SASKATOON CO-OPERATIVE ASSOCIATION LIMITED, Applicant v CRAIG THEBAUD, Respondent

LRB File No. 215-19; 200-19; May 21, 2020
Vice-Chairperson, Barbara Mysko; Board Members: Aina Kagis and Laura Sommervill

For the Applicant, Saskatoon Co-operative Association Limited: Kevin C. Wilson, Q.C.

For the Respondent, Craig Thebaud: Self-Represented

Application for Summary Dismissal – Unfair Labour Practice Application – Clause 6-62(1)(j) of The Saskatchewan Employment Act – Allegations of Espionage or Spying – Statutory Interpretation – Clause 6-62(1)(j) Safeguards Privacy to Facilitate and Promote Collective Bargaining Rights.

Law of Standing – Failure to Demonstrate Sufficient Interest – Applicant does not have Standing to bring Application pursuant to clause 6-62(1)(j) – Application for Summary Dismissal Granted.

REASONS FOR DECISION

Background:

[1] Barbara Mysko, Vice-Chairperson: These are the Board's Reasons for Decision in relation to an Application for Summary Dismissal, filed on September 24, 2019, by Saskatoon Co-operative Association Limited ["Employer"] against Craig Thebaud. In its Application, the Employer asks the Board to summarily dismiss an unfair labour practice application filed by Mr. Thebaud on September 9, 2019, pursuant to clause 6-62(1)(j) of *The Saskatchewan Employment Act* ["Act"]. This unfair labour practice application is LRB File No. 200-19. The Employer asks that the Application be considered by an *in camera* panel of the Board and without an oral hearing. Having considered this Application *in camera*, and having reviewed the written submissions provided by the parties, the Board has decided to grant the Application for the following Reasons.

[2] Saskatoon Co-op operates a retail business with locations in and around Saskatoon. The Employer states that many of Saskatoon Co-op's locations and employees are represented by United Food and Commercial Workers, Local 1400 ["Union"]. Although the Union was provided

notice of the within Application and the underlying application, it did not apply for status to intervene in either.

[3] The underlying application arises in relation to a labour dispute that began in or around November 1, 2018. In the pleadings, Mr. Thebaud admits to having organized a petition calling for a special meeting for the purpose of removing the current directors of the Co-op and electing new directors. Shortly thereafter, and on November 8, 2018, the Employer filed an unfair labour practice application against both the Union and Mr. Thebaud. This unfair labour practice application is LRB File No. 230-18. Mr. Thebaud filed another unfair labour practice application (LRB File No. 200-19), which is the subject of the current Application, approximately ten months later.

[4] In the unfair labour practice application designated as LRB File No. 200-19, Mr. Thebaud alleges that the Employer engaged agents to conduct espionage at various events that occurred in June and July, 2019. The detailed allegations are as follows:

> 1. *The Respondent believed that Craig Thebaud and the group Co-op Members for Fairness were actually fronts for the United food and Commercial Workers, Local 1400 (here after referred to as UFCW).*
>
> 2. *The respondent made application to the Saskatchewan Labour Relations Board on the 8th of November 2018 that Craig Thebaud was an agent of the UFCW.*
>
> 3. *The UFCW is a union that holds a certification to represent employees employed by the respondent in collective bargaining.*
>
> 4. *The Respondent and the UFCW were engaged in a labour dispute beginning the 1st of November 2018 ending the 20th of April 2019.*
>
> 5. *The respondent made application to the Saskatchewan Labour Relations Board on the 11th of June 2019 alleging the group Co-op Members for Fairness to be a front of the UFCW and the group was attempting to run a slate of candidates at the upcoming annual general meeting of the Saskatoon Co-op on behalf of the UFCW.*
>
> 6. *On the 12th of June 2019 the group Co-op Members for Fairness held a town hall meeting at Station 20 West in Saskatoon. Some of the attendees were members of UFCW.*
>
> 7. *Erin Kanak an agent for the respondent and another agent for the respondent attended the meeting. Erin Kanak audio recorded the entirety of the meeting while the other agent took notes on a steno pad.*
>
> 8. *Erin Kanak and Craig Thebaud attended school together from Kindergarten through Grade 12. They did not socialize outside of school. They did not socialize after grade 12 except at a school reunion.*

9. *After the meeting on the 12th of June 2019, Erin Kanak approached Craig Thebaud and suggested that Craig Thebaud and other people who attended the meeting get together. Craig Thebaud met Erin Kanak at Flint at approximately 9 pm on the 12th of June 2019.*

10. *Flint is a Bar on 2nd Avenue South in Saskatoon.*

11. *While at Flint Erin Kanak asked Craig Thebaud questions regarding the group Co-op Members for Fairness and their activities.*

12. *The annual general meeting of the Saskatoon Co-op was held on the 20th of June 2019.*

13. *On the 20th of June 2019 the UFCW put on a hospitality suit* [sic] *prior to the Saskatoon Co-op's annual general meeting from 4pm until 6pm The hospitality suit* [sic] *was at the same venue as the annual general meeting.*

14. *At 4:15pm on the 20th of June 2019 Craig Thebaud received a message from Erin Kanak via Facebook Messenger: "Are you coming to this premeeting before the AGM?". Erin Kanak later messaged Craig Thebaud to see where he was sitting at the meeting so she could sit with him. Erin Kanak sat with Craig Thebaud through out* [sic] *the entirety of the annual general meeting.*

15. *After the Meeting Erin Kanak again inquired about socializing after the meeting. Erin Kanak met Craig Thebaud and other members of the group Co-op Members for Fairness as O'shea's* [sic] *Irish Pub at the conclusion of the Annual General Meeting. There was a UFCW member present at that gathering. Erin asked those at the social event questions about the group Co-op Members for Fairness.*

16. *On the 10th of July 2019 the group Co-op Members for Fairness held a potluck barbeque in Rotary Park in Saskatoon.*

17. *On the 11th of July 2019 Erin Kanak messaged Craig Thebaud via Facebook messenger: "hey. Did you make it to the bbq?".*

18. *Erin Kanak is not a member of the Saskatoon Co-op.*

[5] LRB File No. 200-19 is grounded in clause 6-62(1)(j) of the Act, which reads:

> *6-62(1) It is an unfair labour practice for an employer, or any person acting on behalf of the employer, to do any of the following:*
>
> *…*
>
> > *(j) to maintain a system of industrial espionage or to employ or direct any person to spy on a union member or on the proceedings of a labour organization or its offices or on the exercise by any employee of any right provided by this Part;*

[6] In its Reply to LRB File No. 200-19, filed on September 24, 2019, the Employer denies the allegations, stating that Mr. Thebaud has brought the unfair labour practice application in his personal capacity and that in a related matter, Mr. Thebaud has denied acting as a member, employer or agent of the Union. The unfair labour practice application does not allege that the

Employer's alleged actions amount to spying on a Union member or a labour organization. Mr. Thebaud has failed to plead the material elements or evidence of a violation of clause 6-62(1)(j) of the Act. Furthermore, Mr. Thebaud has no standing to bring an unfair labour practice in his personal capacity.

Argument on Behalf of the Parties:

The Employer:

[7] The Employer makes three general arguments, which it characterizes as "standing", "lack of material evidence", and "lack of material elements".

[8] First, the Employer provides a succinct explanation of its objections on standing at page three of the within Application:

> *Saskatoon Co-op submits that Thebaud has no standing to bring an unfair labour practice application in his personal capacity. There is no freestanding right for any individual to bring an unfair labour practice application to the Board. Permitting any individual to bring an unfair labour practice complaint risks opening the floodgates to vexatious litigation arising from individuals who have no connection to the workplace and who face no cost consequences from filing unfair labour practices.*

[9] The Union is a sophisticated party that is capable of advancing its own complaints, and it is unnecessary to grant standing to an external individual such as Mr. Thebaud. Mr. Thebaud has denied an association with the Union. He is not an employee. Unionized employees are within their rights to bring duty of fair representation complaints if they take issue with the Union's exercise of their bargaining rights.

[10] Second, Mr. Thebaud fails to plead material evidence to support his complaint. In a summary dismissal application, the Board may consider documents that are cited in the pleadings, which in this case includes pleadings for LRB File No. 230-18. In those pleadings, Mr. Thebaud denies acting as a member, employee or agent of the Union, and denies having any role in collective bargaining for either the Union or the Employer. Mr. Thebaud's unfair labour practice application does not allege spying on a Union member or labour organization.

[11] Third, Mr. Thebaud's application fails to plead the material elements of a violation of clause 6-62(1)(j) of the Act. On this point, the Employer repeats its earlier assertions but adds that Mr. Thebaud's application "makes vague reference to UFCW members, but does not make specific allegations as to spying." Further, "Thebaud's application does not allege that Erin Kanak attended any events held by UFCW".

Mr. Thebaud:

[12] Mr. Thebaud defends his standing to bring the underlying application and asserts that the underlying application discloses an arguable case.

[13] Mr. Thebaud's standing argument is summarized at the outset of his brief, as follows:

> *The status of Thebaud as it relates to the Co-op is currently under dispute under a different LRB file before the board (LRB File No. 230-18). It is the position of Thebaud that this application cannot be dealt with until after the status of Thebaud is determined in LRB 230-18. If Thebaud is found to have status through LRB File No. 230-18 then an arguable case has been presented based on the facts and allegations contained in the application.*[1]

[14] According to Mr. Thebaud, the issue of standing turns on the Board's determination of his status in LRB File No. 230-18. The Employer's allegations in that case draw no distinction between the Union and Mr. Thebaud. Therefore, the Employer must be alleging that Mr. Thebaud committed an unfair labour practice by failing to bargain in good faith with the Employer; by failing to abide by a collective agreement; and by failing to comply with the Act. Having made the foregoing assertions, the Employer must be proceeding on the basis that Mr. Thebaud is "a union with collective bargaining obligations with the Co-op".[2] A union would have standing to bring the underlying application. So should he.

[15] Next, Mr. Thebaud argues that his application discloses an arguable case. It alleges that the Employer sent at least two agents to attend meetings of Co-op members and to record those proceedings. Co-op employees who are Union members were present at those meetings. One of the agents attempted to obtain information from Mr. Thebaud about his networks and whereabouts during functions. Although the Employer has argued the contrary, the legislation does not require that the events, at which the espionage activity is alleged to have occurred, be organized by the Union. If the Employer believes that the allegations in the underlying application lack specificity, the proper course would be to request particulars.

Applicable Statutory Provisions:

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

> ***6-62****(1) It is an unfair labour practice for an employer, or any person acting on behalf of the employer, to do any of the following:*
>
> *. . .*

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[1] *Thebaud's Brief* at para 4.
[2] *Ibid* at para 17.

> *(j) to maintain a system of industrial espionage or to employ or direct any person to spy on a union member or on the proceedings of a labour organization or its offices or on the exercise by any employee of any right provided by this Part;*

. . .

6-111*(1) With respect to any matter before it, the board has the power:*

. . .

> *(p) to summarily dismiss a matter if, in the opinion of the board, there is a lack of evidence or no arguable case;*
>
> *(q) to decide any matter before it without holding an oral hearing;*

[17] The following provisions of the Regulations are applicable:

32*(1) In this section:*

> *(a) "application to summarily dismiss" means an application pursuant to subsection (2);*
>
> *(b) "original application" means, with respect to an application to summarily dismiss, the application filed with the board pursuant to the Act that is the subject of the application to summarily dismiss;*
>
> *(c) "party" means an employer, union or other person directly affected by an original application.*

(2) A party may apply to the board to summarily dismiss an original application.

(3) An application to summarily dismiss must:

> *(a) be in writing; and*
>
> *(b) be filed and served in accordance with subsection (5).*

(4) In an application to summarily dismiss, a party shall specify whether the party requests the board to consider the application for summary dismissal by an in camera panel of the board or as a preliminary matter at the outset of the hearing of the matter that is the subject of the original application.

(5) If a party requests that the application to summarily dismiss be heard:

> *(a) by an in camera panel of the board, the application to summarily dismiss must be filed with the registrar, and a copy of it must served on the party making the original application and on all other parties named in the original application, at least 30 days before the date set for hearing the original application;*
>
> *(b) as a preliminary matter at the outset of the hearing of the matter that is the subject of the original application, the application to summarily dismiss must be filed with the registrar, and a copy of it served on the party making the original application and on all other parties named in the original application, at least three days before the first date set for hearing of original application.*

(6) An application to summarily dismiss must contain the following information:

(a) the full name and address for service of the party making the application;

(b) the full name and address for service of the party making the original application;

(c) the file number assigned by the registrar for the original application;

(d) the reasons the party making the application to summarily dismiss believes the original application ought to be summary dismissed by the board;

(e) a summary of the law that the applicant believes is relevant to the board's determination.

Analysis:

[18] The Board derives its power to summarily dismiss an application and to decide any matter without holding an oral hearing pursuant to clauses 6-111(1)(p) and (q) of the Act respectively.

[19] The Employer raises three main issues with the underlying application: Mr. Thebaud lacks standing to bring an unfair labour practice application in his personal capacity; the application fails to include material evidence in support of the allegations; and, the application fails to plead the material elements of a violation of clause 6-62(1)(j) of the Act. The Board will assess each of these allegations in turn.

[20] The first question is whether Mr. Thebaud has standing to bring the underlying unfair labour practice application in his personal capacity. The Employer is asking the Board to determine standing at a preliminary stage, prior to a hearing on the substantive matter. In some cases, it will be necessary for the Board to receive tested evidence in a hearing on the question of standing. For example, it will be necessary to hold a hearing if the materials raise doubts only about the existence, nature, or quality of the evidence in support of the claim to standing. The Board's ability to determine standing at the outset depends on the sufficiency of the existing materials to allow for a proper assessment of the nature of the interest engaged.

[21] Here, the Board has the benefit of the pleadings, the written arguments, and the pleadings on the related matters. There is nothing in the application that suggests that a hearing on the underlying application may disclose more or better evidence on the claim of standing. Mr. Thebaud does not suggest that he will proffer evidence in support of his claim to standing. Here, the materials are sufficient to allow for a proper assessment of the nature of Mr. Thebaud's interest.

[22] Based on his written brief, Mr. Thebaud appears to have brought the unfair labour practice application as a counteroffensive in the event that he is subject to an adverse Board decision on LRB File No. 230-18. Mr. Thebaud implicitly objects to his inclusion in LRB File No. 230-18 – but he does so through LRB File No. 200-19.

[23] The Board finds that Mr. Thebaud does not have standing for the following reasons.

[24] To start, the Board will consider the governing principles related to standing. Thus far, there is not a robust line of cases outlining a test for assessing standing for persons who bring applications before the Board. On the other hand, this Board has well-established tests for assessing standing in intervenor applications. These tests are not particularly instructive in the current case. The intervenor tests assume that there is pre-existing applicant with a direct interest in resolving the issues raised by the proceeding. Proposed intervenors seek to add their perspective to that existing dispute.

[25] In *Merit Contractors Association,* [1996] Sask LRBR 119, LRB File No 098-95 [“*Merit Contractors Association”*], then Chairperson Beth Bilson agreed that there is a distinction between applications to participate as an intervenor and applications to participate as an applicant:

> *In many of the cases where the question of standing has arisen, the issue has been examined in the context of an application to make representations as an intervenor or interested party.*
>
> *[…]*
>
> *We accept the argument advanced on behalf of the Respondents here that there is a distinction between an application to participate in proceedings in the role of an intervenor or interested party, and an application in which a party proposes to participate as an applicant.*[3]

[26] Despite the distinction, there is a common thread among the three categories of interests considered in intervenor applications, being direct interest, public law, and exceptional prejudice. In each of these categories, the minimum requirement for intervention is that the person have a sufficient interest or stake in the outcome of the proceeding. Granted, this requirement is less apparent in the Board’s test to assess public law standing, but it is still there. In the courts, the law of public interest standing developed to prevent legislation or public acts from being immune to challenge. Along these lines, a potential intervenor’s public law interest in a given matter arises

[3] At 6.

from the public law nature of the dispute. The common thread between all three forms of standing is that the Board requires a bare minimum sufficient interest in the underlying matter before granting standing to a party.

[27] For the sake of consistency, the Board will label as "private interest standing" the category of standing sought in this case. Here, the overarching question asks whether Mr. Thebaud has a sufficient interest to be entitled to invoke the Board's processes and utilize the Board's resources, by bringing an application. The ancillary question asks what constitutes a sufficient interest to invoke the Board's processes. Mr. Thebaud, for his part, suggests that he was the direct target of espionage and spying.

[28] Mr. Thebaud's brief relies on *CUPE v University of Saskatchewan*, [2001] SLRBD No. 49 ["*CUPE v University of Saskatchewan*"] for the proposition that standing in unfair labour practice applications should only be given to those with a direct or material interest in the alleged breach.[4] There, the matter was determined, in part, in reference to the following now-repealed section of the Regulations:

> *6(1) Any trade union or any person directly affected may apply to the board for an order or orders determining whether or not any person has engaged in or is engaging in any unfair labour practice or any violation of the Act, and requiring such person to refrain from engaging in any such unfair labour practice or any violation of the Act.*

[29] Subsection 6(1) of the Regulations restricted unfair labour practice applications to those applicants who were trade unions or persons "directly affected". The applicable Regulations no longer include this requirement. Despite this, *CUPE v University of Saskatchewan* remains instructive for assessing the sufficiency of an interest to ground a claim to private interest standing.

[30] In *CUPE v Saskatchewan*, the Board was tasked with assessing CUPE's standing to bring an application that alleged that the employer had been bargaining with a company-dominated union contrary to the Act. The alleged company-dominated union was also certified to represent employees in a bargaining unit with that employer. In considering the matter, the Board referred to its earlier decision in *Merit Contractors Association*:

> *13 The Board considered the standing issue in Merit Contractors Assn. Inc., supra. In that case, Merit Contractors Association Inc. brought an application against various respondents who were parties to the Crown Construction Tendering Agreement alleging that the Agreement violated various provisions of the Act. The standing of Merit Contractors Association Inc. to bring the application was challenged and the Board held that it lacked standing to bring the unfair labour practice application. At 125, the Board referred to*

[4] *Thebaud's Brief* at para 13, referring to *CUPE v Saskatchewan* at para 24.

> *Construction Assn. Management Labour Bureau Ltd. v. H.F.I.A., Local 116 (1977), [1978] 2 Can. L.R.B.R. 150 (N.S.L.R.B.), where the Nova Scotia Labour Relations Board stated the test as follows:*
>
> > *To determine whether a complainant has a right under a particular provision of the Trade Union Act and therefore has standing to complain under Section 53(1) requires us to interpret the substantive provision to determine what interests it is intended to protect. Only if the "rights" or interests of the complainant are found to be within the purview of the provision will he have standing to complain of a breach thereof. The courts appear to approach issues of standing on this basis. For instance, "a private person who seeks relief from what is a nuisance to the public must show that he has a particular interest or has suffered injury peculiar to himself if he would sue to enjoin it." (Thorson v A.G. of Canada)(No. 2) (1974), 43 DLR (3d) 1 (SCC), at 10 (per Laskin, J. for the majority).*

[31] The Nova Scotia Board in *Construction Association*, as referred to in *Merit Contractors Association*, considered whether an employer had standing to file an unfair labour practice complaint related to union discipline over employees. The Board found that the employer did not have standing in its own right to file the complaint, despite the relevant section providing that "[a]ny person or organization may make a complaint". The Board explained its reasoning in coming to that conclusion:

> *…An employer, for example, would not have standing to complain that his competitor had committed an unfair labour practice against a union. Nor would one employee have standing to complain of an unfair labour practice committed against another employee unless, of course, he was acting in a representative capacity.*

[32] *Construction Association* is an old case from a jurisdiction outside of Saskatchewan, which means that the Board must be careful in applying its conclusions to the current circumstances. However, the Board in *Construction Association* makes important observations that are relevant in the current context. In short, the granting of legal rights and interests to some persons may come at the expense of others, whether or not those other persons are directly involved in the matter. The Board must be careful not to grant private interest standing to individuals who do not have rights or interests, and in so doing, potentially undermine the rights or interests of others who are directly affected and, for example, may have chosen not to bring an application, or may not be aware that the existing application even exists.

[33] In *Merit Contractors Association*, the Board issues a similar warning about the potential consequences of granting private interest standing, to persons other than those who have been "wronged":

> *….Whenever there is a breach of Section 52(h) there is a wronged employee but if the employer in his own right has standing as a complainant the allegedly wronged employee*

> *loses control over the proceedings, The [sic] employer could then bring the complaint even where the employee did not want him to.*

[34] As a summary, whether a person has private interest standing depends on whether that person has a sufficient interest or stake in the matter to invoke the Board's process. An interest or stake is sufficient to support private interest standing only if it is real and it is direct.

[35] Having considered the general principles applicable to standing, the Board will now turn to consider whether Mr. Thebaud has standing in relation to the specific statutory provision in issue. To start, the Board must address the parties' arguments in relation to the Board's holding in *Metz v S.G.E.U.*, [2003] Sask LRBR 28 ["*Metz*"].

[36] In *Metz*, the Board considered the applicant's standing to bring an application pursuant to clause 11(1)(c) of now-repealed *The Trade Union Act*. As Mr. Thebaud accurately observes, *Metz* does not stand for the proposition that an individual can never bring an unfair labour practice. Rather, it stands for the proposition that an individual cannot bring an unfair labour practice application alleging that a union or an employer has failed to bargain in good faith. This makes sense, because the duty to bargain in good faith is a duty that belongs to unions and employers.

[37] The following excerpt from *Metz* is apposite:[5]

> *We find that the Applicant lacks standing to bring the s. 11(1)(c) complaint against the Employer. The Employer owes a duty to bargain in good faith to the Union selected by the employees to be their exclusive representative. Once employees select a union to represent them in collective bargaining, the Employer must negotiate work place disputes exclusively with the Union. As set out by the Ontario Labour Relations Board in Beurling v. C.L.A.C., [1998] O.L.R.B. Rep. 115 (Ont. L.R.B.) at para. 9, citing Abramowitz v. O.P.S.E.U., [1987] O.L.R.B. Rep.455 (Ont. L.R.B.), at para. 8:*
>
> > *Thus, the Board has consistently held in the context of The Labour Relations Act that employees do not have the status to assert that their trade union or their employer has violated the duty to bargain in good faith and make every reasonable effort to make a collective agreement ... The bargaining duty imposed by those provisions is owed by the trade union to the employer, and vice versa.*
>
> *For these reasons, the unfair labour practice application brought by the Applicant against the Employer is dismissed for lack of standing.*

[38] On the other hand, according to Mr. Thebaud, there are unfair labour practices that do engage persons other than unions and employers. One would think so, given the wording of section 14 of the Regulations. As an example, clause 6-62(1)(g) of the Act makes it an unfair

[5] At paras 66-7, cited at 2003 CarswellSask 295.

labour practice to discriminate with respect to hiring or tenure of employment with a view to encouraging or discouraging membership in a labour organization. Surely, an individual who is not a union member may bring an application pursuant to this clause. Some individuals, in particular those individuals whose unionization efforts have been unsuccessful, would otherwise be barred from bringing a matter before the Board.

[39] By providing the foregoing example, Mr. Thebaud makes the point that the protected rights or interests are properly assessed in relation to the statutory provision in issue. The Board agrees with this point. To be more precise, the rights or interests are properly assessed by interpreting the statutory provision in accordance with the modern principle. Further to this conclusion, the Board will now turn to interpreting the statutory provision, clause 6-62(1)(j), with a view to determining what rights or interests it protects. Then, the Board will consider whether the rights or interests of Mr. Thebaud are within the purview of the provision, so as to determine whether he has standing to bring the within application.

[40] The modern principle of statutory interpretation asks the Board to read the legislative text in its ordinary sense harmoniously with the scheme and objectives of the Act, in particular Part VI, and the intention of the legislature. Clause 6-62(1)(j) makes it an unfair labour practice for an employer, or any person acting on behalf of the employer, to maintain a system of industrial espionage or to employ or direct any person to spy on specified persons or in specified circumstances. The specified persons or circumstances are a union member, the proceedings of a labour organization or its offices, and the exercise by any employee of any right provided by Part VI. While it is clear that the protection against spying is explicitly extended to a union member, a labour organization, or an employee, it is less clear who benefits from the protection against an employer who maintains a system of industrial espionage.

[41] Therefore, it is useful to consider the meaning of the term “industrial espionage”. The parties filed no cases interpreting this term. In fairness, there are very few cases that consider clause 6-62(1)(j), and there is no other reference to “industrial espionage” in Part VI. The Board in *CUPE v Warman (City)*, 2017 CanLII 30130 (SK LRB) confirms the lack of case law on the matter, observing that clause 6-62(1)(j) “is a holdover from *The Trade Union Act*” and “[p]erhaps such activity was common then, but it is certainly not common now”.[6] The Board’s decision in *Plumbing and Pipefitting v Reliance Gregg’s*, 2018 CanLII 127677 (SK LRB) does not provide any additional guidance in interpreting the provision.

[6] At para 45.

[42] It is necessary for the Board to interpret the provision by first considering the ordinary meaning of the language used. The ordinary meaning of the phrase “system of industrial espionage” is a coordinated or organized method of conducting intelligence activity. A finding that such a system has been maintained does not require proof that the employer has employed or directed a person to spy. A system of industrial espionage may be facilitated, for example, through technology. The system of industrial espionage contemplated by clause 6-62(1)(j) is one that is maintained by the employer or any person acting on behalf of the employer.

[43] The objects of Part VI of the Act are to facilitate and promote collective bargaining rights. Collective bargaining rights extend to employees, union members, labour organizations, and employers. Clause 6-62(1)(j) combines with additional provisions, such as clauses 6-62(1)(a), (b), (g), (h), and (i), to protect employees, union members, and labour organizations from an unlawful intrusion into union affairs and into the exercise by employees of rights conferred by Part VI. The protection against industrial espionage and spying, pursuant to clause 6-62(1)(j), provides a layer of privacy protection for these persons, thereby reducing the risk of, or discouraging, unlawful intrusions that risk impeding collective bargaining rights. The main distinction between a system of industrial espionage and spying, as contemplated by clause 6-62(1)(j), is the method of the impugned intrusion, not the interests at stake.

[44] As noted in *Construction Association,* only if the rights or interests of Mr. Thebaud are found to be within the purview of the provision will he have standing to complain of a breach thereof. Mr. Thebaud has brought the within application in his personal capacity. He is not and does not represent an employee, a Union member, or labour organization; nor does he claim to be an employee, a Union member, or a labour organization.

[45] For greater clarity, “labour organization” and “union” are defined at section 6-1 of the Act:

> *6-1(1) In this Part:*
> *. . .*
>
> *(k) “labour organization” means an organization of employees who are not necessarily employees of one employer that has collective bargaining among its purposes;*
> *. . .*
>
> *(p) “union” means a labour organization or association of employees that:*
>
> *(i) has as one of its purposes collective bargaining; and*
>
> *(ii) is not dominated by an employer;*

[46] Granted, clause 6-62(1)(j) extends its protection to a "labour organization", which is a more inclusive term than "union". Mr. Thebaud refers in the underlying application to the activities of the group, Co-op Members for Fairness, but he has not pleaded, or even submitted through his written brief, that Co-op Members for Fairness is an organization of employees that has collective bargaining among its purposes. Instead, Mr. Thebaud relies largely on the application filed by the Employer in LRB File No. 230-18, and in particular on the Employer's characterization of his role.

[47] Despite having had opportunities to do so, Mr. Thebaud has not alleged that he is an employee, a Union member, or an agent of the Union. The Employer has made clear its reasons for objecting to Mr. Thebaud's application. In its Reply to the unfair labour practice application at page two, the Employer states that Mr. Thebaud is not an employee. At page three of that Reply, the Employer points out that Mr. Thebaud has denied being a member, employee or agent of the Union. The Employer raises the same issues in the context of the within application and supporting brief. Despite these observations, Mr. Thebaud has made no attempt to refute them.

[48] To his credit, Mr. Thebaud does not purport to stand in the place of anyone who has rights or interests pursuant to clause 6-62(1)(j). He does not claim to act on behalf of employees, Union members, or a labour organization. Even if he did, it would be incumbent on Mr. Thebaud to demonstrate a reason why the Board should grant him standing to represent persons who may have a sufficient interest or stake in the matter. A "representative" stands in the place of, acts on behalf of, or "speaks for" another. It sets a dangerous precedent to grant representative status in the absence of any indication of same.

[49] Mr. Thebaud's denials with respect to agency and representativeness are unequivocal. The underlying unfair labour practice application refers specifically to LRB File No. 230-18.[7] In his Reply in that matter, Mr. Thebaud states that he is a member of the Saskatoon Co-op, but is not a member, employee or agent of the Union and is concerned for his equity as a result of a strike. He says that he has no role in the bargaining process with the Union and specifically denies having acted implicitly or expressly as an agent of the Union. Having issued these denials, Mr. Thebaud now asks the Board to grant standing *in case* it makes a factual finding that directly contradicts these denials. Mr. Thebaud seeks to benefit from the Board's resources for the purpose of pursuing this additional proceeding. At the very least, this would not be a judicious use of the Board's resources.

[7] At paras 3.2, 3.5.

[50] Not being an employee, Union member, or labour organization, Mr. Thebaud does not have rights pursuant to clause 6-62(1)(j). Nor does he have a sufficient interest or stake in the within application.

[51] Granting standing to Mr. Thebaud under these circumstances would do a disservice to Mr. Thebaud by sending him down a path without a foothold, and a disservice to rights-holders by permitting a hearing in the absence of their contribution. The Board agrees with the Employer's observation that the Union, for example, is a sophisticated party that is capable of filing and litigating unfair labour practice complaints. This is a case in which the Board can contribute to access to justice by acknowledging the limits of its statutory powers and the limits of the law, and by making clear which doors are closed, allowing the parties to re-direct their energies toward more constructive undertakings.

Conclusion:

[52] We have concluded that Mr. Thebaud has not demonstrated any basis upon which he should be granted standing to bring an unfair labour practice application pursuant to clause 6-62(1)(j) of the Act. This conclusion is a complete answer to the Employer's application for summary dismissal. It is therefore not necessary to consider whether the underlying application fails to plead the material elements of a cause of action, thereby failing to disclose an arguable case.

[53] Based on the foregoing, the Board makes the following Orders:

1. The Application for Summary Dismissal in LRB File No. 215-19 is granted; and

2. The Unfair Labour Practice Application in LRB File No. 200-19 is dismissed.

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

DATED at Regina, Saskatchewan, this 21st day of **May, 2020.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson