Saskatchewan
Labour Relations Board

WORKERS UNITED CANADA COUNCIL, Applicant v AMENITY HEALTH CARE LP and/or 7169320 MANITOBA LTD. operating as TIM HORTONS, Respondent

LRB File No. 014-21; October 28, 2021
Vice-Chairperson, Barbara Mysko; Board Members: Phil Polsom and Mike Wainwright

Counsel for the Applicant, Workers United Canada Council: Heather M. Jensen

Counsel for the Respondent, Amenity Health Care LP and/or 7169320 Manitoba Ltd. operating as Tim Hortons: Brent M. Matkowski

Section 6-25 of *The Saskatchewan Employment Act* – First Collective Agreement Application – Conclusion of Terms – Statutory Prerequisites Met – Whether Board should exercise its Discretion to appoint Arbitrator – Mediation/Breakdown Model – Preservation of Relationship – Not appropriate to Intervene – Application Dismissed.

REASONS FOR DECISION

Background:

[1] **Barbara Mysko, Vice-Chairperson:** These are the Board's Reasons for Decision in relation to a first collective agreement application filed by Workers United Canada Council [Union] on February 9, 2021. The employer is Amenity Health Care LP operating as Tim Hortons in Canora, Saskatchewan. The Union asks that the Board 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, pursuant to clause 6-25(6)(b) of *The Saskatchewan Employment Act* [Act].

[2] The Union had first applied for assistance on February 20, 2020. Further to that application, the Board ordered that the parties jointly request the Minister to appoint pursuant to section 6-27, a labour relations officer, or section 6-28, a special mediator, or establish a conciliation board, pursuant to section 6-29 of the Act. On August 24, 2020, a labour relations officer, Kenton Emery, was appointed pursuant to section 6-27 of the Act to assist in the mediation of a collective agreement.

[3] Although the parties made some progress in the course of mediation, they did not successfully complete the negotiation of a collective agreement. On February 8, 2021, the Union applied again for collective agreement assistance, pursuant to clause 6-25(6)(b) of the Act,

seeking that the Board or an arbitrator conclude, within 45 days after the date of the order, any term or terms of the first collective agreement between the parties.

[4] Upon filing this application, the Union took the position that the Board's assistance is automatic and the Board does not have the discretion to consider whether it is appropriate to impose terms. The Employer objected, stating that the Board has discretion whether to grant the assistance sought. The Board set a hearing date to address this preliminary issue.

[5] That issue was resolved in *Workers United Canada Council v Amenity Health Care LP*, 2021 CanLII 40225 (SK LRB) [*Amenity 2021 No. 1*]. The Board's conclusion was that it has discretion to decide whether to make an order to conclude terms upon receipt of an application filed in accordance with subsection 6-25(1) and clause 6-25(6)(b) of the Act. After reaching that conclusion, the Board placed the matter on motions' day to be scheduled for a hearing. That hearing concluded on October 15, 2021.

Facts:

[6] The following is a brief outline of the facts disclosed by the documentary evidence and the testimony of three Union witnesses, Andy Spence, Abs Diza, and Vas Gunaratna, and one Employer witness, Tara Ede.

[7] The Union was first certified to represent employees of this Employer on February 12, 2018.[1] After certification, the parties met briefly for purposes of collective bargaining but that process was interrupted by further legal proceedings. The Employer filed an unfair labour practice application in relation to the conduct of the representation vote.[2] Further to this application, the Board found that certain employees (and the Union) had committed an unfair labour practice when the employees had met as a group to conduct the representation vote. The certification order was rescinded.

[8] The Board ordered a new vote, and further to that vote, the Union was certified on September 9, 2019 to represent the following bargaining unit:

> *…all employees (including shift supervisors) employed by Amenity Health Care LP and/or 7169320 Manitoba Ltd. operating as Tim Hortons in Canora, Saskatchewan, except supervisory employees as defined in clause 6-1(1)(o) of The Saskatchewan Employment Act or those who exercise managerial responsibilities, is an appropriate unit of employees for the purpose of bargaining collectively.*

[1] LRB File No. 130-17.
[2] LRB File No. 160-17.

[9] On October 21 and 22, 2019, the parties met and engaged in collective bargaining, starting where they had left off in the previous sessions. For the Union's side, Ms. Diza and Mr. Gunaratna were in attendance. For the Employer, the representatives were Ms. Ede, Bill Humeny, Doug Lott and Shaban Tariq. Early on, an agreement was made to delay monetary negotiations until the conclusion of non-monetary items.

[10] The parties met again on November 19 and December 4, 2019. In Ms. Ede's recollection, by November, there were a few outstanding items but nothing that they didn't think they could resolve. On December 4, the parties went back and forth three times on a number of items. The Employer removed Article 2.02, which had purported to exclude casual employees from the scope of the unit except as otherwise provided. Other revisions were made.

[11] The Employer's bargaining committee felt that they were making progress, but then, at the end of the day on December 4 the Employer asked the Union representatives for additional dates, and the Union refused. Mr. Gunaratna said that the Union planned to apply for an imposed contract. This was not the first time he had made such a statement. Mr. Humeny asked if the Union would consider negotiating the monetary items and Mr. Gunaratna refused.

[12] December 4, 2019 is the last date that the parties met face-to-face, whether virtually or otherwise, for purposes of collective bargaining.

[13] The Union proceeded to make its application for assistance. In that application the Union sought, at paragraph 1, "assistance by way of arbitration, in the conclusion of a first collective agreement". Although the Employer complains about this language, this wording was lifted from the Board's form as it appeared at the time. The application included, as is statutorily required, "the proposed collective agreement (the last offer) that the applicant is prepared to sign". This particular proposed collective agreement had not been presented at the bargaining table.

[14] In its reply to that application for assistance, the Employer took the position that the parties were likely to make progress on their own or with the assistance of conciliation. As such, the Employer requested an order from the Board for the parties to attend conciliation.

[15] Like most of the Board's applications at that time, the application for first collective bargaining agreement assistance included a requirement that it be declared as true pursuant to the *Canada Evidence Act*. Mr. Gunaratna received the application from the lawyer and then met with a second lawyer in B.C. to sign and declare the application. Mr. Gunaratna says that he signed that application without reviewing it (except for the last page) and cannot verify its

accuracy. He believed that he could rely on the lawyer who had prepared it, and so he did so. He took offense at the suggestion that signing a legal document without reading it is abnormal or uncommon. He offered no apologies to the Board.

[16] Around the time of that application, Mr. Spence joined the Union's bargaining team and Mr. Gunaratna stepped out. The Employer was not advised of the personnel change. Mr. Spence reviewed what he felt he needed to - the proposals and terms that he understood were still on the table. He did not review the historical proposals or the course of bargaining.

[17] On October 29 and 30, 2020, November 24, 2020 and December 15, 2020, the parties engaged in a shuttle mediation process with the labour relations officer, Mr. Emery. The bargaining committees provided proposals and counter-proposals in writing to Mr. Emery, who passed these on to the other side. They also provided verbal context for their positions to Mr. Emery.

[18] During the mediation in October, the parties dealt primarily with one issue – Article 3.02 (management performance of in-scope work). Once the parties had resolved that issue, the Employer asked the Union for a full proposal, something it hadn't received from the Union in about a year. The Employer also asked for more dates. The parties agreed to meet on November 24. On that date, the Union provided a counter proposal to the Employer's proposal of October 29. At the end of the session, the Employer asked for more dates. The parties agreed to meet on December 15, 2020.

[19] The Union presented a proposal on December 15. This proposal included various terms that had not been included in the offer appended to the initial application for collective agreement assistance. At the end of the document was a list of items entitled, "Articles that still need to be addressed, per the Union Proposal dated October 2019".

[20] At the end of the day on December 15, the Employer asked, through Mr. Emery, for additional dates in order to continue bargaining and present a response to the Union's latest proposal. A few days later, on December 18, 2020, the Employer received a response. Mr. Emery conveyed that the Union was not interested in booking further dates and intended to move to conclude the agreement after the statutorily required 120 days had expired.

[21] On December 23, 2020, 121 days after the labour relations officer was appointed, the Union wrote directly to the Board Chair requesting that an arbitrator be appointed. On January 6, 2020, the Board Registrar informed the parties that the letter to the Board Chair was not an

application to the Board. Two days later, Mr. Emery contacted the Employer with a request from the Union to schedule more dates. Dates were scheduled for January 19 and 21, 2021.

[22] About a week prior to these dates, Mr. Humeny left a phone message for Mr. Gunaratna requesting a conversation in advance of bargaining. Mr. Gunaratna sent his reply by text on the same date, indicating that he was in negotiations all day and "I don't think there is any point in us talking".

[23] The parties proceeded to engage in collective bargaining on the January dates. On January 21, there was very little movement. The Employer sought more dates but the Union refused. The current application was filed about 20 days later.

[24] It was on this application that the Union took the position that the Board was required to intervene if the statutory prerequisites had been met. On April 6, 2021, the Board proceeded to schedule a preliminary hearing to consider this issue. About a week later, the Employer asked the Union whether they could return to the bargaining table to discuss monetary items with or without the assistance of Mr. Emery. Mr. Gunaratna replied that he was "out of the loop" and would forward the request "to the person who is handling the case and get back to you". Mr. Gunaratna forwarded the request to Ms. Diza, who received it but decided not to respond.

Arguments:

Union:

[25] Over two years have passed since the current certification order was issued. The two-year freeze on decertification applications has now ended and the Union is more vulnerable as a result of the availability of the decertification process. The mere passage of time supports the intervention of the Board. Furthermore, the relationship of the parties has deteriorated over time and there has been a breakdown in communication. The bargaining process has degenerated. Both sides have been holding firm to their positions. A significant number of terms remain outstanding.

[26] The Employer has taken positions, specifically with respect to the exclusion of casual employees and the performance by managers of in-scope work, which seek to erode the strength of the bargaining unit and to grant power to the Employer to unilaterally determine the scope of the collective agreement. The fast-food sector is hard to organize. It is characterized by low wages and precarious employment. This particular bargaining unit is small, and many of the positions are entry-level. It is a particularly vulnerable unit.

[27] The Union is not seeking anything unreasonable through this application, and besides, the principles of interest arbitration prevent the Union from achieving a breakthrough agreement through imposed terms: *Burntwood Regional Health Authority v Manitoba Medical Assn.*, [2007] MGAD No 16 (Wood). Intervention will have the effect of preserving the parties' collective bargaining relationship.

Employer:

[28] The Union's application should be dismissed. First, the Union has positioned itself for an imposed agreement, has not genuinely engaged in collective bargaining, and is responsible for the failure of the collective bargaining process. Second, the Union has engaged in receding horizon bargaining, thereby damaging the bargaining relationship and frustrating negotiations.

[29] Related to the second point, the proposed collective agreement (last offer) that the Union was prepared to sign, as per the initial application for assistance, is a genuine reflection of the state of outstanding proposals as of February, 2020. Given the statutory framework, which mandates assistance be sought in two stages and extensive information be filed in support, the deficiencies in the first application mean that the current application is not properly before the Board. Even if the first application is not void, the Board should decline to exercise its discretion to provide assistance in such circumstances.

Analysis:

[30] As the applicant, the Union bears the onus to persuade the Board that intervention is appropriate.

[31] As a preliminary matter, the statutory prerequisites for assistance pursuant to subclause 6-25(6)(b) have been met. The Board has issued a certification order; the Union and the Employer have engaged in collective bargaining and have failed to conclude a first collective agreement; and, 90 days or more have passed since the Board made the certification order. The requisite materials have been filed with the Board in support of the application, and a period of over 120 days has elapsed since the appointment of a labour relations officer.

[32] Therefore, the remaining question is whether the Board should exercise its discretion to provide assistance. First collective agreement applications are not to be treated as automatic. The foundation of the statutory labour relations regime rests on self-sustaining relationships involving good faith collective bargaining. Within this regime, the Board assumes the role of supervisor of the collective bargaining process. To promote the autonomy of the parties and the

sustainability of the relationship, the Board's responsibility extends to the process, rather than results, of collective bargaining.

[33] The statutory framework that allows for intervention in first agreement bargaining is an exception to the general rule. Intervention is allowed due to the unique dynamics of first agreement bargaining relationships.

[34] First agreement bargaining tends to be more difficult than bargaining undertaken to conclude renewal agreements. The parties have yet to establish a successful bargaining relationship. The union is attempting to prove its value to the bargaining unit members. If it is not successful, the union is susceptible to diminished support from its members, and to a challenge to its status as the exclusive bargaining agent through the decertification process. As time wears on, the union is increasingly exposed.

[35] An employer might be inclined to adopt tactics that will hinder the conclusion of the agreement, prevent a change to existing terms and conditions, and undermine the union's relationship with its members. By doing this, an employer might, by its own design, render unionization meaningless, chip away at union support, and facilitate the decertification process.

[36] These dynamics have shaped the Board's interpretation of the relevant statutory provisions.

[37] Numerous cases have interpreted and applied the predecessor provision, section 26.5 of *The Trade Union Act* (now repealed). These include: *RWDSU v Prairie Micro-Tech Inc.*, 1996 CarswellSask 880 [*Prairie Micro-Tech*]; *Board of Education of Tisdale School Division v CUPE, Local 3759*, [1996] Sask LRBR 503 [*Tisdale School Division*]; *CAW-Canada v SIGA*, [2001] Sask LRBR 42 [*CAW-Canada v SIGA*]; *RWDSU v Temple Gardens Mineral Spa*, [2001] Sask LRBR 345 [*Temple Gardens*]; and, *SGEU v Namerind*, [1998] Sask LRBR 542 [*Namerind*]. For the current purposes, the predecessor provision is substantially similar to the current provision.

[38] Both parties rely extensively on the analysis set out in *Prairie Micro-Tech*. This case, in particular, provides a helpful explanation of the purpose of the regime and the principles that should guide the Board in deciding whether to provide assistance:

a) First collective agreement applications are not to be treated as a substitute or replacement for collective bargaining, but are intended to "foster and support" it (*Prairie Micro-Tech* at para 34);

b) Intervention seeks to achieve a balance between promoting healthy and independent bargaining and avoiding the risk of damage or destruction to the relationship because of the conduct or inexperience of the parties (*Prairie Micro-Tech* at para 33);

c) The purpose is to intervene, where the situation warrants it, in an attempt to preserve the collective bargaining relationship and the ability of the trade union to continue to represent employees (*Prairie Micro-Tech*, at para 42);

d) The applicable framework is one of mediation/breakdown as opposed to bad faith/extraordinary remedy (*Prairie Micro-Tech*, at para 38);

e) The question is not whether one or another of the parties has violated the duty to bargain collectively or is otherwise guilty of an unfair labour practice. Nonetheless, both the conduct of the parties and the state of the parties' relationship are relevant factors in determining whether intervention is appropriate to promote healthy and independent bargaining and avoid the risk of damage or destruction to the relationship (*Prairie Micro-Tech*, at para 37).

[39] Unlike section 26.5 of *The Trade Union Act*, section 6-25 includes as a circumstance justifying intervention the passage of 90 days or more from the issuance of the certification order. The inclusion of this circumstance signals an acknowledgement on the part of the legislature that in some cases it may be necessary to intervene in the absence of a strike vote, a lock-out, or a determination pursuant to an unfair labour practice application, where sufficient time has passed. It is an acknowledgement that the passage of time is relevant.

[40] The next question is which specific factors are relevant in deciding whether to provide assistance.

[41] The Union relies on *Namerind* to identify the factors that the Board should consider in making the determination. In that case, the Board considered whether to intervene after mediation efforts, which were led by an appointed Board agent, failed to result in a collective agreement. The Board found that it may consider various matters, including: (1) the report of the Board agent; (2) the length of time that has passed since the union was certified; (3) the bargaining efforts; (4) the nature of the business and the size of the bargaining unit; and (5) any other relevant information. The Union relies on factors 2, 3, and 4 in respect of the current application.

[42] The Employer relies on *Prairie-Micro Tech*, *Temple Gardens*, *Tisdale School Division, and CAW-Canada v SIGA*, as well as *UFCW, Local 1400 v Wal-Mart Canada Corp.*, 2012 CarswellSask 970 for the factors that the Board may consider in deciding whether to intervene. These include: the conduct of the parties; the sufficiency of bargaining; the effectiveness of third-party intervention; evidence of problems that go beyond the normal problems that are experienced in collective bargaining; each party's view of the state of collective bargaining; the existence of an insoluble industrial dispute; and, roadblocks resulting from the incompetence or inexperience of the negotiators.

[43] In *CAW-Canada v SIGA*, the Board expanded on one of these factors, the parties' view of the state of collective bargaining, at para 18:

> *On the threshold question of whether or not the Board should intervene in the collective bargaining process, the Board needs to know how each party views the state of their collective bargaining; what their estimate is of the likelihood of success if left to their own devices; what efforts they have made on their own to conclude an agreement; what the main stumbling blocks are; and how they would propose to resolve them without Board assistance.*

[44] The Employer says that the answer to each of these questions helps the Board to determine whether reaching a collective agreement is possible without assistance. The Employer takes the position that in the current case it is.

[45] In addition to the factors listed in the preceding paragraphs, it may also be necessary to consider the likely availability of common tools, such as a labour dispute, for the purpose of resolving an impasse. The question in every case is whether there are sound labour relations reasons for intervening.

[46] Having considered the applicable principles and factors, the Board has concluded that it is not appropriate to provide the parties with assistance with collective bargaining at this time. Firstly, although the Union insists that it prefers negotiated agreements, it appears to have either positioned itself for an imposed agreement or hastily and repeatedly resorted to applying for the imposition of terms as a substitute for collective bargaining. The Board has cautioned against such an approach, in *Temple Gardens*, at para 10:

> *[10] Given this environment and the report of the Board agent, the Board has determined to dismiss the Union's application for first collective agreement. The parties will be left to their own devices to achieve a settlement. The Board agent concluded that the parties were reluctant to settle because of their position for the first collective agreement application. It is essential for the first collective agreement process, that the parties engage in meaningful discussions with the Board agent and not withhold possible settlement*

> *proposals based on some perception that they may get a "better deal" from the Board. Section 26.5 of the Act is intended to assist parties achieve a first collective agreement and is not intended as a substitute for collective bargaining.*

[47] In the present case, on December 4, 2019, with only three months into the certification order and four days of bargaining, the Union declared its intention to seek an imposed collective agreement. When the Employer asked, the Union refused to undertake voluntary conciliation. The Union says that, under the existing statutory regime, submitting to voluntary conciliation would only have contributed to greater delay. Unlike the previous regime, engaging in voluntary conciliation does not permit the parties to proceed to the second step (imposed terms). While this characterization of the current regime is accurate, it does not detract from the Union's expressed intention to proceed to seek an imposed agreement at such an early stage, and to enter into conciliation with the end goal of an imposed agreement.

[48] On a number of occasions, the Union refused to meet with the Employer in response to a request for further dates. The Union refused to move to monetary items as a way of creating momentum, despite its frustration at the bargaining table. The timing of the Union's letter requesting the appointment of an arbitrator, 121 days after the appointment of the labour relations officer, is remarkable, especially after its refusal to schedule more dates. On occasions when the Board refused to intervene with the immediacy that the Union expected, the Union then returned to the bargaining table. On these occasions, the Employer found dates as necessary and proceeded to bargain.

[49] Mr. Gunaratna refused to talk to Mr. Humeny when asked. The Union has explained his refusal by pointing to the fact that Mr. Gunaratna was in negotiations at the time. However, Mr. Gunaratna's unwillingness to engage, only one day after requesting additional dates, is undeniable. He stated to the Employer unequivocally: "I don't think there is any point in us talking". On another occasion, Mr. Gunaratna forwarded a request from the Employer to Ms. Diza, and Ms. Diza decided not to respond. The Employer wasn't even aware that Mr. Gunaratna was no longer the contact person for the Union's negotiating team.

[50] The Employer has also suggested that the Union has engaged in receding horizon bargaining. There is some evidence that the Union changed its proposals over time, reverting to original proposals from October 2019. The proposed annual anniversary bonus increased, the employee discount increased, and the number of uniforms increased. While both parties included language in their proposals ostensibly to permit such conduct, these caveats do not alter the effect of this approach, which was to contribute to confusion and frustration in the process.

[51] In making these observations, the Board is not making a specific determination about receding horizon bargaining. Relatedly, it is not necessary to determine whether the last offer appended to the first application precisely equates to the proposals that were then on the table. The Board accepts that it was not exchanged at the bargaining table. However, it mirrors what the Board has found to be a level of engagement and attention to detail at the bargaining table which was less than desirable. This approach, no doubt, had a negative impact on bargaining.

[52] In fairness to the Union, the evidence suggests that the Employer was leading the bargaining process and was, at the outset, responding to those topics that it accepted for inclusion in the agreement. However, this should not have prevented the Union from clearly defining which topics it felt remained to be discussed, if any. Even if the Union did not revive proposals that were spent, it certainly did not communicate very clearly about which proposals actually did remain on the table. The fallible memories of the Union representatives and their paper trail were not helpful to them on this point.

[53] The Union states that the current case is similar to *C.U.P.E., Local 1975 v Treats at the University of Saskatchewan*, 2000 CarswellSask 908 [*Treats*]. In *Treats*, the workplace was "largely unskilled and composed of students, young people working part-time and casual employees". The Board found that job action was impractical. It had been over two years since the union had been certified. As in *Treats*, the Union argues that the Employer has failed to table its wage proposal after two years. However, as the following passage demonstrates, the bargaining history of the parties in *Treats* is distinguishable from the current case:

> *19 In the present case, the parties have demonstrated that they can bargain and they have concluded virtually the whole of a first agreement with the exception of the wage and monetary issues. The Union has made monetary and wage proposals to the Employer; the Employer has refused to do the same, simply rejecting the Union's proposals. The Employer's intransigence has extended to these proceedings in which it has neglected to fulfill its statutory obligation pursuant to s. 26.5(5) to file with the Board and serve upon the Union a list of the issues in dispute and its position on those issues. Indeed, the Employer's stance with respect to this duty borders on defiance. In a letter to the Board Registrar dated November 26, 1998, counsel for the Employer stated: "We understand your position on mandatory time limits. However, there is nothing in the Act to say what the consequence of non-compliance are [sic], whether by the Union or the Company."*

[54] In *Treats*, the employer was found to be intransigent, in particular by demonstrating an unwillingness to negotiate monetary issues, and taking a stance in relation to proceedings which bordered "on defiance". The Board identified the existing rescission application as a potential result of the employer's conduct.

[55] By contrast, in this case, the parties agreed from the outset not to negotiate monetary items, the Employer made two requests to negotiate monetary terms to facilitate movement, and the Union refused to engage in formal monetary negotiations. The fact that the Employer wanted to formally enter into negotiations over monetary items, instead of forwarding its wage proposal to the Union without an agreement to do so, was a legitimate and reasonable allocation of resources. The Employer has certainly not been defiant.

[56] In total, there have been ten bargaining sessions. This is not an insignificant number of sessions relative to the progress made (or not made). However, there have been only four face-to-face bargaining sessions. There were four sessions without the labour relations officer and another six shuttle sessions with the officer. Since the Union stated its intention to move to an imposed agreement in December 2019, the parties have not met face-to-face. The Employer has made attempts to return to the bargaining table at various times, and the Union has, at times, refused to engage.

[57] The Union complains that the Employer rejected basic provisions for the sole reason that the provisions were not necessary. While this positioning likely contributed to the frustration, it does not go beyond the normal strategies adopted in collective bargaining. Furthermore, the Board does not view the provisions with respect to scheduling, casual employees, or management performance of in-scope duties with as much suspicion as does the Union, in part, given the scope language that exists in another of the Union's collective agreements and, in part, given that the disputes over casual employees and management work were ultimately resolved.

[58] The Union also complains about the pace of bargaining in January 2021. It is our view that the bargaining history, which was characterized by unnecessary haste in bringing applications to the Board, resistance to returning to the bargaining table, the confusion caused by the transition in the negotiating team, the return of items or the confusion around the remaining items at the table, and a lack of direct communication between the parties, contributed to the parties holding their positions. Clearly, the Employer identified this problem and offered a solution which the Union refused.

[59] Finally, there are a few factors that give us pause. These are: the length of time since the issuance of the certification order, the size and nature of the bargaining unit, and the viability of striking as an option to resolve impasse. These factors highlight the relative vulnerability of the Union and its bargaining unit.

[60] On the balance, however, intervention is not necessary for promoting healthy and independent bargaining and avoiding the risk of damage or destruction to the relationship. The problems the parties have encountered do not go beyond the normal problems experienced in collective bargaining. The Union's negotiators are experienced and capable. Many of the complications were preventable. Negotiations have not broken down such that intervention is appropriate.

[61] The Employer believes that the parties can conclude an agreement without the intervention of the Board. The Board accepts this point of view. The parties made progress in the initial bargaining sessions when they met face-to-face. They also made some progress through the intervention of a third party.

[62] The communication challenges will likely be alleviated through direct discussion. The parties are strongly encouraged, whether through a third party or otherwise, to continue to meet face-to-face, when possible.

[63] The Board believes that when the parties resume focusing on the task at hand, they can successfully bargain a first agreement. The most effective approach to preserving the bargaining relationship is to send the parties back to the table.

[64] Finally, the Board was disappointed to learn that Mr. Gunaratna believes that it is acceptable to treat the Board's processes, and in particular the legal requirement to ensure the accuracy of declared applications, in such a casual manner. As a result of this evidence, the Employer asked the Board to find that the first application, made pursuant to subclause 6-25(6)(a), is void. Given the stage of the proceedings and the necessity for the parties to proceed with collective bargaining, there is no labour relations purpose in doing so. This request is denied.

[65] Given the length of time that has passed, the Board is not barring the parties from making another application pursuant to subclause 6-25(6)(b) of the Act, should there be a change in circumstances that warrants the Board's intervention. If that should occur this panel will be seized.

[66] For all of these reasons, the Union's application is dismissed.

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

DATED at Regina, Saskatchewan, this **28th** day of **October, 2021.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson