Saskatchewan
Labour Relations Board

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1400, Applicant v AAA SECURITY GROUP LTD., Respondent

LRB File No. 063-22; October 31, 2022
Vice-Chairperson, Barbara Mysko; Board Members: Kris Spence and Hugh Wagner

Counsel for the Applicant, United Food and Commercial Workers Union, Local 1400:	Heath Smith
For the Respondent, AAA Security Group Ltd.:	No submissions made

Unfair Labour Practice Application – Notice to Bargain – Failure to Respond or Meet – No Submissions Made by Employer – Breach of Sections 6-7, 6-62(1)(b) and (d) of *The Saskatchewan Employment Act*.

REASONS FOR DECISION

Background:

[1] Barbara Mysko, Vice-Chairperson: These are the Board's Reasons for Decision in relation to an unfair labour practice application filed by the United Food and Commercial Workers Union, Local 1400 [Union] on April 27, 2022, against the Employer, AAA Security Group Ltd. [Employer]. The Union is certified as the exclusive bargaining agent for all employees of the Employer in or in connection with specified locations as set out by Board Order dated December 20, 2017.[1]

[2] In the application, the Union says that the Employer committed an unfair labour practice by contravening sections 6-7, 6-62(1)(b), and 6-62(1)(d) of *The Saskatchewan Employment Act* [Act]. The essence of the complaint is that the Union has attempted to bargain a renewal to the collective agreement and the Employer has ignored the Union's many requests for bargaining dates.

[3] In response to the Union's application, the Employer has been mostly unresponsive. The Employer has not filed a Reply. After the Employer did not participate in a Motions' Day appearance for the purpose of scheduling this matter for a hearing, the Board sent a letter to two separate addresses for the Employer, advising that it had decided to proceed with this matter by

[1] LRB File No. 152-17.

written submissions. The Board provided the Employer with the deadlines for the filing of those submissions.

[4] For its part, the Union filed a brief of law and an affidavit of Rod Gillies on September 14, 2022. The following day, the Board forwarded those submissions to the email address it had on file for the Employer. The Employer replied on the same day indicating that it was no longer licensed to operate guard services in Canada. It did not specify the date when its operations ceased. It did not express an intention to file any submissions; nor did it file submissions.

[5] In the Union's affidavit, Mr. Gillies, in-house counsel and Director of Negotiations for the Union, provides the following information (omitting references to exhibits):

> 1. *Since Certification, the Parties have successfully negotiated Collective Bargaining Agreements, the most recent of which expired January 1, 2021 (the "CBA").*
> 2. *Prior to the expiry date of the most recent CBA, and at several points after the expiry date, the Union attempted to engage the process of collective bargaining with the Employer, in order to arrive at a new CBA. The Union has not received a response to the Employer to any such attempt.*
> 3. *To date, the Union has attempted to contact the Employer by means of the following:*
>   - *September 9, 2020 – Notice to Bargain.*
>   - *March 18, 2021 – Letter requesting bargaining dates, to which no response was received.*
>   - *June 3, 2021 – Letter requesting bargaining dates, to which no response was received.*
>   - *August 2021 – Several telephone calls to all known phone numbers for the Employer. Responses to telephone calls and voicemail messages were never received;*
>   - *September 9, 2021 – Letter requesting that the Employer immediately contact the Union regarding collective bargaining, to which no response was received;*
>   - *September 2021 – Several telephone calls to all known phone numbers for the Employer. Responses to telephone calls and voicemail messages were never received;*
>   - *October 2021 – Several telephone calls to all known phone numbers for the Employer. Responses to telephone calls and voicemail messages were never received.*

[6] The Union has the onus to prove, on a balance of probabilities, that the Employer has contravened the Act. The lack of participation by the Employer in these proceedings means that there is no contest in relation to the Union's application. Other than providing vague, unsworn information about its operations ceasing, via email to the Board, the Employer has provided no evidence or submissions in this matter. The Board also notes that, based on the Union's evidence, it can be inferred that the Employer did not respond to any of the Union's communications with information about its alleged closure, whether impending or actual.

[7] However, it is still necessary for the Board to determine whether the requisite elements of the allegations have been made out.

[8] The Union claims that the Employer has breached the following sections of the Act:

> ***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.*
> …
> ***6-62****(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:*
>
> > *(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;*
> > …
> > *(d) to fail or refuse to engage in collective bargaining with representatives of a union representing the employees in a bargaining unit whether or not those representatives are the employees of the employer;*

[9] Section 6-7 states that an employer has a duty to bargain in good faith in the time and in the manner required pursuant to Part VI. Included in the definition of collective bargaining, found at subclause 6-1(1)(e)(i) of the Act is the "negotiating in good faith with a view to the conclusion of a collective agreement or its renewal or revision". Section 6-26 states that, if the statutory notice to bargain has been given, the parties "shall immediately engage in collective bargaining with a view to concluding a renewal or revision of a collective agreement or a new collective agreement".

[10] The statutory notice must be given not less than 60 days nor more than 120 days before the expiry of the collective agreement, pursuant to subsection 6-26(2). On the collective agreement that was filed with the Board in these proceedings, the expiry date is December 31, 2020. Notice to Bargain was given on September 9, 2020, and therefore the Notice to Bargain falls within the timeframe set out in the Act. This means that the Employer was required to immediately engage in collective bargaining. The Employer failed to do so and, therefore, failed to comply with sections 6-7 and 6-62(1)(d) of the Act.

[11] A similar observation was made by the Board in *SEIU-West v Canadian Blood Services*, 2022 CanLII 25872 (SK LRB):

> *[49] First, despite repeated requests by the Union, the Employer failed to provide any dates for bargaining for more than 10 months after receiving the notice to bargain from the Union. Then, when the Employer finally offered dates for bargaining, those dates were more than 4 months further into the future. Failing to make its representatives available to meet for more than 14 months after receipt of the notice to bargain does not comply with the Employer's obligation to "immediately" engage in collective bargaining.*

[12] Moreover, the Union's current complaint extends beyond a failure to immediately engage in collective bargaining. The Employer has failed entirely to respond to the Union's communications, to attempt to meet with the Union, or to otherwise engage with the process. It is well established that a failure to meet at all is a breach of the duty to bargain in good faith: *Health Services and Support - Facilities Subsector Bargaining Assn. v British Columbia*, 2007 SCC 27 (CanLII), [2007] 2 SCR 391 [*Health Services*] at para 100. This is perhaps the most basic of the procedural requirements of the duty to bargain in good faith. The Employer's complete lack of participation in the process is a contravention of sections 6-7 and 6-62(1)(d) of the Act.

[13] With respect to its allegations pursuant to clause 6-62(1)(b), the Union relies on *United Food and Commercial Workers, Local 1400 v Saskatoon Co-operative Association Limited*, 2020 CanLII 10516 (SK LRB), and in particular, paragraph 123 of that decision:

> *[123] The Employer argues that its actions, even if interfering, are not sufficiently "direct" to ground a contravention. In considering this issue, the Board has examined certain instances in which a contravention has been or may be made out, pursuant to clause 6-62(1)(b). These instances may be characterized in the following terms: frustrating and obstructing the union's access to its own rights (Woolworth Co.); removing the union's ability to ensure the continuity and visibility of its communications (Wal-Mart Corp.); offering or providing a gift or other inducement to persuade employees to act, or attempting to do so (bribes); compelling or deterring employees through threats, or attempting to do so (intimidation); and, otherwise improperly influencing a witness.*

[14] The Union says that the Employer's actions (or inactions) amount to "frustrating and obstructing the union's access to its own rights" and "removing the union's ability to ensure the continuity and visibility of its communications". It says that, by refusing to engage in collective bargaining, the Employer is denying the Union the opportunity to fulfill its most basic administrative function, including all of its associated responsibilities. Lastly, the Union states that the Employer is "exposing the Union to potential dissatisfaction among members, as members expect the Union to address their workplace concerns through collective bargaining."

[15] In *SGEU v Saskatoon Downtown Youth Centre Inc*., 2021 CanLII 19681 (SK LRB), the Board analyzed an alleged breach of clause 6-62(1)(b) of the Act as follows:

> *[40] In Saskatoon Co-operative, in finding a contravention of clause 6-62(1)(b), the Board made the following findings:*
>
> > *[106] On review, in SEIU-West v Saskatchewan Association of Health Organizations, 2015 SKQB 222 (CanLII) [SAHO QB], the Court found, at paragraph 57:*

> *The board decided that s. 11(1)(b) related only to the protection of unions as an independent legal entity, and went on to say at para. 123 that "the fact that the views and opinions being expressed by SAHO and the respondent employers made the jobs of the applicant trade unions more difficult" could not amount to a violation of s. 11(1)(b). That it concluded the independence of the union was not adversely affected by the respondents' conduct is not unreasonable, but it does leave open the question of whether an employer making the union's life difficult can ever be the subject of an unfair labour practice as the board has stated such submission does not belong in either s. 11(1)(a) or s. 11(1)(b).*
>
> *. . .*
>
> *[126] Further, in relation to clause 6-62(1)(b), the focus is on whether the Employer interfered with the administration of the Union. This provision governs conduct that threatens the integrity of the Union as an organization - with an emphasis on the impugned conduct and its significance for the Union's organizational integrity.*
>
> *[41] Can the comments in the memo that SGEU objects to be characterized as adversely affecting SGEU's independence, threatening its integrity as an organization, interfering with its administration or creating obstacles that make it difficult or impossible for SGEU to carry on as an entity devoted to representing employees?...*

[16] Under the circumstances, the Board finds that the Employer has created obstacles that make it difficult or impossible for the Union to carry on as an entity devoted to representing employees. This is sufficient to establish a breach of clause 6-62(1)(b) of the Act.

[17] In conclusion, the Board finds that the Employer has breached sections 6-7, 6-62(1)(b) and 6-62(1)(d) of the Act. The Board will order that the Employer cease and refrain from committing these breaches.

[18] Contrary to the Union's request, the Board will not "order" that it be seized of this matter, as there is nothing outstanding before the Board. Issues of compliance with decisions and enforcement of Board orders are covered under sections 6-103 and 6-108 of the Act.

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

DATED at Regina, Saskatchewan, this **31st** day of **October, 2022.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson