Saskatchewan
Labour Relations Board

MOOSE JAW REFINERY PARTNERSHIP, Applicant v UNIFOR LOCAL 595, Respondent

LRB File Nos. 082-23 and 112-23; October 5, 2023
Chairperson, Michael J. Morris, K.C.; Board Members: Vince Engel and Brian Barber

Counsel for the Applicant, Moose Jaw Refinery Partnership: Justin Turc

For the Respondent, Unifor Local 595: Brett Payne, President

Summary dismissal – Unfair labour practice – Expiry of collective agreement – Notice to bargain – Union provided notice in accordance with period required by collective agreement – Employer refused to bargain – Union alleging failure to bargain in good faith – Section 6-7 and clause 6-62(1)(d).

Summary dismissal – Unfair labour application dismissed – Clause 6-111(1)(p) – No arguable case – Subsection 6-26(2) requires greater notice than given by Union – Subsection 6-26(2) operative pursuant to subsection 6-41(6) – Employer not required to bargain – Collective agreement remained in force pursuant to clause 6-39(1)(b).

Pleading – Allegation that Employer bargained in bad faith in 2019 when agreeing to notice period not clearly or expressly pled in Union's application – Board refuses to hear allegation pursuant to s. 6-111(3).

Settlement privilege – Union filed grievance alleging Employer failed to bargain following service of notice to bargain per collective agreement – Employer communicated with Union to settle grievance – Union alleges Employer's communications show breach of duty to bargain in good faith – Communications presumptively settlement privileged – Employer not required to bargain under Act – No arguable case before Board in which to consider abrogating settlement privilege.

REASONS FOR DECISION

Background:

[1] Michael J. Morris, K.C., Chairperson: These are the Board's reasons regarding an application by the Moose Jaw Refinery Partnership [Employer] to summarily dismiss an unfair labour practice application [ULP] brought against it by Unifor Local 595 [Union].[1]

[1] The ULP, LRB File No. 082-23, was filed on June 12, 2023.

[2] The ULP alleges that the Employer contravened ss. 6-7 and 6-62(1)(d) of *The Saskatchewan Employment Act*[2] [Act] by failing to bargain in good faith with the Union after the Union served a notice to bargain on December 28, 2022, 34 days before the expiry of the parties' collective agreement on January 31, 2023.

[3] Article 23.01 of the collective agreement permitted the notice to be served no less than 30 days before the agreement's expiry. Article 23.02 required bargaining to commence within 30 days of service of the notice.[3]

[4] The Employer took the position that it was not required to bargain because service of the notice did not comply with s. 6-26(2) of the Act, which requires that a notice to bargain be served no less than 60 days prior to the expiry of a collective agreement.

[5] The Union filed a grievance on February 9, 2023, alleging that the Employer failed to comply with its bargaining obligations pursuant to the collective agreement.[4] The Union elected to proceed to arbitration with respect to this grievance. The Employer has indicated that it provided notice of its preferred arbitrator on April 21, 2023.[5] However, the status of the grievance has not been disclosed to the Board.

[6] In addition to raising the Employer's failure to bargain following service of its December 28th notice, the ULP references settlement-oriented communications that occurred in April 2023 between the Employer and the Union regarding the potential resolution of the February 9th grievance. The ULP alleges that the Employer's communications were in bad faith, based on what the Employer was prepared to do. Essentially, the Board understands the Union to be alleging that the Employer was required to be more open-minded with respect to renegotiating the collective agreement to resolve the February 9th grievance.

[7] The Employer applied to summarily dismiss the ULP on multiple grounds on July 26, 2023.[6] The Union filed a reply to the Employer's application on August 14th.

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[2] *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [Act].
[3] The collective agreement was appended as Document #1 to the ULP.
[4] The grievance is appended to the Employer's reply to the ULP. Though it is dated "Feb 9, 2009", this date is clearly in error, as it describes the "date the incident took place" as December 30, 2022, and references the Employer's response to the Union's notice to bargain. The Employer's reply indicates that the Union grieved the matter on February 9, 2023: Employer's reply to the ULP, para 4(b).
[5] Employer's reply to the ULP, para 4(b).
[6] LRB File No. 112-23.

[8] The parties had the opportunity to provide written submissions with respect to the Employer's summary dismissal application, but both elected to rely solely on their pleadings.

Argument of the Employer:

[9] The Employer argues that article 23.01 of the collective agreement is inoperative because of the combined effect of ss. 6-26(2) and 6-41(6) of the Act. Subsection 6-26(2) requires that a notice to bargain be served no less than 60 days prior to the expiry of a collective agreement, while subsection 6-41(6) states "[i]f there is any conflict between a provision of a collective agreement and a requirement of this Part, the requirement of this Part prevails." Accordingly, the Union's notice was not served in compliance with s. 6-26(2) and the Employer was under no obligation to bargain with it. Rather, the collective agreement remained in force for another year, pursuant to clause 6-39(1)(b).

[10] Alternatively, the Employer argues that the Union has properly characterized the dispute as being related to the Employer's contravention of the collective agreement, and as such, the dispute is within the exclusive jurisdiction of a grievance arbitrator. Further, to the extent the ULP references settlement-oriented communications in the context of the grievance proceeding, these are privileged and inadmissible for the purposes of the ULP.

[11] In the further alternative, the Employer requests that the Board refuse to hear the ULP on the basis that it is untimely, pursuant to s. 6-111(3). It notes the Union filed its grievance on February 9th and has provided no reasonable explanation for waiting until June 12th to file the ULP.

Argument of the Union:

[12] The Union's pleading in response to the summary dismissal application is brief (one page).

[13] First, the Union suggests there is no conflict between the timelines in the collective agreement and s. 6-26(2) of the Act, and it submits that the timelines in the agreement should be respected. Second, the Union argues that the Employer must have bargained in bad faith in 2019 by agreeing to article 23.01 if it had no intention of abiding by it. Third, the Union argues that the Employer engaged in bad faith bargaining in its settlement-oriented communications in April of 2023, based on what the Employer was prepared to do.

Applicable Statutory Provisions:

[14] The following provisions of the Act are relevant:

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.*

…

Commencing collective bargaining – renewal or revision

6-26*(1) Before the expiry of a collective agreement, either party to the collective agreement may give notice in writing to the other party within the period set out in subsection (2) to negotiate a renewal or revision of the collective agreement or a new collective agreement.*

(2) A written notice pursuant to subsection (1) must be given not less than 60 days nor more than 120 days before the expiry date of the collective agreement.

(3) If a written notice is given pursuant to subsection (1), 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.

…

Period for which collective agreements remain in force

6-39*(1) Except as provided in this Subdivision, every collective agreement remains in force:*

(a) for the term provided for in the collective agreement; and

(b) after the expiry of the term mentioned in clause (a), from year to year.

…

Parties bound by collective agreement

6-41*(1) A collective agreement is binding on:*

(a) a union that:

(i) has entered into it; or

(ii) becomes subject to it in accordance with this Part;

(b) every employee of an employer mentioned in clause (c) who is included in or affected by it; and

(c) an employer who has entered into it.

(2) A person bound by a collective agreement, whether entered into before or after the coming into force of this Part, must, in accordance with the provisions of the collective agreement:

(a) do everything the person is required to do; and

(b) refrain from doing anything the person is required to refrain from doing.

(3) A failure to meet a requirement of subsection (2) is a contravention of this Part.

(4) If an agreement is reached as the result of collective bargaining, both parties shall execute it.

(5) Nothing in this section requires or authorizes a person to do anything that conflicts with a requirement of this Part.

(6) If there is any conflict between a provision of a collective agreement and a requirement of this Part, the requirement of this Part prevails.

…

Arbitration to settle disputes

6-45*(1) Subject to subsections (2) and (3), all disputes between the parties to a collective agreement or persons bound by the collective agreement or on whose behalf the collective agreement was entered into respecting its meaning, application or alleged contravention, including a question as to whether a matter is arbitrable, are to be settled by arbitration after exhausting any grievance procedure established by the collective agreement.*

…

Unfair labour practices – employers

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:*

…

(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;

…

Powers re hearings and proceedings

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

…

(o) to summarily refuse to hear a matter that is not within the jurisdiction of the board;

(p) to summarily dismiss a matter if, in the opinion of the board, there is a lack of evidence or no arguable case;

(q) to decide any matter before it without holding an oral hearing;

…

(3) Subject to subsection (4), the board may refuse to hear any allegation of an unfair labour practice that is made more than 90 days after the complainant knew or, in the opinion of the board, ought to have known of the action or circumstances giving rise to the allegation.

(4) The board shall hear any allegation of an unfair labour practice that is made after the deadline mentioned in subsection (3) if the respondent has consented in writing to waive or extend the deadline.

Analysis and Decision:

i) General principles

[15] The Employer applies to dismiss the Union's application pursuant to clause 6-111(1)(p) on the basis that it discloses no arguable case. The test for summary dismissal on this basis is summarized in *Roy*:

> *1. In determining whether a claim should be struck as disclosing no arguable case, the test is whether, assuming the applicant is able to prove everything alleged in his/her claim, there is no reasonable chance of success. The Board should exercise its jurisdiction to strike on this ground only in plain and obvious cases and where the Board is satisfied that the case is beyond doubt.*
>
> *2. In making its determination, the Board may consider only the subject application, any particulars furnished pursuant to demand and any document referred to in the application upon which the applicant relies to establish his/her claim.*[7]

[16] As indicated in *Roy*, summary dismissal is a vehicle for the disposition of applications that are patently defective.[8] The defect(s) must be apparent without the need for weighing evidence, assessing credibility, or evaluating novel statutory interpretations.[9] It must be plain and obvious the application will fail even if the applicant proves everything they allege.

[17] The Employer also applies to dismiss the Union's application pursuant to clause 6-111(1)(o) on the basis that the essential character of the dispute concerns the interpretation, application or alleged contravention of the collective agreement within the meaning of subsection 6-45(1), and accordingly, that the Board is without jurisdiction to adjudicate it. In determining the essential character of the dispute, the Board must focus on the facts underlying the dispute and whether they concern the interpretation, application or alleged contravention of the collective agreement, and not the legal packaging in which an applicant presents their dispute to the Board.[10]

[18] Regarding whether the Board should exercise its discretion pursuant to s. 6-111(3) to refuse to hear the Union's application, the applicable principles are stated in *Saskatchewan Polytechnic*:

> *1. The 90-day time limit is a legislative recognition of the need for expedition in labour relations matters.*

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[7] *Roy v Workers United Canada Council*, 2015 CanLII 885 (SK LRB) [*Roy*], at para 8.
[8] *Roy*, at para 9.
[9] *Roy*, at para 9.
[10] *Lapchuk v Saskatchewan (Highways),* 2017 SKCA 68, at paras 15-17.

> 2. *"Labour relations prejudice" is presumed to exist for all complaints filed later than the 90-day limit.*
>
> 3. *Late complaints should be dismissed unless countervailing considerations exist.*
>
> 4. *The longer the delay, the stronger must be the countervailing considerations before the complaint will be allowed to proceed. There is no separate category of "extreme" delay.*
>
> 5. *Without closing the categories of countervailing considerations that are relevant, the Board will consider the following questions:*
>
>> *(a) Who is seeking relief against the time limit? A sophisticated or unsophisticated applicant?*
>>
>> *(b) Why did the delay occur? Are there extenuating circumstances? Aggravating circumstances?*
>>
>> *(c) Has the delay caused actual litigation prejudice or labour relations prejudice to another party?*
>>
>> *(d) And, in evenly balanced cases, what is the importance of the rights asserted? And what is the apparent strength of the complaint?*[11]

ii) Application

[19] The Employer says it was not required to bargain with the Union after being served with the Union's December 28, 2022 notice, because the notice did not comply with the Act.

[20] The Employer's argument requires the Board to interpret and apply ss. 6-26(2) and 6-41(6) of the Act. These provisions are reproduced below for ease of reference (emphasis added):

> ***6-26****(1) Before the expiry of a collective agreement, either party to the collective agreement may give notice in writing to the other party within the period set out in subsection (2) to negotiate a renewal or revision of the collective agreement or a new collective agreement.*
>
> *(2) A written notice pursuant to subsection (1) must be given not less than 60 days nor more than 120 days before the expiry date of the collective agreement.*
>
> *(3) If a written notice is given pursuant to subsection (1), 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.*
>
> …

[11] *Saskatchewan Polytechnic Faculty Association v Saskatchewan Polytechnic*, 2016 CanLii 58881 (SK LRB) [*Saskatchewan Polytechnic*], at para 16.

> ***6-41*** *…*
>
> *(6) If there is any conflict between a provision of a collective agreement and a requirement of this Part, the requirement of this Part prevails.*

[21] The 120-60 day "open period"[12] mentioned in s. 6-26(2) came into effect when the Act entered into force in 2014. This was a change from the 60-30 day open period which had been in place under *The Trade Union Act* [*TUA*].[13]

[22] Section 33 of the *TUA* contained the relevant predecessor provisions:

> ***33****(1) Except as hereinafter provided, every collective bargaining agreement, whether heretofore or hereafter entered into, shall remain in force for the term of operation provided therein and thereafter from year to year.*
> *…*
>
> *(4) Either party to a collective bargaining agreement may, not less than thirty days or more than sixty days before the expiry date of the agreement, give notice in writing to the other party to terminate the agreement or to negotiate a revision of the agreement and where a notice is given the parties shall forthwith bargain collectively with a view to the renewal or revision of the agreement or the conclusion of a new agreement.*[14]

[23] In *Integ Management*[15] Mr. Justice Scheibel interpreted these provisions. There, the issue was whether the statutory notice period in s. 33(4) of the *TUA* overrode a conflicting provision in a collective agreement. Scheibel J. concluded it did, and his reasoning was upheld by the Court of Appeal:

> *24 In my opinion the legislature, in using the words "except as hereinafter provided", intended that s. 33 of the Act should apply to every collective bargaining agreement unless it is within the exceptions provided in the Act. In this case the exceptions are not applicable. Therefore s. 33 of the Act overrides any conflicting provisions contained in a collective agreement.*[16]

[24] In the course of his reasons, Scheibel J. referred to the Court of Appeal's decision in *Utah Co.*[17] In that decision, the Court of Appeal similarly had to decide whether a statutory notice period in a previous iteration of the *TUA* overrode a conflicting provision in a collective agreement. The Court of Appeal concluded that it did (emphasis added):

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[12] The "open period" is the period in which either party to a collective agreement may give notice to the other that they wish to negotiate a renewal or revision of the collective agreement or a new collective agreement.
[13] *The Trade Union Act*, RSS 1978, c T-17 [*TUA*].
[14] *TUA*, s 33.
[15] *CUPE, Local 2399 v Integ Management and Support Services Ltd.*, 1986 CanLII 3358, [1987] 1 WWR 40 (SKKB) [*Integ Management*].
[16] *Integ Management*, at para 24; affirmed in *CUPE, Local 2399 v Integ Management and Support Services Ltd.*, 1987 CanLII 4646, [1987] 3 WWR 479 (SKCA)
[17] *Utah Co. of the Americas v International Union of Operating Engineers, Hoisting and Portable, Local 870*, 1959 CanLII 229, 21 DLR (2d) 166 (SKCA) [*Utah Co.*].

> *10 The only ground upon which the order of the labour relations board is attacked is that the board found that the notice to negotiate given by the union under the 60-30 day provision of sec. 26 of The Trade Union Act was effective "notwithstanding the provisions of Article 24 of the collective bargaining agreement." It is contended that this finding shows an error on the face of the order. The contention must be that the provision of art. 24 of the collective bargaining agreement must be followed in place of the statutory provision. Sec. 26 of The Trade Union Act is as follows:*
>
> > *26. — (1) Except as hereinafter provided, every collective bargaining agreement, whether heretofore or hereafter entered into, shall, notwithstanding anything contained therein, remain in force for a period of one year from its effective date and thereafter from year to year.*
> >
> > *(2) Either party to a collective bargaining agreement may, not less than thirty days nor more than sixty days before the expiry date of such agreement, give notice in writing to the other party to terminate such agreement or to negotiate a revision thereof, and thereupon, subject to subsection (3), the parties shall forthwith bargain collectively with a view to the renewal or revision of such agreement or the conclusion of a new agreement.*
>
> *11 The words in subsec. (1) "notwithstanding anything contained therein" make it clear that provisions in the collective bargaining agreement cannot affect the provisions of sec. 26 of the statute. Notwithstanding any provision of the collective bargaining agreement, the agreement remains in force for one year from its effective date and thereafter from year to year except as provided in subsecs. (2) and (3). There can be no doubt as to the meaning of sec. 26; the words are plain. There is no ambiguity and the words must be interpreted in their ordinary sense.*[18]

[25] In the Board's view, the proper meaning to attribute to s. 6-26(2) is that it overrides any conflicting provision in a collective agreement, pursuant to s. 6-41(6). In other words, the combination of ss. 6-26(2) and 6-41(6) operates in the same manner as their predecessor provisions did under the *TUA*. This is consistent with a grammatical and ordinary interpretation of the provisions in context,[19] and the Legislature's continued intention to regulate the open period near the expiry of collective agreements. A regulated open period creates commonality in collective bargaining relationships. It ensures that a party receives a minimum amount of notice before being required to bargain under the Act, rather than having an agreement extended for another year pursuant to s. 6-39(1)(b).

[26] Subsection 6-41(6) is clear and unambiguous: *If there is any conflict between a provision of a collective agreement and a requirement of this Part, the requirement of this Part prevails.* The requirement in s. 6-26(2) is to provide notice not less than 60 days before the expiry of a collective

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[18] *Utah Co.*, at paras 10-11.
[19] As required by s. 2-10 of *The Legislation Act*, SS 2019, c L-10.2.

agreement. Pursuant to s. 6-41(6), a conflicting provision in a collective agreement cannot relieve a party from compliance with this notice period.[20]

[27] Here, the Union admits that it did not comply with the statutory notice period in s. 6-26(2). The Employer's obligation to bargain under s. 6-26(3) could only arise if the notice requirement in s. 6-26(2) had been complied with, which did not occur.

[28] Notably, if the requisite notice had been provided pursuant to s. 6-26(2), s. 6-26(3) would have required the parties to "immediately engage in collective bargaining", as opposed to within the 30 days following service of the notice, as contemplated in article 23.02 of the parties' collective agreement.[21]

[29] The result is that the ULP cannot succeed insofar as it alleges a refusal or failure to bargain in response to the Union's December 28, 2022 notice. It is plain and obvious that the Employer was under no obligation under the Act to bargain when served with the notice, and the collective agreement remained in force for another year until January 31, 2024, pursuant to s. 6-39(1)(b).

[30] This leaves the Union's allegations that: (1) the Employer bargained in bad faith in 2019 because it did not indicate that it would not respect the notice period in article 23.01 of the agreement; and (2) the Employer bargained in bad faith when it offered to settle the grievance in April 2023.

[31] The Board will address these allegations in turn.

[32] Respectfully, the Union's allegation that the Employer must have been bargaining in bad faith in 2019 is not stated in its ULP, or at least not clearly or expressly stated.[22] It appears to

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[20] In this regard, ss. 6-26(2) and 6-41(6) operate differently than s. 59(2) of Alberta's *Labour Relations Code*, which states (emphasis added): "… when a collective agreement is in effect, either party to the collective agreement may, not less than 60 days and not more than 120 days preceding the expiry of the term of the collective agreement or within any longer period that may be provided for in the collective agreement, by notice in writing, require the other party to the collective agreement to commence collective bargaining."

[21] The Board notes that the 30 day period in article 23.02 of the parties' collective agreement is similar to the 30 day period in s. 60(1) of Alberta's *Labour Relations Code*: "When a notice to commence collective bargaining has been served under this Division, the bargaining agent and the employer or employers' organization, not more than 30 days after notice is served, shall… meet and commence, or cause authorized representatives to meet and commence, to bargain collectively in good faith, and… make every reasonable effort to enter into a collective agreement."

[22] At paragraph 5 of the ULP, the Union states: "We have since learned that the Saskatchewan Employment Acts were updated in 2014, and the notice period was extended to 60 days. However, this change has never been updated in our CBA through two contract negotiations or brought to the attention of the union. Despite this, [the Employer] agreed to these terms in our last bargaining session in 2019, so we are left confused as to why they are now using this as a reason to deny bargaining."

have been made in response to the Employer's summary dismissal application.[23] Accordingly, there is a legitimate question as to whether this allegation has been properly pled for the purposes of the ULP. For the purposes of the summary dismissal application the Board will assume (without deciding) that it has been, or could be. Even so, as explained below, the Board refuses to hear the allegation, pursuant to s. 6-111(3).

[33] The Board notes that an inquiry into this allegation would require an examination of circumstances from approximately four years ago. Further, the Union was aware of the Employer's position - that it would not negotiate due to non-compliance with s. 6-26(2) - as of December 30, 2022.[24] Yet, the Union did not file the ULP until June 12, 2023, in spite of filing a grievance respecting the Employer's failure to negotiate on February 9, 2023. And even then, as mentioned above, an allegation of bad faith bargaining in 2019 only really became apparent in the Union's August 14, 2023 reply to the Employer's summary dismissal application.

[34] In these circumstances, the Board refuses to hear the allegation asserting bad faith bargaining in 2019, pursuant to s. 6-111(3). In exercising its discretion to do so, the Board presumes labour relations prejudice based on the dated nature of the allegation. The Union has not identified any countervailing considerations, and the Board is not aware of any which would justify hearing the allegation. Inquiring into circumstances from four years ago could present challenges with respect to the availability and reliability of evidence. The Union is a sophisticated party which promptly filed a grievance based on the Employer's refusal to bargain but waited four months after having done so to file the ULP, and until its reply to the Employer's summary dismissal application[25] to squarely allege bad faith bargaining in 2019. In sum, in considering the principles identified in *Saskatchewan Polytechnic* (at paragraph 18 of these reasons), the Board concludes that it is appropriate to exercise its discretion to refuse to hear this allegation.

[35] The remaining allegation is that the Employer bargained in bad faith in April 2023 when it tried to settle the February 9, 2023 grievance. This allegation, unlike the allegation of bad faith bargaining in 2019, is apparent on the face of the ULP; the Union appended the parties' settlement-oriented communications to the ULP.

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[23] In its reply to the summary dismissal application the Union states "the company committed bad faith bargain [*sic*] when signing the current contract on August 27, 2019 if it had no intention of following Article 23 and its requirements when the contract was signed."
[24] The Employer's position was stated in correspondence to the Union dated December 30, 2022, appended as Document #3 to the ULP.
[25] This was filed on August 14, 2023.

[36] Fundamentally, this allegation relies on presumptively privileged settlement-oriented communications[26] with respect to a grievance over which the Board has no jurisdiction.[27]

[37] In spite of this, the Union asserts that the Board has jurisdiction arising from the Employer's efforts to settle the grievance, which it characterizes as bad faith bargaining.

[38] The Board reiterates that the Act imposed no obligation on the Employer to engage in collective bargaining in response to the December 28th notice. Accordingly, s. 6-7, referenced by the Union as grounding the ULP and its requested relief, has no application (emphasis added):

> ***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.*

[39] Because the Act imposed no obligation on the Employer to engage in collective bargaining, s. 6-62(1)(d), the other provision referenced by the Union as grounding the ULP and its requested relief, is similarly inapplicable (emphasis added):

> ***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:*
> *…*
> *(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;*

[40] There is no basis for the Board to examine the Employer's presumptively privileged communications. Settlement privilege extends to communications offering a compromise to resolve a litigious dispute,[28] whether or not a settlement is achieved.[29] Admittedly, the privilege is not absolute, and it may be abrogated if a competing public interest outweighs the public interest in encouraging settlement (which provides the basis for the privilege).[30] However, a threshold requirement for the Board to even consider abrogating the privilege would be that the ULP alleges facts disclosing a violation of the provisions of the Act relied upon by the Union, and the ULP does not do so. Were it otherwise, a union or employer could come before the Board any time it took

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[26] See *Sable Offshore Energy Inc. v Ameron International Corp*., 2013 SCC 37 [*Sable Offshore Energy*], at paras 12-17.
[27] The Union's February 9, 2023 grievance centers on the application and alleged contravention of the parties' collective agreement, particularly articles 23.01 and 23.02. Pursuant to s. 6-45(1) of the Act, determining whether a contravention of the agreement occurred, and if so, the appropriate remedy, is within the exclusive jurisdiction of a grievance arbitrator: See *Northern Regional Health Authority v Horrocks*, 2021 SCC 42, at paras 39-40.
[28] *Sable Offshore Energy*, at para 14.
[29] *Sable Offshore Energy*, at para 17.
[30] *Sable Offshore Energy*, at para 19.

issue with the other's offer to settle a grievance merely by characterizing the offer as "bad faith bargaining". This would be untenable, and it is not contemplated by the Act.[31]

[41] The result of these reasons is that the Employer's application is successful and the ULP is dismissed pursuant to clauses 6-111(1)(o), (p) and (q) and subsection 6-111(3) of the Act. An appropriate order will accompany these reasons.

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

DATED at Regina, Saskatchewan, this **5th** day of **October, 2023.**

LABOUR RELATIONS BOARD

Michael J. Morris, K.C.
Chairperson

[31] A circumstance in which the Board might be asked to examine an offer to settle a grievance, or a concluded settlement of a grievance, is within the context of an employee-union dispute alleging a breach of the duty of fair representation. Such a dispute is anchored in an alleged violation of s. 6-59 of the Act.