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Dear Mr. Hrycan, Ms. Robertson and Mr. Talbot:

**Re: LRB File No. 192-19: David B. Lapchuk v Saskatchewan Government and General Employees' Union and Government of Saskatchewan**
**Application for Production**

**Background:**

**[1]** On August 26, 2019, the Applicant in this matter, David Lapchuk ["Applicant"], filed an Application for Production by Saskatchewan Government and General Employees' Union ["Union"] in which he requested the following Orders:

1. An Order requiring the Respondent SGEU to produce the original of the Authorization/Release provided to Applicant's counsel on or about February 28, 2019.
2. An Order requiring the Respondent SGEU to produce the complete Authorization/Release document, including the Power of Attorney, provided to Applicant's counsel on or about February 28, 2019.
3. An Order requiring the Respondent SGEU to produce the metadata for the entry of the Authorization/Release referred to in #1 supra, in the UnionWare system.
4. An Order requiring the Respondent SGEU to produce the metadata for the screenshot of the Authorization/Release provided to Applicant's counsel on or about March 1, 2019.
5. An Order stating which individuals had access to Mr. Lapchuk's files during the term of the grievance arbitration proceeding.
6. An Order requiring the Respondent SGEU to produce the original of the Authorization which was provided on or about November 1, 2018 to counsel for SGEU.
7. An Order requiring the Respondent SGEU to disclose the entire email correspondence between Ms. Amor and the Applicant.
8. An Order requiring the Respondent to disclose the complete Union file on the above noted grievance.

9. An Order requiring the Respondent SGEU to disclose the notes of any witnesses who will be testifying.
10. An Order requiring the Respondent SGEU to disclose the "additional documentation" referenced in their counsel's letter to Applicant's counsel dated April 7, 2019.
11. An Order requiring the Respondent SGEU to produce copies of the documents relied upon by Leslie Peace in performing his examination.

**[2]** The Applicant makes this Application on the basis that the requested information is required with respect to his two applications[1] against the Union and the Government of Saskatchewan ["Employer"], alleging contraventions of sections 6-4, 6-58 and 6-59 of *The Saskatchewan Employment Act* ["Main Applications"].

**[3]** The Application for Production was filed after the Applicant had closed his case. It followed the disclosure by the Union to the Applicant of an Authorization for Release of Information to the Union dated April 24, 2015 ["Authorization"]. The Applicant apparently signed both parts of the Authorization, first authorizing the Union to obtain certain information, and then declining to consent to the disclosure of any information. The Applicant takes issue with the authenticity of this document and, in particular, his signature declining to consent to the disclosure of information. This document, which was provided to the Applicant by the Union on February 28, 2019, was discovered by the Union following further investigation of their records after the Applicant provided the same document to the Union, in which only the consent to disclosure was signed[2]. At this point, the Authorization has not been entered into evidence before the Board nor has any of the other information that the parties have obtained respecting its authenticity.

**[4]** When the Board convened on September 13, 2019 to consider the Application for Production, the Applicant raised an objection to his own Application. He argued that it would be *ultra vires* for the Board to order the production of the documents requested. On October 21, 2019 the Board reconvened to consider both the jurisdiction and production issues.

**Jurisdiction:**

*Argument on behalf of the Applicant*

**[5]** The Applicant argues that, since his position is that the Authorization is a forgery, an attempt by either party to tender it into evidence would require the Board to make a

[1] LRB Files No.353-13 and 263-16.

[2] There is a dispute between the parties as to whether the Applicant provided the first document to the Union on November 1, 2018 or February 21, 2019. For the purpose of deciding this Application it is unnecessary to resolve that issue.

determination regarding whether it is a forgery and whether an employee of the Union forged it. Forgery is a crime contrary to section 366 of the *Criminal Code*. Criminal law is within the exclusive jurisdiction of the federal government. Since the Board is created by the provincial government, it does not have jurisdiction to make determinations under the *Criminal Code*. The obligation placed on the Board in considering the Authorization would effectively require it to function as a criminal court. The Applicant relies on the following passage from the headnote for *Starr v Houlden*[3] ["*Starr*"] in support of its position:

> *The Commissioner, while specifically prevented from making a determination of criminal responsibility, could nevertheless do so by implication. A finding of intent, once the findings of fact are made regarding the existence of dealings and benefits, is almost an irresistible inference. It is a reasonable inference that persons can be presumed to have intended the natural consequences of their acts. The Commissioner need not make findings of guilt in the true sense of the word for the inquiry to be ultra vires the province. It suffices if the inquiry is in effect a substitute police investigation and preliminary inquiry into a specific allegation of criminal conduct by named, private citizens*

**[6]** The Applicant argues that a finding by the Board that the document was forged would in effect be a finding of criminal liability.

**[7]** The Applicant rejects the applicability of *Hartwig v Commission of Inquiry into matters relating to the death of Neil Stonechild*, stating that in that case, there was only the existence of a bare possibility the conduct in question could be criminal. He noted the following comment:

> *A variety of other Supreme Court decisions have also upheld the validity of non-judicial agencies established by provinces to inquire into potentially criminal activity. See: Di Iorio v. Warden of the Montreal Jail, 1976 CanLII 1 (SCC), [1978] 1 S.C.R. 152; Faber v. The Queen, 1975 CanLII 12 (SCC), [1976] 2 S.C.R. 9; Phillips v. Nova Scotia, 1995 CanLII 86 (SCC), [1995] 2 S.C.R. 97.*[4]

Here, he says, the investigation into the authenticity of the Authorization is a criminal investigation, not an inquiry into potentially criminal activity.

*Argument on behalf of the Employer*

**[8]** While the Employer takes no position on the Application for Production, it did provide helpful argument with respect to the jurisdiction issue. The Employer argues that *Starr* does not stand for the proposition that any matter that tangentially engages criminal conduct causes a provincial administrative tribunal like the Board to lose jurisdiction. *Starr* stands for the proposition that the province cannot exceed its constitutional authority by establishing inquiries

[3] [1990] 1 SCR 1366.
[4] 2008 SKCA 81 (CanLII), at para 59.

that, in pith and substance, are a criminal law or criminal procedure. Further, *Starr* stands for the proposition that a provincial government cannot establish an administrative tribunal that has as its dominant purpose a matter that is properly categorized as criminal law or criminal procedure. In *Starr*, the Supreme Court held that the province exceeded its jurisdiction by creating an inquiry that in substance served as a substitute police investigation and preliminary inquiry of a specific criminal offence.

**[9]** The Employer cited a number of cases in which arbitrators/administrative tribunals acting pursuant to provincial jurisdiction heard and decided matters that required them to determine whether specific criminal conduct had occurred[5].

*Argument on behalf of the Union*

**[10]** The Union argues that *Starr* is inapplicable to this case. It agrees with the Employer that *Starr* does not stand for the proposition that the Board loses its jurisdiction on matters within its statutory mandate if either a peripheral matter or a matter arising during the course of proceedings within that mandate touches on conduct that could be considered criminal. The Board has jurisdiction to hear matters within its statutory authority that may also indirectly determine conduct that could be considered criminal.

*Analysis and Decision*

**[11]** The Board agrees with the Employer and the Union that this argument is without merit. The hearing before this Board does not become "in pith and substance" a criminal court if it is asked to determine whether a document proffered in evidence is authentic. The Applicant's argument is unsupported by *Starr*. The primary focus of the Board in this matter is not to investigate criminal conduct; it is to determine whether the Union contravened the duty of fair representation that it owed to the Applicant. If the Authorization is tendered into evidence by either party, even if the Board refused to accept it as authentic, that would not be a determination by the Board of criminal responsibility of a specific individual for a specific offence. It would be a determination by the Board for the purpose of assisting it in deciding whether the Union breached its duty of fair representation.

[5] *Westfair Foods Limited v United Food and Commercial Workers Local 1400*, 1996 CanLII 17898; *Saskatchewan Health Authority v Canadian Union of Public Employees*, 2019 CanLII 2192*; Labourers' International Union of North America v Avcon Construction Inc.*, 2009 CanLII 11675; *Law Society of Saskatchewan v Migneault*, 2017 SKLSS 7.

**Application for Production:**

*Argument on behalf of the Applicant*

**[12]** The Applicant chose not to file a Brief of Law in support of his Application for Production. In his Application he argued that the Board has jurisdiction to compel the production of materials that are relevant and necessary for a full and fair hearing, in accordance with the guiding principles in *Toronto District School Board v CUPE Local 4400*[6]:

> *23 After duly considering and comparing the civil and criminal process to the arbitration process, it is my view that a liberal view should be taken with respect to the production of documents. In considering a general request for production, the following factors should be considered:*
>
> *(i) anything which can assist in the preparation and presentation of a party's case, the refining of issues, the facilitation of settlement and a fair process should be encouraged, Re Children's Aid Society of Belleville (City), Hastings (County) & Trenton (City) v. C.U.P.E., Local 2197 , infra. Arbitration by ambush should not be condoned.*
>
> *(ii) Once a general request for production is made every document relating to any matter in issue that is or has been in the possession, control or power of a party must be disclosed and that includes documents for which privilege is claimed. The party in possession, control or power of a document should provide a list of documents, relating to any matter in issue, to the requesting party and make those documents available for examination prior to the hearing.*
>
> *(iii) All documents which are arguably or seemingly relevant or have a semblance of relevance must be produced. The test for relevance for the purposes of pre-hearing is a much broader and looser test than the test of relevance at the hearing stage. A board of arbitration, at the pre-hearing stage, is simply not in a position, and ought not to lay down precise rules as to what may be relevant during the course of the hearing.*
>
> *(iv) The primary onus to produce documents rests with the party who has or has had possession, control or power of the documents. In the ordinary civil process a party must serve and file an affidavit of production with respect to documents, and while I do not suggest complicating the arbitration process by requiring affidavits on production, I see no reason why a party who has or had possession, control or power over documents should not have the onus of producing such documents.*
>
> *(v) The burden lies on the party who resists disclosure to justify the refusal to disclose.*

[6] (2002) 109 LAC 4th 20; 2002 CarswellOnt 4762 (Ontario Arbitration).

*(vi) Some of the arbitration decisions require a requesting party to particularize the documents it wishes to have produced with some precision. However, while I acknowledge that parties to the arbitration process live together in a continuing relationship and know something about each others affairs, they cannot be expected to be fully aware of each others internal affairs. Given the general purpose for producing documents, where the knowledge of those documents lies, coupled with the minimal pre-hearing procedures in the arbitration process, and after considering where the onus to produce documents lies, it is my view, that while a request for particular documents may be helpful, the request for particulars should not be scrutinized too carefully for precision. Where a party is served with a general request to produce documents as indicated above, it must produce every document relating to any matter in issue which is seemingly or arguably relevant. Needless to say, I find that the civil rules make greater sense than the established arbitral rules, by requiring the party who has possession, power or control over the documents to produce them. To require a party who has not had possession, power or control over the documents, or who may not be completely aware of the documents or their contents to identify them with any precision or particularity seems contrary to commonsense.*

*(vii) where a request has been made for documents and a party fails to produce such a document, but seeks to produce it during the hearing and the document is favourable to that party's case, consideration should be given to not admitting the document at the hearing. However, the arbitrator should exercise his/her discretion in admitting the document and may do so under certain terms.*

*(viii) Contrary to the Union's submissions, in this case, all documents should be produced prior to the hearing in order to enable the parties to prepare their cases with the documents in mind. And further the documents of the opposing parties may be introduced in evidence in order to assist either party in the presentation of its case, regardless of the burden of proof. Oral statements made by a party to the proceeding are always admissible even to assist the opposing party and there is no reason why statements in writing should not be similarly admitted. In civil matters, oral statements made by a party whether made outside the proceedings or on discovery, as well as documents produced by an opposing party may be used by the other party to buttress its case, even to the point in assisting the other party in satisfying the burden of proof. In this respect, while I am in agreement with much of the learned arbitrator's interim award in Re Central Park Lodges v. S.E.I.U., Local 210 (2001), 95 L.A.C. (4th) 192 (Ont. Arb.) (B. Etherington), I respectfully disagree with that portion of the award at p204, which maintained that production by the Union might undermine the "placement of the burden of proof on the employer", nor am I in agreement with that part of the award which delays production until well into the case. In my view, all productions should be ordered prior to the hearing regardless of whether the documents help or hurt a party's case. See also Re West Park Hospital v. O.N.A. (1993), 37 L.A.C. (4th) 160 (Ont. Arb.)at p169 (P. Knopf). The purpose of the prehearing is to either encourage settlement or ensure a fair process and a board of arbitration at that stage should not enter the fray and consider issues such as the burden of proof. The role of a board of arbitration prior to the hearing is simply to ensure that all relevant information*

> *is produced regardless of which party that information may help or hinder. Moreover, counsel or representatives presenting the case should be in a position prior to the hearing to plan and strategize how the case is to be presented; it is too awkward to plan and develop a case if productions are made mid-stream, so to speak.*
>
> *(ix) I also recognize that there are documents which are privileged as well as documents which should only be produced with certain restrictions imposed. In that respect, should any problem arise, an arbitrator may be asked to make a determination with respect to those documents prior to the hearing. Also, it is only those documents which are clearly irrelevant which need not be produced.*
>
> *24 Having regard to the foregoing, I determine that all the documents requested by the Board, including prior drafts if any to which the Union objected, as well as all documents that are arguably or seemingly relevant, should be produced. Should any problem arise in the implementation of this order, I will remain seized of those issues.*

**[13]** The Applicant says that the Application is filed late because he did not know about the Authorization earlier. The requested production is necessary to establish whether or not the Authorization is authentic. He is entitled to have concerns that he has not received full disclosure, given the issues he sees with the authenticity of the Authorization. While the request may appear very broad, the Applicant argues that it is reasonable to suggest that, for example, Item #8, the file, could contain other documents that show how the Union approached its responsibility to him.

*Argument on behalf of the Union*

**[14]** The Union argues that the Application for Production should be dismissed in its entirety for the following reasons: its late timing; allowing it would unduly delay, complicate and lengthen the proceeding; it is a fishing expedition; the Authorization has not been entered into evidence; the Union's case does not turn on whether or not the Authorization is valid; the documents sought are unrelated to the Main Applications.

**[15]** The Union relied on *Saskatoon Co-operative Association Limited v United Food and Commercial Workers*[7] ["*Saskatoon Co-operative*"] as outlining the legal principles applicable to guide the exercise of the Board's authority to order production:

> *[29] The Board has had many opportunities to consider the principles that guide the exercise of its authority to order document production. In doing so, it has consistently adopted and applied the principles as identified by the Canadian Industrial Relations Board in A.L.P.A. v Air Canada, [1999] CIRBD No. 3 ["Air Canada"]:*
>
> *1. Requests for production are not automatic and must be assessed in each case;*

[7] 2019 CanLII 76933 (SK LRB).

> *2. The information requested must be arguably relevant to the issue to be decided;*
> *3. The request must be sufficiently particularized so that the person on whom it is served can readily determine the nature of the request, the documents sought, the relevant time frame and the content;*
> *4. The production must not be in the nature of a fishing expedition; that is, the production must assist a complainant in uncovering something to support its existing case;*
> *5. The applicant must demonstrate a probative nexus between its positions in the dispute and the material being requested;*
> *6. The prejudicial aspect of introducing the evidence must not outweigh the probative value of the evidence itself, regardless of any possible "confidential" aspect of the document.*
>
> *[30] In applying the Air Canada principles, the Board starts from the premise that a production order is a discretionary order that is granted on a case-by-case basis.*
>
> *[31] The Board does not seek to replicate the pre-hearing discovery process of the civil courts. Stated another way, it is not "the practice of this Board to grant broad-spectrum, non-specific or infinite production Orders to in essence, compel the kind of pre-hearing discovery of documents that occurs in civil courts." Doing so would undercut the Board's flexibility to promote the expedient resolution of disputes between parties, many of whom have ongoing relationships, participate in multiple Board proceedings, and have a high interest in mitigating the level of conflict between them. In balancing fairness to the parties with expediency in process, the Board must be careful to avoid endorsing extensive discovery procedures and sacrificing expediency for minimal gain.*

**[16]** In *Service Employees International Union (West) v Saskatchewan Association of Health Organizations*[8] ["*SAHO*"], the request for production of documents was made by the applicant unions following the close of the evidentiary portion of their cases and in the midst of evidence being called by the respondent. The Board dismissed many of the requests because "there can be no doubt that the late request for the production of documents has delayed these proceedings, consumed this Board's resources, and ambushed the Respondents"[9]. The Union argues that the same concerns about delay apply to this Application, especially Items #7 – 9. The Board went on to say:

> *[41] The applicant unions argued that any restriction on their right to seek production of documents, even at this late stage in the hearing, would offend the principles of natural justice by potentially denying them access to documentary evidence that may have probative value. With all due respect, we do not agree for a number of reasons. Firstly, any of the applicant unions could have sought production of the majority of their desired documents in the many months prior to the commencement of the within hearing. In the alternative, the applicant unions, or any of them, could have sought production of these documents in February of 2011 when this Board made its procedural ruling to join the*

[8] 2012 CanLII 18139 (SK LRB).
[9] At para 38.

> *within applications. In the alternative, the applicant unions could have sought production of the desired documents in May of 2011 when the evidentiary portion of these proceedings began. In our opinion, the right of the applicant unions to go fishing for documents began to fade with the calling of their respective witnesses and the conclusion of the evidentiary portions of their respective cases. The practicality of this conclusion is apparent when one considers that there is no procedural obligation on a respondent to call any witnesses following the conclusion of the evidentiary portion of an applicant's case. Secondly, the right of the applicant unions to cross-examine, and to seek production of documents arising out of such examination, is unfettered. Essentially, what fades and then expires when a party closes the evidentiary portion of their case, is the fishing season; the period of time when the parties have the right to seek broad-spectrum production of documents (i.e.: the kind of production that may have been available through the Board's prehearing procedures or even at the outset of the hearing). In this regard, we note that the Canada Industrial Relations Board came to this same conclusion in the Air Canada case at para 34.*
>
> *[42] For purposes of clarity, we do not wish to imply that a party can not seek production of documents once a hearing has commenced or after they have closed their respective cases. To the contrary, all parties clearly have the right to seek (and even tender) documentary evidence through someone else's witness either in support of an allegation under the Act or for the purpose of attacking the defense of an opposing party or the credibility of a witness. However, for the most part, once a hearing has commenced and certainly once a party has closed the evidentiary portion of their case, fishing season is over. The onus is on the party seeking a broad-spectrum production of documents after a hearing has already commenced to explain their delay in seeking such documents. Certainly, once a party has closed the evidentiary portion of their case, extraordinary justification is required to do so.*

**[17]** With respect to the timing of the Application, the Union notes that the Applicant received the Authorization on February 28, 2019 and did not file the Application until August 26, 2019, six months later. The Union also noted that by this time, the Applicant has already closed his case.

**[18]** The Union noted that, in *SAHO*, after referring to the *Air Canada* principles mentioned above, the Board stated:

> *[46] It is also important to note that, in the Air Canada case, the Canada Board acknowledged that there are a number of restrictions on a party's right to seek production of documents in labour relations proceedings and that these restrictions grow in intensity with the greater the number of documents sought and the greater the potential for involving confidential or privileged information. In this regard, we do not accept the argument of the applicant unions that their right to seek out and obtain potentially relevant documents ought to be the dominant factor in our determination. In determining any request for the production of documents, this Board must weigh a number of factors; including a number of competing factors; with the importance of any particular factor shifting with the circumstances under which the request is made (such as in the case of late requests for the production of documents).*

**[19]** With respect to the specific requests, the Union makes the following objections:

(a) Item #1: it does not have this document. It notes that this document was faxed to it by the Applicant, so presumably he would have the original.

(b) Item #2: there is no known Power of Attorney. That portion of the form is used for persons who do not have capacity to make their own decisions or who appoint someone else to act for them. Neither of these situations exists here.

(c) Items #3 - 4: granting these requests would unduly delay, complicate and lengthen the proceedings. A request for metadata is an extraordinary request and a fishing expedition.

(d) Item #5: this is not an application for document production and contravenes criteria 4, 5 and 6 of the *Air Canada* principles. None of this information would advance the Applicant's case.

(e) Item #6: the Union does not have this document.

(f) Items #7 – 9: these very broad requests can be characterized as a fishing expedition. No explanation was provided for the delay in making application for these documents. Extraordinary justification is required, and has not been provided. They are not sufficiently particularized; the Applicant has not explained what is sought or why it is sought now, at this late date.

(g) Item #9: the Union also points to the following passage in *SAHO* and argues that, similarly in this case, the request is very broad, the Applicant has failed to identify what is being sought, any relevant time frames or how the requested information pertains to the Main Applications:

> *[64] There is no existing obligation on a witness to produce the material with which they refreshed their memory prior to testifying before the Board; nor do we wish to impose such an obligation. As such, this category of requested documents represents the greatest potential for violation of the rule against fishing. It is wholly undefined and arguably infinite. As such it violates the Air Canada factors. This request indiscriminately seeks production of documents, including privileged communications, without any attempt to focus the search and limit its injurious impact. Having considered the arguments of the parties, we are not satisfied that the production of this category of documents is either appropriate or necessary.*

(h) Items #10 and 11: the Union notes that it has provided this information to the Applicant.

**Relevant statutory provisions:**

**[20]** Section 6-111 of *The Saskatchewan Employment Act* set out the powers of the Board to order disclosure:

> ***Powers re hearings and proceedings***
> *6-111(1) With respect to any matter before it, the board has the power:*

> *(a) to require any party to provide particulars before or during a hearing or proceeding;*
>
> *(b) to require any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing or proceeding;*
>
> *(c) to do all or any of the following to the same extent as those powers are vested in the Court of Queen's Bench for the trial of civil actions:*
>
> *(i) to summon and enforce the attendance of witnesses;*
>
> *(ii) to compel witnesses to give evidence on oath or otherwise; and*
>
> *(iii) to compel witnesses to produce documents or things;*

**Analysis and Decision:**

**[21]** The Ontario Arbitration decision relied on by the Applicant does not apply to the Board, or reflect the Board's approach to production applications. As the cases cited by the Union explain, this Board has no intention of replicating the discovery procedures used in the courts. The *Air Canada* principles, relied on in *Saskatoon Co-operative* and *SAHO*, are applicable to the determination of this Application. This was pointed out to the Applicant in *Lapchuk v Saskatchewan Government and General Employees' Union* [10]:

> *[13] As noted by this Board, it has not been our practice to grant broad-spectrum, non-specific or infinite production Orders to, in essence, compel the kind of pre-hearing discovery of documents that occurs in civil courts. As such, Mr. Lapchuk's application for production of documents is contrary to the direction of this Board in Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, et.al, supra. It is not for this Board to cure such defects; for to do so, would encourage applicants to seek broad-spectrum production of documents in the expectation that this Board will do their work for them.*
>
> *[14] However, in my opinion, a greater and more significant problem lies in the type of document sought by Mr. Lapchuk and the requirement of relevancy. In my opinion, none of the documents he desires are relevant to any matters properly before this Board.*

**[22]** In determining this Application, the Board is concerned with the relevance of the requested information to the Main Application:

> ***Desired documents must be relevant**: While the test for relevance was not seriously in dispute in these proceedings, the extent to which a party may embark upon a fishing expedition through discovery of documents in proceedings before this Board does warrant some consideration. As indicated, this Board does not have; nor do we wish to replicate; the kind of discovery procedures or the kind of production of document obligations*

[10] 2014 CanLII 16077 (SK LRB).

> *commonly seen in a judicial setting. Generally speaking, an applicant seeking production of documents must satisfy the Board that the desired documents are arguably relevant and/or that there is a probative nexus between the documents or information sought and the matters in issue arising out of proceedings before the Board. The greater the number of documents sought, the stronger the probative nexus expected by the Board, particularly so if considerable expense, time and effort is required to locate and produce the desired documents. As we have indicated, it is also an expectation of this Board that such request will occur early in the proceedings whenever possible.*[11]

The Applicant has provided no explanation of the relevance of the requested information or how it relates to the Main Applications. At this late stage, this is a significant issue for the Board to consider, especially given the breadth of the requested disclosure.

**[23]** The Board is also concerned that some of the requests, especially Items #7 – 9, are not sufficiently particularized, and adopts the following finding by the Board in *Industrial Wood and Allied Workers of Canada, Local 1-184 v Edgewood Forest Products Inc.:*

> *Not to provide particularization of the documents being sought, and in this case, the time frame for which they are being sought brings to the request the inescapable conclusion that the Applicants are simply fishing for information.*[12]

As the Board went on to find in that matter: "It is not appropriate to simply cast your net and ask for production of many irrelevant documents in the hopes that there may be something there to support your case".[13]

**[24]** With respect to the specific requests, the Board provides the following additional comments:

(a) Item #1: The Union has advised the Applicant and the Board that it does not have the document requested.

(b) Item #2: The Union has advised the Applicant and the Board that no such document exists. The Applicant has not advised the Board or the Union that he has appointed someone to act on his behalf, by Power of Attorney, for any aspect of this matter.

(c) Items #3 and 4: The Applicant has not explained how this request relates to or advances the Main Applications. The Applicant has not satisfied the Board that the information is arguably relevant to the issue to be decided, or demonstrated a probative nexus between

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[11] *SAHO* at para 44.
[12] 2012 CanLII 51715 (SK LRB) at para 29.
[13] At para 33.

its position in the Main Applications and the requested information. This request is in the nature of a fishing expedition.

(d) Item #5: As the Union notes, this is not a request for document production. It is a broad spectrum request that can only be characterized as a fishing expedition. There is no explanation of how this information relates to the Main Applications.

(e) Item #6: The Union has advised the Applicant and the Board that it does not have the document requested.

(f) Items #7, 8 and 9: These requests are clearly fishing expeditions. They are not sufficiently particularized or related to the Main Applications. Particularly at this point in the proceedings, sufficient rationale has not been provided in support of these requests. No explanation was provided for the delay in making these requests. With respect to Item #9, the Board also refers to its findings at *SAHO*, paragraph 64, noted above.

(g) Items # 10 and 11: These documents were already provided by the Union to the Applicant.

**[25]** The Applicant may argue that the "extraordinary justification" required to support this Application is his allegation that the recently discovered Authorization is a forgery. However, as noted above, this proceeding is not a criminal investigation. Some of the requested information may or may not be relevant to a criminal investigation respecting the Authorization. That is not a question that the Board has the expertise to determine. What the Board can determine, and has determined, is that it is not relevant to the Main Applications.

**[26]** The issue to be decided in the Main Applications is whether the Union failed in its duty to fairly represent the Applicant by acting in a manner that was arbitrary, discriminatory or in bad faith. That is the lens through which this Application must be assessed. In applying the *Air Canada* principles, the Board starts from the premise that a production order is a discretionary order that is granted on a case by case basis. After a thorough consideration of the *Air Canada* principles, the Board has determined that the Applicant has not satisfied the Board that this is an appropriate case in which to exercise its discretion.

**[27]** The Application for Production is dismissed.

Yours truly,

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