SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicant v BENJAMIN HAZEN, SCOTT TAYLOR, ARLEN NICKEL, JAY MURRAY, MELISSA LEASON, TODD MACLEOD, ADAM DONAUER, JERI ANN CAMPBELL, DALLAS TOLE, GAIL LOCKSTEAD, STEVEN SPERLING, ALISON SWEDBERG, REID ROBERTSON, KARLENE HRAPPSTEAD and KAYLA BUGG, Respondents

LRB File No. 233-19; November 6, 2020
Chairperson, Susan C. Amrud, Q.C.; Members: Aina Kagis and Ken Ahl

For Saskatchewan Government and General Employees' Union:	Crystal Norbeck and Samuel Schonhoffer
For Benjamin Hazen, Scott Taylor, Arlen Nickel, Jay Murray, Melissa Leason, Todd MacLeod, Adam Donauer, Jeri Ann Campbell, Dallas Tole, Gail Lockstead, Steven Sperling, Alison Swedberg, Reid Robertson, Karlene Hrappstead and Kayla Bugg:	Self-Represented

Application for interim relief dismissed – Application alleged 15 members of SGEU committed unfair labour practices by disrupting ratification meetings.

Application for interim relief against three Respondents withdrawn – Application for interim relief dismissed against eight Respondents because no evidence submitted against them – Affidavits and flash drive not served on Respondents inadmissible – Certain portions of four affidavits ruled inadmissible as they were opinions or argument rather than facts or were based on information and belief where the source of the information was not disclosed and no special circumstances were provided to justify their admission.

With respect to four remaining Respondents, Applicant raised arguable case of potential contravention of clause 63(1)(a) of *The Saskatchewan Employment Act*.

Applicant did not satisfy Board that balance of convenience favoured granting an Interim Order prohibiting remaining four Respondents from attending future ratification meetings.

REASONS FOR DECISION

Background:

[1] Susan C. Amrud, Q.C., Chairperson: On October 30, 2019, Saskatchewan Government and General Employees' Union ["SGEU"] filed an Unfair Labour Practice Application ["Main

Application"] against 15 of its members[1] ["Respondents"]. SGEU alleged that the Respondents were interfering with ratification meetings it was holding to provide information to its members about a tentative collective agreement, address their questions, and then allow an opportunity for members to vote on the tentative agreement in person. In support of its application SGEU relied on sections 6-5, 6-7 and 6-35, clause 6-38(1)(b), subsection 6-38(2) and clause 6-63(1)(a) of *The Saskatchewan Employment Act* ["Act"], *The Trespass to Property Act* and sections 129, 266 and 430 of the *Criminal Code*.

[2] On October 30, 2019, SGEU also filed an Application for Interim Relief, in which it requested:

> a) *An interim order prohibiting the Respondents from attending the SGEU Ratification Meetings for this tentative agreement and from preventing or impeding ingress & egress of other SGEU members who wish to participate in the ratification process;*
>
> b) *An interim order requiring attendees at future Ratification Meetings for this tentative agreement adhere to the meeting rules;*
>
> c) *An order requiring a copy* [of the] *Board's ruling in this matter to be posted in the meeting room in a visible place and in other conspicuous locations deemed appropriate by the Board and/or SGEU;*
>
> d) *Such further and other relief as this honourable Board deems just and reasonable.*

[3] With its Application for Interim Relief, SGEU filed 8 affidavits (Angi McGarry, Kim Picot, Verne Larson, Shaunine Muir, Mahboob Siddiqui, Shayne Kreitzer, Shane Osberg and Curt Woytiuk). Kreitzer's affidavit referred to video surveillance, that SGEU provided to the Board on a flash drive. The application did not refer to Woytiuk's affidavit.

[4] The affidavits noted that, in preparation for the ratification meetings, SGEU officials decided that they would ban from attending the ratification meetings any members wearing a T-shirt they found offensive. The T-shirt displayed a picture of the SGEU President with the words "Not My President". Much of the upheaval at the Regina ratification meetings resulted from the reaction of SGEU representatives to members wearing that T-shirt.

[5] A hearing was held on November 4, 2019. At the conclusion of the hearing, the Board dismissed the Application for Interim Relief[2], with Reasons to follow. These are those Reasons.

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[1] LRB File No. 232-19.
[2] On November 20, 2019, SGEU withdrew the Main Application.

Argument on behalf of SGEU:

[6] SGEU filed a Brief of Law that the Board has reviewed and found helpful.

[7] As will be described in greater detail below, SGEU did not provide the Respondents with the notice of the hearing required under section 15 of *The Saskatchewan Employment (Labour Relations Board) Regulations* ["*Regulations*"], and asked that the timelines and/or service requirements be waived or modified by the Board. SGEU noted that all of the Respondents were present at the hearing. SGEU argued that since they were provided with the applications and affidavits in advance of service, by email, no prejudice was suffered by the Respondents as a result of its non-compliance with the service requirements.

[8] SGEU agreed that it bore the onus to satisfy the Board that:

(a) The Main Application raised an arguable case of a potential contravention of the Act; and

(b) The balance of convenience favoured the granting of interim injunctive relief pending a hearing on the merits of the Main Application.

[9] It cited *Saskatchewan Government and General Employees' Union v. Saskatchewan (Government)*[3] ["*SGEU v Saskatchewan*"] which elaborates on these two requirements:

> *[30] Interim applications are utilized in exigent circumstances where intervention by the Board is thought to be necessary to prevent harm from occurring before an application pending before the Board can be heard. Because of time constraints, interim applications are typically determined on the basis of evidence filed by way of certified declarations and sworn affidavits without the benefit of oral evidence or cross-examination. As such, the Board is not in a position to make determinations based on disputed facts; nor is the Board able to assess the credibility of witnesses or weigh conflicting evidence. Because of these and other limitations inherent in the kind of expedited procedures used to consider interim applications, the Board utilizes a two-part test to guide in its analysis: (1) whether the main application raises an arguable case of a potential violation under the Act; and (2) whether the balance of convenience favours the granting of interim injunctive relief pending a hearing on the merits of the main application. See: Hotel Employees and Restaurant Employees Union, Local 206 v. Canadian Hotels Income Property Real Estate Investment Trust #19 Operations Ltd. (o/a Regina Inn), [1999] Sask. L.R.B.R. 190, LRB File No. 131-99. See also: Canadian Union of Public Employees, Local 4973 v. Welfare Rights Centre, 2010 CanLII 42668, LRB File No. 083-10. As with any discretionary authority under the Act, the exercise of the Board's authority to grant interim or injunctive relief must be based on a sound labour relations footing in light of both the broad objectives of the Act and the specific objectives of the section allegedly offended.*
>
> *[31] In the first part of the test, the Board is called upon to give consideration to the merits of the main application but, because of the nature of an interim application, we do not place*

[3] 2010 CanLII 81339 (SK LRB).

too fine a distinction on the relative strength or weakness of the applicant's case. Rather, the Board seeks only to assure itself that the main application raises, at least, an "arguable case". See: Re: Regina Inn, supra. See also: Canadian Union of Public Employees, Local 4973 v. Welfare Rights Centre, 2010 CanLII 42668, LRB File No. 083-10. The Board has also used terms like whether or not the applicant is able to demonstrate that a "fair and reasonable" question exists (which should be determined after a full hearing on the merits) to describe this portion of the two-part test. See: Re: Macdonalds Consolidated, supra. Simply put, an applicant seeking interim relief need not demonstrate a probably violation or contravention of the Act as long as the main application reasonably demonstrates more than a remote or tenuous possibility.

[32] The second part of the test – balance of convenience - is an adaptation of the civil irreparable harm criteria to the labour relations arena. See: Hotel Employees and Restaurant Employees Union, Local 206 v. Chelton Suite Hotel (1998) Ltd., [2000] Sask. L.R.B.R. 434, LRB File Nos. 091-00, 110-00, 125-00, 139-00, 144-00 & 145-00. In determining whether or not the Board ought to grant interim relief prior to a full hearing on the merits of an application, we are called upon to consider various factors, including whether or not a sufficient sense of urgency exists to justify the desired remedy. See: Grain Services Union, Local 1450 v. Bear Hills Pork Producers Ltd. Partnership, [2000] Sask. L.R.B.R. 223, LRB File No. 079-00. The Board will also balance the relative labour relations harm that is anticipated to occur prior to the hearing of the main application without intervention by the Board compared to the harm that could result should a remedy be granted. See: Saskatchewan Joint Board, Retail Wholesale and Department Store Union v. Regina Exhibition Association Limited, et. al., [1997] Sask. L.R.B.R. 667, LRB File No. 266-97; United Brotherhood of Carpenters and Joiners of America, Local 1985 v. Con-Force Structures Limited, [1999] Sask. L.R.B.R. 599, LRB File No. 248-99; and International Association of Fire Fighters, Local 1318 v. South Saskatchewan 911, [2001] Sask. L.R.B.R. 97, LRB File No. 037-01. In assessing the relative labour relations harm, the Board is particularly sensitive to the potential for irreparable or non-compensable harm. See: Retail, Wholesale and Department Store Union, Local 455 v. Tai Wan Pork Inc., [2000] Sask. L.R.B.R. 219, LRB File No. 076-00.

[10] SGEU argued that it had proven it had an arguable case. It said that, because of the Respondents, the Regina ratification meetings were not carried out as planned. It had heard rumours that some of the Respondents were planning to attend the Saskatoon ratification meetings, and it asked the Board to prevent them from attending. It was of the view that a member need only attend one ratification meeting, and the only reason to attend a second one would be to be disruptive. Since the Board has authority under section 6-35 of the Act to supervise a vote, it argued that the Board has jurisdiction to enter into a more limited supervision of the vote through this means.

[11] There is a duty on SGEU under section 6-7 of the Act to bargain in good faith. The ratification meetings are required pursuant to section 6-38, to meet that duty. Therefore, SGEU argued, the Board has authority to make the requested Orders to assist SGEU in complying with this duty.

[12] SGEU acknowledged that it could provide the Board with no precedent of a union making an unfair labour practice application against its members. However, it argued that the wording of clause 6-63(1)(a) of the Act would allow it to be applied in this situation. The Respondents were persons who were interfering with, restraining, intimidating, threatening and coercing employees with a view to discouraging activity in or for a labour organization. It says the Respondents' activities were discouraging people from attending, participating and voting at the ratification meetings.

[13] The labour relations harm that SGEU argued would occur without an Interim Order is that the Respondents would attend and disrupt the Saskatoon ratification meetings. It argued that there was no reason for the Respondents to attend those meetings as it is not their Local, and SGEU thought that some or all of them had already voted. There would be no harm to the Respondents if the Interim Order was granted.

[14] Many of the Respondents mentioned that they have been suspended from SGEU. SGEU countered that this is not the time to deal with that issue.

[15] Although its application relied on three sections of the *Criminal Code*, at the hearing SGEU acknowledged that the Board has no jurisdiction to enforce the *Criminal Code*. It also did not pursue the argument that the Board should rely on *The Trespass to Property Act* in making the requested Orders.

Argument on behalf of Respondents:

[16] Each Respondent appeared and provided oral submissions. Many of the submissions were the Respondents' (unsworn) versions of what occurred at the Regina ratification meetings that they attended. Leason and Taylor filed written Replies on November 4, 2019. Several other Respondents filed written Replies to the Main Application after this application was dismissed. Those Replies were therefore not considered in making the decision.

[17] With respect to the issue of whether SGEU had proven it has an arguable case, the Board heard a variety of arguments. Some Respondents argued that the sections of the Act cited by SGEU do not apply to individual members of a union and therefore the Respondents did not breach the Act. Some objected to the short notice they received of the hearing, and argued that the time they were given to respond was not satisfactory or fair. Some argued that the Board should not rely on SGEU's affidavits since they contain hearsay. Some argued that no evidence

was presented to the Board that they were trespassing at the SGEU building. Some noted that their names do not appear in any of the affidavits. In their written Replies, Leason and Taylor argued that any disruption at the Regina ratification meetings was caused by SGEU representatives. They considered the version of events as described in SGEU's affidavits to be embellished.

[18] With respect to the issue of the labour relations harm that would be suffered by the Respondents from the granting of the application it was argued that they would be scared to speak up about their concerns.

Relevant Legislative Provisions:

[19] The following provisions of the Act are in issue in this matter:

> ***Interpretation***
> *1-2(1) In this Act:*
> *(b) "business day" means a day other than a Saturday, Sunday or holiday;*
>
> ***Coercion and intimidation prohibited***
> *6-5 No person shall use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue to be or to cease to be a member of a union.*
>
> ***Good faith bargaining***
> *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.*
>
> ***Vote on employer's last offer***
> *6-35(1) At any time after the parties have engaged in collective bargaining, any of the following may apply to the board to conduct a vote among the employees in the bargaining unit to determine whether a majority of employees voting are in favour of accepting the employer's last offer:*
>
> *(a) the union;*
>
> *(b) the employer;*
>
> *(c) any employees of the employer in the bargaining unit if those employees represent at least 45% of the bargaining unit or 100 employees, whichever is less.*
>
> *(2) On receipt of an application pursuant to this section, the board shall direct that a vote be taken.*
>
> *(3) Only one vote with respect to the same dispute may be held pursuant to this section.*
>
> *(4) On the recommendation of a labour relations officer, a special mediator or a conciliation board or if the minister considers it to be in the public interest, the minister may require the board to order a vote on the employer's last offer.*

(5) A vote required in accordance with subsection (4) may be in addition to a vote taken on an application pursuant to subsection (1).

(6) If a majority of votes cast favour acceptance of the employer's last offer:

> *(a) a collective agreement is thereby concluded between the parties; and*
>
> *(b) the collective agreement is to consist of the terms voted on and any other matters agreed to by the union and the employer.*

Ratification vote
6-38(1) If a ratification vote is required by one or both of the parties to confirm the acceptance of a collective agreement, no union or employer shall fail to:

> *(a) commence the process of conducting the vote within 14 days after the date on which the collective agreement was reached; and*
>
> *(b) conclude the vote mentioned in clause (a) within 60 days after the date on which the collective agreement was reached.*

(2) All members of the union who are in the bargaining unit affected by the collective agreement mentioned in subsection (1) are entitled to vote in the ratification vote.

Unfair labour practices – unions, employees
6-63(1) It is an unfair labour practice for an employee, union or any other person to do any of the following:

> *(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten or coerce an employee with a view to encouraging or discouraging membership in or activity in or for a labour organization;*
>
> *. . .*
>
> *(h) to contravene an obligation, a prohibition or other provision of this Part imposed on or applicable to a union or an employee.*

General powers and duties of board
6-103 (2) Without limiting the generality of subsection (1), the board may do all or any of the following:

> *. . .*
>
> *(d) make an interim order or decision pending the making of a final order or decision.*

Service
9-9(2) Unless otherwise provided in this Act, any document or notice required by this Act or the regulations to be served on any person other than the director may be served:

> *(a) by personal service on the person by delivery of a copy of the document or notice;*
>
> *(b) by sending a copy of the document or notice by registered or certified mail to the last known address of the person or to the address of the person as shown in the records of the ministry;*

(c) by personal service at a place of employment on the person's manager, agent, representative, officer, director or supervisor;

(d) by any method set out in The Queen's Bench Rules for the service of documents; or

(e) by delivering a copy to the person's lawyer if the lawyer accepts service by endorsing his or her name on a true copy of the document or notice indicating that he or she is the lawyer for that person.

[20] Section 15 of the Regulations applies to Applications for Interim Relief:

Application for an interim order
15(1) An employer, other person or union that intends to obtain an interim order pursuant to clause 6-103(2)(d) of the Act shall file:

(a) an application in Form 12 (Application for Interim Relief) with the registrar;

(b) an affidavit of the applicant or other witness in which the applicant or witness identifies with reasonable particularity:

(i) the facts on which the alleged contraventions of the Act are based, including referring to the provision or provisions of the Act, if any, that are alleged to have been contravened;

(ii) the party against whom the relief is requested; and

(iii) any exigent circumstances associated with the application or the granting of the interim relief;

(c) a draft of the order sought by the applicant; and

(d) any other materials that the applicant considers necessary for the purposes of the application.

(2) Subject to subsection (3), every affidavit filed pursuant to clause (1)(b) must be confined to those facts that the applicant or witness is able of the applicant's or witness's own knowledge to prove.

(3) If the board is satisfied that it is appropriate to do so because of special circumstances, the board may admit an affidavit that is sworn or affirmed on the basis of information known to the person swearing or affirming the affidavit and that person's belief.

(4) If an affidavit is sworn or affirmed on the basis of information and belief in accordance with subsection (3), the source of the information must be disclosed in the affidavit.

(5) Before filing an application pursuant to this section, the applicant shall contact the registrar and, on being contacted, the registrar shall set a date, time and place on which the application is returnable.

(6) On being notified pursuant to subsection (5) of the date, time and place of the hearing, the applicant shall serve a copy of the application, along with the materials referred to in the application, on the party against whom the interim relief is claimed within:

> *(a) subject to clause (b), at least three business days before the date set for the hearing; or*
>
> *(b) any shorter period that the executive officer may permit.*
>
> *(7) Before the hearing, the applicant shall file proof of service of the application for interim relief mentioned in clause (1)(a).*

[21] Sections 26 and 27 of the Regulations include the following potentially applicable provisions:

> ***Service***
> *26(1) Any Form or other document required by these regulations to be given or served is to be given or served:*
>
> *(a) personally;*
>
> *(b) by being mailed by ordinary or registered mail; or*
>
> *(c) by electronic means if the person, union or labour organization to be served has provided the board with an address for service that authorizes service by those electronic means.*
>
> *. . .*
>
> *(4) Irregularity in the giving or service of a Form or other document does not affect the validity of an otherwise valid Form or document.*
>
> ***Authority of executive officer to vary time***
> *27(1) On the request of any employer, other person, union or labour organization, the executive officer may, by order, set a further or other time than the time prescribed in these regulations for filing any Form or document or doing any other thing authorized or required by these regulations.*
>
> *(2) The executive officer may issue an order pursuant to subsection (1) whether or not the period at or within which a matter mentioned in that order ought to have been done has expired.*
>
> *(3) The executive officer may impose any terms and conditions on an order issued pursuant to subsection (1) that the executive officer considers appropriate.*
>
> *(4) Anything done at or within the time specified in an order pursuant to subsection (1) is as valid as if it had been done at or within the time fixed by or pursuant to these regulations.*

[22] Clause 9-9(2)(d) of the Act authorizes service by any method set out in *The Queen's Bench Rules* for the service of documents. Section 12-4 of *The Queen's Bench Rules* provides the following rules respecting service by electronic transmission:

> ***Service by alternative modes***
> *12-4(1) If expressly authorized by enactment, an order of the Court or these rules, service of a document may be effected by an alternative mode, including:*

(a) courier;

(b) registered or ordinary mail;

(c) fax; or

(d) electronic transmission.

(2) Subject to subrule (3), if an address for service in a proceeding has been filed respecting the person to be served, a document required to be served may be served at the address for service by any of the following modes:

(a) courier, including any adult person who delivers the document;

(b) registered or ordinary mail;

(c) fax; or

(d) electronic transmission.

. . .

(7) In the case of service by electronic transmission:

(a) the document must be electronically transmitted to the electronic transmission address shown in the address for service of the person to be served; and

(b) the electronic transmission must set out all of the following information:

(i) the sender's name, address, telephone number, electronic transmission address and the sender's fax number if there is one;

(ii) the name of the person to be served;

(iii) the date and time of transmission;

(iv) the electronic file name of the document being transmitted, the style of cause, name and date of the document being transmitted and the total number of hard copy pages of the document;

(v) the name and telephone number of a person to contact in the event of transmission problems;

(vi) confirmation that the original document has been signed, that the original signed document has been or will be filed with the Court and that the original signed document is available for inspection at the place and times specified.

Analysis and Decision:

[23] At the hearing, SGEU applied for leave to amend its application to remove three Respondents: Swedberg, Tole and Robertson. That application was granted.

[24] The application is dismissed against Taylor, Leason, Donauer, Campbell, Lockstead, Sperling, Hrappstead and Bugg because SGEU provided no evidence against them. These eight Respondents are not mentioned in any of the affidavits.

[25] With respect to the four remaining Respondents (Hazen, Nickel, Murray, MacLeod), the first issue the Board will address is whether they were served in accordance with the Act and the Regulations and, if not, whether the irregular service will be waived.

[26] Under clause 15(6)(a) of the Regulations, SGEU was required to serve the Respondents with a copy of the application and the materials referred to in the application "at least three business days before the date set for the hearing". Subsection 2-28(2) of *The Legislation Act* provides:

> *(2) A period expressed in days and described as occurring before, after or from a specified day excludes the specified day.*

Clause 1-2(1)(b) of the Act defines business day to mean "a day other than a Saturday, Sunday or holiday". The hearing was held on Monday November 4, 2019. That means that the Respondents were to be served by October 30, 2019.

[27] The affidavits of Kathryn Sinclair filed by SGEU indicate that she provided eleven Respondents (including Hazen, Nickel, Murray and MacLeod) with the applications and seven of the eight affidavits (all except Muir's) on October 30, 2019, by email[4]. Neither section 9-9 of the Act nor section 26 of the Regulations authorized service of these documents by email because no address for service by electronic transmission/electronic means had been filed with the Board by the Respondents as of that date.

[28] Affidavits of Service filed by SGEU indicate that eight Respondents, including Murray and MacLeod, were served by personal service with the applications and six affidavits (McGarry, Picot, Larson, Siddiqui, Kreitzer, Osberg) on Wednesday October 30, 2019. Two Respondents, including Nickel, were served by personal service with the applications and the same six affidavits on Thursday October 31, 2019. Affidavits of Attempted Service were also filed, which indicate that five Respondents, including Hazen, were not served. With respect to Hazen, the process server's affidavit indicated significant efforts were made to serve him, at the same address that Hazen later provided to the Board.

[29] As SGEU acknowledged, the service requirements in the Act and Regulations were not complied with in this application with respect to Nickel and Hazen. Clause 15(6)(b) of the Regulations would have allowed SGEU to apply to the executive officer to abridge the time for service; this was not done. Granting an adjournment to allow SGEU time to correct the service

[4] She did not provide the documents by email to Donauer, Tole, Lockstead, Swedberg or Robertson.

issues was not requested and in any event would not have been practical in this matter because SGEU was, on November 4, 2019, asking the Board for an Order prohibiting the Respondents from attending ratification meetings on November 5 and 6, 2019.

[30] The normal rule in matters before the Board is that respondents have ten business days to reply to an application, following which a date will be set for a hearing. On interim applications, respondents are only entitled to three business days' notice of the hearing. This is a very short period of time, making it important that it be complied with. Therefore, a request to waive this requirement must be carefully considered to ensure the Respondents were given adequate time to prepare a response. The Board is prepared to waive the service irregularities with respect to Nickel and Hazen. Both received the material by email on October 30, 2019. Nickel was served one day short and Hazen could have been served as early as October 29, 2019 if he had responded to the process server, as requested. Both appeared at the hearing and provided well-prepared submissions. Neither raised an objection to the service irregularities.

[31] The next issue is which material filed by SGEU is admissible against the Respondents.

[32] The email sent to the eleven Respondents by Kathryn Sinclair indicated:

> *One of the affidavits include video footage form* (sic) *the security cameras at SGEU. We are unable to send that through email as the attachment is too large. We can make copies on a flash drive if you'd like and we can make that available to you. Another option is we are working with our IT to create a link for you to access them and that link will be ready in about an hour.*

The Board received no evidence that the link was provided. In any event, providing a link in an email is not service. Some of the Respondents did not receive a copy of the flash drive until they arrived at the hearing, which prevented them from seeing it in advance of making their submissions. SGEU's explanation was that not all of the Respondents received a copy of the flash drive because not all of them asked for one. It is not sufficient for SGEU to offer to serve evidence on the Respondents; it is obligated to serve them. The video on the flash drive is inadmissible because SGEU did not provide the Board with proof that it was served on any of the Respondents. Therefore, Kreitzer's affidavit is struck as it contains no other information.

[33] No evidence was provided that a copy of Muir's affidavit was served on or sent by email to any of the Respondents. Woytiuk's affidavit was not served on any of the Respondents. Woytiuk's affidavit was not referred to in paragraph 2 of the application, which set out the list of

affidavits SGEU was relying on in support of the application. The affidavits of Woytiuk and Muir are accordingly inadmissible.

[34] Subsection 15(2) of the Regulations confines affidavits on interim applications to "facts" in the witness's "own knowledge", because the Board has no opportunity at this stage to assess the credibility of witnesses, weigh conflicting evidence or make determinations on disputed facts. SGEU acknowledged that the affidavits contained information that was not based on personal knowledge. Subsection 15(3) of the Regulations allows the Board to accept an affidavit based on information and belief if it is satisfied that it is appropriate to do so because of special circumstances. The Board was not asked to make such an Order or provided with any information of special circumstances on which it could make an Order admitting that information. The Board has no discretion to admit or rely on assertions in affidavits that are not facts, and that instead are opinion, speculation or argument.

[35] With these principles in mind the Board reviewed the remaining affidavits. No issues were identified with the affidavit of Siddiqui. It is admitted in its entirety. With respect to the affidavits of McGarry, Picot, Larson and Osberg, the Board identified portions that did not comply with these principles, as they contain assertions that are not facts or are based on information and belief, where the source of the information is not disclosed and no special circumstances justifying their admission were identified, *e.g.*, "I am also aware", "The Table Officers became aware of rumours"; "I was concerned"; "I believe that I witnessed"; "I had heard rumours"; "My understanding". Accordingly, those portions of the affidavits of McGarry, Picot, Larson and Osberg identified in Appendix A are struck out.

[36] The Board turns then to the main issue in this application, whether the Board should exercise its discretion to grant the interim orders requested by SGEU. In determining this question, the Board must keep in mind that the exercise of this authority "must be based on a sound labour relations footing in light of both the broad objectives of the *Act* and the specific objectives of the section allegedly offended"[5]. The Board has also noted on more than one occasion that the purpose of an interim order is to maintain the status quo pending the hearing of the underlying application.[6]

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[5] *SGEU v Saskatchewan*, para 30.
[6] For example, see *Hotel Employees and Restaurant Employees Union, Local 206 v. Chelton Suite Hotel (1998) Ltd.*, [2000] Sask. L.R.B.R. 434, LRB File Nos. 091-00, 110-00, 125-00, 139-00, 144-00 & 145-00, para 21, relied on by *SGEU v Saskatchewan*, at para 32.

[37] In determining whether to grant interim relief, the Board considers a two-part test. The first part of the test is whether the Main Application raises an arguable case of a potential contravention of the Act. As SGEU argued, the Board has not set a rigorous standard to be reached at this step. It has been described by the Board as:

- The applicant has an arguable case;
- A fair and reasonable question exists;
- There is more than a remote or tenuous possibility that the applicant can prove its case;
- There is a serious issue to be decided;
- Arguable issues have been raised that are not vexatious or frivolous.[7]

[38] While SGEU was unable to provide the Board with a precedent of a successful claim by a union against its members under clause 6-63(1)(a) of the Act, the Board agrees that a fair and reasonable question exists to be determined at the hearing of the Main Application respecting its interpretation. The same can be said with respect to its arguments about the applicability of sections 6-7, 6-35 and 6-38 of the Act.

[39] The Board finds that SGEU has satisfied the first part of the test, as it had only to prove that its arguments had more than a remote or tenuous possibility of success.

[40] The second part of the test requires the Board to consider whether the balance of convenience favours the granting of interim injunctive relief. At this step in the analysis, *SGEU v Saskatchewan* summarizes the analysis to be undertaken as follows:

> *The second part of the test – balance of convenience - is an adaptation of the civil irreparable harm criteria to the labour relations arena.… In determining whether or not the Board ought to grant interim relief prior to a full hearing on the merits of an application, we are called upon to consider various factors, including whether or not a sufficient sense of urgency exists to justify the desired remedy.... The Board will also balance the relative labour relations harm that is anticipated to occur prior to the hearing of the main application without intervention by the Board compared to the harm that could result should a remedy be granted…. In assessing the relative labour relations harm, the Board is particularly sensitive to the potential for irreparable or non-compensable harm.*[8]

[41] The Board was not satisfied that irreparable or non-compensable harm would result to SGEU should the requested Orders not be granted. However, the harm that would result to the Respondents would not easily be remedied by the Board if SGEU was unsuccessful on the Main

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[7] *SGEU v Saskatchewan*, paragraphs 30 – 32, and the cases relied on in those paragraphs.
[8] At para 32 (citations removed).

Application. The issues raised by the Main Application are factually and legally complex, and deserve a full hearing before the remedial relief requested by SGEU is granted. Therefore, the application is dismissed against the last four Respondents, Hazen, Nickel, Murray and MacLeod.

[42] The Board thanks the Respondents for attending the hearing and providing submissions to assist the Board in making this decision. It was apparent that there are other unresolved issues between SGEU and the Respondents. In the context of this application, the Board cannot, as the Respondents requested, overturn their suspensions from SGEU or make a decision whether the rule prohibiting them from wearing the "Not My President" T-shirt at the ratification meetings contravened either the *Canadian Charter of Rights and Freedoms* or SGEU Policy.

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

DATED at Regina, Saskatchewan, this **6th** day of **November, 2020.**

LABOUR RELATIONS BOARD

Susan C. Amrud, Q.C.
Chairperson

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The following portions of certain Affidavits submitted by SGEU are struck out as inadmissible pursuant to subsection 15(2) of the Regulations (see paragraph 35).

Affidavit of Angi McGarry:

- Second sentence of paragraph 3
- First sentence of paragraph 6
- First sentence of paragraph 7
- First three sentences of paragraph 9
- Second sentence of paragraph 13
- Paragraph 15
- Second sentence of paragraph 16
- Last sentence of paragraph 21
- Last sentence of paragraph 23
- In paragraph 24 the words “trespassing”, “where he had already been specifically banned” and “without permission”
- Second sentence in paragraph 26.

Affidavit of Kim Picot:

- Last sentence of paragraph 3
- First and third sentences of paragraph 8
- Third and fourth sentences and the words in brackets in the fifth sentence of paragraph 9
- Third and last sentences of paragraph 10
- Second and third sentences of paragraph 11
- Second and third sentences of paragraph 14
- Second sentence of paragraph 18
- First sentence of paragraph 21
- First and second sentences of paragraph 24.

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Affidavit of Verne Larson:

- Second sentence of paragraph 6
- Last sentence of paragraph 7
- Last sentence of paragraph 10
- Paragraph 12
- Paragraph 13
- Second sentence of paragraph 15
- Second sentence of paragraph 17.

Affidavit of Shane Osberg:

- Last sentence of paragraph 2.