Saskatchewan
Labour Relations Board

**UNIVERSITY OF SASKATCHEWAN FACULTY ASSOCIATION, Applicant v UNIVERSITY OF SASKATCHEWAN, Respondent**

LRB File No. 228-19; June 16, 2020
Vice-Chairperson, Barbara Mysko; Board Members: Mike Wainwright and Shelley Boutin-Gervais

Counsel for the Applicant, University of Saskatchewan Faculty Association: Gary L. Bainbridge, Q.C.

Counsel for the Respondent, University of Saskatchewan: John R. Beckman. Q.C.

**Application for Deferral – Unfair Labour Practice Application – Clause 6-62(1)(d) of The Saskatchewan Employment Act – Meaning and Applicability of Collective Bargaining Agreement – Applicability of Negotiated Dispute Resolution Process – Defer to Arbitration.**

## REASONS FOR DECISION

**Background:**

**[1]** **Barbara Mysko, Vice-Chairperson:** These are the Board's Reasons for Decision in relation to an application to defer an unfair labour practice application. The University of Saskatchewan Faculty Association [USFA] filed the underlying Application with the Board on October 25, 2019, pursuant to clause 6-62(1)(d) of *The Saskatchewan Employment Act* [Act]. The Employer, the University of Saskatchewan, filed a reply to the Application on November 6, 2019. The USFA is the certified bargaining agent for all full-time academic employees of the University in Saskatchewan, pursuant to a certification order most recently amended on April 3, 2014.

**[2]** In the underlying Application, the USFA alleges that the parties had agreed to a dispute resolution process to deal with the creation of new Associate Dean positions. More specifically, the parties entered into a Memorandum of Agreement dated November 19, 2013 [the Scope MOA]. A dispute arose in relation to a new position, specifically whether it was an Associate Dean, and therefore out-of-scope, or an Assistant Dean, and therefore in-scope. According to the USFA, the University did not refer the dispute to an adjudicator, but instead refused to take part in the negotiated dispute resolution process. The University has both created and filled a new out-of-scope position in the workplace, and has unilaterally declared the position out-of-scope in contravention of the Act.

**[3]** The University says that this matter arises directly from an interpretation of the parties' collective agreement [CBA]. It says that the Scope MOA was superseded by a second Memorandum of Agreement, dated June 4, 2019 [the Appointment MOA] that was entered into and formed a part of the newly negotiated CBA. According to the University, the Appointment MOA set out a different process than that which was set out in the Scope MOA.

**[4]** This preliminary matter was heard via Webex on June 5, 2020, in accordance with the Board's Covid-19 Notice, dated May 7, 2020. The Board is grateful to the parties for adapting to the virtual process, and for the parties' efforts in ensuring that the hearing could proceed, and do so smoothly.

**[5]** The parties reached an agreed statement of facts in relation to this preliminary objection, and therefore, there are no facts in dispute. The parties' efforts in this respect are appreciated, as are their comprehensive written and oral submissions. In the agreed statement of facts, the parties agree that the CBA dated July 1, 2017 to June 30, 2022 was tentatively agreed on June 21, 2019, and then ratified on July 23, 2019.

**[6]** The University does not contest paragraph 3(f) of the underlying Application, which reads:

> *Following a review of this information, the Union disagreed that the new position was properly an out-of-scope Associate Dean position. Accordingly, the Union advised the employer of this disagreement on September 30, 2019, and requested that the matter be referred to the adjudicator for the terms of the Scope MOA.*

**[7]** Otherwise, the agreed statement of facts consists of six documents, namely:

a. the Scope MOA;
b. CBA, July 1, 2014 to June 30, 2017;
c. the Appointment MOA;
d. Letter dated July 17, 2019 from Jim Basinger to Doug Chivers;
e. Letter dated October 1, 2019 from Jim Basinger to Doug Chivers; and
f. CBA, July 1, 2017 to June 30, 2022.

**[8]** The USFA does not object to the factual accuracy of the content of the University's chronology of events, as outlined in its Reply. On the other hand, it suggests that the content itself is incomplete.

**Argument on Behalf of the Parties:**

*USFA:*

**[9]** The USFA says that the underlying Application raises two issues of failure to bargain collectively. The first issue relates to the University's refusal to take part in the negotiated dispute resolution process. The second issue relates to the University's failure to bargain with the USFA in relation to the creation and placement of the new position.

**[10]** The dispute is whether the University can refuse to follow the negotiated process for dispute resolution, and then create and place a new position out-of-scope in the absence of agreement from the USFA or an order from this Board. The University has repudiated the dispute resolution process, which requires sanction and direction from the Board.

**[11]** The Board must carefully consider the proper characterization of this dispute. As for the first issue, the dispute is not that the CBA was violated, but rather, that the University failed to deal with a workplace dispute through a negotiated process. The University's actions also constitute a breach of the Scope MOA, but the essential character of the dispute is the University's repudiation of the dispute resolution process.

**[12]** As for the second issue, it is not a question of whether the CBA has been violated; it is a question of whether the University has unilaterally created and placed a position out-of-scope. The USFA is seeking sanction for a discrete form of unlawful conduct, and reassurance that its negotiated process for dispute resolution will be followed in the future. It is the process of collective bargaining that is at stake, not the result.

*University:*

**[13]** The parties have a mature collective bargaining relationship. This history should be taken into account, and the parties should be encouraged to continue to negotiate and rely on those negotiations. The determination sought by the USFA is contingent on the Board first determining whether the Scope MOA forms part of the CBA, and therefore, finding the University breached the terms of the Scope MOA. As such, the dispute is more appropriately a dispute for an arbitrator appointed pursuant to the CBA.

**[14]** However, the University says that the Scope MOA does not apply, that the Appointment MOA governs this dispute, and therefore it complied with its obligations by notifying the USFA of the new position. The allegation that the University unilaterally created an out-of-scope position in contravention of the Act is without merit. The USFA has filed the unfair labour practice

application to avoid the outcome of collective bargaining, that is, having to operate pursuant to the Appointment MOA. The USFA is attempting to change the outcome of the last round of collective bargaining.

**Facts:**

**[15]** The following facts provide background for the purpose of the current dispute. As mentioned by the USFA, these facts may be incomplete for purposes of the related matter(s).

**[16]** The parties entered into the Scope MOA on November 19, 2013. The parties' most recent CBA covered the timeframe from July 1, 2014 to June 30, 2017. On June 4, 2019, the parties entered into the Appointment MOA. On July 17, 2019, the University sent a letter to the USFA attaching a job profile for a new position as Associate Dean, pursuant to the Scope MOA. On July 18, the University emailed documentation to support the creation of the position.

**[17]** On July 30, the USFA replied that the matter needed to go before the USFA Executive Committee, and requested information. The University provided additional information on August 19. On September 9, the USFA indicated that it was yet to make a decision and requested more information. The next day, the University requested clarification as to the additional information. The University followed up with the USFA a couple of times to inquire about the status of the deliberations, and then on September 30, emailed the USFA. In the meantime, a new CBA had been ratified on July 23, 2019. On the same day, the USFA advised the University that it disagreed that the position was out-of-scope and requested that the matter be referred to the adjudicator pursuant to the Scope MOA.

**[18]** By this point, the University stated that the Scope MOA had been superseded by the Appointment MOA, which it said sets out a different process for the creation of new positions of the relevant type.

**[19]** For background, the Scope MOA refers to a process that is set out in an appendix, summarized as the parties' agreement to "discuss whether or not the employer's designation of a newly created position as an Associate Dean is appropriate". The University relies, not on the Scope MOA, but on the Appointment MOA (Appointment and Reappointment of Senior Administrators), which provides,

> *2. The University shall notify the Joint Committee for the Management of the Agreement when new Senior Administrator positions are created.*

**[20]** Article 2.1 of the CBA states,

> *2.1 It is the purpose of this Agreement to promote harmonious relations between the Employer and employees and to facilitate the peaceful settlement of all disputes and grievances affecting the terms and conditions of employment. Both parties recognize that there may be matters which are not covered in this Agreement and agree to use the Joint Committee for the Management of the Agreement as the vehicle for resolving such matters.*

**[21]** If the Appointment MOA applies, does this mean that by notifying the Joint Committee, the University is not required to follow the dispute resolution process under the Scope MOA? If so, then what is the dispute resolution process that applies? Is there a negotiated dispute resolution process that serves as an alternative to the Scope MOA? The parties have not answered these questions, but nor should they have to, for the current purposes. However, both parties have argued that the Board does not have jurisdiction to interpret the CBA, and the USFA has argued forcefully that an interpretation of the CBA is not required. So where does that leave the Board?

**Relevant Statutory Provisions:**

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

> ***6-1****(1) In this Part:*
>
> *(a) "bargaining unit" means:*
>
> *(i) a unit that is determined by the board as a unit appropriate for collective bargaining; or*
>
> *(ii) if authorized pursuant to this Part, a unit comprised of employees of two or more employers that is determined by the board as a unit appropriate for collective bargaining;*
>
> *. . .*
>
> *(d) "collective agreement" means a written agreement between an employer and a union that:*
>
> *(i) sets out the terms and conditions of employment; or*
>
> *(ii) contains provisions respecting rates of pay, hours of work or other working conditions of employees;*
>
> *(e) "collective bargaining" means:*
>
> *(i) negotiating in good faith with a view to the conclusion of a collective agreement or its renewal or revision;*
>
> *(ii) putting the terms of an agreement in writing if those terms were arrived at in negotiations or are required to be inserted into a collective agreement by this Part;*
>
> *(iii) executing a collective agreement by or on behalf of the parties; and*

> *(iv) negotiating from time to time the settlement of disputes and grievances of employees covered by a collective agreement or represented by a union;*
>
> *…*
>
> ***6-45****(1) Subject to subsections (2) and (3), all disputes between the parties to a collective agreement or persons bound by the collective agreement or on whose behalf the collective agreement was entered into respecting its meaning, application or alleged contravention, including a question as to whether a matter is arbitrable, are to be settled by arbitration after exhausting any grievance procedure established by the collective agreement.*
>
> *(2) Subsection (1) does not prevent the director of employment standards as defined in Part II or the director of occupational health and safety as defined in Part III from exercising that director's powers pursuant to this Act.*
>
> *(3) Without restricting the generality of subsection (2), the director of employment standards may issue wage assessments, issue hearing notices, take action to collect outstanding wages or take any other action authorized pursuant to Part II that the director of employment standards considers appropriate to enforce the claim of an employee who is bound by a collective agreement.*
>
> *. . .*
>
> ***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:*
>
> *…*
>
> *(d) to fail or refuse to engage in collective bargaining with representatives of a union representing the employees in a bargaining unit whether or not those representatives are the employees of the employer;*
>
> *…*

**Analysis:**

**[23]** Deferral to an arbitrator is not automatic or even unconditional. It needs to be appropriate under the circumstances.

**[24]** Two primary principles guide the Board's determination in this matter. First, the Board has an important objective of promoting the capacity and willingness of parties to collectively bargain, described by this Board in *International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 v AlumaSafway*, 2019 CanLII 120651 (SK LRB), at paragraph 64:

> *[64] In deciding whether to defer, the Board takes into account its proper role, as well as the important policy objective of promoting the capacity and willingness of the parties to engage in collective bargaining on their own accord. The Board must be careful not to encourage parties to come to the Board as a forum of first resort for resolving disputes as to the meaning, application or alleged contravention of a collective agreement. The Board should give full consideration to the value of ensuring that the parties are equipped to resolve their differences through collective bargaining, and after collective bargaining, through the very processes that they have established and set out in the collective bargaining agreement.*

**[25]** Related to this policy objective, is the Board's supervisory responsibility over collective bargaining. The Board must be careful not to abdicate this responsibility when deferring a matter to another process. The Board must seek to achieve a balance between recognizing an arbitrator's jurisdiction over the meaning, application or alleged contravention of a collective agreement, and continuing to exercise its authority pursuant to the Act.

**[26]** Second, the Board has a well-established and consistent policy of requiring parties to negotiate the creation of out-of-scope positions. The process for creating new positions was set out in *Donovel (Re)*, [2006] SLRBD No 29, and proceeds as follows:

> *28 An employer must adhere to the following steps in determining the proper assignment of the work and the position:*
>
> 1. *notify the certified union of the proposed new position;*
>
> 2. *if there is agreement on the assignment of the position, then no further action is required unless the parties wish to update the certification order to include or exclude the position in question;*
>
> 3. *if agreement is not reach on the proper placement of the position, the employer must apply to the Board to have the matter determined under ss.5(j), (k), (m).*

**[27]** The Board will consider it to be an unfair labour practice when an employer unilaterally declares a newly created position out-of-scope prior to a determination being made by the Board, or an agreement being reached by the parties.

**[28]** These principles converge in this case. The case is complicated by the fact that the parties have negotiated a process or processes for the resolution of disputes pertaining to the designation of an Associate Dean, an out-of-scope position.

**[29]** In deciding whether to defer, the Board considers the three-stage test as set out in *Communications, Energy & Paperworkers Union of Canada, Local 911 v ISM Information Systems Management Canada Corporation (ISM Canada)*, 2013 CanLII 1940 (SK LRB) [*ISM Information Systems*]:

> *[22] Our Court of Appeal in United Food & Commercial Workers, Local Union 1400 and The Labour Relations Board et al., established the following criteria for the Board to exercise its authority to defer to arbitration:*
>
> > *(i) the dispute put before the Board in an application for an unfair labour practice order and the dispute intended to be resolved by the grievance-arbitration procedure provided for in the collective agreement must be the same dispute;*

> *(ii) the collective agreement must make possible (i.e. empower) the resolution of the dispute by means of the grievance arbitration procedure; and*
>
> *(iii) the remedy sought under the collective agreement must be a suitable alternative to the remedy sought in the application before the Board.*

**[30]** The USFA refers to *UFCW, Local 1400 v Saskatchewan (Labour Relations Board)*, [1992] SJ No 425 (SK CA) [*Westfair*] as the touchstone decision in deferral applications. There, the union had alleged that the employer had intimidated an employee, and had contacted that employee directly to negotiate grievances. The Board dismissed the union's application, stating that the matter was covered by the collective agreement. The Court of Appeal allowed the appeal from the dismissal, and set aside the order of the Board. The Court of Appeal found that the "availability of a grievance-arbitration process [was] not a true alternative to an application to the Board for an unfair labour practice order".[1]

**[31]** The USFA has not filed a grievance in the present case. *Westfair* clarifies that "essentially the same three preconditions must coexist before it can be said that the availability of a grievance-arbitration procedure in a collective agreement is a 'relevant' consideration" on a deferral application.[2] Where it is a question of the availability of the grievance procedure, the Court of Appeal describes the test this way:

> *…It is necessary first to delineate and define with some precision the dispute between the parties. Next, it is necessary to determine whether the collective agreement empowers the arbitrator to resolve that same dispute. Lastly, it is necessary to establish whether the arbitrator is empowered to grant a remedy which is a suitable alternative to the one sought in the application made to the Board.*[3]

**[32]** If the collective agreement empowers the arbitrator to resolve the dispute and grant a suitable remedy, then the availability of the grievance-arbitration process is a relevant consideration on a deferral.

**[33]** Pursuant to the first stage of the test, it is necessary to delineate and define the dispute between the parties. Is it a statutory breach or a violation of the collective agreement? The parties characterize the dispute differently. The USFA says that the dispute raises two issues. The first question is whether the University failed to follow the process set out in the Scope MOA for the adjudication of disputes; the second question is whether the University failed to follow the Board's process for the creation of a new position.

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[1] At 10.
[2] At 6.
[3] *Ibid*.

**[34]** The first question is whether the University was bound by and failed to follow the process set out in the Scope MOA for the adjudication of disputes [the MOA compliance issue]. This question is a dispute pertaining to the meaning, application or alleged contravention of the collective agreement. The parties agree that the MOAs form or did form a part of the existing or past collective agreement(s). The USFA suggests that, even if the Appointment MOA applies, it does not supersede the Scope MOA. The Scope MOA still governs the process through which the parties must resolve their dispute, and the University failed to submit to the process set out therein. The University says that the Scope MOA does not apply, and therefore it was not required to submit to its dispute resolution process.

**[35]** The second question is whether the University failed to comply with the requirement to negotiate a newly created position [the ULP issue]. It says that the University has repudiated the negotiated process, and has unreasonably relied on the existence of the Appointment MOA as a smokescreen for its failure to bargain a newly created position. The University seems to suggest that it has no obligation to negotiate a new Associate Dean position, and that it can simply notify the Joint Committee that it has created the position, or alternatively, that it does have an obligation to negotiate, but that said obligation is satisfied through the notice that was provided.

**[36]** Therefore, there are two main aspects to the dispute. First, the dispute relates to whether the Scope MOA continues to form part of the CBA, applies to the parties, and is determinative, and if so, whether the University violated the CBA by failing to comply with the Scope MOA. Second, the dispute relates to whether the University committed an unfair labour practice by failing to negotiate a newly created position in line with the *Donovel* process.

**[37]** Next, it is necessary to determine whether the CBA empowers the arbitrator to resolve the dispute before the Board. The collective agreement establishes the source of, and subject-matter forming, the arbitrator's jurisdiction. Pursuant to section 6-45 of the Act, all disputes between the parties to a collective agreement respecting its meaning, application or alleged contravention, including a question as to whether a matter is arbitrable, are to be settled by arbitration after exhausting any grievance procedure established by the collective agreement.

**[38]** In considering whether the CBA empowers an arbitrator to resolve the dispute, the Board will address each issue in turn. The first issue is whether the Scope MOA continues to form part of the CBA, applies and is determinative, and if so, whether the University violated the CBA by

failing to comply with the Scope MOA. An arbitrator is empowered to interpret the terms of the CBA, including whether the Scope MOA continues to form a part of the CBA.

**[39]** The second part of the dispute is whether the University committed an unfair labour practice by failing to negotiate a newly created position in line with the *Donovel* process. Does the CBA empower an arbitrator to resolve that dispute? The answer to this question is no. However, an arbitrator is empowered to interpret the CBA and rule on the meaning of the respective MOAs. The parties ask the Board not to engage in this interpretative exercise. However, such an interpretation is required to allow the Board to properly engage with the Employer's arguments on the unfair labour practice issue.

**[40]** The Board exercises a general supervisory jurisdiction over the collective bargaining relationship. Where an unfair labour practice application has been filed, and that application raises an issue related to the meaning, application or alleged contravention of a collective agreement, the Board shares concurrent jurisdiction with an arbitrator. However, only the Board has jurisdiction to decide whether an unfair labour practice has occurred and only the Board has jurisdiction to impose discipline on a party for breaching its obligation.

**[41]** The USFA says that it is the collective bargaining relationship that is at issue, not the employees' terms and conditions of employment. Just because the parties have negotiated a dispute resolution process does let the Board off the hook; the Board continues to take an interest in the success of that process, and therefore, the health of the bargaining relationship. The Board agrees. As outlined in *Saskatchewan Crop Insurance Corporation v Saskatchewan Government and General Employees' Union,* 2017 CanLII 68785 (SK LRB):

> *[31] The Board's authority with respect to unfair labour practices is a unique jurisdiction granted to the Board to oversee the collective bargaining relationship between the parties. This is not a jurisdiction that can be assumed or resolved through the grievance process. Assuming the matter eventually found its way to an arbitrator appointed under the collective agreement, that arbitrator would not have the authority granted to this Board to uphold and support the collective bargaining process. […]*

**[42]** The USFA relies on the Board's holding in *Re Saskatoon City Police Association and Saskatoon Board of Police Commissioners*, [1993] SLRBD 72 [*Saskatoon City Police*], in that, the arbitrator's jurisdiction is limited by the provisions of the collective agreement. There, the Board refused to defer the matter due to insufficient "information/evidence at this stage of the proceedings to determine with precision the essential character of the dispute".[4] After doing so,

[4] At para 41.

the Board was faced with adjudicating an unfair labour practice application while taking care to ensure "that the Board does not stray into the Arbitrator's jurisdiction under the collective agreement".[5] The USFA asks the Board to take the same approach; however, if the Board were to do so in this case, it would have to first decide to disregard any of the context that the Employer has asked the Board to take into account, and in doing so, prejudge the unfair labour practice complaint in favor of the USFA.

**[43]** In *Canadian Union of Public Employees, Local 1975 v Saskatchewan Indian Federated College*, 2003 CanLII 62888 (SK LRB) [*CUPE v SIFC*], the primary dispute related to the interpretation of a Letter of Understanding with respect to pay rates. One aspect of the dispute was not amenable to grievance/arbitration. According to the Board, "the Employer has taken the position that it will not make retroactive payments to employees, even the payments that it agrees are owing to employees under the Letter of Understanding".[6] The employer clearly agreed that certain payments were owing and did not rely on the collective agreement to justify this position. The Board found that the employer had repudiated the Letter of Understanding and had failed to bargain in good faith. The Board also deferred the primary dispute, which related to the interpretation of the Letter of Understanding, to arbitration.

**[44]** *CUPE v SIFC* is distinct. Here, the Employer justifies its repudiation of the Scope MOA by suggesting that a different MOA governs. The USFA states that it is the process of collective bargaining that is in issue in this dispute, not the result of collective bargaining. However, the parties have negotiated process-based MOAs that may or may not govern, or guide, the underlying dispute. They have negotiated the process. It is the process that is the result of collective bargaining. The extent to which the negotiated process can or should override *Donovel* is another matter, but it is not a matter that the Board should entertain at this stage.

**[45]** In *Re SPI Marketing Group*, [1996] SLRBD No 9 [*SPI Marketing*], then Chair Bilson agreed that the questions of whether a former employee was either laid off, resigned, or was terminated were disputes over the "meaning, application or alleged violation" of the collective agreement, and were to be submitted to arbitration. The employer had taken the position that those disputes did not call for the application or interpretation of the collective agreement. In turn, the Board found that it was not open to the employer to "make a unilateral decision that the collective agreement does not apply, or that this is not the type of dispute which should go to arbitration".

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[5] At para 44.
[6] At para 17.

By refusing to "contemplate proceeding to arbitration", the employer had breached the duty to bargain. The Board directed that the employer accede to the union's request to appoint an arbitration board.

**[46]** The USFA also relies on *Saskatoon (City) Board of Police Commissioners (Re)*, [2000] SLRBD No 36 [*Saskatoon Board of Police*]. There, the employer had insisted that the disputed matter could not be the subject of a grievance due to the authority of the Chief of Police under common law and statute. The Board found that the employer had committed an unfair labour practice by refusing to refer a dispute to arbitration. On appeal from dismissal on judicial review, the Court of Appeal confirmed that a party to a collective agreement may not "unilaterally decide whether…a matter is arbitrable".

**[47]** Here, the University does not appear to have repudiated the arbitration process, as a whole, but instead has indicated that it is willing to proceed to arbitration to determine the governing MOA. On the other hand, the USFA asks the Board to adjudicate an unfair labour practice application, and in so doing, send the matter back to the adjudicator under the Scope MOA. However, in order to make such an order, the Board has to first interpret the CBA and find that a breach has occurred.

**[48]** The USFA also relies on *Re University of Saskatchewan*, [1989] SLRBD No 47. There, the USFA had refused to provide information to the employer during bargaining – a clear breach of the duty to negotiate in good faith with respect to the settlement of grievances. The Board found that it was "pointless to defer to the very process that the Union is alleged to have impeded and obstructed by its lack of good faith". In the current case, the Board is not being asked to defer to the process that the University is alleged to have impeded; it is being asked to defer to arbitration for purposes of interpreting the CBA.

**[49]** The Board agrees with the USFA that there is no restriction on the potential number of dispute resolution processes under a collective agreement. Furthermore, arbitration pursuant to section 6-45 is not restricted to grievance arbitration; it extends to "all disputes between the parties to a collective agreement".[7] However, the parties have to be prepared that when they negotiate a separate dispute resolution process under a collective agreement, that there may be disputes over whether that process applies.

[7] The USFA cites *Re Regina Qu'Appelle Health Region*, [2007] SLRBD No 23 for this proposition.

**[50]** In many of the foregoing cases, the Board chose not to defer the dispute when requested. Either the CBA did not empower an arbitrator to resolve the dispute, or as in *SPI Marketing*, one party was presenting roadblocks to arbitration. Here, the CBA does empower an arbitrator to resolve the first, and arguably most pressing, part of the dispute, and to provide direction on the negotiated process to assist in resolving the second. The Employer is willing to proceed to arbitration.

**[51]** Lastly, the third stage of the test deals with remedy. The remedy sought under the CBA must be a suitable alternative to the remedy sought in the application before the Board. It does not have to be an exact equivalent. Clearly, an order directing the University to negotiate with the USFA is not an order an arbitrator can grant. An arbitrator cannot make a finding that the Act has been or is being violated, or make a cease and desist order with respect to an unfair labour practice.

**[52]** The Board agrees with the USFA that the unfair labour practice question puts in issue the conduct of the University. The question of whether the University has committed an unfair labour practice is within the jurisdiction of the Board. However, the University's defense to the unfair labour practice appears to be grounded in the Appointment MOA. The Board is satisfied that the parties, should they proceed to arbitration pursuant to the CBA will seek and receive direction as to the applicable MOA, as well as the applicable negotiated process.

**[53]** A decision that the governing MOA is the Scope MOA could provide a suitable alternative remedy for the USFA, by providing clear direction to the parties. Perhaps said remedy would turn out to be incomplete. But the Board would have to prejudge the issues to justify redirecting the matter to the negotiated adjudicator, and could occasion even more delay by doing so. It is not for the Board to decide which MOA applies.

**[54]** In conclusion, the Board wishes to give effect to and encourage the parties' capacity and demonstrated willingness to enter into negotiations, while maintaining jurisdiction over the unfair labour practice allegations. In this case, it is appropriate to defer the matter to an arbitrator pursuant to the CBA. Should arbitration not resolve the underlying unfair labour practice issues, either party is free to return to the Board, on notice to the other side, for a hearing.

**[55]** The Board makes the following Orders:

1. THAT the USFA's unfair labour practice application designated LRB File No. 228-19 is deferred to the grievance/arbitration process and adjourned *sine die*.

2. THAT LRB File No. 228-19 may be renewed before the Board by either party on notice to the other side should there be outstanding issues not resolved upon conclusion of the grievance/arbitration process.

**[56]** The dates that are set down for the hearing of the unfair labour practice application shall be vacated.

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

**DATED** at Regina, Saskatchewan, this **16th** day of **June, 2020.**

**LABOUR RELATIONS BOARD**

Barbara Mysko
Vice-Chairperson