of litigation disclosed in the written correspondence between the parties.

[73] The next factor considers why the delay occurred, and necessitates a balancing exercise in the assessment of these reasons. The CLR insists that it took a conciliatory approach to its concerns, attempting to resolve the matter outside of the Board's process prior to filing its Application. Nonetheless, at a certain point, Douglas felt that he was being strung along and decided that he needed to put his foot down and push forward.

[74] The CLR states that the Board should avoid discouraging the approach that it took in this case, relying on the Board's comments in *Sask Polytechnic*, to the following effect:

> *[28] SPFA's counsel submitted further that were the Board to dismiss SPFA's application as being out-of-time, it would discourage conciliatory attempts to resolve industrial relations disputes rather than immediately initiating adversarial processes such as grievance arbitrations or applications to the Board. The Board accepts counsel's submission to a point. At the same time statutorily imposed time lines are there for a reason, namely to ensure the expeditious resolution of such disputes. In SGEU, for example, the Board repeated the oft-quoted maxim that "labour relations delayed are labour relations defeated and denied".[15] Even the best of intentions cannot displace the operation of a stringent statutory requirement like that found in subsection 6-111(3) of the SEA.*
>
> […]
>
> *[30] Finally, we are satisfied that SPFA did not intentionally ignore the statutory limitation period, but rather made a sincere effort to investigate a possible compromise before filing its unfair labour relations application, an effort that was hindered – but only in part – by the summer months. However laudable the approach adopted by SPFA in this matter may be, in future they must be mindful of, and respect, statutory pre-requisites to the commencement of applications of this kind.*

[75] In the current case, the CLR should have been aware of the passage of the 90-day limitation period. It is important that parties before the Board show respect for and deference to the statutorily imposed timelines and the Board's processes. As the Board noted in *Mosaic Potash*, the legislature has determined that unfair labour practice applications should be initiated with reasonable dispatch, given the likelihood for "serious industrial relations strife" in the relevant workplace.[5]

---

[5] At para 14.

[76] Nonetheless, Kovatch and Douglas were having ongoing discussions in a seeming effort to come to a mutual understanding. The CLR preferred not to enter into costly and time-consuming litigation, and so it made ongoing and repeated efforts to find an alternative avenue to resolve the parties' differences. Douglas did not sit back while time passed by. He revisited his concerns and attempted to move forward, by repeatedly requesting the enabling information from Kovatch. Over the course of his multiple attempts, it became increasingly clear that his concerns were not isolated or minimal, and so he concluded that formal legal action was the only, or best available, alternative recourse.

[77] In *Mosaic Potash*, "the Union's fervent hope that the Employer would in time reverse itself", even after the employer had hired workers to fill newly created positions, was unreasonable, and the Board concluded that the Union's "wishful thinking" could not justify its delay.[6] The current case is distinguishable. While Kovatch made his position clear in December, 2017, he remained open to discussion, leading Douglas to believe that there was room to negotiate a mutually beneficial solution. While in the end it became clear that Douglas' hopes were not to materialize, his wishful thinking was more optimistic than misguided, and was not unreasonable under the circumstances.

[78] The Board is not interested in discouraging "conciliatory attempts to resolve industrial relations disputes".[7] Instead, the Board agrees with *Sask Polytechnic* that it should encourage parties' efforts to resolve matters as between them, wherever possible. Doing so supports the Board's vision in promoting a balanced, transparent, healthy and effective labour relations environment in Saskatchewan.

[79] The Board agrees with the CLR that there are countervailing considerations which operate in favor of the Board to refuse to exercise its discretion to dismiss for lack of timeliness.

[80] The CLR argues further, relying on *Toppin*, that delay should be excused in the case of a continuing policy or practice rather than a discrete set of events. But the evidence before the Board does not disclose a "continuing policy or practice", in the same manner or form, for example, as a policy for criminal records checks: *Saskatchewan (Re)*, [2009] SLRBD No 22, at

---

[6] At para 40.
[7] *Sask Polytechnic*, at para 28.

paragraph 30. In this case, a particular set of events gave rise to the CLR's concerns, not a written policy implemented through a formal process.

[81] The Union argues that the CLR's case is weak, and that this fact should tip the scales in favor of dismissing the application. While the Board heeds the guidance provided by *Toppin*, it does not accept that it is appropriate to wade into an assessment of the relative merits of the parties' respective positions in this case. Nor is it necessary. This case involves issues of principle with a potentially wide application, and is therefore relatively important, in theory.[8] *Toppin* suggests that the Board may consider relative importance in deciding whether to exercise its discretion. On the balance, therefore, this factor would militate in favor of allowing the underlying application to proceed.

Application for Deferral:

[82] The Board will defer to an arbitrator where an unfair labour practice application engages issues involving the interpretation of a collective agreement about which a grievance has also been filed. The Board does not grant a deferral automatically or unconditionally. In many cases, the Board's jurisdiction will be concurrent with that of the arbitrator, and as confirmed by the Board in *Canadian Union of Public Employees, Local 3736 v North Saskatchewan Laundry and Support Services Ltd.,* [1996] Sask LRBR 54, at 60, it is necessary for the Board to determine whether to exercise its discretion to defer based on its assessment of the particular facts of the case.[9]

[83] The analytical framework to apply on a deferral application was set out by the Saskatchewan Court of Appeal in *United Food and Commercial Workers, Local 1400 v Westfair Foods Ltd. et al.* (1992), 95 DLR (4th) 541, 1992 CanLII 8286 ["*Westfair Foods*"]

1. Is the dispute the same dispute?
2. Can the grievance process resolve the dispute?
3. Can the grievance process provide a suitable remedy?

[84] In an application for deferral in which a grievance has also been filed, it is necessary to compare the underlying application with the grievance filed. The relevant grievance, in this case, is the grievance filed by PCL.

---

[8] Albeit "relative importance" is admittedly somewhat vague, as all of the Board's cases are arguably important.

[9] As cited by the Board in *United Food and Commercial Workers, Local 649 v Federated Co-operatives Ltd*., [2018] SLRBD No 31; 2018 CanLII 68445 (SK LRB); LRB File Nos 171-17, 232-17, at para 9.

[85] The unfair labour practice application and the grievance engage the same circumstances, namely, the Union's enabling agreement in relation to the Chinook project. The Board agrees with the CLR's characterization of the grievance as pertaining to PCL's lost or allegedly lost opportunity to bid on the project, for which it seeks damages. By contrast, the current dispute was brought by the CLR and not PCL, and engages the concerns of the applicant who brought the application. It is therefore not restricted to PCL's lost opportunity, but engages the CLR's general desire to obtain information about the enabling agreement so as to inform contractors, such as PCL (but not restricted to PCL), to ensure equal bidding opportunities. Douglas explained that the CLR is rarely in possession of information related to the bidders for a job, and for that reason it provides the enabling information to all signatory contractors in order to ensure a level playing field.

[86] The underlying concerns are overlapping: both parties are concerned with the Union's refusal to provide the enabling agreement information and with the impact on the available information to potential bidders. The Board accepts, however, that the CLR's interest while overlapping with that of PCL is not identical to that of PCL. The CLR's interest extends to all of its signatory contractors.

[87] Nonetheless, it is not the legal characterization but the essential character of the dispute that carries the day. The essential character is informed by the underlying circumstances, which are the same in both cases, and the principal question, which in both cases asks about the nature of the Union's obligation in relation to the enabling agreement. And while two parties have brought two separate proceedings, the Board is not limited to considering a deferral only in circumstances where a proceeding has been pursued in another forum. The Board will proceed to explain.

[88] The Union argues that the CLR is not entitled to argue as a defense to the Union's Application that it has not elected to file a grievance. To be fair, the CLR has not made this argument. As well, the Board agrees that the CLR could not have relied on such a defense. In the same vein, the CLR cannot suggest that, because a third party characterized the dispute differently than it would have, that the differing characterization obviates the relevance of the parallel proceeding. Just as the absence of a second proceeding is not a defense to a deferral application, a second proceeding, characterized differently, is not a defense if arbitration is otherwise available and the essential character of the dispute falls under section 6-45.

[89] The Board in *Westfair* held that, even when an applicant has not elected to initiate a grievance, essentially the same three preconditions are necessary for determining whether the availability of a grievance procedure in a collective agreement is a relevant consideration.[10]

[90] In the first stage, it is necessary to define the dispute between the parties. If the essential character of the dispute arises out of the meaning, application or alleged contravention of a collective agreement, pursuant to section 6-45 of the Act, then it must be resolved through the grievance process. Section 6-45 establishes an exclusive jurisdiction model in relation to the matters set out therein.[11] In following this model, the courts recognize the proliferation of alternative dispute resolution avenues, facilitate and encourage the resolution of disputes through a single forum, and discourage parallel or overlapping proceedings.

[91] The CLR delineates its view of the dispute through its unfair labour practice application. In its application, it relies primarily on the Act and suggests that the Union's obligation is grounded in section 6-70. But while the CLR requests a declaration that the Union has breached section 6-70, it also seeks an order "to abide by the Collective Agreement requirements on a go forward basis". One has to ask how the Union could possibly follow an order to abide by the Collective Agreement requirements without the relevant decision-maker first making a determination and outlining its description of those requirements in the decision from which the order emanates.

[92] The Union suggests that the dispute is about the proper interpretation of the Collective Agreement, but that an interpretation of the Collective Agreement discloses that there is no obligation to provide the requisite information. The Union relies for this proposition, as well, on Form "G", which it characterizes as void of any need for the CLR's input or information. The Union insists that there can be no additional, overriding, or supplemental obligation arising from the legislation.[12] At the same time, if there is an obligation on the Union, the obligation would be set out in the Collective Agreement.

[93] In both cases, the parties acknowledge that the dispute pertains to the existence, nature, and extent of the Union's obligation to provide the enabling information to the CLR, and by extension to the CLR's signatory members. The Union suggests that if the obligation is not found

---

[10] *Westfair,* at para 17.
[11] *PCL Intracon Power Ltd.,* [2017] SLRBD No 32, 2017 CanLII 68787 (SK LRB) ["*PCL Intracon*"], at para 28, citing *Weber v Ontario Hydro*, [1995] 2 SCR 929.
[12] This point was made in oral argument.

in the Collective Agreement, then it does not exist. The CLR suggests that the obligation is rooted in the exclusive bargaining agent relationship created by section 6-70 of the Act.

[94] The Board agrees with the Union, to the extent that the Collective Agreement, specifically Article 2:01, is the source of the parties' agreement to allow the negotiation of special conditions for special jobs during the life of the agreement. The Collective Agreement must therefore be a starting point in assessing the Union's obligations in relation to the enabling process. Specifically, there may be a question as to the meaning and relevance of the phrase "mutual consent" and the role of the "parties" for that purpose. There may also be a question as to the significance of Form "G". More generally, the arbitrator has jurisdiction to consider and apply laws of general application in interpreting the provisions of the Collective Agreement. If that jurisdiction is found to be limiting, resulting in unresolved issues, then the parties may bring the matter back before the Board.

[95] The CLR seems to urge the Board to review the Collective Agreement with a view to concluding that it is so skeletal as to necessitate the Board's reliance on the Act. Clearly, the Board cannot skip over the Collective Agreement and proceed immediately to the Act, and in so doing, pre-determine the issues on the merits.

[96] The second question is whether the grievance process can resolve the dispute. As the Board confirmed in *PCL Intracon*, this question necessitates only a consideration of whether an arbitrator is authorized to assume carriage over the dispute, not whether an arbitrator is empowered to resolve the entire dispute.[13] There is no question whether an arbitrator is able to determine whether the Union is obliged, pursuant to the Collective Agreement, to provide the CLR with enabling information. That said, an arbitrator in interpreting the Collective Agreement could dispose of the bulk of the dispute, by delineating an obligation, if any is found.

[97] The third question is whether the grievance process provides a suitable remedy. The remedies in both forums need not be the same but the available remedies in the grievance forum must be a suitable alternative.[14] To be sure, an arbitrator's remedial powers are limited. First, an arbitrator does not have jurisdiction to award remedies for a breach of clause 6-63(1)(h) of the Act. Second, it is unlikely that the PCL grievance would result in "[f]ull disclosure of all past enabling activities from January 1, 2017".

---

[13] At para 42.
[14] *PCL Intracon*, at para 44.

[98] The Union suggests that, should an arbitrator interpret the Collective Agreement so as to find that the Union is obliged as alleged, that will be the end of the matter. The Board agrees that, if an arbitrator determines that such an obligation exists, the dispute will be either fully or substantially resolved. The remedies will not be equivalent to those requested in the unfair labour practice, but will have the effect of defining permissible conduct.

[99] The Board notes that in the PCL grievance, PCL asked for a declaration that the Union had violated the collective agreement. To determine whether the Union violated the Collective Agreement, the arbitrator would have to decide whether the Union failed in not providing the information to PCL, through the CLR, who had initially requested it.

[100] Furthermore, in the unlikely event that the facts in the PCL grievance are presented in a way that prevents the arbitrator from defining the contours of the obligation, specifically in relation to the CLR, the grievance process remains available to the CLR. Under the right circumstances, the Board's process may also remain open to the parties, should an arbitrator decline jurisdiction over the dispute.

Conclusion:

[101] Accordingly, for the foregoing reasons, the Board declines to exercise its jurisdiction to dismiss for want of timeliness, and concludes that the underlying application should be deferred to the grievance/arbitration process.

[102] In addition, the Board directs that the unfair labour application be adjourned *sine die* on the condition that it may be brought back before the Board by either party on notice to the other side, should there be outstanding issues not decided by the arbitrator.

[103] The Board makes the following Orders pursuant to section 6-103 of the Act:

1. THAT the CLR's unfair labour practice application designated LRB File No. 117-18 is deferred until the grievance/arbitration process is concluded.
2. THAT LRB File No. 117-18 is adjourned *sine die* such that it may be renewed before the Board by either party on notice to the other side should there be outstanding issues not resolved by the grievance/arbitration process.

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

DATED at Regina, Saskatchewan, this **22nd** day of August**, 2019.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson