

**SASKATOON TWIN CHARITIES INC, operating as CITY CENTRE BINGO, Applicant v SEIU-WEST, Respondent**

LRB File Nos. 044-23, 051-23 & 066-23; July 18, 2023

Vice-Chairperson, Barbara Mysko; Board Members: Phil Polsom and Laura Sommervill

Counsel for the Applicant, Saskatoon Twin  
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**Application for Pre-Hearing Production – Subsection 6-111(1) of *The Saskatchewan Employment Act* – Documents and Particulars Sought.**

**Underlying Unfair Labour Practice Application – Clauses 6-62(1)(b), (d), (n), (r), and Section 6-7 of the Act – Allegations – Provision of Employee Information – Change in Working Conditions.**

**Production of Particulars – Whether Sufficient Clarity – Allegations pursuant to Clauses 6-62(1)(b), (d), (n) – Sufficiently Clear – Request for Legal Argument – Reliance on Clause 6-62(1)(r) – Ambiguity – Requests Partially Denied.**

**Production of Documents – Application of *Air Canada* Principles – Lack of Particularization – Broad-Spectrum Request – Request Denied.**

**New Requests in Brief of Law – Requests Denied.**

## **REASONS FOR DECISION**

### **Background:**

[1] **Barbara Mysko, Vice-Chairperson:** The Applicant, City Centre Bingo, [Employer] brings this application for pre-hearing production pursuant to section 6-111 of *The Saskatchewan Employment Act* [Act]. The underlying application is an unfair labour practice application filed by the Union in LRB File No. 051-23 claiming that the Employer failed to provide necessary, up-to-date information about employees in the bargaining unit and unilaterally changed the conditions of employment before entering into a first collective agreement [ULP application]. That application is set to be heard by the Board on September 13, 14, and 15, 2023. A related application, set to be heard on the same dates, is a rescission application brought by Mary-Anne Beardy in LRB File No. 044-23.

**[2]** In the present application, the Employer seeks production of the following documents and particulars:

1. *...any documents, or other evidence, which is in the possession of the Union, and which is relevant to the issues to be decided in the proceeding in LRB File No 051-23.*
2. *...particulars of the claims made in LRB File No 051-23, as follows:*
  - a. *Particulars of the claimed requirements to provide employee lists, and other employee information;*
  - b. *Particulars of City Centre Bingo's alleged failure or refusal to provide employee lists; and*
  - c. *Particulars of which section of The Saskatchewan Employment Act the Union is relying on with respect to their claims regarding providing employee lists, including particulars of the sections which require City Centre Bingo to provide any employee information in the course of collective bargaining.*

**[3]** Relying on *Prairie Arctic Regional Council of Carpenters, Drywallers, Millwrights v EllisDon Corporation*, 2014 CanLII 100507 (SK LRB) [*EllisDon*], the Employer asserts that the limited disclosure in labour relations cases should not be taken to mean absolutely no disclosure. The Employer says that the requested disclosure and particulars are necessary so that it may know the case it has to meet. It says that the Union has failed to provide any of the requested documents or particulars.

**[4]** The Union replied to the application, stating that the underlying ULP application contains sufficient specificity to enable a clear understanding of the violations alleged and the applicable statutory provisions, clauses 6-62(1)(b), (d), (n), (r) and section 6-7. The Union says that it provided, attached to the ULP application, the only employee lists from the Employer that were in the Union's possession. The sole list that has surfaced since that application was filed is the amended Notice of Vote provided by this Board in LRB File No. 044-23. The Employer has in its possession the requested particulars, that is, the ULP application makes clear what was provided and what was not. There is no need for a production order.

**[5]** The Union argues, in the alternative, that the Employer's application has been brought improperly. The Union provides two reasons to support this argument. The first is that the Employer's application lacks the particularization necessary to enable the reader to understand what additional particulars or documents are being sought. The second is that paragraph 3(a) of

the application asks, in essence, that the Union provide a rundown of its legal arguments. This type of disclosure is not what is intended by clauses 6-111(1)(a) and (b) of the Act.

**[6]** The Employer sought that this application be addressed in writing by an *in-camera* panel of the Board. The Union advised that it intended to file written argument to be considered by said panel. After receiving the pleadings in this matter, the Board set deadlines for the filing of written argument. Both parties submitted briefs, which the Board has reviewed and found helpful. For the following reasons, the Board has decided to dismiss the Employer's application, in part.

**Analysis:**

**[7]** The Board's authority to order the production of documents is found at subsection 6-111(1) of the Act:

**6-111(1)** *With respect to any matter before it, the board has the power:*

*(a) to require any party to provide particulars before or during a hearing or proceeding;*

*(b) to require any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing or proceeding;*

*(c) to do all or any of the following to the same extent as those powers are vested in the Court of Queen's Bench for the trial of civil actions:*

*(i) to summon and enforce the attendance of witnesses;*

*(ii) to compel witnesses to give evidence on oath or otherwise; and*

*(iii) to compel witnesses to produce documents or things;*

**[8]** In support of its application, the Employer relies on the principles identified by the Canadian Industrial Relations Board in *A.L.P.A. v Air Canada*, [1999] CIRBD No. 3 [*Air Canada*]:

1. *Requests for production are not automatic and must be assessed in each case;*
2. *The information requested must be arguably relevant to the issue to be decided;*
3. *The request must be sufficiently particularized so that the person on whom it is served can readily determine the nature of the request, the documents sought, the relevant time frame and the content;*
4. *The production must not be in the nature of a fishing expedition; that is, the production must assist a complainant in uncovering something to support its existing case;*
5. *The applicant must demonstrate a probative nexus between its positions in the dispute and the material being requested;*

6. *The prejudicial aspect of introducing the evidence must not outweigh the probative value of the evidence itself, regardless of any possible "confidential" aspect of the document.*

[9] The Board has repeatedly applied the *Air Canada* principles in assessing whether to order the production of documents.<sup>1</sup>

[10] The Employer also relies on the principles that govern requests for particulars, as set out in *SEIU-West v Voyager Retirement v Genpar Inc.*, 2016 CanLII 79627 (SK LRB) [*Voyager*].<sup>2</sup> The Board in *Voyager* was guided by the following excerpt from *P.A. Bottlers Ltd. v United Food Commercial Workers, Local 1400*, [1997] SLRBD No 22 [*P.A. Bottlers*]:

5. *In [Saskatchewan Joint Board Retail, Wholesale and Department Store Union v WaterGroup Companies Inc., [1993] 1st Quarter Sask. Labour Rep. 252], the Board commented on the place of particulars in connection with the proceedings of the Board, at 257:*

*To this statement of the Board's long-standing practice on the issue, the Board would like to add that the need for particulars in the originating documents is especially important before tribunals like the Labour Relations Board which employ a summary procedure that does not provide for examinations for discovery or pre-hearing disclosure, and that permits relatively little time to prepare a defence. If the Board's hearings are to be conducted in accordance with the basic requirements of natural justice, a respondent is entitled to, and the Board must require, reasonable clarity and particularity in the originating documents.*

*Failure to provide reasonable particulars in the initial application would justify the Board in dismissing the application, adjourning the application pending the provision of particulars, or proceeding with any part of the application which has been particularized and refusing to proceed with the remainder. It is absolutely no answer for an applicant to argue that the respondent "knows what the case is about." As part of a fair hearing, the respondent is entitled to have the allegations against it particularized in writing. It should not be forced to guess which of its interactions with the applicant are the subject of the application.*

6. *The Board has thus made it clear that it is necessary for an applicant to state with some precision the nature of the accusations which are being made, both in terms of the specific events or instances of conduct which are considered objectionable, and of the provisions of the Act which have allegedly been violated. The Board has linked this requirement with the capacity to provide a fair hearing to a respondent.*

7. *On the other hand, the Board must balance the requirement for a fair hearing with other values which are also of pressing importance to the Board, including those of expedition of the hearing of applications, and maintaining relative informality in Board proceedings. Whatever might be the case in a civil court, the nature of the proceedings before this Board cannot accommodate extensive pre-hearing or discovery processes without running the*

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<sup>1</sup> See, for example, *Saskatchewan Government and General Employees Union v Parkland College and Western Trade Training Institute*, 2021 CanLII 12999 (SK LRB); *Amalgamated Transit Union, Local 615 v Battlefords Transit System*, 2022 CanLII 23037 (SK LRB) [*Battlefords Transit*].

<sup>2</sup> See, in particular, paras 16 to 21.

*risk that the ability to respond in a flexible and timely way to issues which arise in the time-sensitive context of industrial relations will be seriously impaired.*

*8. We do not interpret the requirement for the provision of sufficient particulars, in any case, to contemplate a complete rehearsal of evidence and argument in exchange between the parties prior to a hearing. What is necessary is that an applicant make it clear what conduct of the respondent is the subject of their complaint and how this conduct, in the view of the applicant, falls afoul of the Act. In assessing the degree to which an applicant has met this requirement, the Board must be guided not only by our desire to ensure a fair hearing but by the demands placed upon us by the objectives of efficacy and timeliness in our proceedings.*

**[11]** Also cited was *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Westfair Foods Ltd.*, [1995] 2nd Quarter Sask Lab Rep 288, [*Westfair Foods*], at 292:

*We cannot accept the argument of counsel for the Union that his obligation is only to outline the general nature of his allegation to the Employer in response to a request for particulars. Such a response must make it clear exactly what case the opposing party has to meet, and this includes allusion to facts which will be used in support of that case. Counsel for the Union was not obliged to give a detailed rundown of the evidence he would call. He should, however, have indicated what basic facts he would use to make out his allegation of discrimination, including the identity of employees whose circumstances would form part of his case. In our view, it would be inconsistent with the rules of procedural fairness to provide anything less. [Emphasis added].*

**[12]** Finally, the Employer relies on clause 6-111(1)(c) to suggest that the Board has powers akin to the Court of King's Bench in matters of production.

**[13]** Next, the Board will proceed to consider the Employer's requests for particulars.

**[14]** The Employer's requests (in the order considered by the Board) are as follows: particulars of its alleged failure or refusal to provide employee lists; particulars of which section or sections of the Act the Union is relying on; and particulars of the claimed requirements to provide employee lists, and other employee information. Relatedly, the Employer seeks the particulars linking the facts being alleged (the failure or refusal to provide certain information) to a section of the Act.

**[15]** To begin, a respondent is entitled to know the case it must meet. To this end, it is necessary for an applicant in an underlying application (in this case the Union) to state with some precision the nature of the accusations that it makes, including the specific events or instances of conduct that are considered objectionable. It is, however, not necessary to provide a complete recitation of the evidence to be presented or the argument to be made. In assessing the sufficiency of

particulars in labour relations matters, the Board must balance the competing interests of fairness with the relative timeliness and informality that is expected of Board proceedings:<sup>3</sup>

**[16]** Thus, the question before the Board is whether the Union has made it clear what conduct of the Employer is complained of and how this conduct contravenes the cited provisions of the Act.<sup>4</sup>

**[17]** In the ULP application, the Union outlines the facts which allegedly demonstrate that the Employer has failed to provide necessary employee information. The Union describes what it claims is the limited information provided by the Employer to the Union in relation to the employees in the bargaining unit, and the dates on which it provided this information. It also outlines what it perceives to be the changes in the bargaining unit over time. Piecing these facts together, it should be reasonably clear what information is alleged not to have been provided, including about which employees. In the Board's view, the Union has made it clear what conduct of the Employer is complained of. Whether this conduct amounts to a breach (or breaches) is a matter to be determined by the Board at a hearing.

**[18]** In alleging a breach or breaches, the Union relies on clauses 6-62(1)(b), (d), (n), (r), and section 6-7 of the Act. In doing so, the Union is alleging interference, failure or refusal to engage in collective bargaining, breach of the statutory freeze provision, and contravention of an obligation, prohibition or other provision of Part VI.

**[19]** In the ULP application, the Union explains the alleged statutory breaches:

*(l) The Union states that the Employer's conduct has interfered with the Union's capacity to represent the employees for whom it has bargaining rights by impeding the union's ability to communicate with these employees and by hindering its ability to negotiate wage rates without current wage and classification information.*

*(m) The Union states that the Employer's conduct was intended to and/or had the effect of interfering with the administration of the Union.*

...

*(o) The Union further states that the Employer's conduct is based on anti-union animus as demonstrated by its repeated failure to provide requested information and information regarding changes to membership in the bargaining unit with the Union.*

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<sup>3</sup> *North Battleford Community Safety Officers Association v City of North Battleford*, 2019 CanLII 43221 (SK LRB), at para 10.

<sup>4</sup> *Ibid*, at para 9.

**[20]** In the Board's view, the foregoing excerpts clearly describe the alleged breaches of clauses 6-62(1)(b) and (d) and section 6-7 of the Act. The Union indicates that the Employer's alleged omissions and failure to provide information interfered with its capacity to represent employees, interfered with the administration of the Union, and hindered its ability to negotiate about wage rates. The Union draws a connection between the stated facts and the provisions of the Act which are alleged to have been breached.

**[21]** The Employer questions the applicability or relevance of the statutory provisions relied upon by the Union. It states that there is no connection between the facts as alleged and the provisions in issue:

*23. Perhaps more concerning [than] the failure to produce specific documents is the failure to tie the alleged refusal to produce documents to any specific obligation imposed on City Centre Bingo by the Act. This is where CCB's primary concern lies.*

*24. Without production, and particulars, on what specifically is being alleged as the breach and what part of the Act is being breached, CCB is left to speculate about how a claim regarding employee information fits into any of the specific sections referred to by the Union.*

**[22]** The Employer also states that none of the cited provisions include a requirement to provide employee information, especially an employee's personal telephone number or personal email address, in the course of bargaining.

**[23]** Ultimately, it is up to the Union to cite the statutory provisions that may ground a breach on the facts, as proven. Whether the alleged, if proven, facts constitute a breach or breaches of the alleged provisions will be the subject of argument at the substantive hearing. The Employer is not entitled to receive the Union's legal argument in advance of the hearing.

**[24]** Relatedly, the Employer seeks the "claimed requirements to provide employee lists, and other employee information". Again, the ULP application relies on the statutory provisions, as stated. Whether these provisions prohibit the alleged conduct is to be determined following the substantive hearing.

**[25]** To be sure, the Union's reliance on clause 6-62(1)(r) introduces an element of ambiguity into its application. Clause 6-62(1)(r) makes it an unfair labour practice for an employer to contravene an obligation, a prohibition or other provision of Part VI imposed on or applicable to an employer. The Union does not specify what obligation, prohibition or other provision is engaged specifically by clause 6-62(1)(r). The reader is left to speculate as to the relationship between this

provision and the allegations made. As a result, the Board will order that the Union provide particulars, related to clause 6-62(1)(r), of the conduct of the Employer that the Union complains of and how this conduct contravenes the provision.

**[26]** Subject to its comments with respect to clause 6-62(1)(r), the Board has found that the Union has made it clear what conduct of the Employer is complained of and how this conduct contravenes the named statutory provisions. The allegations against the Employer are stated with sufficient precision for it to know the specific events and conduct that provide a basis for the contraventions, which provisions of the Act have allegedly been contravened and how the impugned conduct contravenes those provisions. The Union's description of the conduct is sufficiently clear to allow the Employer to recognize the conduct in question. The Union is not required to provide a detailed description of the evidence it will present or the legal arguments it plans to make.

**[27]** Next, the Employer seeks "any documents, or other evidence, which [are] in the possession of the Union, and which [are] relevant to the issues to be decided in the proceeding in LRB File No 051-23".

**[28]** The Board has repeatedly stated that it does not seek to replicate the pre-hearing discovery and production processes that exist in the civil courts. It is well established that requests for production are not automatic and must be assessed in each case. It is not the Board's practice to grant "broad-spectrum, non-specific or infinite production Orders".<sup>5</sup> Relatedly, a request for production must be sufficiently particularized so that the person on whom it is served can readily determine the nature of the request, the documents sought, the relevant time frame and the content.

**[29]** The Employer's request is the very type of request that the Board has advised against.

**[30]** In *Amalgamated Transit Union, Local 615 v Battlefords Transit System*, 2022 CanLII 23037 (SK LRB), a similar request was found to be unacceptable:<sup>6</sup>

*[23] The Board is satisfied that the requests are sufficiently particularized. This is not a broad, generic request. It is precise and detailed. It is narrow and targeted to the issues raised in the Applications before the Board. In its Application for Production, the Union initially asked for an Order for "any other document which is arguably relevant". That request was withdrawn. The Employer argues that the Union would not have been entitled*

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<sup>5</sup> *Service Employees International Union (West) v Saskatchewan Association of Health Organizations*, 2012 CanLII 18139 (SK LRB), at para 37.

<sup>6</sup> *Battlefords Transit*.



*to such a broad Order. The Board agrees: that request was the epitome of a fishing expedition. The Employer argues that by asking for production that covers every aspect of its pleadings, the Union is trying to do indirectly what it cannot do directly. The effect is the same. The Board does not accept that argument. The Board encourages the particularization of the requests as provided by the Union. This leads to a request that is specific and targeted. The Employer can readily determine the nature of the requests, the documents sought, the relevant timeframe and the content. The approach taken by the Employer in its offered production confirms that the detailed extensive request by the Union was unfortunately necessary in this matter to ensure the Employer complies with its disclosure duty.*

**[31]** In summary, the Board will dismiss the request for documents.

**[32]** The Employer also seeks, through its brief of law, certain particulars and documents that were not sought in its application and not included in the draft interim order, required to be filed with the application pursuant to section 15 of the Board's Regulations.

**[33]** First, the Employer seeks not only particulars "linking the facts being alleged...to a section of the Act", but also documents that do the same. Second, the Employer seeks "relevant documentation, or other production" related to the allegation that it failed or refused to provide employee information.

**[34]** The new requests for documents appear to be a late-stage attempt to provide further and better particularization of the request for "any documents, or other evidence" that are arguably relevant to the issues to be decided. The Employer did not seek to amend its application to include these new requests. It simply articulated these requests for the first time through its brief of law. For these reasons, the Board will not permit these requests.

**[35]** Moreover, these new requests are still not sufficiently particularized. First, the Employer's request for documents "linking the facts being alleged...to a section of the Act" does not enable a person to readily determine the documents sought. Second, the Employer's request for "relevant documentation, or other production" (related to the allegation of a failure to provide employee information) is only marginally more specific than the broader request for any documents arguably relevant to the issues to be decided. The Union could not readily determine the nature of the documents sought or the content of those documents. Although the Employer provides an example of missing documents, at paragraph 22 of its brief, the request as framed would provide the Union no specificity as to the parameters of the required production.

**[36]** Third, the Employer seeks, through its brief of law, “particulars on which employee, or employees, the Union is claiming received a raise in March of 2023, and whether that is the only specific material fact that the Union is relying on with respect to its claim under s. 6-62(1)(n).” This request for particulars is again an entirely new request<sup>7</sup>, appearing for the first time in the Employer’s brief. It falls, in its entirety, outside of the application for production. The application seeks the production of “any documents, or other evidence, which [are] in the possession of the Union, and which [are] relevant to the issues to be decided in the proceeding” and “further requests particulars, with respect to one of the claims – the claim on providing employee lists” [emphasis added]. There is no request for particulars relating to the second issue, the working conditions.

**[37]** The Employer has made no attempt to amend its application for production to include this request. For these reasons, the Board will dismiss this request.

**[38]** It is, however, also necessary to address an argument made by the Union in relation to this request. The Union argues that the request should be rejected due to the Employer’s own admissions (as outlined in its Reply to the ULP application):

*27. More importantly, the Employer, in its reply to the Union’s ULP Application, has already expressly admitted that the Employer has given raises “to all employees” between the date of certification and the ULP application. Given this admission, the Union is puzzled as to why the Employer seeks further particulars from the Union in this regard.*

**[39]** The Union, through this submission, all but responds to one aspect of the request for “particulars on which employee, or employees, the Union is claiming received a raise in March of 2023”.

**[40]** Despite this, the Union objects to the Employer’s request. However, the question on an application for production of particulars is whether the Union has made it clear what conduct of the Employer is complained of and how this conduct contravenes the relevant statutory provisions. The analysis examines the Union’s pleadings, not the Employer’s admissions of fact. As stated in *P.A. Bottlers*, it is no answer to argue that the respondent “knows what the case is about”.

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<sup>7</sup> The Union also makes this observation in its Brief, at para 26.

**Conclusion:**

**[41]** In conclusion, the Board will order that the Union provide to the Employer particulars, related to clause 6-62(1)(r) of the Act, of the conduct of the Employer that the Union complains of and how this conduct contravenes the provision, within 14 days of the Order.

**[42]** This is a unanimous decision of the Board.

**DATED** at Regina, Saskatchewan, this **18th** day of **July, 2023**.

**LABOUR RELATIONS BOARD**

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Barbara Mysko  
Vice-Chairperson