



**SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION and CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 5430, Proposed Intervenors v SASKATCHEWAN HEALTH AUTHORITY, SERVICE EMPLOYEES INTERNATIONAL UNION WEST and HEALTH SCIENCES ASSOCIATION OF SASKATCHEWAN, Respondents**

LRB File Nos. 182-19 and 183-19; February 6, 2020

Chairperson, Susan C. Amrud, Q.C.; Members: Mike Wainwright and John McCormick

For Saskatchewan Government  
and General Employees' Union:

Andrea Johnson

For Canadian Union of Public  
Employees, Local 5430:

Sachia Longo

For Saskatchewan Health Authority:

Paul Clemens

For Service Employees International  
Union-West:

Heather M. Jensen

For Health Sciences Association  
of Saskatchewan:

Gary L. Bainbridge, Q.C.

**Intervenors – SGEU meets criteria for direct interest intervenor status – SGEU’s rights and obligations potentially directly affected by outcome of main application – SGEU will bring perspective to issues that the parties will not bring and will accordingly be of assistance to Board in deciding main application.**

**Intervenors – CUPE meets criteria for exceptional intervenor status – CUPE has demonstrable and genuine interest in outcome of main application – Special circumstances differentiating it from others established – CUPE will bring perspective to issues that the parties will not bring and will accordingly be of assistance to Board in deciding main application.**

**Intervenors – Applicants granted standing to provide evidence and arguments.**

## **REASONS FOR DECISION**

### **Background:**

**[1] Susan C. Amrud, Q.C., Chairperson:** The Saskatchewan Health Authority ["SHA"] has applied for an Order ["Main Application"] determining whether the position(s) of Child Life Therapist, located within the Jim Pattison Children’s Hospital in Saskatoon is in-scope of the Health Sciences Association of Saskatchewan ["HSAS"] or Service Employees International

Union West ["SEIU-West"]<sup>1</sup>. In SHA's opinion, the Child Life Therapist properly belongs in the HSAS bargaining unit.

[2] Saskatchewan Government and General Employees' Union ["SGEU"] applies to intervene in the Main Application, as a direct interest intervenor.

[3] Canadian Union of Public Employees, Local 5430 ["CUPE"] applies to intervene in the Main Application, as an exceptional intervenor.

[4] The SHA does not take a position on the Applications to Intervene. HSAS does not oppose the Applications. SEIU-West supports the Applications.

[5] SGEU and CUPE both filed helpful Briefs of Law, that also outline the facts that are relevant to their Applications to Intervene.

[6] SGEU, CUPE and SEIU-West all represent health service provider employees employed by the SHA. They each formerly represented these employees for some of the Regional Health Authorities, for which the SHA is now the successor employer. Pursuant to a Letter of Understanding dated October 3, 2003, SEIU-West, SGEU and CUPE negotiated a Joint Job Evaluation Maintenance Committee ["JJEMC"] with the Saskatchewan Association of Health Organizations. The JJEMC created common job descriptions for the health service provider bargaining units represented by SEIU-West, SGEU and CUPE. The JJEMC has created a position of Child Life Specialist. Only in the CUPE bargaining unit are there currently Child Life Specialists employed; in the SGEU and SEIU-West bargaining units, the Child Life Specialist positions are vacant.

#### **Argument on behalf of SGEU:**

[7] SGEU relied on recent decisions of the Board on this issue, including *Saskatchewan Government and General Employees' Union, Regina Professional Fire Fighters Association, IAFF Local 181 v University of Saskatchewan* ["SGEU v U of S"], which described the Board's approach to intervention applications as follows:

*The Board's approach to the granting of intervenor status in proceedings before the Board was summarized as follows in Construction Workers Union (CLAC), Local 151 v Tercon Industrial Works Ltd ["Tercon"]:*

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<sup>1</sup> LRB File No. 165-19.

*In J.V.D. Mills Services #1, supra, this Board clarified its general approach to the granting of intervenor status in proceedings before the Board. In doing so, the Board reiterated the long standing principle that the granting of standing as an intervenor in any proceedings before the Board is a matter of discretion and that, generally speaking, the Board exercises its discretion based on the circumstances of each case, considerations of fairness (to the party seeking standing) and/or the potential for the party seeking standing to assist the Board (by making a valuable contribution or by providing a different perspective) without doing injustice to the other parties. The Board went on to identify and adopt three (3) forms of intervention recognized by this Board. These three (3) forms of intervention are summarized as follows:*

1. **A Direct Interest Intervenor;** where the applicant seeking standing has a direct interest in the answer to the legal question in dispute in that it has legal rights or obligations that may be directly affected by the determinations of the Board.
2. **An Exceptional Intervenor;** where the applicant has a demonstrable and genuine interest in the answer to the legal question in dispute (i.e.: for example, if the party has a pending application before the Board on the same issue and thus has legal rights or obligations that may be affected by a binding precedent); and the applicant can establish the existence of “special circumstances” that differentiate it from others who may have a similar interest; and where that party can demonstrate that it can provide a valuable assistance to the Board in considering the issues before it.
3. **A Public Law Intervenor;** where the applicant has no legal rights or obligations that may be affected by the answer to the legal question in dispute, but can satisfy the Board that its perspective is different or that its participation would assist the Board in considering a public law issue before it.<sup>2</sup>

[8] It also referred to the following passage from that decision:

*In Saskatchewan Government Employees Union, 2016 CanLII 74494 (SK LRB), the Board considered the issue of whether to grant intervenor status to the Saskatchewan Government Employees’ Union and the Saskatchewan Joint Board, Retail, Wholesale and Department Store Union for the hearing to be held in Saskatoon Public Library Board. It quoted with approval the following passage from Government of Saskatchewan, Ministry of Environment v Saskatchewan Government Employees Union [“Ministry of Environment”]:*

*The granting of intervenor status is discretionary and should be exercised sparingly. Within the ambit of that discretion, CIFFC as an applicant seeking to be made an intervenor in this Queen’s Bench matter pursuant to Rule 2-12 should be prepared to address the following:*

- a. *A sufficient interest in the outcome of the matter must be shown such that their involvement is warranted. An outcome that adversely affects them may well be considered sufficient to meet this criterion;*

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<sup>2</sup> 2019 CanLII 76931 (SK LRB) at para 11.

- b. There must exist the reasonable prospect that the process will be advanced or improved by their addition as an intervenor. This includes demonstrating that, as an intervenor, they will bring a new perspective or special expertise to the proceedings that would not be available without their participation. Merely echoing the position of one or more of the parties indicates they will not provide the requisite value;*
- c. As an intervenor they cannot seek to increase the number of issues the parties themselves have included in the proceeding;*
- d. Adding them as an intervenor must meet the goals and objectives identified by Rule 1-3 such that the issues raised by the litigation will be heard with reasonable dispatch and the matter will not be overwhelmed with procedure by virtue of their inclusion as an intervenor;*
- e. Adding them as an intervenor must not unduly prejudice one of the parties;*
- f. The intervention should not transform the court into a political arena; and*
- g. The court is not bound by any of these factors in determining an application for intervention but must balance these factors against the convenience, efficiency and social purpose of moving the case forward with only the persons directly involved in the proceeding.<sup>3</sup>*

**[9]** SGEU argues that it meets these seven tests.

**[10]** It has a sufficient interest because, if the Board was to determine that the Child Life Therapist position is included in the SEIU-West health service provider bargaining unit, then, pursuant to the Joint Job Evaluation system, the position would automatically be included in SGEU's and CUPE's health service provider bargaining units. SGEU also argues that since the Board's previous Registrar advised it of the Main Application, he has already determined that it has a direct interest and should therefore be granted intervenor status. It also argued that granting it direct interest intervenor status would be consistent with the Board's determination in another very similar matter, LRB File No. 220-18, in which it was recognized as a direct interest intervenor.

**[11]** With respect to whether the process will be advanced or improved by their intervention, SGEU argues that it will bring a new perspective. SHA, it argues, has attempted to focus the Board's attention only on the Child Life Therapist position located in Saskatoon. However, if the Child Life Therapist position in Saskatoon is determined to properly belong in the SEIU-West bargaining unit, this will create a new position in SGEU's bargaining unit in other parts of the

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<sup>3</sup> At para 8.

province. The intervention of SGEU will assist the Board by providing a full picture of how its decision will impact the bargaining unit structure of employees of the SHA across the province.

[12] SGEU has no intention of increasing the issues to be addressed in the Main Application.

[13] SGEU does not intend to tender duplicative evidence, but only to supplement the evidence provided by SEIU-West to the extent necessary to ensure the Board has the full picture as to how its decision will impact all health service provider bargaining units in Saskatchewan.

[14] None of the parties has raised any issue of prejudice that they would suffer by granting the intervention application. SGEU is available for the hearing dates fixed for hearing the Main Application.

[15] SGEU does not intend to raise political issues during the hearing.

[16] There are no factors relating to convenience, efficiency or social purpose that would weigh against its inclusion in the hearing of the Main Application.

[17] SGEU asks that it be granted direct interest intervenor status, including the opportunity to call its own witnesses and to cross-examine the witnesses of other parties, as it considers necessary, but not so as to create a duplication of evidence.

#### **Argument on behalf of CUPE:**

[18] CUPE applies for exceptional intervenor status. It also relies on *SGEU v U of S*. That decision adopted a test for exceptional intervenor status that requires an applicant to satisfy the Board that:

- *It has a demonstrable and genuine interest in the answer to the legal question in dispute;*
- *Special circumstances differentiate it from others who may have a similar interest; and*
- *It can provide valuable assistance to the Board in considering the issues before it.*<sup>4</sup>

[19] CUPE argues that it has a demonstrable and genuine interest in this matter because the Main Application implicates the role of the JJEMC. The JJEMC is implicated because the Main Application will determine whether the Child Life Therapist position belongs in the SEIU-West

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<sup>4</sup> At para 13.

bargaining unit. If it does, then the new position will be subject to the JJEMC to which CUPE is a party and, consequently, will also be part of the CUPE bargaining unit.

[20] CUPE states that special circumstances exist because it currently represents members who fill the similar position of Child Life Specialist. The only Child Life Specialists employed by the SHA are in the CUPE bargaining unit; the equivalent positions in SGEU and SEIU-West are vacant.

[21] CUPE can provide valuable assistance to the Board because it will be able to call evidence of its members who are Child Life Specialists.

[22] CUPE noted that it is not seeking to widen the *lis* between the parties; the evidence it seeks to bring would be helpful to the Board in deciding the questions already in issue in the Main Application.

[23] Its participation will not cause a delay as it is available for the dates set for the hearing of the Main Application.

#### **Analysis and Decision:**

[24] The test to be applied to Applications to Intervene is clear. The granting of intervenor status is discretionary and is exercised sparingly. The Board must be satisfied that the addition of intervenors will meet the tests set out in *SGEU v U of S*. In this matter, the Board has determined that the Applications for Intervention will be granted.

[25] The proposed intervenors have satisfied the Board that they have a sufficient interest in the outcome of the Main Application. The decision in the Main Application will have a direct effect on their bargaining units, either by adding or not adding a new position that they believe should be part of their bargaining units. There is a reasonable prospect that both proposed intervenors, but particularly CUPE, will advance or improve the Board's understanding of the issues it will face on the Main Application. While SGEU's evidence and argument is likely to be similar to that provided by SEIU-West, it has undertaken not to duplicate SEIU-West's submissions. Neither proposed intervenor seeks to increase the questions at issue in the Main Application. Their participation will not increase the issues to be heard, and accordingly is not expected to increase the length or cost of the hearing. The parties have not raised any issue of prejudice that would result from the proposed intervenors' inclusion, and the Board has not identified any prejudice

that would result from their inclusion. There is no suggestion that the intervenors intend to stray beyond matters of law into matters of politics. There are no factors of convenience, efficiency or social purpose that would lead the Board to determine that the Applications to Intervene should not be granted.

**[26]** The Board would note that, contrary to SGEU's submission, it is the Board, not the Registrar, that determines whether an applicant will be granted intervenor status (see subsection 24(3) of *The Saskatchewan Employment (Labour Relations Board) Regulations*). The Registrar's role is to provide notice to potential applicants who may decide to apply for standing under either subsection 20(2) or (3) of the Regulations. Therefore, the fact that SGEU and CUPE received notice of the Main Application from the Registrar played no role in the Board's decision in this matter.

**[27]** Each proposed intervenor will be granted the intervention status requested. With these Reasons an Order will be issued as follows:

- (a) SGEU is granted standing as a Direct Interest Intervenor in LRB File No. 165-19, to provide evidence and argument, including the ability to call its own witnesses and cross-examine the witnesses of other parties, but not so as to duplicate the evidence submitted by other parties;
- (b) CUPE is granted standing as an Exceptional Intervenor in LRB File No. 165-19, to provide evidence and argument, including the ability to call its own witnesses and cross-examine the witnesses of other parties, but not so as to duplicate the evidence submitted by other parties.

**[28]** This is a unanimous decision of the Board.

**DATED** at Regina, Saskatchewan, this 6<sup>th</sup> day of **February, 2020**.

**LABOUR RELATIONS BOARD**

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Susan C. Amrud,  
Chairperson