CITY OF PRINCE ALBERT, Applicant v CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 882, Respondent

LRB File No. 111-23; September 28, 2023

Vice-Chairperson, Barbara Mysko; Board Members: Aina Kagis and Jenna Moore

For the Applicant, City of Prince Albert: Kevin Yates

For the Respondent, Canadian Union of Public Employees, Local 882: Craig Thebaud

Application to Conduct Vote – Employer Application – Vote on Employer's Last Offer – Objections by Union – Board Considers Objections – Limits on Board's Discretion – Clear, Definitive, Unequivocal Last Offer – Conditions Precedent Met – No Additional Discretion.

REASONS FOR DECISION

Background:

[1] Barbara Mysko, Vice-Chairperson: On August 9, 2023, the Board issued a Direction for Vote pursuant to section 6-35 of *The Saskatchewan Employment Act*, with reasons to follow. These are the Board's Reasons.

[2] The Employer, the City of Prince Albert, brought the application. The Union, CUPE, Local 882, is the exclusive bargaining agent for a group of employees subject to specific exceptions, pursuant to an amended certification order of this Board, dated May 25, 2023.[1] The collective bargaining agreement [CBA] between the parties expired on December 31, 2021.

[3] The parties have been bargaining since November of 2022. In or around June 2023, the parties exchanged offers of settlement, including a final offer by the Employer. The Union took the final offer to the membership, and it was rejected. A strike vote was taken. The parties proceeded to conciliation pursuant to section 6-33 of the Act but did not resolve the dispute. On July 26, 2023, the Employer made its application, pursuant to section 6-35 of the Act.

[1] LRB File No. 118-22.

[4] Section 6-35 states:

> ***6-35****(1) At any time after the parties have engaged in collective bargaining, any of the following may apply to the board to conduct a vote among the employees in the bargaining unit to determine whether a majority of employees voting are in favour of accepting the employer's last offer:*
>
> > *(a) the union;*
> >
> > *(b) the employer;*
> >
> > *(c) any employees of the employer in the bargaining unit if those employees represent at least 45% of the bargaining unit or 100 employees, whichever is less.*
>
> *(2) On receipt of an application pursuant to this section, the board shall direct that a vote be taken.*
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> *(3) Only one vote with respect to the same dispute may be held pursuant to this section.*
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> *(4) On the recommendation of a labour relations officer, a special mediator or a conciliation board or if the minister considers it to be in the public interest, the minister may require the board to order a vote on the employer's last offer.*
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> *(5) A vote required in accordance with subsection (4) may be in addition to a vote taken on an application pursuant to subsection (1).*
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> *(6) If a majority of votes cast favour acceptance of the employer's last offer:*
>
> > *(a) a collective agreement is thereby concluded between the parties; and*
> >
> > *(b) the collective agreement is to consist of the terms voted on and any other matters agreed to by the union and the employer.*

[5] Section 11 of *The Saskatchewan Employment (Labour Relations Board) Regulations, 2021* [Regulations] states:

> ***11*** *A union, employer or employees that intend to apply to the board for an order pursuant to section 6-35 of the Act shall file:*
>
> > *(a) an application in Form 8 (Application to Conduct Vote); and*
> >
> > *(b) in the case of an application by employees, the evidence of employees' support required by that section.*

[6] In accordance with the relevant provisions of the Act and the Regulations, the Employer filed with the Board:

(a) A copy of the Employer's last offer;

(b) A list of the names and addresses of the employees in the bargaining unit as of the date on which the application was filed;

[7] The Employer filed the original certification order (order dated July 11, 1996 in LRB File No. 095-96) but did not file the most recent, operative certification order, which it was required to do.

[8] In the Union's Reply, it denies many if not all of the allegations made by the Employer in its application. The Union points out that the certification order filed by the Employer was rescinded on May 25, 2023. The Union also attaches the list of employees it believes are the current employees of the bargaining unit.

Issues:

[9] The Union asks the Board to dismiss the application. It raises the following concerns:

- The last offer proposes wage adjustments for certain workers through a triggering event of the signing of a Memorandum of Agreement. There is no Memorandum of Agreement, therefore, those wage adjustments are not a part of the Employer's last offer. This would result in leaving employees with the wrong impression about wage adjustments.

- The last offer is subject to an Employer ratification process. For the Board to conduct the vote, the last offer cannot be subject to a ratification process. Subsection 6-35(6) of the Act states that if a majority of the bargaining unit votes in favour of the last offer this concludes bargaining and forms the amendments to a new collective agreement.

- The last offer is not a Memorandum of Agreement. Therefore, the heading entitled "Memorandum of Agreement" should be removed from the offer before a vote is ordered. Otherwise, the voters will be misled.

- The last offer proposes to delete Letters of Understanding [LOUs] 2022-05 and 2022-06. All LOUs were agreed to be renewed.

[10] Following receipt of the pleadings, the Board sought written submissions from the parties in relation to the Union's objections. At that time, the Board indicated that the parties may wish to review *Calokay Holdings Ltd. v United Food, 2016 CanLII 30543 (SK LRB)* [*Calokay*], at paragraphs 18 to 25. The Board received submissions from both parties and found them helpful.

[11] The Employer states that it has satisfied the requirements pursuant to section 6-35. The provision is not discretionary. In response to the Union's specific concerns, it states:

- It is clear on the face of the collective agreement that the wage adjustments would take effect upon the signing and implementation of the agreement. In offering those adjustments, the Union told the members that the adjustments were part of the offer, and removing the adjustments would change a document already presented to the membership. No further negotiations are needed to implement the wage adjustments.

- The ratification statement in the offer is a procedural statement found in all settlement documents. The Employer's bargaining committee has the necessary approvals and must have before offering a monetary package. The Union requires a vote from its membership to accept or reject an offer.

- The paragraphs under the heading "Memorandum of Agreement" provide clarity to the members that:

    - the only changes to the collective agreement are those that are in the offer;

    - that Articles in the previous agreement not referenced are to remain as presented but LOUs, unless expressly renewed or amended, are to expire; and

    - sets out the effective dates and the term.

- The Employer agreed that all LOUs would be renewed in earlier bargaining. Two of the LOUs were written with the intent to be included in the agreement itself (not attachments) in the next round. The last offer is consistent with this. If the Union wishes to keep those LOUs as attachments, then that can be accommodated.

[12] The Employer opposes any redaction of the offer before a vote.

[13] The Union argues, based on the concerns that it raised in its Reply, that the offer is not a properly constituted last offer.

Analysis:

[14] The Union raised a preliminary issue with the Employer's failure to file the most recent certification order. The Board decided not to dismiss the application on this basis. On the whole, this was the only deficiency found in the application and it was a technical deficiency involving a Board document of which the Union is very much aware.

[15] In *Calokay*, the Board described the substantive requirements for a successful application pursuant to section 6-35:

> *[18] However, there are other requirements that must be present before an application can be made under section 6-35. These are that the parties (1) must have engaged in collective bargaining and (2) there must have been a last offer presented on which the employees can be expected to vote.*
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> *[19] There is no issue between the parties with respect to whether or not collective bargaining had occurred. However, there was an issue between the parties as to the nature and content of what the Board should consider as the last offer on which the employees should vote.*
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> *…*
>
> *[21] However, before proceeding further with this analysis, the Board wants to point out to both parties and to others who may seek to make applications in the future under section 6-35 that the Board is concerned about the formulation of the last offer in this case and wants to advise any future applicant that there must be a clear, definitive and unequivocal last offer from the employer, which offer would resolve all matters remaining in dispute between the parties, and which has been presented to the union as a last offer, before the Board will be called upon to order a vote. The rationale for this is simple. Employees must know what terms and conditions of their employment will be impacted by their vote, as the result of a vote in favour of the last offer crystalizes a collective agreement between the parties. If the employees vote to accept the last offer, there is no refining of that last offer once the vote has been conducted and the employees have voted in favour. It is a demonstration of the old maxim, "Be careful of what you want, because you may end up getting it".*
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> *…*
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> *[23] Returning to the issue of the requirement to issue a vote, we agree that, presuming the conditions precedent for the issuance of a vote are met, then the Board has no discretion with respect to the issuance of a vote on the last offer. This is consistent with both the purpose of section 6-35 which is to provide a form of safety valve for negotiations between a union and the employer.*
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> *[24] In this fact situation, the Board has determined that notwithstanding the vagueness of the Employer's last offer, that it would nevertheless order the requested vote. There may, however, be situations where such a request may be considered to lack sufficient clarity, definition or be so equivocal that a final collective agreement could not result if the vote was to be determined to be in favour. Where a last offer is such that, does not address all of the matters in issue between the parties and, if it is accepted, the result would not be a collective agreement may not be permitted to proceed and should, in our opinion be adjourned by the Board pending resolution of a last offer which does not contain the defects outlined above.*
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> *[25] Nevertheless, as shown by our earlier issued order, the Board is of the view that this last offer is not so deficient that it cannot result in a collective agreement being concluded should the vote affirm the Employer's last offer.*

[16] In the current case, there is no issue as to whether collective bargaining had occurred. The Board does note that one of the Union's concerns (that the terms of the agreements were changed) might have fit within this heading, even if the Union did not articulate it in this way. As

explained in the following paragraphs, the concern was unfounded and does not justify the Union's objection no matter how it is articulated.

[17] The main issues pertain to whether there is a last offer presented on which the employees can be expected to vote. As set out in *Calokay*, there must be "a clear, definitive and unequivocal last offer from the employer, which offer would resolve all matters remaining in dispute between the parties, and which has been presented to the union as a last offer". In considering this question, the Board has regard for the issues raised:

- *The Last Offer includes a section titled "Memorandum of Agreement" indicating that the union and the employer have agreed to the changes outlined in the Last Offer, which is not the case.*

- *The Last Offer contains a provision that if accepted by union members would still be subject to ratification by the employer.*

- *The Last Offer contains changes to the collective agreement that the [parties] agreed would not be made; and*

- *The Last Offer contains wage adjustments that have an implementation date that will not happen.*

[18] The Board does not agree with the Union's concerns about the Memorandum of Agreement language. The section titled "Memorandum of Agreement" is not misleading. It provides important information for the members. It is reasonable to expect that in a vote on a last offer, the members would be able to understand that they are voting on an offer, as opposed to an agreement. There is nothing unusual about offers being presented in this manner.

[19] The Board has no concerns about the ratification language included in the offer. This is standard language. The Union's concerns suggest that the Employer's bargaining team did not have authority to conclude an agreement that it was negotiating. There is no evidence of this in the offer or in any of the materials that were filed.

[20] Furthermore, subsection 6-35(6) states that if a majority of votes favour acceptance of the last offer a collective agreement is concluded and the agreement is to consist of the terms voted on and any other matters agreed to by the Union and the Employer. This provision protects the Union from the mischief it alleges.

[21] The Union's concerns about ratification are wholly unfounded.

[22] Next, the Union suggests that the Employer has made changes to the LOUs that the Employer promised would not be made. The materials suggest otherwise. The LOUs pertain to the restructuring of multiple departments within the City. A review of the LOUs and the related Articles supports the Employer's explanation that the LOUs were written to be included in the agreement (2022-05 explicitly so) and were then included in the agreement. LOU 2022-06 is intended to ensure job titles and duties more accurately reflect the new organizational structure. In line with this intent, the offer states "incorporate new titles into Collective Agreement as required".

[23] Nevertheless, the Employer offered to include the LOUs in the collective agreement if that was the Union's preference. Obviously, there is no real issue here.

[24] Lastly, there is no evidence that the Employer does not intend to implement the wage adjustments that it has offered. It is clear on the face of the offer that the wage adjustments would take effect upon the signing and implementation of the agreement.

[25] In summary, none of the Union's concerns are founded. The Union has a clear, definitive, and unequivocal last offer from the Employer, which offer would resolve all matters remaining in dispute between the parties, and which was presented to the Union as a last offer.

[26] The conditions precedent for the issuance of a Direction for Vote are met. The Board has no residual discretion with respect to the issuance of a Direction for Vote on the last offer.

[27] The Direction for Vote was issued for those reasons, by a unanimous decision of the Board.

DATED at Regina, Saskatchewan, this **28th** day of **September, 2023.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson