MARY ANNE LEGARY, Applicant v UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1400, Respondent and CARNDUFF CO-OPERATIVE LTD., Respondent

LRB File Nos. 242-19 & 269-19; November 30, 2020
Vice-Chairperson, Barbara Mysko; Board Members: Bettyann Cox and Mike Wainwright

For the Applicant, Mary Anne Legary:	Self Represented
Counsel for the Respondent, United Food and Commercial Workers Union Local 1400:	Heath Smith
Counsel for the Respondent, Carnduff Co-operative Ltd.:	Robert Frost-Hinz

Application to cancel certification order – Employer advice, influence, or interference – Anti-union animus in the workplace – Board member tells employee, not Applicant, to call the Labour Board – Section 6-106 of *The Saskatchewan Employment Act* – Decertification Application Dismissed.

REASONS FOR DECISION

Background:

[1] **Barbara Mysko, Vice-Chairperson:** United Food and Commercial Workers Union, Local 1400 [Union] is the bargaining agent representing all employees employed by Carnduff Co-operative Limited [Employer] in Carnduff, Saskatchewan, except the general manager, pursuant to the Certification Order issued in LRB File No. 066-04, dated April 27, 2004. Mary Ann Legary [Legary] has filed an application to cancel that Certification Order [Decertification Application]. The Union objects to the Decertification Application, stating that it was 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. The Employer denies these allegations.

[2] The Union has filed a related Unfair Labour Practice [ULP] Application with the Board.[1] In that Application and in its Reply to the Decertification Application, the Union alleges that the Employer has bargained in bad faith and has communicated directly to the employees, attempting to convince the employees to apply to decertify the Union and "attempting to poison them against the process of collective bargaining". The Employer filed a Reply to the Decertification Application, denying that it failed to bargain in good faith, denying that the decertification process was

[1] LRB File No. 269-19.

Employer-dominated, and denying that it used the bargaining process to poison the employees against the Union.

[3] The timeline with respect to the Decertification Application is as follows. Legary declared the Decertification Application on October 31, 2019; the Application with the Board was received on November 4, 2019. A Direction for Vote was issued on November 12, 2019, and the Board mailed the Notice of Vote that day. The deadline for voting was December 3, 2019. The Union filed the ULP Application on November 29, 2019.

Arguments:

[4] The following is a brief summary of the parties' arguments.

[5] Legary made minimal argument in support of her Application. She did, however, voice her opinion at various points throughout the hearing when moved to do so. In short, Legary states that she and others are not benefiting from the assistance of the Union, that the Union representatives are in it for themselves, that she could put the amount paid in Union dues to better use, and that she believes in "earning" her money rather than negotiating for it.

[6] The Union says that it has made out a clear case for Employer interference in the Decertification Application. The Board should exercise its discretion to dismiss the Application pursuant to section 6-106 of the Act. Management of Carnduff Co-op has displayed palpable anti-union animus in the workplace, a Board member has communicated directly to an employee on work time suggesting that she call the Labour Board, the leader of the Decertification effort is related to that Board member and her stated reasons for applying to decertify the Union are implausible, the chronology of events is suspicious and it includes anti-union conversations between management and employees in the middle of collective bargaining.

[7] Employer interference is rarely characterized by overt actions, but is more often disguised and must be inferred from the totality of the circumstances of the case. Interference can be inferred from Employer involvement in decertification drives, as the Employer has no legitimate role in that process. The Board has noted that Employer interference in decertification efforts usually takes one of two forms: cases in which the Employer has actively led a decertification initiative and cases in which the Employer has poisoned the workplace against the Union.

[8] The Employer says the Board's approach to reviewing the duty of good faith bargaining has been characterized by measured restraint. The Board does not closely supervise the

bargaining strategies adopted and employed by the parties. Instead, the Board asks, primarily, whether the parties have genuinely engaged in the collective bargaining process. Here, the evidence demonstrates that the Employer has been genuinely engaged in the collective bargaining process, even by concluding a collective agreement only two months after the negotiations officially started. Contrary to the Union's suggestion, the Employer did not bring an unusually large number of representatives to the bargaining table or otherwise engage in bad faith bargaining.

[9] The Employer also specifically addresses the Union's allegations that it engaged in unfair labour practices pursuant to clauses 6-62(1)(a) and 6-62(1)(b) of the Act. With respect to clause 6-62(1)(a), there is no evidence of any Employer communications that interfered with, restrained, intimidated, threatened or coerced any employee as against the exercise of any rights granted by the Act. The mere fact that a communication may have had an influence does not constitute a breach. Second, clause 6-62(1)(b) asks whether the Employer directly interfered with the internal administration of the Union to the extent that its survival or integrity was threatened. The Union has failed to demonstrate that the Employer breached clause 6-62(1)(b) of the Act.

[10] The Employer denies interfering with the Decertification Application, and suggests that the Union's argument consists of bare allegations and suspicions of inappropriate conduct, none of which have been established. There is no evidence that any Employer communications were made for the purpose of poisoning the work environment, or that there was any evidence of Employer conduct amounting to coercion or intimidation.

Evidence:

[11] Six witnesses testified at the hearing of these matters: the Applicant, Legary; an employee, Larry Seymour [Seymour]; an employee, Patricia Sidey [Sidey]; an employee, Julie Dixon [Dixon]; the Carnduff Co-op General Manager, Shane Marsh [Marsh]; and a member of the Board of Directors [Co-op Board], Debbie Fowler [Fowler]. The Board will proceed to summarize certain, general findings of fact, based on the testimony of these witnesses, followed by a summary of the remaining aspects of the testimony.

[12] Carnduff Co-op consists of a grocery store, an attached gas bar, a cardlock, and bulk food deliveries. The bargaining unit at Carnduff Co-op consists of seven employees, and all of those employees work as clerks or cashiers. Under the existing collective bargaining agreement [CBA], there are two out-of-scope positions, consisting of the General Manager and the Grocery Supervisor.

[13] The previous CBA was set to expire on May 2, 2019. The most recent round of collective bargaining, and the round that is subject to these proceedings, commenced in October, 2019. Bargaining during this round took place on October 8, 9, and 10. The parties met all three days. On the first day of bargaining, the Employer was represented by four individuals: Lola Ayotunde [Ayotunde], Maria Jordan [Jordan], Marsh, and Fowler. The Union was represented by three individuals: Rod Gilles, Seymour, and Sidey.

[14] By the time negotiations had begun, Marsh had been in his position as the General Manager of Carnduff Co-op for only a few weeks. As these negotiations were to be his first experience with collective bargaining, Fowler attended on the first of those days so that she could be there to provide support to Marsh. She did not return on the subsequent days. During the subsequent days, each of the parties was represented by three individuals. The Union representatives did not raise any concerns with the number of representatives attending for the Employer at any time during the negotiations in October.

[15] At the time of the negotiations there were two out-of-scope positions. The Employer proposed to exclude two additional positions, the Cardlock Manager and a Produce Supervisor. The Union rejected that proposal and the Employer withdrew the proposal on either the first or the second day of bargaining.

[16] The Employer presented a final offer at the close of bargaining. The final offer did not include the initial scope proposal excluding the additional two positions. The Union communicated that it was not in support of the offer. The membership would ultimately vote against the offer, but in the meantime a number of concerning incidents occurred.

[17] In the middle of October, after the close of the first round of bargaining, Fowler attended at the Co-op Gas Bar where Dixon was working. An unusual exchange took place. The specifics of that exchange are subject to some dispute and are central to the Union's argument that the Employer had a hand in the Decertification Application. The specifics will be explored more in the summary of the witnesses' testimony.

[18] In October, Legary sought support for her Decertification Application. On October 28, 2019, the employees voted to reject the Employer's final offer. On October 31, 2019, Legary completed the Decertification Application. The deadline for voting on the Decertification Application was set for December 3, 2019. Then, on December 4, 2019, the parties met with the assistance of a mediator to attempt to achieve a resolution to collective bargaining. It was a shuttle

mediation. The Employer tabled a revised offer, changed only slightly from the previous offer, in particular through the addition of a Christmas bonus for staff. The employees voted in favor of that offer, and on December 14, 2019, a revised CBA was ratified.

[19] The Board will proceed to summarize the testimony of each of the witnesses, in turn.

[20] The first witness was Legary. Legary expressed some impatience with the Decertification process. She communicated her belief that having filed an Application, she did not need to testify in support of that Application. Having filed that Application, however, she agreed to submit to cross examination on the part of both parties.

[21] In the course of that cross examination, Legary testified to the following. Legary has worked at Carnduff Co-op for about five years now. She has in the past raised the issue of decertifying the Union, if not in those exact words. She spoke with Dixon and Sidey about it before. She is not a fan of unions in general. To get started on this Application, she phoned the Labour Board and was told by the staff there how to obtain a Decertification Application form. She then obtained the form from the Board's website, and filled it out. In filling out the form, she obtained specific details, such as the Certification Order file number from the Board. No one else assisted her in preparing the Application.

[22] She admitted that Fowler is her sister-in-law, but insisted that they are not close. They speak only when Fowler comes into the store to buy groceries. Legary denied speaking with Fowler about this Application. Legary denied that either Fowler or Marsh had said that the employees would suffer no loss of benefits or wages through the removal of the Union. She denied speaking with any representatives of the Union about the Application.

[23] Legary explained her motivation in seeking to expel the Union. She does not like paying Union dues. The cost of living is going up. Her money is her money. She should not have to "donate" her money to the Union. Her husband determined the amount of her Union dues through bank statements and related documents. Legary does not "go on computers". Union counsel suggested that Legary's suggested amount was an overestimation. Legary countered that the Union's suggested amount would still help with groceries.

[24] Legary explained that she is unimpressed with the Union. Her Union representative has "nothing to say to us", and just gets the employees to "sign a piece of paper" for a "chance to win $100". What paper? She could not say. During negotiations, one of the employees asked the Union representative some questions, and he responded that it was "all in the book". Not very

helpful. She insisted that she does not avoid the Union representative, but if he had something to say to the employees, then he could approach them.

[25] In the Application, Legary wrote that if it was not for the Union the Shop Stewards would no longer be working at Carnduff Co-op. She insisted that she does not want to get anyone fired; she just wants them to work. She wrote this out of spite. She says that no other part of the Application was made out of spite. She feels that the "rest of us shouldn't have to do their work for them". She has not spoken directly to the employees about this - "they've been there long enough they should know". But she has raised these concerns with her Employer. She acknowledged that decertifying the Union will not improve anyone's work performance – "we just want out".

[26] The Shop Stewards are only in it for themselves. They do not ask the employees anything. They should be asking "what we want". She could not recall receiving a survey about the collective bargaining negotiations.

[27] When asked what benefits she enjoys under the CBA, she replied that she does not get anything. She receives benefits through the Co-operators. Granted, those benefits might be "thrown out" if she succeeds in decertifying the Union. She does not know what would happen to her wage rate, but she is willing to take that chance because "[w]here I come from, when you work if you deserve a raise you get a raise. That was how I was brought up. Not having someone to fight for me to get money".

[28] The second witness was Seymour. Seymour has been working at Carnduff Co-op for approximately 26 years, and has been a Shop Steward for over ten years. Seymour described the last round of bargaining. He stated that the Union usually asks the membership in advance of collective bargaining what they wish to negotiate for, and then the Union takes the information that it receives and raises those issues in bargaining. In 2019, a request for feedback was sent out to each member.

[29] He understands that Carnduff Co-op management would prefer not to have a Union in the workplace. A previous manager, Sherry Schlosser [Schlosser], had said that because of the Union her hands are tied.

[30] Seymour had no interactions with Marsh about Legary's Application. There has been friction at work because of what Legary has done. At some point Seymour told Marsh that "what

happened was uncalled for" and Marsh agreed with him. It was unclear what Seymour was referring to.

[31] Seymour claimed that one day while he was sitting in the break room, Marsh entered the room and announced, without any introduction, that "you realize that if you lose the Union you will not lose your benefits". Seymour understood this to mean the Co-operator benefits. Seymour asked if the wages would decrease and Marsh said "no". Also present at the conversation was the Grocery Supervisor, Jenny Turton [Turton], who handed Seymour a Co-operators benefits brochure. When the panel asked Seymour to confirm when this happened, Seymour stated that it happened during the Spring of 2020. Neither counsel asked any follow up questions about the stated timeline.

[32] The Board will refer to the foregoing, and related, conversations collectively as the Benefits Conversation.

[33] Seymour indicated that Legary has had no involvement with the Union, and even a few years ago was adamant that she wanted to get rid of the Union. When Seymour asked her why, she asked, "what has the Union ever done for us?" But before the Union was certified, the employees went years without a raise. There are many benefits to having a Union.

[34] Seymour confirmed that Legary has never raised concerns with him about his performance.

[35] Seymour spoke about the recent round of collective bargaining negotiations. The Employer had submitted a proposal to place two additional employees out-of-scope, up from the existing two. Seymour assumed that the Employer had intended to move current employees out-of-scope, but had not been told that, and so he did not know. He acknowledged that the Employer withdrew the proposals for the out-of-scope positions on the first day of bargaining.

[36] The third witness was Sidey. Sidey has been an employee of Carnduff Co-op for five years. She was first made aware of the Decertification Application when she saw the Notice of Vote posted in the workplace.

[37] When she was first hired, Seymour told her that the Board did not want or need the Union. She knows that Marsh does not believe in unions. He has told her this directly. When Marsh "was back in September, he was saying that the Board was not with the Union and then he didn't like unions". According to Sidey,

> *We were just talking about different things and some of the conversation turned towards the negotiations and that's when he said that they didn't want, they didn't really want the union, don't like unions.*

[38] Sidey explained that this conversation took place around mid-October at the workplace after the negotiations had occurred.

[39] Sidey was aware that Marsh was talking to other Co-ops who were not unionized to assess whether they had the same benefits as Carnduff Co-op. He told Sidey that he had a document from the other Co-ops and she asked to see it. She was at the store after the negotiations in October, and Marsh called the Redvers Co-op and had them fax their information over. According to Sidey, he showed this document to everyone, but when Sidey spoke with Marsh they were alone in the back room. When asked how she knew that he was showing everyone, she replied, "I just took it that he showed everybody, that we wouldn't lose…if we got rid of the Union. That we'd still have the same benefits."

[40] Redvers is non-unionized. She had no reason to believe that the information contained in the document was inaccurate.

[41] In response to a question from the panel about "that conversation you said you had with the General Manager Mr. Marsh, you said it was after negotiations were over on October 10th", Sidey explained that the conversation with Marsh took place after the vote to reject the first proposal, which vote took place on October 28. It is unclear whether the foregoing consists of two conversations.

[42] Sidey was on the negotiating team in the last round of bargaining. When she received the Employer's proposal package, she had no concern with the scope proposal. According to Sidey, it was on the 9th that the Employer withdrew that proposal, prior to the group discussing monetary items. The Union raised no concerns about the number of people representing the Employer in negotiations.

[43] Sidey did not see Ayotunde or Jordan outside of bargaining. Sidey has had no interactions with Marsh about Legary's Application.

[44] The third witness was Dixon. Dixon has been an employee of Carnduff Co-op for six years. She was not directly involved in the recent round of collective bargaining. She confirmed that the Union had asked the employees what they wanted to negotiate in collective bargaining.

[45] Dixon became aware of the Decertification Application the day before "we went to the bargaining table the first time". Legary and one of the other in-scope employees were talking, and the two employees approached Dixon near the entrance to the gas bar about signing a "paper to get rid of the Union". When asked about the timing again, she stated "it was in October sometime…it was at work, it was one night, like I say it was the night before we went to vote." When asked further, she said "it was later in the day about 4:30-ish". Carnduff Co-op is open from 8:30 am until 6 pm. Dixon did not report to management that she was approached about this at work.

[46] According to Dixon, the relationship between management and the Union is not very good. She said that the Co-op Board and management have always been against the Union. Marsh has made comments that he "is not a union man" and Schlosser, when she was a manager, said that she is not a union person. And the Co-op Board, Dixon feels, has always been against the Union. Marsh has said that no matter what happens to the Union the employees "will be treated the same way" and the benefits will not change.

[47] Dixon was asked to provide more details about the Benefits Conversation. They were in the coffee room, and Marsh said whether or not there was a Union in the workplace, things would stay the same. She could not recall what prompted him to say that. It had just come up, and Sidey was present at the time.

[48] In or around October 17, 2019, Fowler approached Dixon at the gas bar where Dixon was working. Fowler was getting gas and she asked Dixon if she had phoned the Labour Board yet. No one else was present at the time. Dixon said she looked at her funny and asked why, and Fowler said "to get rid of the Union". When Dixon replied that she had not phoned the Board, Fowler told her that she should because she would be better off without the Union. They pay so much in Union dues and they could all use the money. There has to be a way to get rid of the Union. She finished the conversation by saying "but you didn't hear it from me".

[49] The Board will refer to the foregoing interaction as the Gas Bar Exchange.

[50] According to Dixon, she does not have a relationship with Fowler. Dixon speaks to Fowler only when she comes to the store. Dixon did not tell anyone she was approached.

[51] According to Dixon, when the Union representative enters the store, Legary says to Dixon, "the Union rep is here. I'm going to avoid him".

[52] Dixon says that she did not see a fax from the Redvers Co-op outlining their benefits.

[53] Marsh was the fourth witness. He started as the General Manager in August, 2019. In this role, he reports to the Co-op Board. The Board consists of five members.

[54] Marsh could not recall when, but he knows that he overheard from the staff that Legary was involved in bringing a Decertification Application. He denied discussing the Application with her, or providing her with support for bringing the Application. He said that he overheard Legary "talking about talking to the Sask Labour Board". It was "an ongoing thing".

[55] Marsh denied communicating to employees about the decertification process, specifically. He acknowledged that staff have talked to him about benefits. A few employees had asked him about benefits, so he emailed Federated Co-op and received some pamphlets. He felt it was his responsibility as a manager to inform the employees. He denied giving the pamphlets to individuals specifically. He said that he put the pamphlets in the staff room and the staff were free to "browse as they want". He could not recall a fax from Redvers.

[56] At some point, Marsh, Dixon and Sidey were talking. Sidey was talking about how she hates this process, and she was saying that she "can't wait for it to be over". She is tired of this "Union stuff". He "just said, whether you keep it or not, things are not going to change. That's up to you guys. It has nothing to do with me. I respect the democratic process…". He wanted to give them reassurance either way. His goal was to provide a safe and healthy work environment.

[57] He said that some staff have tried to talk to him about Union issues and he has just tried to direct them to the Union. He explains to the employees that he is not allowed to discuss certain things. He tries not to go into detail. He tries to avoid the process entirely but he is not entirely sure what he is not supposed to discuss, as he is new to the role. If it is anything "outside of me", he tries not to provide an opinion.

[58] He denied ever saying to employees, "I am not a union man", in "those words". He said he might have commented on what was going on with the Refinery Co-op strike. They might have taken those comments to mean that he does not like unions. There might be a distinction between different industries. He does not "know why they have them sometimes".

[59] He denied ever starting these conversations with employees. It was either raised in a conversation within a conversation, or at coffee.

[60] He acknowledged that Legary has complained in passing about the work ethic of Seymour and Sidey.

[61] Fowler was the last witness to testify. Fowler sat on the Co-op Board for 16 years, as secretary of the Board for 14 of those years. She resigned in March 2020.

[62] She confirmed that she attended the first day of collective bargaining to provide support to Marsh. She does not have extensive direct experience in collective bargaining. She attended one day of bargaining in 2015.

[63] Fowler confirmed that Legary is her sister-in-law. She also confirmed that the two are not close. Before Legary was hired, Fowler had not seen Legary for two to three years. Fowler might say “hi” when she comes to the store. Otherwise they do not communicate.

[64] According to Fowler, the Decertification Application was raised in a Co-op Board meeting in October or November. She did not hear about it from Legary. She did not assist Legary in any way. She was not aware of any managers who helped Legary with her Application.

[65] Fowler was asked about the Gas Bar Exchange. She said that she does not speak to employees about the Union but she did speak with Dixon on this occasion. She confirmed that she had stopped to get gas. She asked Dixon how much money she paid to the Union. Dixon answered she did not know. Fowler asked if that money would help with her situation, and Dixon said “yes”.

[66] Fowler was asked what else she said, and she replied:

> *Um. [Pause] I’m not really sure if I might have…ss…because, um, she uh, I, I, I, felt bad for her because I know her situation. Um, I’m more of a mother type to anyone that age.*

[67] Fowler described what she knew of Dixon’s situation. She said that she never asked Dixon about the Labour Board. But then she indicated that she could “not remember” but “I might have said ‘you can call the Labour Board’”. However, Dixon is a quiet person, and so for that reason Fowler knew that Dixon would never follow through and call the Board. She did not provide Dixon with any other options for resolving her concerns.

[68] Fowler denied having conversations with any other Union members about decertification, wages, or benefits. She did not approach the students, for example, about their circumstances. Why would she? They were still living at home.

[69] On cross, Fowler acknowledged that she did not mention alternative options for Dixon, for example, seeking a bonus from the Employer. Fowler could not say what Dixon pays in Union dues – she does not even know how much she gets paid. Nor does she know to what extent Dixon might be better off through the benefits she receives through the CBA. However, she has known about Dixon's situation since early 2019 and did not approach her until now.

[70] Fowler admitted that she was frustrated in October when the Employer's proposal was rejected. She agreed that it would be easier to set the employees' terms and conditions without the involvement of the Union.

[71] When asked why she chose to approach Dixon directly instead of talking to Marsh, she attributed her actions to her "motherly instinct".

Applicable Statutory Provisions:

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

> ***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.*
>
> *[…]*
>
> ***6-7*** *Every union and employer shall, in good faith, engage in collective bargaining in the time and in the manner required pursuant to this Part or by an order of the board.*
>
> *[…]*
>
> ***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.

. . .

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:*

(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Part;

(b) subject to subsection (3), to discriminate respecting or interfere with the formation or administration of any labour organization or to contribute financial or other support to it;

. . .

(l) to declare or cause a lockout or to make or threaten any change in wages, hours, conditions or tenure of employment, benefits or privileges while:

(i) any application is pending before the board; or

(ii) any matter is pending before a labour relations officer, special mediator or conciliation board appointed pursuant to this Part;

. . .

(r) to contravene an obligation, a prohibition or other provision of this Part imposed on or applicable to an employer.

(2) Clause (1)(a) does not prohibit an employer from communicating facts and its opinions to its employees.

(3) Clause (1)(b) does not prohibit an employer from:

(a) permitting representatives of a union to confer with the employer for the purpose of collective bargaining or attending to the business of a union without deductions from wages or loss of time while so occupied; or

(b) agreeing with any union for the use of notice boards and of the employer's premises for the purposes of the union.

6-104*(1) In this section:*

(a) ***"former union"*** *means a union that has been replaced with another union or with respect to which a certification order respecting the union has been cancelled;*

(b) ***"replacing union"*** *means a union that replaces a former union.*

(2) In addition to any other powers given to the board pursuant to this Part, the board may make orders:

> *(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;*
>
> . . .
>
> ***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.*

Analysis:

[73] There are two main issues before the Board. First, the Board must consider whether it should temporarily remove the employees' right to determine the representation question pursuant to section 6-106 of the Act. Second, the Board has been asked to consider whether the Employer has committed an unfair labour practice, as described by the Union in that Application.

[74] On the first issue, 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, and that the Board should exercise its discretion pursuant to section 6-106 of the Act. The evidence led must be sufficiently clear, convincing, and cogent.

[75] The starting point is the wording of the relevant statutory provision, which reads:

> ***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.*

[76] The Application need only be made 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. It is not necessary for the Board to find that the Employer's or its agent's actions were the sole or even the primary influence in bringing the Application.

[77] The modern approach to statutory interpretation and the doctrine of liberal construction are contained in section 2-10 of *The Legislation Act*, which reads:

> ***2-10****(1) The words of an Act and regulations authorized pursuant to an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.*

> *(2) Every Act and regulation is to be construed as being remedial and is to be given the fair, large and liberal interpretation that best ensures the attainment of its objects.*

[78] Section 6-106 grants to the Board a discretionary power to dismiss an application in certain circumstances. The Board may exercise that power if it is satisfied that the circumstances set out in that provision are established. These circumstances include 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.

[79] In deciding whether to exercise its discretion, the Board is guided by the scheme of the Act which seeks to facilitate the employees' right to join a union and recognizes that the right to join a union is a function of employee choice, as carried out within the majoritarian model. As a function of that choice, employees are entitled to periodically revisit the representation question. The Board seeks to determine whether the votes to be tabulated will reflect the true wishes of the employees, within the constraints of the vote.

[80] According to the Board's case law, the circumstances in which an employer's conduct will prevent a decertification application from proceeding will take two general forms. The Board in *Williams v United Food and Commercial Workers, Local 1400 and Affinity Credit Union (Hague Branch)*, 2014 CanLII 63996 (SK LRB) [*Williams*] described the two prevailing themes in the case law decided pursuant to *The Trade Union Act*:

> *[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.*

[81] By virtue of the nature of and circumstances in which decertification applications are made, it is a rare case in which there is overt or direct evidence of interference or other impugned conduct on the part of the employer. It is for this reason that the Board must be alert to the existence of unusual circumstances, inconsistencies, or other hallmarks of suspicious conduct, and the Board is permitted, and in some cases must, infer from the circumstances the nature and extent of the employer's conduct.[2]

[82] This does not mean that every "statement made or action taken by an employer will necessarily lead to the conclusion that a rescission application has been made as the result of improper influence, interference, assistance or intimidation by the employer".[3] In deciding whether to exercise its discretion, the question that the Board will consider is whether the employer's conduct is of a nature and significance that the probable impact of that conduct would be to compromise the ability of employees, of reasonable fortitude and intelligence, to freely exercise their rights under the Act.[4] The Board gives due consideration to the circumstances occurring in the workplace at the relevant time, including the maturity and status of collective bargaining. This is an objective test.

[83] In summarizing the evidence, both of the parties relied on the following passage from *Mitchell Wentworth v Teamsters Canada Rail Conference*, 2019 CanLII 83972 (SK LRB) [*Wentworth*], to different effect:

> *[75] Section 6-106 provides the Board with discretionary power to dismiss a decertification application when the application has been made in whole or in part due to employer advice, influence, interference or intimidation. The Board must consider the whole of the circumstances. While each case must be assessed on its facts, the Board routinely examines the following factors in assessing a given case:*
>
> *a. The plausibility of the applicant's motives for bringing the application;*
>
> *b. The relationship between the applicant and management, or the provision of special treatment;*
>
> *c. The provision of information or resources to the applicant, on behalf of the employer;*
>
> *d. Words or conduct, on behalf of the employer, that suggest, whether indirectly or overtly, that decertifying will result in a benefit to the employees;*

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[2]See, for example, *Conrad Parenteau v Saskatchewan Government and General Employees' Union (SGEU)*, 2019 CanLII 57379 (SK LRB) [*Parenteau*] at para 99; *Nadon v United Steelworkers of America and X-Potential Products Inc.*, 2003 CanLII 62864; *Wentworth v Teamsters Canada Rail Conference*, 2019 CanLII 83972 (SK LRB) at para 96.
[3]*Williams* at para 33.
[4] *Ibid.*

> *e. Demonstrated conduct on behalf of the employer that has hindered bargaining and damaged the union's reputation.*

[84] To be clear, the Board in *Wentworth* stated that it "routinely examines" those factors in assessing a given case. As such, those factors are not an exhaustive list of criteria, but are factors that routinely arise in decertification cases, attract the attention of the Board, and may be persuasive. Each case must be decided on its facts.

[85] In this case, the Board has had to make certain assessments of credibility in the course of its deliberations. On the issue of assessing credibility, the Employer relies on *Faryna v Chorny*, 1951 CanLII 252 (B.C. CA), [1952] 2 DLR 354 (BCCA) [*Faryna*], in which O'Halloran J.A. provided the following direction:

> *9 …the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility […]. A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial judge and yet the surrounding circumstances in the case may point decisively to the conclusion that he is actually telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.*
>
> *10 The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skillful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial judge to say "I believe him because I judge him to be telling the truth," is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.*
>
> *11 The trial judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial judge with a divine insight into the hearts and minds of the witnesses. And a court of appeal must be satisfied that the trial judge's finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case.*
>
> [citations removed]

[86] The Employer also relies on *Hadzic v Pizza Hut Canada*, 1998 CarswellBC 3257, 1999 BCHRT 44, for the following distillation of the principles in *Faryna*:

> *36 To be credible, a witness's testimony must be in "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions […]. Other factors that must be weighed include the witnesses' motives, their powers of observation, their relationship to the parties, the internal consistency of their evidence, and inconsistencies and contradictions in relation to other witnesses' evidence.*

[87] A trier of fact should review the "totality of the inconsistencies" particularly when "there is no supporting evidence on the central issue": *C. (R.) v McDougall*, 2008 SCC 53, at paragraph 57.

[88] Next, the Board will apply the foregoing principles to the facts of the case before it.

[89] First, if the Board finds that the Decertification Application was 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, it must consider whether to exercise its discretion to dismiss the Application.

[90] Section 6-17 sets out the requirements for applying to the Board to cancel a certification order in cases in which an applicant alleges a loss of support for the union. The employee may apply if the employee 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 files evidence of same. Therefore, a decertification application cannot be made unless an applicant is able to gather the statutorily required support from the employees in the bargaining unit during the required timeframe.

[91] Furthermore, pursuant to subsection 2-10(2) of *The Legislation Act*, the Board must construe section 6-106 as being remedial and give it the fair, large and liberal interpretation that best ensures the attainment of its objects. The objects of the statutory regime include facilitating the employees' right to join a union, permitting employees to periodically revisit the representation question, and seeking to determine the true wishes of the employees when the question is revisited, within the constraints of the vote. It is well established that if the nature of an employer's improper conduct is such that the Board has lost confidence in the capacity of the employees to independently decide the representation question that the requirements pursuant to section 6-106 are satisfied. The Board may then consider whether to exercise its discretion in line with the objects of the Act.

[92] Granted, there is no evidence that the Employer made the Application or directly advised the Applicant, Legary, to make it. However, there is sufficient evidence to persuade the Board

that the Employer's conduct was improper and that it likely impaired the employees of their capacity to freely and independently decide the representation question.

Plausibility of Motives:

[93] First, the Board will consider the plausibility of Legary's motives.

[94] Legary's long-standing opposition to the Union is not a secret. When confronted about "going out of her way" to avoid her Union representative, she explained, consistent with her stated beliefs, that she did so because the Union representative has "nothing to say to us". Legary's own description of her upbringing and value system suggest that her views are sincerely held.

[95] The Board does not accept, as was obliquely suggested by the Union, that Legary filed the Decertification Application in a plot to terminate the Shop Stewards. The Board believes that Legary is genuinely frustrated by the Shop Stewards.

[96] On the other hand, certain inconsistencies raise questions about Legary's motives in this case. First, Legary says that she assessed the cost of the Union dues relative to the increased cost of living, but did not consider the potential for a reduction in her wage rate. To be clear, the Board does not expect Legary to be able to recount the precise amount of her Union dues; she arrived at a general amount with the assistance of her husband. But, she appears to have held fast to the notion that the dues are an unnecessary expense without accounting for any potential negative impacts.

[97] Second, Legary has wanted to cut ties with the Union for years, but only on this occasion, in the middle of a collective bargaining round that left the Employer dissatisfied, and with minimal knowledge of the CBA or the collective bargaining process, did she make her Decertification Application. On October 28, 2019, the employees voted to reject the Employer's final offer. On October 31, 2019, Legary completed the Decertification Application. It was received by the Board a few days later. This is a concerning confluence of events, and Legary was not able to satisfactorily account for the timeline.

Employer Assistance and Relationship with Applicant:

[98] Next, the Board will consider the extent of assistance provided by the Employer and the relationship with Legary, if any.

[99] First, there is no direct evidence that Legary received assistance from anyone or used Employer resources to fill in or file the Decertification Application. Second, there is insufficient evidence to support a negative inference based on the familial relationship between Fowler and Legary.

[100] Dixon testified that Legary approached her at the workplace on work time to request that she sign a support card. Legary was accompanied by another employee. Dixon did not report this incident to management.

[101] Marsh was aware that Legary was bringing a Decertification Application. He overheard staff talking about it. And he had overheard Legary "talking about talking to the Sask Labour Board". He could not recall when he found out but it was an "ongoing thing". There is no evidence that Marsh did anything to discourage workplace discussion about the Decertification Application.

[102] On the other hand, Sidey first heard of the Decertification Application when the notice of vote was posted in the workplace. This suggests that Sidey, at least, was not aware of Legary's attempts to gain support.

Communicating a Benefit - Gas Bar Exchange:

[103] Next, there is evidence that Fowler, a Co-op Board member, advised an employee to call the Labour Board to attempt to get rid of the Union and its associated dues.

[104] Fowler and Dixon both testified about this exchange, but their accounts differed. Of the two, the Board prefers Dixon's account. In fairness, Dixon's memory is not perfect.[5] However, she displayed no proclivity for minimization or exaggeration. She testified in a straightforward manner, and provided spontaneous and coherent responses to questions in cross examination. For example, when the Employer's lawyer asked Dixon whether she thought Fowler's inquiry was odd, Dixon confirmed that she did – in fact, that was why she looked at Fowler "funny" and then asked Fowler "why?". Dixon was genuinely bewildered – a likely and believable reaction to such an inquiry.

[105] In contrast, Fowler offered incomplete answers to certain questions, parsed words, and displayed a faulty memory in relation to key aspects of the conversation. When asked "what else" she said to Dixon, she was less than forthright. Fowler denied that she "asked" Dixon about the Labour Board but admitted that she might have said that Dixon could "call" the Labour Board.

[5] As demonstrated by her error in relation to the shoe benefit.

Fowler was unwilling or unable to recall important details of the exchange; it is therefore unlikely that she was willing or able to clearly recollect her motivation in initiating the exchange.

[106] Fowler suggested that she was motivated by her motherly instinct to protect Dixon. But "motherly instinct" is an inadequate explanation. Fowler and Dixon do not have a close relationship. They are acquaintances, and Fowler was a Board member in Dixon's workplace. The nature of their relationship does not align with Fowler internalizing a particular concern for Dixon.

[107] Some small towns have glass walls, but this does not excuse the demonstrated disregard for Dixon's privacy, or explain the manner in which Fowler chose to express her stated interest in Dixon's circumstances. Fowler presented only one solution. If she truly believed that Dixon would fail to follow through, and was genuinely concerned with her welfare, then why did she not present any other solutions?

[108] Fowler initiated the Gas Bar Exchange after the first round of bargaining and before the employees voted on the Employer's offer. Fowler actively attempted to canvass support for decertifying the Union during collective bargaining. Fowler was not focused on Dixon; she was focused on the Union, which she believed was a hindrance.

[109] Fowler ended the conversation by stating "you didn't hear it from me"; she understood that she should not have been having the conversation but she was having it anyway.

[110] This exchange is akin to the fourth factor described in *Wentworth* as "words or conduct, on behalf of the employer, that suggest, whether indirectly or overtly, that decertifying will result in a benefit to the employees". Clearly, Fowler communicated to Dixon that decertifying would result in a benefit.

Reputational Damage through Bargaining:

[111] Lastly, there is no evidence of demonstrated conduct on behalf of the Employer that has hindered bargaining and thereby damaged the Union's reputation. Despite this, there is evidence of anti-union animus that needs to be considered.

Anti-Union Animus:

[112] Sidey, Seymour, and Dixon each testified that they believed that the management at the Co-op is anti-Union. This shared understanding is supported by the surrounding evidence,

including the evidence related to Fowler's conduct at the gas bar, and to some extent by Marsh's own testimony.

[113] Marsh's credibility was negatively impacted by his tendency to provide indirect, vague answers to questions. However, while he was not very forthcoming, he did acknowledge having reservations about unions. He insisted that he did not say, "I am not a union man", but then qualified, "in those words". Marsh maintained that he avoids inappropriate conversations in the workplace; but when he attempted to describe those "inappropriate conversations" he said he should not engage in conversations "outside of me". Based on his testimony, it is not clear that Marsh has a strong grasp of what is appropriate and what is not.

[114] To be clear, the Board takes nothing from Marsh's admission to having commented on the Co-op Refinery "strike", which began after the events at issue in this proceeding. Nor does the Board place any weight on the conversation between Sidey and Seymour about anti-union animus in the workplace.

[115] To be fair, there is no direct evidence that Marsh communicated to employees about the decertification process. None of the employees suggested that Marsh spoke to them about Legary's Application. However, it is apparent that Marsh has communicated that he is not in favour of unions. The Board does not believe that Marsh has been appropriately neutral in relation to the presence of the Union in the workplace. The employees have made this clear, and despite his denials as to the specifics, Marsh's testimony corroborates the sentiment.

[116] Finally, the previous manager and the Board have a reputation among the employees for expressing anti-union animus.

[117] Certain inconsistencies in the employees' accounts of the Benefits Conversation necessitate that the Board exercise caution in drawing conclusions about this matter. There are two issues that could not be resolved on the evidence. The first issue is the precise timeline. In Seymour's account, the Benefits Conversation took place in Spring 2020. In Sidey's account, the Benefits Conversation took place in October 2019. Neither Dixon nor Marsh provided clarification about the timeline. The second issue pertains to the pamphlet. There is insufficient evidence to conclude that Marsh provided the pamphlet directly to other employees, or that he left it in a location for the employees to pick up if they wished to.

[118] On the other hand, the inconsistencies mean it is unlikely that the witnesses planned their testimony or invented a common narrative to communicate to the Board. This lends greater weight to the themes that managed to rise to the surface. All employee witnesses suggested that there was a conversation with Marsh about benefits while they were in a break room. It is likely that Dixon, Sidey, and Marsh were in attendance during that conversation - both Dixon and Marsh testified to this effect. It is likely that there was an information pamphlet - each of Sidey, Seymour, and Marsh testified that there was.

Summary:

[119] To summarize, the question is whether the Board 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. Section 6-106 is to be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

[120] Based on the foregoing, the Board is satisfied that the Application was made, at least in part, as a result of the influence of the Employer. Taken as a whole, representatives of the Employer have communicated, at different times, that the Employer is not in favour of the Union and that employees would be better off without the Union. Fowler's actions in counseling an employee to attempt to decertify the Union were wholly inappropriate and inexcusable. Three employees have testified to anti-union animus in the workplace. The workplace culture, fostered by the Employer, encourages anti-union animus.

[121] Upon this backdrop, and in the middle of collective bargaining, Legary canvassed support for a Decertification Application. She completed that Application very shortly after the vote on the Employer's offer was held, in the aftermath of a frustrated collective bargaining round. The timing of the Application heightens the Board's concerns about the employees' susceptibility to anti-Union sentiment.

[122] From an objective standpoint, the probable impact of the entirety of the Employer's conduct would be to compromise the ability of an employee or employees, of reasonable fortitude and intelligence, to freely exercise their rights under the Act. Whether a particular employee claims to have voted with his or her conscience is not the question.

[123] Rather, it is difficult to imagine how an employee could leave an exchange such as that which occurred at the gas bar, and not register that the Employer representative had just set an expectation about the appropriateness of supporting the Union. It is difficult to imagine how an

employee of reasonable fortitude and intelligence would not be concerned about potentially disappointing said Employer representative through his or her actions. Finally, it is difficult to imagine how the employees, operating with a clear view of the Employer's preference for a non-unionized environment, would not question their support for the Union when approached to support a decertification campaign in the workplace in the middle of collective bargaining.

[124] Based on the foregoing, the Board has lost confidence in the capacity of the employees to independently decide the representation question. The Board is satisfied that the circumstances set out in section 6-106 are established, and that it should exercise its discretion to dismiss the Decertification Application pursuant to the applicable statutory objectives.

Unfair Labour Practice Application:

[125] The Union claims that the Employer failed to satisfy its duty to bargain in good faith, communicated directly with Union members contrary to the Act, interfered with the employees' exercise of their rights, interfered in the administration of the Union, and interfered with the selection of a Union. In its ULP Application and its submissions, the Union cites clauses 6-62(1)(a), (b), (l), and (r) of the Act.

[126] In his brief of law, counsel for the Union did not address the ULP Application. During his closing argument, he explained that the Union was not withdrawing that Application but had chosen instead to focus on the Decertification Application. According to the Union, if the Decertification Application were dismissed then its requested remedies would be met.

[127] The Board interprets this to mean that the Union is abandoning its request for punitive damages – the only separate and distinct remedy sought by the Union through the ULP Application. To be sure, the Board avoids granting punitive remedies. Instead, a remedy should support and foster a healthy collective bargaining relationship, in pursuit of an underlying objective of the Act: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Loraas Disposal Services Ltd*., [1998] Sask LRBR 556.

[128] Therefore, it is unnecessary for the Board to address the ULP Application, as there is no further remedy to be considered. The Union has not sought a declaration against the Employer. Out of respect, however, for the Employer's efforts in this matter, and to provide both parties with general guidance in labour relations matters, the Board will make the following comments.

[129] First, the Union suggested that the Employer failed to engage in collective bargaining with representatives of a Union by sending an unusually large number of representatives to the bargaining table to "have operatives on hand to mount a campaign to decertify the union". Granted, four Employer representatives attended on the first day of bargaining. However, the Employer provided a coherent and reasonable explanation for what was only a minor discrepancy in numbers. After the first day of bargaining, the additional representative was no longer present, and the parties continued bargaining with the same number of representatives on each side.

[130] Second, the Union also alleged that the Employer had insisted, in bad faith, on designating two or three additional positions that would render fifty percent of the workforce out-of-scope. The evidence does not support this allegation. Certainly, the Employer proposed that two additional positions be treated as out-of-scope. The Employer may or may not have intended to hire new employees for the purpose of filling these positions. However, the Employer withdrew this proposal only a short time after the commencement of bargaining.

[131] Third, as for Fowler's conduct, the Board has the following comments.

[132] The Employer relies on subsection 6-62(2) of the Act, which clarifies that clause 6-62(1)(a) does not prohibit an employer from communicating facts and its opinions to its employees. The law was helpfully restated by the Court of Appeal in *Cypress (Regional Health Authority) v Service Employees' International Union-West*, 2016 SKCA 161 (CanLII), at para 81,

> *Under this line of analysis, a communication that is a fact or opinion does not receive a free pass, i.e., an employer cannot send out coercive or intimidating communications with impunity simply because they can be characterized as facts or opinions. The determinative issue is always whether the communication improperly impairs the employee's ability to exercise his or her rights.*

[133] The Board in *Button v UFCW, Local 1400 and Wal-Mart*, 2011 CarswellSask 430 [*Button*] considered the modification to the scope of permissible communication, which at that time specified that "nothing in this Act precludes an employer from communicating facts and its opinions to its employees":

> *146 While the scope of an employer's right to communicate to its employees following the 2008 amendment has yet to be determined, it seems apparent that an employer may not ask or advise its employees to seek to decertify their union or encourage them to do so through financial reward, for example, as was the case before this Board in Leavitt v. U.F.C.W., Local 1400, [1990] Sask. Lab. Rep. 61 (Sask. L.R.B.), LRB File No. 225-89. While employers now have the right to communicate facts and their opinions, such communications may not contain an anti-union animus or amount to a campaign against a union. In the application of s. 9 of the Act, the primary concern for this Board is the capacity*

> *of the subject employees to independently decide the representation question and, if we are persuaded that an employer's communications have likely impaired the capacity of employees in the exercise of their rights under the Act, then s. 9 continues to be available to the Board to guard against such abuses notwithstanding the recent amendments to s. 11(1)(a) of the Act.*

[134] In *International Brotherhood of Electrical Workers Local Union 2038 v Clean Harbors Industrial Services Canada*, 2014 CanLII 76047 (SK LRB) [*Clean Harbors*], the Board observed that "caution must be taken by this Board to ensure that employers remain demonstrably neutral in all their dealings with their employees regarding the representational question".[6]

Conclusion:

[135] The Board hereby orders, pursuant to section 6-106 of the Act, that the application to cancel the certification order is dismissed. Pursuant to section 6-103 of the Act, the unfair labour practice application is dismissed.

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

DATED at Regina, Saskatchewan, this **30th** day of **November, 2020.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson

[6] At para 110.