CONRAD PARENTEAU, APPLICANT v SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION (SGEU), RESPONDENT and VALLEY HILL YOUTH TREATMENT CENTRE INC., RESPONDENT

LRB File No. 234-18; May 22, 2019
Vice-Chairperson, Barbara Mysko; Board Members: Don Ewart and Phil Polsom

For the Applicant:	Self-Represented
Counsel for the Respondent, Union:	Jana N. Stettner
Counsel for the Respondent, Employer:	Anil K. Pandila

Application to cancel certification order – Employer influence and interference – Employer openly antagonistic to Union representation in the workplace – Employer making views commonly known in the workplace – Close relationship between Applicant and management – Applicant pursuing decertification in an aggressive manner – Board finds Employer improperly influenced decertification application by creating a hostile workplace for the Union.

REASONS FOR DECISION

Background:

[1] **Barbara Mysko, Vice-Chairperson:** Conrad Parenteau ("Parenteau"), an employee with Valley Hill Youth Treatment Centre Inc. ("Employer" or "Valley Hill"), filed an application to cancel a certification order with the Board on November 14, 2018 ("Application" or "Decertification Application"). The Saskatchewan Government and General Employees' Union (the "Union") has asked that this Application be dismissed pursuant to section 6-106 of *The Saskatchewan Employment Act* (the "*Act*"), having been made in whole or in part on the advice of, or as a result of influence of or interference or intimidation by the Employer. These are the Board's Reasons further to the Union's request to dismiss the Decertification Application on that basis.

[2] Valley Hill is a non-profit residential treatment center operating in partnership with the provincial government and the Prince Albert Grand Council. On November 28, 2013, this Board issued an Order declaring that the Union represents a majority of employees in the appropriate

unit and ordering that the Employer bargain collectively with the Union ("Certification Order").[1] The unit is comprised of approximately 33 employees of Valley Hill, excluding the Executive Director and the Clinical Supervisor. On January 4, 2016, the parties signed their first collective bargaining agreement (the "CBA").[2] Since 2016, Parenteau has made five applications to cancel the Certification Order, including the present Application. These applications have been dealt with as follows:

a. The application filed on January 15, 2016, LRB File No. 004-16, was dismissed by this Board on February 9, 2016 pursuant to sections 6-9 and 6-103 of the *Act*.

b. The application filed on April 12, 2017, LRB File No. 064-17, was dismissed by this Board on May 2, 2017 pursuant to clause 6-17(1)(a) of the *Act*.

c. The application filed on September 5, 2018, LRB File No. 187-18, was not accepted for filing due to its failure to comply with the requirements of the Board.

d. The application filed on October 1, 2018, LRB File No. 207-18, was withdrawn on October 25, 2018.

e. The Application filed on November 14, 2018, LRB File No. 234-18, was the subject of a hearing and, consequently, these Reasons.

[3] The Union filed an unfair labour practice application (the "ULP Application") on October 17, 2018, alleging that Parenteau was influenced by the Employer in bringing the application filed on October 1, 2018, LRB File No. 207-18. The Employer filed a Reply to the ULP Application on October 29, 2018. The ULP Application was not withdrawn after Parenteau withdrew the underlying application to cancel a certification order, and remained a live application.

[4] On December 3, 2018, the Executive Officer of the Board ordered that a vote be conducted among all eligible employees who were employed within the unit as of November 15, 2018, to determine whether the said employees wished to continue to be represented by the Union, pursuant to subsection 6-17(2) of the *Act*. The vote was held and the ballot box remains sealed.

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[1] LRB File No. 024-13.

[2] Valley Hill Youth Treatment Centre Inc. and Saskatchewan Government and General Employees' Union, Collective Agreement, January 1, 2016 to December 31, 2018.

[5] The Board Registrar advised the parties that both the Decertification Application and the ULP Application would be advanced to the panel of the Board for consideration. Although the ULP Application was technically filed in relation to the withdrawn decertification application, the parties raised no objections to proceeding in this fashion.

[6] A hearing was held on March 20 and 21, 2019. A few days prior to the hearing, the Union advised that it did not intend to proceed with the ULP Application on the scheduled dates, and requested that the ULP Application be placed in abeyance pending the outcome of the Decertification Application. No objections were raised. The Board granted the Union's request, and proceeded to hear the evidence and argument on the Decertification Application. The parties suggested that they may apply to the Board to have some or all of the evidence on the Decertification Application applied to the ULP Application, at a later date.

Argument on Behalf of the Parties:

[7] Parenteau's principal argument is that he initiated and filed the Decertification Application on his own account and free from any Employer influence. According to Parenteau, there is no benefit to certification and Union dues are a wasted expense. He urges the Board not to assume that the financial impact of union dues is nominal, but to keep an open mind when considering the plausibility of his motivations, bearing in mind the impact of dues on workers of limited means. He says that some of his co-workers literally cannot pay their bills; those who cannot, share in his wish to decertify. For these reasons, Parenteau insists on exercising his right to choose and on facilitating the right of his co-workers. He has never intimidated anyone. The employees approached him and not the other way around.

[8] In its Reply, the Union asks that the Decertification Application be dismissed for two main reasons. First, in bringing this Application, Parenteau has failed to comply with the 12-month waiting period following a refusal of a previous application pursuant to subsection 6-17(4) of the *Act*. Second, the Decertification Application was made "in whole or in part on the advice of, or as a result of influence of or intimidation by the Employer or Employer's agent" and should therefore be dismissed pursuant to section 6-106 of the *Act*. In the hearing, the Union focused on the second of these two reasons.

[9] In relation to the second reason, the Union asks the Board to consider what it describes as the Employer's demonstrated anti-union animus, confirmed by the Board's unfair labour

practice decision in *Saskatchewan Government & General Employees' Union v Valley Hill Youth Treatment Centre Inc.*, 2013 CanLII 98136 (SK LRB) ("*Valley Hill*").[3] The Employer has made its anti-union animus generally known, resulting in a chilling effect on Union activity. Employees are afraid they will lose their jobs if they support or have contact with the Union. This is not an environment in which the Board can reasonably determine the wishes of the employees. Furthermore, the timing of the filing of the Decertification Application is suspect and should be taken into account, having occurred after the Union delivered notice to bargain a renewal of the CBA.

[10] The Union says that the close relationship between Parenteau and Valley Hill's Executive Director, Robert Fitzpatrick ("Fitzpatrick"), creates an "apprehension of betrayal". According to the Union, Parenteau, with influence from the Employer, has behaved in an intimidating and threatening manner in order to obtain the support necessary to bring the Application. These circumstances undercut the Board's ability to discern the employees' true wishes in relation to the representational question.

[11] Although the Employer takes no "official" position on the Decertification Application, it maintains that it did not influence it or interfere in any way. The Employer argues that many of the cases relied upon by the Union were decided prior to the enactment of *The Saskatchewan Employment Act* and prior to the relevant, contemporary *Charter* jurisprudence. By contrast, the Board in *Hannah Crowder v SEIU-WEST and The Saskatoon Society for the Protection of Children Inc.*, LRB File No. 023-16 (July 28, 2016) ("*Crowder*") considered the relevant issues under the current legislative scheme. The facts in *Crowder* are similar to the present allegations. The *Crowder* reasoning should guide the Board's deliberations in this matter.

[12] The Employer acknowledges that Fitzpatrick and Parenteau are friends, but insists that there is nothing exceptional about their relationship. Furthermore, there is no evidence that Fitzpatrick directed Parenteau in the completion of the Decertification Application. The charge of anti-union animus has been grossly exaggerated. There have been no unfair labour practice

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[3] In *Saskatchewan Government & General Employees' Union v Valley Hill Youth Treatment Centre Inc.,* 2013 CanLII 98136 (SK LRB) ("*Valley Hill*"), the Employer was found to have committed an unfair labour practice when it terminated an employee responsible for the union organizing drive. See, paragraph 56:

> [56] … In our opinion, the relatively weak foundation for the Employer's case, coupled with our finding that the Employer knew that Ms. Cote was the person responsible for the organizing drive; coupled with Mr. Lewsey's palpable displeasure with anyone who surprises him; raises a compelling inference that the decision to terminate Ms. Cote was motivated by a desire to punish her for exercising a right protected by *The Trade Union Act.*

decisions since current management was installed. Nor has the Employer directed anyone to refrain from Union activity, or fired anyone for exercising their rights under the *Act*. To the extent that the Employer has asserted its management prerogatives, its comments have been taken out of context and misconstrued.

Evidence:

[13] The Board heard from six witnesses: Parenteau, Delilah Sanderson, Velma Petit, Stephen Dettmers, Patrick Sander, Fitzpatrick and Cassie Petit. Stephen Dettmers ("Dettmers") is an employee at Valley Hill and is currently serving as the Union Shop Steward. Delilah Sanderson ("Sanderson") and Velma Petit ("Velma") are both employees at Valley Hill. Patrick Sander ("Sander") is a Labour Relations Officer with SGEU, responsible for Valley Hill. Fitzpatrick is the Executive Director of Valley Hill and Cassie Petit ("Cassie") is the Clinical Supervisor. Both Fitzpatrick and Cassie are excluded from the bargaining unit, as per the Certification Order.

[14] The witnesses provided their perspectives on a number of key incidents. The basic facts of those incidents are summarized below, followed by a further, particularized description of the witnesses' personal perspectives on those incidents and other surrounding circumstances.

The March Meeting:

[15] On March 29, 2018, Sander attended Valley Hill to meet with the staff, with the consent of the Employer. During the meeting Parenteau advised that he was in the process of completing a decertification application. In response, some staff spoke in favor of decertifying the workplace and others spoke against. The meeting revealed a divided workplace. Both Parenteau and the Union relied on the meeting as support for their respective positions.

The Board Meeting:

[16] The CBA is set to expire on December 31, 2018. In anticipation of the expiry, Sander attended a meeting of the Valley Hill Board to discuss bargaining preparations. The meeting occurred in April 2018. The minutes from the meeting were entered into evidence. In the minutes, Sander's attendance is summarized:

> *SGEU – Pat Sander attended the meeting to discuss planning for next contract which expires December 31, 2018. He proposed that there be a committee to do the negotiating. Members have applied for decertification so there may be a different process if this occurs. The board will review this in July pending the outcome of the labour relations board ruling.*

[17] The secretary of the Board was not called to testify. The main dispute was who, as between Fitzpatrick and Sander, was responsible for having raised the issue of decertification at the meeting.

The Ringdahl Incident:

[18] A fellow staff member, Mariah Ringdahl ("Ringdahl"), complained to Fitzpatrick about Parenteau's forceful conduct in pursuing his decertification objectives. Fitzpatrick's purported response is captured in his memo, dated June 27, 2018, as follows:

> *Response to concerns to question received by Mariah Ringdahl. In attendance for the meeting yesterday June 19.2018; as requested by the Union Labour Relation Officer – Pat Sanders, my self Robert Fitzpatrick and Sandy McLachlan the HR representative.*
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> 1. *There was no written complaint it was a verbal complaint on June 12, 2018 at approximately 15:55 pm . Glen McMaster ask that I come into the debriefing and hear what was going on. I was told by Mariah Ringdahl that Conrad Parenteau and some of the staff and his behavior was forceful and swore at wanting papers signed. The writer asked what kind of papers Mariah said; "to get the union out". I stated this can not be going on here and I would be speaking to him right away. I left the debriefing room and proceed to speak to Conrad about this issue.*
>
>   *Time 16:04 PM – I approached Conrad Parenteau to speak to him as to what was going on. That a few of the staff were feeling threatened and being forced to sign a paper. He said it is to have a vote to have the union gone. I the writer stated this is unacceptable this behaviour and is not allowed to do union business in the centre this will not be tolerated. He accepted what I had said and went back to cooking. When I was done every one was gone from debriefing room and I was unable to responded to let the staff know, time 16:15 PM.*
>
>   *June 13/2018:*
> 2. *Pat Sanders phoned that he would like to meet I said at 8:30 AM. My self and Glen McMaster and Pat Saunders met in the board meeting. He mentioned about the verbal complaint from yesterday. I stated that I had spoken to Conrad about the issue and advised Conrad about his behaviour and union information was not allowed on the property. That as far as I am concerned, it has been dealt with. Pat asked if he could speak to Mariah alone so me and Glen left, he also wanted to talk to Conrad as well. He spoke to each of them alone and left at 9:30 AM.*
>
>   *[…]*

[19] Ringdahl was not called as a witness. A key issue is whether Fitzpatrick clearly explained to Parenteau that his workplace decertification activity would not be tolerated.

The McMaster Incident:

[20] In the summer of 2018, Parenteau and then Clinical Supervisor, Glen McMaster, were involved in a confrontation, witnessed by Dettmers. As a result of the confrontation, Parenteau was sent home, and then suspended and directed to attend anger management programming.

Dettmers filed a report in relation to the incident. McMaster was sent home after the incident and eventually terminated. The primary question is whether Fitzpatrick inappropriately interfered with Parenteau's discipline following the incident.

The August Meeting:

[21] On August 2, 2018, Fitzpatrick called a meeting for all staff. Parenteau was not in attendance. During the meeting, Fitzpatrick suggested that staff could be fired as a result of insubordination. Fitzpatrick received a call on his cell phone, terminated the meeting, and then stepped out. After this happened, Parenteau entered the room and attempted to distribute decertification papers. When Parenteau was rebuffed by a couple of employees, he followed them out into the parking lot with the paperwork. A key dispute is whether Fitzpatrick had advance knowledge of, or was involved in, Parenteau's decertification attempts on this date.

Testimony:

Conrad Parenteau ("Parenteau"):

[22] Parenteau is the head cook at Valley Hill. Throughout the hearing, he expressed strong views about the Union, its relative value or lack thereof to its members, and his right to choose whether to have the Union represent his interests. His language was colorful and unfiltered; his approach, passionate. He described the Union tersely as "tough guys [who] take money from you". He categorically denied that he is susceptible to the Employer's influence or that he is doing the Employer's bidding. He insisted that "the employees" turned to him when they needed an advocate and he simply answered the call. Of the role that has been foisted upon him, he said that he has paid dearly and is by now "sick of doing their dirty work".

[23] Parenteau's testimony will be remembered more for its passion than its consistency. While he has no use for the Union, he has considered becoming a shop steward if this Application fails. And although he is "sick of doing [the employees'] dirty work", he will fight this battle to the end, bringing one application after another until the mission is accomplished. When pressed for details about Union dues, he was unable to pinpoint precisely how much he was paying. On cross, Parenteau claimed that the "sum total of all of them is $25,000 per year" but admitted that he had not bothered to check the amount of his own dues. Parenteau claimed that the Union had done nothing for him, but then was unable to compare pre- and post-Union working conditions with any specificity.

[24] Much was made of Parenteau's relationship with the Employer, which Parenteau attempted to address. He said that, contrary to the Union's accusations, he does not live with Fitzpatrick. Fitzpatrick's living arrangements are a straightforward matter of convenience. Fitzpatrick was looking for a place to live and there was an available basement suite in a house owned by Parenteau's son. Parenteau lives with his wife in Struthers and he stays with his son for only a few days each month. Parenteau greets Fitzpatrick in his office every morning, but Parenteau extends a similar morning greeting to each of his co-workers. Parenteau and Fitzpatrick have driven each other's cars but only rarely. On a few occasions, he has joined Fitzpatrick and his wife for supper, and has visited at their cottage, but no material inference can be drawn from this.

[25] Parenteau spoke to his previous applications. In 2018, he filed three. In 2017, he was involved in one. He will file more if necessary. He does not work alone. For instance, Sanderson prepared the April 2017 application. That application was sent on a fax machine from the Employer's office. While Parenteau "couldn't tell you how to use a fax machine" if asked, he admits that he was probably "standing right there getting someone to send it for him".

[26] In relation to the first of the three 2018 applications, LRB File No. 187-18, it was also completed by Sanderson, although the applicant's name is his own. It was signed by a Notary Public and promptly rejected by the Registrar for lack of compliance. In relation to the second application, he was directed by the Board Registrar to withdraw it. He denied that his withdrawal was motivated by a lack of support evidence.

[27] Parenteau spoke generally of his process for obtaining support evidence. He admitted that he told employees that if they did not sign the paperwork they would be precluded from voting. He said that this misperception was "his opinion" and that he "was wrong" and that eventually, the Registrar "set [him] straight". Despite this, Parenteau went on at length about the importance of having a voice and taking the opportunity to vote, no matter what the consequence. While having been "set straight", Parenteau, at times, seemed wedded to his view that support evidence was necessary to allow employees to "have a voice".

[28] Parenteau insisted that he does not engage in intimidating behavior. He built support for this assertion by asking his witnesses directly: "have I ever intimidated you?" When Union counsel accused Parenteau of chasing employees into the parking lot to demand their support, he

countered with, “I didn’t chase them. I walked, I didn’t run.” He elaborated further: “I do stand my ground. Steve swore at me. I didn’t swear at him”.

[29] As a consequence of the McMaster Incident, Parenteau was suspended without pay for ten days and was directed to attend anger management classes. When asked whether Fitzpatrick took steps to prevent him from being fired, Parenteau was initially evasive but then rejoined with, “I know what you’re suggesting. That Bob protected me. Bob didn’t protect nothing”. When asked whether he was aware that Fitzpatrick had enjoined the witness to change his incident report, Parenteau denied any knowledge and countered that he had personally counselled the witness to “tell the honest to God truth”.

[30] As for the August Meeting, Parenteau denied that it was mandatory and that he had set the stage for his worksite decertification activities. He denied further that he made the phone call to Fitzpatrick. No phone records were led. In explaining his motives at the August Meeting, he said, “there were three people there who I needed to see”. “They were avoiding me.” “I tried everything. I tried phoning them”.

[31] Parenteau blamed his initial absence on having “food to cook”, but then failed to properly explain how he found the time to show up later. In reference to the post-meeting confrontation, Parenteau denied that Ringdahl was running away from him, suggesting, “nobody runs from me because I would never chase anybody.” And then, “she just went to her truck, and I walked up to Steve…and she said ‘leave F*ing Steve alone’ and then Steve told me to F* off.” Parenteau then went to talk to Fitzpatrick, demanding, “you have to do something about this Bob”.

[32] Parenteau admitted that he had broadcasted to staff that “everyone needs a voice”. When challenged that instead of giving his co-workers a voice he was attempting to silence them, Parenteau’s response was pointed, with an undertone of criticism: “assuming stuff – I’ve told you what assuming stuff means”.

[33] Parenteau applied, after his case was closed, to enter letters from certain employees in support of the Decertification Application. In addition to the obvious concerns about timing, the proposed evidence was deemed inadmissible on a minimum of three grounds. First, the admission of the letters runs counter to the purpose of the secret ballot vote and the Board’s policy of upholding the privacy of employees’ support for or opposition to the Union. Second, the evidence was hearsay, which under the circumstances, was not appropriate. Third, unless the

evidence went to the issue of Employer influence or interference, which was not suggested, it was not relevant to the issue at hand.

Delilah Sanderson ("Sanderson"):

[34] Parenteau called Sanderson as a witness. In chief, he asked Sanderson directly whether he had ever intimidated her or forced her to sign papers. She responded "no". About her support of decertification, Sanderson explained that she and other staff could not afford to pay the Union dues. Parenteau asked point blank, "has the Union ever done anything for you?" Sanderson replied "no" and then qualified the statement by explaining that she had initially supported Union certification, because, as a First Nations person working within the Saskatchewan provincial health system, she was afraid of losing her job.

Velma Petit ("Velma"):

[35] Velma, a five-year employee, was also called by Parenteau. Velma explained that she had never been in support of Union certification. When Parenteau asked whether he had ever intimidated her or other staff members, she replied "no". When asked who came up with the idea to file the Application, she offered "all of us".

Stephen Dettmers ("Dettmers"):

[36] Dettmers is the first shop steward at Valley Hill. He is a part-time employee but has, in the past, worked both days and nights in excess of full-time hours. Dettmers had a concern about seniority that he had attempted to address directly in discussions with Fitzpatrick. After as many as four attempts, the matter remained unresolved. Dettmers turned to the Union. When Fitzpatrick learned of this, he questioned Dettmers, declaring, "I'm thoroughly disgusted with you" and then warned him not to "call in for shifts...you won't get any". Since that encounter Dettmers has been working 40 hours per week on the "graveyard shift".

[37] On the day of the McMaster Incident, Dettmers had come in to record his hours. While he was there, he came across Parenteau and McMaster getting "in each other's faces". He proceeded to insert himself into the confrontation to prevent a greater escalation. Dettmers wrote an incident report and submitted it to Fitzpatrick. Fitzpatrick said, "you can't put that in because they would fire Conrad". Dettmers changed the report to "make it look like it was McMaster's fault", at least in part, because he "felt bad for [Parenteau]".

[38] Dettmers first learned that Parenteau was attempting to decertify "when he started going around with the papers". This was before the August Meeting. Dettmers explained that the meeting was "mandatory", as per the schedule, and that he was motivated to attend because of the compensation. As for who was in attendance, it was "just about everyone" except Parenteau.

[39] During the meeting, Fitzpatrick announced that "no one is to go to the Union", that staff were to "talk to me first", and then, "if you go to the Union without talking to me first you will be written up and let go" for insubordination. Fitzpatrick received a call at around 2:30 p.m., announced that he had to take it, and then left the room. About 20 seconds later Parenteau entered the room passing out papers. At that point, most everyone was still in the room. When rebuffed by Ringdahl and Dettmers, Parenteau followed them out the door. Dettmers refused to speak to Parenteau but denied telling him to "F* off". Parenteau warned that if they did not sign papers they would not be allowed to vote. Dettmers felt like they were being attacked.

[40] On another occasion Dettmers says that he showed a fellow co-worker the wage raise schedule in the CBA and advised him to talk to human resources about a potential discrepancy. Upon learning of this activity, Fitzpatrick challenged Dettmers, saying, "why are you talking about Union stuff in here?"[4]

Patrick Sander ("Sander"):

[41] Sander is a Labour Relations Officer based in Prince Albert. He handles all of the "correctional facilities" in which there is SGEU representation. His area covers "Prince Albert to La Loche, to the Alberta border, to Creighton, to Porcupine Plain, to Hudson Bay". Because of his large territory, travel is an issue. Sometimes he will travel ten hours just to attend one meeting.

[42] While Valley Hill staff will talk to Sander by phone, it is a different story on site. Furthermore, members have expressed concerns about meeting Sander at the Union office because Prince Albert is "a small place". To address these concerns, he has told members that he will meet with them anywhere, except in their homes.

[43] Sander has heard concerns from eight to ten separate employees. About the same number have expressed fears about coming forward. In some cases, the employees' partners have raised the concerns. Sander has had to explain to members that they must put their name

[4] The Board will refer to this the "Wage Schedule Incident".

to their complaints. When he gives that direction, the complaints and the members seem to "disappear". Sander acknowledged that only two formal grievances have been filed in his time and there was no basis to proceed with either of them.

[44] On cross, Sander estimated that 90% of the complaints are about missing shifts. He tells employees to talk to Fitzpatrick first. Further to that direction, some of the complaints have been straightened out; others not. When they are not, he offers the grievance avenue. It is true that complaints do not always check out, and so he tries to gather the necessary information when given consent to do so. On cross, Sander explained that, given the size of his territory, he does not want to be involved in day-to-day workplace issues.

[45] Sander spoke about the March Meeting. There were approximately 20 attendees. Of those, there were a few vocal supporters of decertification, a few vocal supporters of the Union, and quite a few more who expressed no view. Sander explained that he was planning to put together a bargaining committee. Some employees said that Fitzpatrick was representing their interests at the bargaining table. Sander had to explain the Union's role. When Parenteau announced his decertification plans, Sander explained that if they wish to decertify, there is a process to follow. Parenteau said that if the decertification failed he wanted to become a Union steward.

[46] Sander commented on his participation in the Board Meeting. He explained that he attended the meeting to discuss the upcoming bargaining process. Instead, Fitzpatrick raised decertification, sidetracking the discussion entirely. While it was agreed that the Board would discuss the matter again in July, Sander was not invited back to that meeting. Ultimately, Sander acknowledged that there had been no further progress on decertification and therefore no reason to revisit the discussion in July.

[47] Sander addressed Ringdahl's harassment allegation against Parenteau. Sander explained that he had an opportunity to examine Parenteau's support papers, which, "did say to vote but [Ringdahl and Dettmers'] understanding was that it was saying we want to decertify". Two other employees had raised similar concerns but chose not to proceed with harassment complaints.

[48] Sander advised Parenteau that he could not use workplace facilities, resources, or time to perform his decertification activities. He believes Fitzpatrick also told Parenteau not to engage

in decertification activities on workplace grounds. On cross, Sander allowed that Parenteau has never been disrespectful towards him and that there has always been talk of decertifying – the March Meeting was not the first he had heard of it.

[49] Sander served formal notice to bargain on September 6, 2018. While there has been no bargaining to date, the Employer has indicated a willingness to move forward. It is the Union that has chosen not to, due to this hearing. In January 2019, Fitzpatrick sent an email asking for dates for collective bargaining and the Union did not respond.

[50] Sander acknowledged that he has a good working relationship with Fitzpatrick, that they have been able to resolve matters together, and that he has not personally witnessed Fitzpatrick influencing his employees. On the other hand, when he has shown up on the worksite, Fitzpatrick has told him that the Union is not needed.

[51] On cross, Sander acknowledged that he did not bring an unfair labour practice complaint immediately after the August Meeting. He acknowledged that he did not witness the Employer influencing Parenteau in making the Decertification Application. Finally, he allowed that, in his Reply, his reference to the "history of unfair labour practices" relates to the one decision from this Board.

[52] Every time Sander attends a meeting, Fitzpatrick says, "the Union is not needed here. We can handle this on our own." In Sander's experience there are two reasons why people do not file a grievance: (1) the workplace is running smoothly; and (2) fear. By the number of phone calls he has received, here, the second is the most likely reason.

Robert Fitzpatrick ("Fitzpatrick"):

[53] Fitzpatrick began working at Valley Hill after it was certified and during a time when, as Fitzpatrick described it, the workplace "was very dysfunctional". When he started, he declared that he would be running Valley Hill differently, that his door is always open, and the staff were to come and see him if they had any problems.

[54] Fitzpatrick hired Parenteau almost five years ago. He was impressed with Parenteau's nutritious menus, which he had taken back to his head cook. After she left her post, the position was advertised and Parenteau applied.

[55] Valley Hill functions like a big family. As with “all the employees”, Fitzpatrick has coffee with Parenteau. He has also had lunch with “Glen and Delilah and Cassie and Hannah”. He resides in a basement suite in Parenteau’s son’s home, but he has his own entrance. He visited Parenteau at his cabin a couple of times last summer, but other employees receive similar invitations. He has gone out for supper with Parenteau and his wife approximately six times, but he has little time to socialize in the evenings.

[56] Fitzpatrick denied advising, influencing, or intimidating Parenteau into making the Application. He said, “I have a good relationship with the Union, including Sander”. He welcomes the Union because “it [makes it] easier to discipline”. However, “I’m the Director and I should be able to direct the place” and “I should be able to give developmental feedback”.

[57] In relation to the Ringdahl Incident, he warned Parenteau about decertification activities onsite. However, he suggested that if they had a proper Union steward, the steward would have told Ringdahl to talk to management. The Ringdahl Incident could have been “held without the Union”. And although Valley Hill has a wonderful group of staff, “some of them take this step…they bypass me and they go to [Sander]”.

[58] Dettmers called Fitzpatrick a couple of times shortly after the McMaster Incident, claiming that Parenteau was going to hit McMaster. Fitzpatrick said, “you can’t say that. He didn’t hit him…how do you know he was going to hit him?” And, “if you say that he hit him, Parenteau could end up getting fired”. But when Fitzpatrick received the final report he did not ask that it be revised. Parenteau was suspended by Human Resources almost immediately. Fitzpatrick did not interfere with his discipline.

[59] As for the seniority list, Dettmers started as a casual employee. He was always asking for shifts. Fitzpatrick felt sorry for him. He likely violated the CBA in assigning Dettmers to shifts. Dettmers’ seniority is largely attributable to what Fitzpatrick describes as his own violation of the CBA. He takes responsibility for this. While he asked Dettmers to work days when short on staff, Dettmers is not qualified to be assigned to day shifts.

[60] The purpose of the August Meeting, which was not mandatory, was to inform the staff that McMaster’s employment had permanently ended. At the meeting, Fitzpatrick apologized for “things” that occurred under McMaster’s watch. There was discussion about the seniority list and the call-in sheet. Fitzpatrick advised that “people can be let go for insubordination” and “there are

some things that the Union cannot protect you on". He provided the employees with the definition of "just cause". At some point he received a phone call from his stepdaughter, and so ended the meeting and went back to his office. He had no prior knowledge of Parenteau's plans and did not witness Parenteau entering the meeting room.

[61] In relation to the Board Meeting, Fitzpatrick denied raising the prospect of decertification. As of November 21, 2018, Fitzpatrick had a bargaining committee together. He wanted to set dates for bargaining so he could relay those to the Board.

[62] On cross, Fitzpatrick insisted that when he visited with Parenteau outside of work there was no talk of decertification. He leaves work at work. The only time he has discussed decertification with Parenteau was in response to the Ringdahl Incident. As for that incident, Parenteau had not denied the allegations contained in Fitzpatrick's memo.

[63] Fitzpatrick has told employees to come to him before going to the Union. When asked whether he told the staff that "bypassing" him would amount to insubordination, he took a long pause. Then the following exchange occurred:

> *Fitzpatrick: "That was the August 2nd meeting, yes".*
> *Union Counsel: "You said it would be insubordination-*
> *Fitzpatrick: "-It could be ins…ahhh, let's see…I need time here…"*
> *[Pause]*
> *Fitzpatrick: "That…ah...some things cou….ah-"*
> *Union Counsel: "Just… just tell us your evidence, tell us the truth. You said that. Is that correct?"*
> *[Pause]*
> *Fitzpatrick: "The time schedule was took and that could have been worked out…"*
> *Union Counsel: "I don't understand that."*
> *Fitzpatrick: "Steve took the time schedule down to the Union and I said you know in some places, um…*
> *Union Counsel: "But I think we are talking about the August 2nd…"*
> *Employer Counsel: "Please let the witness answer."*
> *Vice-Chair: "I agree."*
> *Union Counsel: "Okay. Sorry. Go ahead."*
> *Fitzpatrick: "Um. In some places, uh, stuff is confidential and uh, taking stuff without my knowledge could be insubordination. Yes, that's what I said."*
> *Union Counsel: "You said that during the meeting?"*

Fitzpatrick: "Yes."

Union Counsel: "That …so what exactly did you say about that?"

Fitzpatrick: "Um, that I'm the Director. That uh like um, just talking about the time I talked to the Union about…um…he was complaining about who was on the schedule…and uh…I said that I wasn't very s…. pleased…uh…him taking the time schedule. And in some places insubordination, that could be insubordination. Yes I did say that."

Union Counsel: "So you don't think that the Union should have access to the time schedule? And what do you mean by time schedule?"

Fitzpatrick: "Well who is being scheduled."

Union Counsel: "Why do you, why… is there an issue with the Union having access to that?"

Fitzpatrick: "Well he was saying he wasn't getting enough hours. He was getting 80."

Union Counsel: "So you told him you are not very pleased with him giving that time schedule to the Union?"

[pause]

Fitzpatrick: "Yeah and I talked to somebody at the Union about it."

Union Counsel: "And you were not very pleased that he went to the Union?"

Fitzpatrick: "Well no, I but wasn't…I, I, he could've came and talked to me about his hours and that's what I'm saying."

Union Counsel: "And then, so I'm guessing that that wasn't actually at the August 2nd meeting – what what you just mentioned about the time schedules…did you specifically refer to time schedules at the August 2nd meeting?"

[pause]

Fitzpatrick: "I used it as a reference, yes. But it was discussed…er… with the Union on the July 25th or something."

Union Counsel: "And so you…and I, um, so just coming back to this August 2nd meeting, you would agree that you said it was insubordination and the Union…it was insubordination if people in certain circumstances went to the Union first."

Fitzpatrick: "I, I, I had a paper with the definitions of just cause, because…um [pause] I, I, have, um...the other thing is, um, we work with the children, we are not to have contact with these children after they leave for two years, um, some people don't have boundaries with, with these children and I thought that some things that are not appropriate, that these things can lead to being let go. Insubordination…following…

Union Counsel: "And one of those things was not going to you first but instead going to the Union…one of the things that could result in dismissal."

Fitzpatrick: "Well they could come and talk to me about that…I, I've had people that have uh workers that have no boundaries and I have explained to them that um well I'm going to tell you the truth, one girl, the um, she had been spoken to a few times about um boundaries with the

kids…um, she was let go because um, she took it upon herself to go down to a reserve and pick one of the clients up. Um…and that was just cause."

Union Counsel: "Now I've no issue that, of course employees can, like they have that option of going to you first, so I don't dispute you on that, but I'm wondering if you could answer the question of whether you said at the meeting that if you do go to the Union first and you don't come to me that's insubordination, that could lead to dismissal."

Fitzpatrick: "No I didn't say …it that way."

Union Counsel: "What way did you say it?"

Fitzpatrick: "That I would prefer that if anybody has any issues to come to me before they went to the Union."

Union Counsel: "And you said it would be insubordination if they didn't."

Fitzpatrick: "No I didn't."

Union Counsel: "And I think we… well that's fine. We'll just let the evidence speak for itself."

[64] When asked whether Fitzpatrick told Dettmers that he was thoroughly disgusted that he went to the Union about the seniority list, Fitzpatrick paused and said, "you know like I said before, Steve didn't have many hours, he doesn't have a pension. I said I wasn't very pleased. You come in and ask [for] hours and I give you hours and uh, with this seniority list, um, I have to play how it is with the seniority list."

Cassie Petit ("Cassie"):

[65] Cassie has held the title of Clinical Supervisor since August 2018. Cassie's testimony was tentative. On the topic of the August Meeting, when asked whether Fitzpatrick said, "nobody go to the Union and if they go to the Union they will be written up and fired", Cassie's response was guarded, offering that "he did not say those words". When asked about the purpose of the meeting, Cassie explained that it was to reassure the staff about the future of the post-McMaster workplace.

[66] On cross, Cassie denied that Fitzpatrick had said "come to me first before going to the Union," but then was careful to add that, "there was discussion about insubordination but in those exact words, I don't recall that." When asked whether he conveyed a message that Union activity would be considered insubordination, she said "not that I recall, no." When pressed, she replied, "he might have said that but …I take this very seriously. I'm not going to say yes or no to something I'm unsure of." Finally, Cassie admitted that there was talk of insubordination at the meeting and that Fitzpatrick pulled out the procedural manual to discuss it.

[67] Cassie denied being in the room during Parenteau's decertification activities.

Relevant Statutory Provisions:

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

Right to form and join a union and to be a member of a union

6‑4(1) Employees have the right to organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing.
(2) No employee shall unreasonably be denied membership in a union.

Application to cancel certification order – loss of support
6‑17(1) An employee within a bargaining unit may apply to the board to cancel a certification order if the employee:
(a) establishes that 45% or more of the employees in the bargaining unit have within the 90 days preceding the date of the application indicated support for removing the union as bargaining agent; and
(b) files with the board evidence of each employee's support that meets the prescribed requirements.
(2) On receipt of an application pursuant to subsection (1), the board shall direct that a vote be taken of the employees in the bargaining unit.
(3) If a majority of the votes cast in a vote directed in accordance with subsection (2) favour removing the union as bargaining agent, the board shall cancel the certification order.
(4) An application must not be made pursuant to this section:
(a) during the two years following the issuance of the first certification order; or
(b) during the 12 months following a refusal pursuant to this section to cancel the certification order.

Board powers
6‑104 …
(2) In addition to any other powers given to the board pursuant to this Part, the board may make orders:
(a) requiring an employer or a union representing the majority of employees in a bargaining unit to engage in collective bargaining;
(b) determining whether an unfair labour practice or a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board is being or has been engaged in;
(c) requiring any person to do any of the following:
(i) to refrain from contravening this Part, the regulations made pursuant to this Part or an order or decision of the board or from engaging in any unfair labour practice;
(ii) to do any thing for the purpose of rectifying a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board;
. . .
(f) rescinding or amending an order or decision of the board made pursuant to clause (b), (c), (d) or (e) or subsection (3), or amending a certification order or collective bargaining order in the circumstances set out in clause (g)

or (h), notwithstanding that a motion, application, appeal or other proceeding respecting or arising out of the order or decision is pending in any court;
(g) amending a board order if:
(i) the employer and the union agree to the amendment; or
(ii) in the opinion of the board, the amendment is necessary;
(h) notwithstanding that a motion, application, appeal or other proceeding respecting or arising out of a certification order or collective bargaining order is pending in any court, rescinding or amending the certification order or collective bargaining order;

Power to dismiss certain applications – influence, etc., of employers
6‑106 The board may reject or dismiss any application made to it by an employee or employees if it is satisfied that the application is made in whole or in part on the advice of, or as a result of influence of or interference or intimidation by, the employer or employer's agent.

Powers re hearings and proceedings
6‑111(1) With respect to any matter before it, the board has the power:
…
(e) to receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the board considers appropriate, whether admissible in a court of law or not;

Analysis:

Onus of Proof:

[69] It is the Union's onus to prove, on a balance of probabilities, that the Application was made in whole or in part on the advice of, or as a result of the influence of or interference or intimidation by the Employer or Employer's agent. The evidence led must be sufficiently clear, convincing and cogent.

Credibility:

[70] While the Board assumes that witnesses attempt to be truthful, it must assess the reliability of witness evidence, considering various indicia of credibility such as: powers of observation, relationship to parties in the dispute, self-interest, consistency, and a failure to produce material evidence if necessary.[5] Issues with reliability do not equate to a finding of dishonesty. Witnesses' capacity to recall events is fallible, limited by memory, sensory perception, and perspective. In light of these considerations, the Board has arrived at the following conclusions.

[5] See, for example, *Hartmier v Saskatchewan Joint Board Retail Wholesale and Department Store Union and Retail, Wholesale and Department Store Union, Local 955*, 2017 CanLII 20060 (SK LRB) at para 170.

[71] While Dettmers' evidence is predominantly credible, his recall is imperfect. Despite this, Sander's evidence is credible and, to some extent, corroborative of the material evidence led by Dettmers. Sander, at times, overstated facts to the Union's advantage, but was quick to allow concessions that did not fit seamlessly into the Union's narrative, acknowledging that he has a working relationship with Fitzpatrick, that they have managed to find some solutions to problems, and that he cannot possibly know the full story about a complaint without making inquiries with the Employer.

[72] Parenteau's evidence is largely unreliable, and should be approached carefully. His testimony was not adequately concerned with accuracy, was internally inconsistent, and was generally driven by self-interest. Key inconsistencies have been summarized in the preceding section.

[73] Parenteau repeatedly denied swearing at his co-workers and calling them insulting names, but then insisted that if he had done so, he would have most certainly apologized. This account had a familiar but hollow ring to it. Throughout the hearing, Parenteau was frequently warned about unacceptable language, would then apologize and refrain, only to be re-triggered, and have the cycle repeat.

[74] Fitzpatrick seems genuinely concerned about Valley Hill's clients. However, on key themes, Fitzpatrick was evasive and his evidence inconsistent. Like Parenteau, Fitzpatrick's evidence seemed motivated by self-interest or, more specifically, self-preservation.

[75] During Fitzpatrick's examination-in-chief, the Employer attempted to lead evidence not put to Dettmers in cross-examination.[6] The purpose of the evidence was to impugn Dettmers' credibility. According to the Employer, the evidence had come to its attention following the close of the Union's case, and the Union would have another chance to rebut it. The Union objected to the evidence primarily on the basis of *Browne v Dunn,* 1893 CanLII 65 (FOREP) ("*Brown v Dunn*"), and secondarily on the basis of the rule against hearsay, the correspondence having originated from an employee who was not being called to testify.

[76] The Board has discretion to "receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the board considers appropriate, whether admissible in a court of law or not", pursuant to clause 6-111(1)(e) of the *Act*. This is a broader discretion than is

[6] The Employer's proposed evidence was in relation to the Wage Schedule Incident.

available to a court of law. Certain matters of admissibility are left to the Board's exercise of discretion, guided by its determination of what is appropriate.

[77] The Board upheld the Union's objection, finding that the Employer's line of questioning around the Wage Schedule Incident, including the correspondence, ran afoul of the rule in *Browne v Dunn* and was therefore inappropriate and inadmissible. The Employer had every opportunity to hear the Union's evidence before fine-tuning its strategy in cross-examination. It was not sufficient for the Employer to allege that it had received the evidence only after the Union had closed its case. Furthermore, the Board heard extensive evidence going to the credibility of the primary witnesses. The Board's conclusions on credibility arise from the whole of the evidence as opposed to any one, specific incident.

[78] A further note is warranted about hearsay evidence. As mentioned, the Board has discretion to admit hearsay evidence pursuant to its exercise of discretion under clause 6-111(1)(e) of the *Act*. Throughout the course of the hearing, hearsay was led, particularly around the issue of anti-union animus. While it is not strictly necessary for the Board to import and rely on the principled approach to hearsay, it is prudent to find guidance in the underlying principles. In a case such as this, where a main issue is Employer influence, anti-union sentiment, and intimidation, hearsay evidence is not only unsurprising, but to some extent necessary. In assessing reliability, the Board's task is to assess the evidence in the context of the whole, while assigning its proper weight. When assigning weight, the Board takes into account issues of credibility, corroboration and motivation.

[79] The Board has taken the foregoing into account in admitting and considering the hearsay evidence in this case.

Waiting Period:

[80] The Union argues that Parenteau has failed to comply with the waiting period as required following a refusal of a certification order and on that basis this Application should be dismissed. The Union relies on clause 6-17(4)(b) of the *Act*, which reads:

> ***Application to cancel certification order – loss of support***
> *6‑17(1) An employee within a bargaining unit may apply to the board to cancel a certification order if the employee:*
> …
> *(4) An application must not be made pursuant to this section:*
> *(a) during the two years following the issuance of the first certification order;*

> *or*
> *(b) during the 12 months following a refusal pursuant to this section to cancel the certification order.*

[81] The 12-month waiting period is dependent on a previous refusal, pursuant to section 6-17, to cancel a certification order.

[82] The current Application was filed on November 14, 2018. This means that the Application is barred if there has been a previous refusal pursuant to clause 6-17(4)(b) in the 12 months prior to November 14, 2018. It is therefore necessary to examine the events that occurred during that 12- month period of time.

[83] The next most recent application was filed on October 1, 2018 (LRB File No. 207-18), less than two months before the current Application was filed. LRB File No. 207-18 was withdrawn by the Applicant on October 25, 2018. Prior to this, the most recent application was filed on September 5, 2018 (LRB File No. 187-18). That application was also withdrawn. On September 10, 2018, the Board Registrar rejected the application for lack of compliance with the requirements of the Board.

[84] In LRB File No. 207-18, the Applicant withdrew the application before there could be any decision rendered. Therefore, the Board made no decision, whether to refuse to cancel the Certification Order or otherwise. On LRB File No. 187-18, the Board Registrar deemed that the application was not compliant and so it was not accepted for further determination. The Board had no opportunity to make a decision. Neither a withdrawal nor a non-compliant filing are tantamount to a refusal under clause 6-17(4)(b).

[85] The next prior application was filed on April 12, 2017 (LRB File No. 064-17) and was dismissed by the Board on May 2, 2017 for failure to file appropriate support evidence. This dismissal occurred approximately 19 months prior to the current Application. For the sake of argument, even if the current Application was deemed a continuation of the two previous applications, the shortest period of time between one of the three 2018 applications (LRB File No. 187-18 – September 5, 2018) and the Board's decision on May 2, 2017 in LRB File No. 064-17 is approximately 16 months. The Applicant is clearly outside of the required waiting period and the current Application cannot be dismissed on the basis of clause 6-17(4)(b) of the *Act*.

[86] The Union states that if the Board finds that there was no refusal as contemplated by clause 6-17(4), that it should take into account the purpose of clause 6-17(4) on the substantive question of whether the Decertification Application should be dismissed. The Union says that a cooling off period is necessary for the employees and parties to gain some distance from the original application and for the Board to properly determine the employees' true wishes about the representational question. The purpose of the waiting period is to give effect to the employees' choice. Therefore, if the evidence of multiple decertification applications does not lead the Board to conclude that the waiting period was infringed, it should at least factor into the analysis of whether the employees' true wishes can be determined. The board considers this argument in the following section.

Employer Advice, Influence and Intimidation:

[87] The second, and main, issue is whether the Application has been made in whole or in part on the advice of, or as a result of influence of or interference or intimidation by, the Employer or the Employer's agent. The Application need only be made "in part" on the advice, influence, interference or intimidation of the Employer.[7] It is not necessary for the Board to find that the Employer's actions were the sole or even the primary influence in bringing the Application.

[88] The Board starts with the premise that employees have the right to join a union, as set out in subsection 6-4(1) of the *Act*, and that joining a union is a matter of the employees' choice, as confirmed by section 2(d) of the *Charter.* As a function of that choice, employees are entitled to "periodically revisit the representational question".[8]

[89] The Board in *Bateman v Saskatchewan Joint Board, Retail, Wholesale and Department Store Union*, 2009 CanLII 18238 (SK LRB) ("*Bateman*") reviewed the cases decided under section 9 of *The Trade Union Act*, the predecessor to section 6-106:[9]

> *[10] In Matychuk v. Hotel Employees and Restaurant Employees Union, Local 206 and El-Rancho Food & Hospitality Partnership o/a KFC/Taco Bell, [2004] Sask. L.R.B.R. 5, LRB File No. 242-03, 2004 CanLII 65622 (SK L.R.B.), the Board approved of the observation*

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[7] *Paproski v International Union of Painters and Allied Trades, Local 739 and Jordan Asbestos Removal Ltd.*, 2008 CanLII 47038 (SK LRB) ("*Paproski*") at para 133.

[8] *Williams v United Food and Commercial Workers, Local 1400 and Affinity Credit Union (Hague Branch)*, 2014 CanLII 63996 (SK LRB) ("*Williams*") at para 28.

[9] *Bateman v Saskatchewan Joint Board, Retail, Wholesale and Department Store Union*, 2009 CanLII 18238 (SK LRB) ("*Bateman*"). Note that the paragraph numbers are recited exactly as they appear in the decision.

that it must be vigilant with respect to the issue of Employer influence as referred to in s. 9 of the Act.

[11] In Wells v. Remai Investment Corporation and United Food and Commercial Workers, Local 1400, [1996] Sask. L.R.B.R. 194, LRB File No. 305-95, at 197, the Board observed that it is alert to any sign that an application for decertification has been initiated, encouraged, assisted or influenced by the actions of the Employer, "as the employer has no legitimate role to play in determining the outcome of the representation question."

[12] The Board has noted in the past that not every suspicious or questionable act or circumstance will necessarily lead to the conclusion that an application has been made as a result of influence, interference, assistance or intimidation by the Employer. As noted in Leavitt v. Confederation Flag Inn (1989) Limited and United Food and Commercial Workers, Local 1400, [1990] Winter Sask. Labour Rep. 64, LRB File No. 225-89 at 66, the conduct must be of a nature and significance that it compromises the ability of the employees to make the choice protected by s. 3 of the Act:

> *Generally, where the Employer's conduct leads to a decertification application being made or, although not responsible for the filing of the application, compromises the ability of the employees to decide whether or not the wish to be represented by a union to the extent that the Board is of the opinion that the employees' wishes can no longer be determined, the Board will temporarily remove the employees' right to determine the representation question by dismissing the application.*

[26] As noted by the Board in Shuba v. Gunnar Industries Ltd. and International Union of Operating Engineers, Hoisting, Portable and Stationary, Local 870, [1997] Sask. L.R.B.R. 829, LRB File No. 127-97, in the application of s. 9 of the Act¸ the Board must carefully balance the democratic right of employees to choose to be represented by a trade union (pursuant to s. 3 of the Act), against the need to ensure that the Employer has not used coercive power to improperly influence the outcome of that choice.

[27] In Mandziak v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Remai Investment Co. Ltd., [1987] Dec. Sask. Labour Rep. 35, LRB File No. 162-87, the Board made a similar point:

> *While the Board generally assumes that all employees are of sufficient intelligence and fortitude to know what is best for them and is reluctant to deprive them of an opportunity to express their views by way of a secret ballot vote, it will not ignore the legislative purpose and intent of Section 9 of The Trade Union Act. Section 9 is clearly meant to be applied when an employer's departure from reasonable neutrality in the representation question leads to or results in an application for decertification being made to the Board. In the Board's view, this application resulted directly from the employer's influence and indirect participation in the gathering of necessary evidence of employee support.*

[90] The Employer suggests that *Crowder* signals a new direction for the Board, and is supported by recent *Charter* cases interpreting the protection for freedom of association. While understandable, this argument cannot be upheld. First, *Crowder* did not outline a principled framework for considering cases pursuant to section 6-106 of the *Act.* Second, the Board's comments in *Crowder* are colored by the circumstances of that case. For instance, to the extent that facts and opinions constitute advice on, influence of, interference in, or intimidation in relation

to a decertification application, they may still run afoul of section 6-106. Third, the facts in *Crowder* are distinguishable from the case at bar.

[91] Section 6-106 provides the Board with discretionary power to dismiss decertification applications when there is evidence of impugned conduct. Each case must be assessed on its facts. In *Crowder*, the facts failed to trigger the Board's exercise of its discretion. Although there are some parallels between *Crowder* and the current case, there are also some important discrepancies, which the Board will address in turn.

[92] First, both cases address allegations of an influential relationship with management. In *Crowder*, the Union relied on hearsay evidence that one of the instigators of the decertification process, not the applicant, was a friend of the Employer outside of the workplace. That evidence was minimal. The evidence in the present case is directly relevant and supported by admissions from both Parenteau and Fitzpatrick. Only the extent of the relationship is in question, and the extent can be inferred from the surrounding facts.

[93] Second, both cases deal with allegations of support evidence obtained through misrepresentation or misapprehension. In *Crowder*, the employees were told that their signatures were a precondition for a vote. But there was no evidence that "any reasonable employee had been misled as to the nature of the support evidence".[10] Here, the support papers "did say to vote", but Parenteau's single-minded and willful approach fueled misunderstandings on at least two occasions, and was likely to fuel more. It is also likely that Parenteau's misleading and aggressive approach facilitated the decertification process.

[94] Parenteau's approach to collecting support evidence is another example of his willful and intimidating tactics. On more than one occasion, Parenteau expressed frustration at the fact that a "few" people were holding up the "right to vote" of the many. He communicated this sentiment directly to the people who he believed were perpetrating this wrong. He came up with a strategy to accost the resisters at the workplace and then single-mindedly pursued them into the parking lot to insist that they sign.

[95] The third issue is the evidence of influence. In *Crowder*, the evidence of "influence" amounted to the applicant's initial contact with the Executive Director, during which she was told

[10] *Hannah Crowder v SEIU-WEST and The Saskatoon Society for the Protection of Children Inc.*, LRB File No. 023-16 (July 28, 2016) ("Crowder") at para 46.

to do her own research. Here, most if not all of the evidence of decertification activities is situated at the workplace. While Fitzpatrick insists that he has discouraged workplace decertification efforts at every turn, his efforts were either ineffective or insincere. The Board accepts that Fitzpatrick warned Parenteau in June 2018, but there is uncontraverted evidence of decertification activity on workplace grounds in August 2018. The Employer should have been alert to the concern given the history of workplace decertification activities as far back as April 2017. Further actions should not have been tolerated.

[96] *Williams v United Food and Commercial Workers, Local 1400 and Affinity Credit Union (Hague Branch)*, 2014 CanLII 63996 (SK LRB) ("*Williams*") was decided after the amendments, referred to in *Crowder*. The Board in *Williams* described the two prevailing themes in the relevant case law:

> *[31] Generally speaking, the cases where this Board has invoked s. 9 of The Trade Union Act have generally fallen into one of two (2) categories:*
>
> > *1. Circumstances where the Board had compelling reason to believe that the real motivating force behind the decision to bring a rescission application was the will of the employer rather than the wishes of the employees. Examples of such cases include Wilson v. RWDSU and Remai Investment Co., supra; Larry Rowe and Anthony Kowalski v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Canadian Linen and Uniform Services Co., [2001] Sask. L.R.B.R. 760, LRB File No. 104-01; Tyler Nadon v. United Steelworkers of America and X-Potential Products Inc., [2003] Sask. L.R.B.R. 383, 2003 CanLII 62864 (SK LRB), LRB File No. 076-03; and Paproski v. International Union of Painters and Jordan Asbestos Removal, supra.*
> >
> > *2 Circumstances where the Board lost confidence in the capacity of the employees to independently decide the representational question because the nature of an employer's improper conduct was such that it likely impaired them of their capacity to freely do so. Examples of such cases include, Schaeffer v. RWDSU and Loraas Disposal Services, supra; and Patricia Bateman v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Empire Investments Corporation (Northwood Inn & Suites), 2009 CanLII 18238 (SK LRB), LRB File No. 149-08.*

[97] The Board confirmed that its task is to balance the right of employees to revisit the representational question with the need to be "alert to signs of improper employer influences".[11] In doing so, the Board "examines the impugned conduct of the employer and measures the likely impact of that conduct on employees of reasonable fortitude giving due consideration to the

[11] *Williams* at para 32.

circumstances occurring in the workplace at the relevant time, including the maturity and status of collective bargaining".[12] This is an objective test.

[98] The Board must also keep the following in mind. First, not every suspicious or questionable act or circumstance will lead to the conclusion that an application has been made as a result of advice, influence, interference, or intimidation by the Employer. Second, the Employer's conduct must be of a nature and significance such that either: the real motivating force behind the decision to bring the application was the will of the Employer, or the Employer's conduct compromises the ability of the employees to decide the representational question to the extent that the employees' wishes can no longer be determined.

[99] The Union argues, and the Board accepts, that cases are rare where there is overt or direct evidence of interference or other impugned conduct on behalf of the employer. The Union cites *Nadon v United Steelworkers of America and X-Potential Products Inc*, 2003 CanLII 62864, in which the Board held that,

> *It is necessary to be vigilant regarding the exercise of influence by an employer in such cases, because the cases are legion that such influence is seldom overt but often may be inferred from unusual circumstances and inconsistent events, meetings and conversations not adequately explained by innocent coincidence…*[13]

[100] The Board in *Paproski v International Union of Painters and Allied Trades, Local 739 and Jordan Asbestos Removal Ltd.*, 2008 CanLII 47038 confirms that indirect evidence is typical:

> *In the case before us, as is typical, there is no direct evidence of employer involvement, influence or intimidation with the application. Therefore, the Board must determine whether there is evidence from which it can draw an inference that the Employer has been involved with the application or has interfered with, intimidated, influenced or encouraged the application being made to an extent that the true wishes of the employees cannot be determined by a vote.*[14]

[101] It is therefore not unusual for the Board to rely on circumstantial evidence in determining whether the test for a dismissal pursuant to section 6-106 has been satisfied. In this case, it is not only appropriate to so rely; it is necessary.

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[12] *Ibid.*
[13] *Nadon v United Steelworkers of America and X-Potential Products Inc*, 2003 CanLII 62864 (SK LRB) at para 18.
[14] *Paproski* at para 91.

[102] The evidence depicts a workplace in which Union activity is discouraged and members reprimanded for simply "going to the Union". Fitzpatrick may believe his actions are innocent but he has shown total disregard for the natural consequence of his actions, being to perpetuate the pre-existing chill on Union activity. While Sander admits that he does not want to be involved in the "day-to-day", this approach does not justify Fitzpatrick's attitude toward employees who seek to rely on the Union.

[103] Fitzpatrick attempts to distance himself from the unfair labour practice finding in *Valley Hill*. And while the tone was set under previous management, Fitzpatrick has failed to reset the clock, and has instead fueled the existing hostility. He states that it "is easier to discipline with the Union" in place, but this obvious concern with operational expediency falls painfully short of acceptance, or even tolerance, of representational rights. The near absence of representational activity is a by-product of the Employer's demonstrated antagonism toward the Union.

[104] Fitzpatrick has "no love" for the Union. He uses the word "bypass" when describing circumstances in which members reach out to the Union. Meanwhile, his friend Parenteau has pursued decertification in a relentless, aggressive, and at times, intimidating manner. Fitzpatrick and Parenteau have clearly minimized their friendship. But on the evidence, a reasonable person would perceive them as close. It is unlikely that they refrained from discussing decertification outside of work. Under the circumstances, it is likely that an employee of reasonable fortitude would fear that support for the Union would be communicated to the Employer. It is therefore likely that some employees experienced an "apprehension of betrayal".

[105] At the August Meeting the combined effect of Fitzpatrick's hostility and Parenteau's aggression reached a fever pitch. Fitzpatrick admitted raising insubordination in relation to the "time schedule" issue. And immediately after the meeting, Parenteau marched in, pursuing decertification. Parenteau intensified the problem by pursuing two employees into the parking lot. He bullied them. It is ironic that he would then direct Fitzpatrick "to do something about [Ringdahl's reaction]". Parenteau demanded recourse for a problem of his own making. This shows a troubling absence of self-awareness. His retelling of this incident comes perilously close to admitting Employer assistance in his decertification efforts.

[106] The Union has asked the Board to consider the effect of multiple decertification drives. The Board is careful not to implicitly extend the 12-month waiting period by suggesting that a cooling off period, greater than that which is outlined in the legislation, is warranted. However, in

the specific circumstances of this case, the multiple and persistent decertification drives are further evidence of Parenteau's forceful and intimidating tactics.

[107] Under the circumstances, the Employer's influence has, more likely than not, injected its interests into the representational question. The Board is satisfied that the Decertification Application was made in part as a result of the influence of the Employer. Due to the nature of the Employer's conduct, the Board has lost confidence in the capacity of the employees to independently decide the representational question. The employees' wishes can no longer be determined.

[108] While it is not necessary to find that the Employer directly advised the making of the Application, the evidence raises serious questions about this. First, Parenteau's motivation is internally inconsistent and based on questionable facts. That said, the Board accepts that people are not always, or even inherently, rational. The coherence of Parenteau's motivation cannot be the sole basis for finding that his decertification efforts were directly counselled by the Employer.

[109] The timing of the Decertification Application is suspect. And, more likely than not, it was Fitzpatrick who raised decertification in the Board meeting. Whether by design or by willful blindness, Fitzpatrick had minimal control over Parenteau's workplace decertification conduct. And while the Board accepts that Fitzpatrick communicated a warning after the Ringdahl Incident, Parenteau's efforts only intensified as the expiry date for the CBA drew closer. Although not much can be made of any "special treatment" arising from the McMaster Incident, there is a pattern of contact that suggests a certain loyalty between Fitzpatrick and Parenteau.

[110] It is also worth highlighting the suspicious circumstances surrounding the August Meeting, including the insubordination discussion, the abrupt end to the meeting, the sudden appearance of Parenteau, and the workplace decertification attempts in broad daylight, both in the meeting room and in the parking lot. While the Board finds that the meeting was likely mandatory, the foregoing circumstances alone raise suspicions about the Employer's conduct.

[111] Parenteau has made clear that he will not stop in his decertification efforts until he achieves his objective. This single-minded approach to decertification misses the point. The decertification process is about discerning the true wishes of the employees. Despite many attempts and much experience, Parenteau still fails to fully appreciate this notion.

[112] If the employees wish to pursue decertification they will be required to comply with the 12-month waiting period as outlined at clause 6-17(4)(b) of the *Act*. In the meantime, the Employer would do well to adopt a different approach to its labour relations. It is of utmost importance that workers feel supported and safe in the exercise of their representational rights. The Board trusts that, upon reviewing these Reasons, the Employer will proceed to reset the clock and improve the labour relations climate in its workplace.

[113] Lastly, it is not necessary to deal with any voter eligibility issues. Despite this, the Board notes that Cassie Petit was included among the eligible voters. Cassie has held the position of Clinical Supervisor since August 2018 and would have properly been excluded from the list.

[114] The Board makes the following Orders pursuant to section 6-106 and clause 6-111(1)(s) of the *Act*:

1. That the application to cancel the certification Order is dismissed;
2. That the ballots cast in this matter be destroyed unopened; and
3. That upon receipt of the Reasons for Decision, the Employer shall post a copy of the Decision and the Board's Order for a period of sixty (60) days in a place in the workplace where the Employer normally posts notices to employees and where the Reasons for Decision will be visible and can be read by as many employees as possible.

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

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

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson