



UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant v CWS LOGISTICS Limited, Respondent

LRB File No. 258-19; April 7, 2020

Vice-Chairperson, Barbara Mysko; Board Members: Aina Kagis and Laura Sommervill

Counsel for the Applicant, United Food
and Commercial Workers, Local 1400: Heath Smith

Counsel for the Respondent, CWS Logistics: Brent Matkowski

**Application for First Collective Agreement Assistance – In Camera Panel –
Section 6-25 of *The Saskatchewan Employment Act* – Criteria Satisfied –
Order issued pursuant to subclause 6-25(6)(a) of the Act.**

REASONS FOR DECISION

Background:

[1] Barbara Mysko, Vice-Chairperson: These are the Board's Reasons for Decision in relation to an Application for First Collective Agreement Assistance pursuant to section 6-25 of *The Saskatchewan Employment Act* ["Act"]. The United Food and Commercial Workers, Local 1400 ["Union"] filed the Application on November 20, 2019. CWS Logistics Limited ["Employer"] filed a Reply on December 2, 2019, and raised objections to the Application. The Board received written submissions from the parties and considered these submissions via an *in camera* panel, pursuant to clause 6-111(1)(q) of the Act.

[2] On June 29, 2018, the Board issued an order certifying the Union as the bargaining agent for all employees employed by the Employer located at an address in Saskatoon except those holding positions of equal or higher than the rank of Managers, Supervisors, and Truckers.¹ The parties began collective bargaining in or around August, 2018, and then met again in September, October, and November, 2019. The parties have exchanged a significant number of proposals on non-monetary issues and have agreed on 12. Some progress in collective bargaining has been made but the parties have failed to conclude a collective agreement. The parties have yet to

¹ LRB File No. 017-18.

commence bargaining in relation to their respective monetary proposals. More than 90 days have passed since the Board made the certification order.

[3] The following provisions of the Act are applicable in this matter:

6-25(1) *The employer or the union may apply to the board for assistance in the conclusion of a first collective agreement, and the board may provide assistance pursuant to subsection (6), if:*

- (a) the board has issued a certification order or a collective bargaining order;*
- (b) the union and the employer have engaged in collective bargaining and have failed to conclude a first collective agreement; and*
- (c) one or more of the following circumstances exist:*
 - (i) the union has taken a strike vote and the majority of those employees who voted have voted for a strike;*
 - (ii) the employer has declared a lockout;*
 - (iii) the board has made a determination pursuant to clause 6-62(1)(d) or 6-63(1)(c) and, in the opinion of the board, it is appropriate to assist the parties in the conclusion of a first collective agreement;*
 - (iv) 90 days or more have passed since the board made the certification order.*

(2) If an application is made pursuant to subsection (1):

- (a) an employee shall not strike or continue to strike and the union shall not declare, authorize or counsel a strike; and*
- (b) the employer shall not lock out or continue to lock out the employees.*

(3) An application pursuant to subsection (1) must include a list of the disputed issues and a statement of the position of the applicant on those issues, including the applicant's last offer on those issues.

(4) All materials filed with the board in support of an application pursuant to subsection (1) must be served on the other party within 24 hours after filing the application with the board.

(5) Within 14 days after receiving the information mentioned in subsection (4), the other party shall:

- (a) file with the board a list of the disputed issues and a statement of the position of that party on those issues, including that party's last offer on those issues; and*
- (b) serve on the applicant a copy of the list and statement.*

(6) On receipt of an application pursuant to subsection (1):

- (a) the board may require the parties to request the minister to appoint a labour relations officer or special mediator to mediate the dispute or establish a conciliation board pursuant to section 6-29; and*

(b) if a period of 120 days has elapsed since the appointment of the labour relations officer or special mediator or the establishment of a conciliation board pursuant to clause (a), the board may do any of the following:

(i) conclude, within 45 days after the date of the order, any term or terms of the first collective agreement between the parties;

(ii) order arbitration by a single arbitrator to conclude, within 45 days after the date of the order, any term or terms of the first collective agreement.

(7) Before concluding any term or terms of a first collective agreement, the board or a single arbitrator may hear:

(a) evidence adduced relating to the parties' positions on disputed issues; and

(b) argument by the parties or their counsel or agent.

[4] The following provision of *The Saskatchewan Employment (Labour Relations Board) Regulations* ["Regulations"] is applicable:

10 An employer or union that intends to obtain an order pursuant to section 6-25 of the Act shall file an application in Form 7 (First Collective Agreement Application).

[5] At this stage, this Board has often been willing to routinely allow for the appointment of an agent whenever the threshold requirements of section 6-25 (or its predecessor, section 26.5 of *The Trade Union Act*) are satisfied: see, *Food and Commercial Workers Union, Local 1400 v Sobeys Capital Inc.*, [2005] Sask LRBR 483. In *Health Sciences Association of Saskatchewan v Medstar Ventures Inc (North-east Emergency Medical Services)*, 2013 CanLII 24894 (SK LRB) ["*Medstar*"], the Board also considered whether a threshold of collective bargaining had been satisfied, while acknowledging that it can be difficult to assess whether "sufficient collective bargaining has occurred to justify and enable meaningful intervention". Here, the Employer argues that the statutory criteria have not been met, which it says is a sign that the Union's Application is premature.

[6] The Employer says that the Union's Application does not satisfy the criteria pursuant to section 6-25 of the Act, section 10 of the Regulations, or Form 7, and is therefore improper.

[7] Generally speaking, by reviewing compliance with the statutory preconditions for an application for first collective agreement assistance, the Board encourages the judicious use of the Board's resources. It promotes the parties' capacity to engage in collective bargaining. It allows the parties to be sufficiently prepared for the intervention of a third party. And, it ensures that a possible or eventual third party is well placed to be able to efficiently and effectively assist the parties.

[8] Subsection 6-25(3) of the Act states that an application “must include a list of the disputed issues and a statement of the position of the applicant on those issues, including the applicant’s last offer on those issues”. The Board will assess each of these requirements, in turn.

[9] First, the Union has provided a list of the disputed issues, a list that is rather long. Still, this precondition has been satisfied.

[10] Second, the Union is required to provide a statement of its position on the disputed issues. The Union has included a document entitled, “Union Outstanding Proposals November 13, 2019”. This document outlines the Union’s position on the disputed issues, and satisfies the requirements of the Act.

[11] Third, the Union is required to provide its last offer on the disputed issues. The Union says that the parties have been unable to agree on the non-monetary issues; therefore, the parties have not moved on to the monetary stage of bargaining. Consequently, the monetary issues are outstanding; it cannot be said that they are currently in dispute. The required last offer pertains to the disputed issues. The document entitled, “Union Outstanding Proposals November 13, 2019, is the Union’s last offer on the disputed issues.

[12] Lastly, section 10 of the Regulations states that a union that intends to obtain an order pursuant to section 6-25 of the Act shall file an application in Form 7 (First Collective Agreement Application). Form 7 lists the items that “must” be attached in support of an application:

- *A description of the bargaining unit, including its size*
- *A list of dates on which collective bargaining has occurred*
- *A list of bargaining issues that have been agreed upon by the parties*
- *A list of issues that remain in dispute, including the applicant’s position on these issues*
- *The proposed collective agreement (the last offer) that the applicant is prepared to sign*
- *Any additional documents or evidence upon which the applicant intends to rely*

[13] As for the fifth item on the list, the Union cannot provide a proposed collective agreement (that it is prepared to sign) before it arrives at the monetary stage of bargaining. The Union is requesting assistance, in part, in relation to the disputed non-monetary issues. It would be unfair and unjust for the Board to require the parties to change the order of bargaining or to proceed to monetary bargaining so as to ensure that such a proposed agreement is before the Board.

[14] Pursuant to subsection 6-112(1) of the Act, a technical irregularity does not invalidate a proceeding before or by the board. The Board is prepared to waive compliance with the

requirement under Form 7 to include the last proposed agreement the Union is prepared to sign, pursuant to subsection 6-112(1) of the Act.

[15] In conclusion, the Union's Application is compliant with the statutory requirements and an order pursuant to section 6-25 is proper and not premature. As a final note, the appointment of an agent will "not necessarily mean that further intervention by the Board will be necessary or appropriate": *Medstar, supra*.

[16] The Board hereby orders the applicant and respondent pursuant to subclause 6-25(6)(a) of the Act to jointly request the Minister to appoint pursuant to section 6-27 of the Act, a labour relations officer, or section 6-28, a special mediator, or establish a conciliation board, pursuant to section 6-29 of the Act.

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

DATED at White City, Saskatchewan, this 7th day of **April, 2020**.

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson