SCARLA GOULD, Applicant v SEIU-WEST and VENTAS CANADA RETIREMENT III, LP, Respondents

SEIU-WEST, Applicant v VENTAS CANADA RETIREMENT III, LP, Respondent

LRB File Nos. 102-23 and 118-23; August 9, 2024
Vice-Chairperson, Barbara Mysko; Board Members: Shawna Colpitts and Laura Sommervill

The Applicant, Scarla Gould:	Self-Represented
Counsel for SEIU-West:	Shannon Whyley
Counsel for Ventas Canada Retirement III, LP:	Trevor Lawson

Decertification Application – Issue of Employer Influence or Interference – Inappropriate Conduct – Application Dismissed.

Unfair Labour Practice Application – Allegation of Employer Withholding of Information – Matter Addressed through CBA Process.

Unfair Labour Practice Application – Employer Communications – Declaration and Notice to Post Issued.

REASONS FOR DECISION

Introduction:

[1] Barbara Mysko, Vice-Chairperson: The Union, SEIU-West, holds bargaining rights for the employees of Ventas Canada Retirement III, LP, operating the Primrose Chateau Retirement Community [Employer], pursuant to a certification order dated May 2, 2017.[1] The Employer and the Union are also parties to a collective bargaining agreement with a term of February 1, 2021 to January 31, 2026 [CBA]. Scarla Gould, an employee of Primrose Chateau and a member of the Union, applied for decertification on July 12, 2023. On August 8, 2023, the Union filed an unfair labour practice [ULP] application.[2]

[2] A hearing was held in relation to these applications over approximately three weeks in February, April, and May 2024.

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[1] LRB File No. 093-16. The certification order is for all employees except “managers and co-managers”. The CBA references the scope of the certification order at Article 4.
[2] The Union’s reply to the decertification was also filed on August 8, 2023.

[3] The Union states that the decertification application was made in whole or in part on the advice of, or as a result of the influence, interference, or intimidation of the Employer, or the Employer's agents. A summary of its allegation is as follows:

> *i. The Employer's repeated failure to provide timely information regarding new and existing employees within the bargaining unit, and other member information required by the Collective Bargaining Agreement and necessary to the Union's representation of its members;*
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> *ii. The Applicant's working in concert with the Employer's local management;*
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> *iii. The Employer's interference with the vote through its communications and/or tacit approval of anti-union communications in the workplace by the Applicant; and*
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> *iv. The Employer's communications with employees subsequent to the filing of the Application in a manner that was false and/or misleading.*[3]

[4] The Union says that the Employer's conduct has interfered with "its capacity to represent the employees for whom it has bargaining rights by impeding the Union's ability to communicate with these employees as set out in more detail in the ULP Application."[4] The Union also alleges that the Employer's conduct is intended to and/or has the effect of interfering with the administration of the Union and is based on anti-union animus.

[5] The Union asks the Board to dismiss the decertification application pursuant to section 6-106 of *The Saskatchewan Employment Act* [Act], and to find that the Employer committed a ULP or ULPs pursuant to sections 6-41(2) and (3), 6-62(1)(a), (b), and (r).

[6] The decertification application was filed pursuant to section 6-14 of the Act, which is the provision that provides for decertification when a union ceases to be a union. After it was filed, the Board staff processed the application as though it had been filed pursuant to section 6-17, which is the provision that relates to loss of support for the union. At the hearing, the Board confirmed[5] that there was no objection by the parties to this approach and allowed the matter to proceed pursuant to section 6-17.

[7] On appearance day on September 6, 2023, dates were scheduled for the substantive hearing, being February 12 to 15, 2024, and a decision was made to email Gould the form for an application to intervene in the ULP application. Although the deadline for an intervention

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[3] Union's Reply to the decertification application, at para 5(c).
[4] Union's Reply to the decertification application, at para 5(d).
[5] On the first day of the hearing.

application was also September 6, neither this deadline nor any other deadline was raised.[6] As it turned out, Gould filed her application to intervene on January 30, 2024.[7]

[8] There was a skirmish about a potential adjournment. On February 9, 2024, the Board held a case management conference at which time the Union acknowledged that Gould had the right to take a position and call evidence on issues raised in the decertification application, which put in issue the ULP, and that Gould didn't need to be added as an intervenor. The parties were satisfied that they could proceed without further exploration of an intervention application. It was understood by those participating that the evidence in both proceedings would apply to both.

[9] The order of proceedings was determined to be: Gould, Union, Employer.

[10] The next procedural issue was that the Employer did not file a reply to the decertification application. It did, however, file a reply to the ULP application. This became a problem, in part, because the Union's reply cited section 6-106 of the Act, whereas the ULP application did not. The Employer did not refer to section 6-106 in its reply to the ULP application. Section 6-106, of course, contains different language than section 6-62.

[11] On the first day of the hearing the Board heard arguments from the parties about this issue. The Union again requested an adjournment. To their credit, counsel for the Union admitted that the Union hadn't picked up on this problem, was preparing its case on the basis that 6-106 was in issue and acknowledged that the issue had not previously been raised with the Board. The Board permitted the Employer to file its reply to the decertification late but required that it be filed by 2 p.m. that day. The Board indicated that the intention would be to proceed with the substantive case the following day.

[12] The Board also heard from the parties with respect to the applicant's failure to file the certification order (pursuant to the requirement in the Regulations). The Union had raised this omission as a reason to dismiss the application. Given that the error was a basic technical defect resulting in no prejudice to the parties, the Board permitted the matter to proceed despite the defect.

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[6] Pursuant to section 25 of the Board's Regulations, the deadline for an intervention application is "within 20 business days after the date on which the original application was filed with the board" . The Board's email was sent to Gould late that afternoon.

[7] According to the Regulations, Gould was required to apply to Executive Officer to extend to the time to apply to intervene.

Evidence:

[13] The Board heard testimony from Gould on her own behalf; from Chris Epp, Kelly Reynolds, Stacy Lolacher and Cameron McConnell on the Union's behalf; and from Dale Wallis on the Employer's behalf:

i. Epp is the unit chair. He is employed at Primrose Chateau as a kitchen utility worker. He has been working there for approximately 22 years.

ii. Reynolds was the Union representative for the employees of Primrose Chateau from May 2022 to March 2024.

iii. Lolacher is the lead organizer with the Union.

iv. McConnell is the northern negotiations officer with the Union. Primrose Chateau is within his assigned region. He was also the Union representative for Primrose Chateau at one time.

v. Wallis is the General Manager of Primrose Chateau. He reports to a Vice-President of the company, Cam Johnson.

[14] Primrose Chateau is located in Saskatoon and provides independent apartment style residences for approximately 130 seniors. There are approximately 35 to 38 bargaining unit members, 12 of whom are full-time employees and the rest who work part-time.

[15] Wallis became General Manager of Primrose Chateau in April 2019. During his time as General Manager there have been four Union representatives assigned to the workplace, in the following chronological order: Judy Horsman, Rhonda Stewart, Sinda Cathcart, and Reynolds. Before Horsman, McConnell was the Union representative, but this was before Wallis's time. During his examination in chief, Wallis portrayed himself as a collaborative manager who was interested in a friendly relationship with the Union.[8]

[16] Wallis testified that, upon his arrival, he had no responsibility for labour relations, and that the person in charge of labour relations was Ron Zelichowski (HR Director). Johnson and Zelichowski made it clear to Wallis that his responsibilities were to ensure that the CBA was followed, but that the "administration" of the agreement and the negotiation of the agreement rested with the HR department.

[8] For example, Wallis testified that when he had worked for the federal government, he was a chief steward for the union and was extensively involved in developing the union-management collaborative framework.

[17] In cross, Wallis was asked about his described delineation of responsibility. He testified that he was responsible for the daily supervision of staff, but not for any communication with the Union. When asked again, he said more specifically that his responsibility was for the union members within the building and the delivery of the CBA within the operations; Zelichowski's responsibility was for the administration of the CBA and communication with the Union about that.[9]

[18] Despite this division of responsibility, Wallis testified that within the first two weeks of his arrival, he asked Epp for the name of the Union representative and was told that it was Horsman. He contacted Horsman to schedule a time for coffee. Horsman said she would get back to him and never did. The next time they spoke was approximately a year later when she asked if she could use a room on the premises for a meeting, and when she arrived for the meeting, they met in person. He asked her again if they could get together and she said she would get back to him. She did not.

[19] During Horsman's tenure, Wallis could not recall any grievances being filed or any concerns raised about union membership cards, employee lists, seniority lists, job postings, or work assignments. He couldn't recall her raising any concerns at all. According to Wallis, other than on these two occasions, Wallis had no contact with Horsman. Wallis testified that it was at this hearing that he first heard of the other two representatives, Stewart and Cathcart.

[20] On cross, Wallis testified that Horsman didn't communicate with him by email. He was then presented with an email exchange between himself and Horsman from March 2020, in which he was accused of holding a disciplinary meeting in the absence of Union representation.[10]

[21] Also on cross, he was presented with an email exchange between Zelichowski and Horsman that occurred in July 2020, to which Wallis was copied. It raised an issue about a bargaining unit member and the CBA.

[22] When it was put to him that these emails were two occasions when Horsman raised an issue about a bargaining unit member, he commented:

> *Not necessarily. I don't agree that either of these were issues. I believe that both of them were administrative or questions about process.*

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[9] Wallis also testified that he had no independent authority to attend a labour-management meeting.
[10] Wallis responded that he had believed that Union representation only started after probation.

[23] He said that neither of these issues became grievances and the questions raised were answered.

[24] Epp testified that he didn't have a recollection of Horsman or Cathcart attending the community and he couldn't recall the last time there was a joint labour-management committee meeting.[11] As far as Epp could recall, Reynolds had attended the Primrose Chateau premises three or four times during his term.[12]

[25] Wallis also testified that Epp didn't file any grievances during Wallis's tenure, nor did Epp and Wallis hold any meetings to discuss Union matters. About four years ago, he asked Epp about union membership cards (because they weren't available) and Epp's response was that the Union no longer collected physical cards and that it was all done electronically.[13]

[26] Wallis also testified that he never received notice of Union stewards.[14]

[27] Gould was first hired at Primrose Chateau in 2019 as an in-scope part-time bus driver. Wallis was involved in her hiring. About a year later, the Engage[15] Life Coordinator [ELC] resigned, and Gould filled the position. Eventually, her position as ELC was terminated with just cause for failure to comply with the workplace vaccination policy.

[28] Gould testified that before her termination, since working as the ELC, she had wanted to decertify. She explained her motivation: the employees, who number only 37 do not need a union and the Union wasn't doing anything for them. She testified that her issues weren't necessarily specific to this Union but were related to unions generally. In cross by the Employer, Gould explained that she wasn't a "union person".

[29] During the first phase of her employment, Gould spoke to a resident at Primrose Chateau, GT, about how to remove a union from the workplace. GT advised that Gould just had to "get it to a vote". She asked how to do that, and he said, "you collect signatures". She believed that the conversation with GT, which was very brief, took place in the hallway one day at work. She didn't know anything about him, but someone had said that he was the person to talk to.

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[11] Reynolds acknowledged in his testimony that there were no labour-management meetings during his tenure.
[12] Including for a corrective action meeting in relation to Epp.
[13] For what it is worth, Wallis testified that the managers at Primrose Chateau had all indicated that they hadn't signed membership cards when they were in-scope.
[14] Article 8.02 of the CBA.
[15] Wording as per the title as indicated in the CBA.

[30] She didn't have time to do anything about it then, and so she didn't take the time to understand what he meant by "get it to a vote".

[31] On February 22, 2022, Cathcart emailed Zelichowski to introduce herself and to confirm that the Employer had released union members from the vaccine mandates. Wallis was not copied on the email, but Epp was. Zelichowski replied that all employees were expected to be fully vaccinated and attached a letter he had sent to Gould. Cathcart responded that the Employer had failed to copy the Union on its correspondence with Gould, reminding the Employer that any and all correspondence to a member that relates to any labour relations matter must be copied to herself. She indicated that her email was "Step 1 of the Grievance Procedure".[16]

[32] Gould was terminated on March 1, 2022.

[33] Wallis signed the termination letter as General Manager but didn't prepare it – Zelichowski did.[17] Copied on the letter are Zelichowski, Epp, and "Sinda Cathcart, SEIU-West Staff Representative". Wallis testified that he didn't make the connection that Cathcart was the Union representative for Primrose Chateau. He thought Horsman was the representative.

[34] Wallis called Gould to the office along with Epp and gave her the letter.

[35] Although Epp had spoken to Gould about it, he did not sign a grievance report for Gould, nor receive any direction to sign one. No grievance was filed.

[36] The question as to whether Gould filed or intended to file a grievance was a matter of some contention. At some point, Gould filled out a grievance report form but included only Wallis's first name and not his last. When the Union asked her about this, she explained that she was unsure whether to file a grievance at the time, was working full time, and didn't have time to "chase the case".

[37] She testified that she was reluctant to name Wallis on her grievance form because she didn't want to get him in trouble. Gould expressed her concerns to Cathcart. In light of Gould's concerns, Cathcart emailed Gould on March 3, asking her to "reply all" to confirm the direction she wanted the Union to take.

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[16] However, Epp didn't have discussions with Gould about the email.
[17] Zelichowski had also prepared the letter, dated February 15, 2022 (U-2).

[38] When asked by the Employer's counsel if Gould recalled sending the "reply all" email, she said, "I was still too in the head". She indicated that she didn't know if she wanted to continue, and then said, "I don't believe I did". During the hearing, on the request of Employer's counsel, Gould agreed to check her records to see if she sent the "reply all" email, saying that she doubted that she had anything "other than what is here". After checking she indicated, "I did check and I didn't respond".

[39] Then, on March 28, Cathcart sent an email to Gould:

> *SEIU-West will require your completion of the attached Grievance Report Form (inclusive of your provision of the Manager's last name). I will need your signature on the Grievance Report form (where it so indicates). Then I will seek Chris Epp's signature in follow up. If you can take a clear photo of the attached, once you've printed and signed, email the photo back to me and the Union will process the grievance on your behalf.*

[40] Again, Gould couldn't recall this email and didn't have a record of it.

[41] There is a grievance report form in evidence containing Wallis's last name and Gould's signature, dated March 29, 2022.[18] Oddly, it is a different form with no place for the steward's signature. The insinuation was that Gould changed the form to remove the field for the steward's signature. However, there is also formatting at the top of the form that is different from the previous form. It appears to be a photo of the grievance form (with the differences as noted), consistent with the instructions given by Cathcart.

[42] In cross by the Union, Gould agreed that a grievance "had never been pursued", that she "ultimately chose not to proceed with her grievance", and that "a correctly filled out grievance report was never provided by [her]".

[43] In cross by the Employer, and upon review of the March 29 form Gould agreed that she did return it to Cathcart because "why did she have it?".

[44] Around the Spring of 2022, Reynolds became the Union representative for Primrose Chateau, assuming the portfolio from Cathcart. According to his testimony, when he started, he and Cathcart spent approximately two months going through the files for which Cathcart was responsible (consisting of fifteen workplaces, both urban and rural, with a total of four CBAs). He testified that Cathcart's primary contact was Wallis. According to Reynolds, he met with Wallis

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[18] U-5.

and got a tour of the building shortly after he started. He couldn't recall when. He confirmed that he didn't send an email advising that he was taking over Cathcart's files.

[45] He also testified that he attended at Primrose Chateau for the first time shortly after his portfolio changed. He didn't check in with Wallis.

[46] Wallis, on the other hand, testified that he was not aware at that time that Reynolds had taken over from Cathcart. (Nor was he aware that Cathcart was a Union representative at any time). According to him, he first met with Reynolds in January 2024 when he was asked to attend a disciplinary meeting. Before this, he and Reynolds communicated only by email. The first email was sent by Reynolds on September 6, 2022. It was this email that alerted him to Reynold's role as Union representative.

[47] That email consisted of a series of requests for specific items – a member seniority list, date of hire information, letters of appointment, copies of job postings and transfers, list of current accommodations in workplace, and contact information for management.

[48] Wallis testified that he immediately forwarded the email to Zelichowski but didn't respond to Reynolds. He and Zelichowski didn't discuss the email.

[49] In the meantime, on February 12, 2023, Gould emailed Cathcart to check in on "the status of my grievance". She received a reply by email that Cathcart was on leave until August 2023. She heard nothing more from the Union until July.

[50] By May 2023, Zelichowski had still not responded to Reynolds' requests. On May 30, Reynolds emailed Wallis another series of requests – for a current seniority list, all letters of appointment of current employees, and all job posting from 2022 to 2023 – along with another inquiry[19]. Wallis didn't acknowledge or otherwise respond to this email. He forwarded the email to Zelichowski.

[51] Wallis testified that between September 2022 and May 2023, he had no contact with Reynolds and there was no follow up with respect to the September 6 request. He assumed that HR had provided the information.

[19] Whether the Employer had provided additional vacation accrual for employees reaching fifteen years of service.

[52] To explain the delay between September 2022 and May 2023, Reynolds stated that he had wanted to give Zelichowski time to gather the information. In cross by the Employer, he acknowledged that the requests “weren’t urgent for me”.

[53] Gould was rehired on May 28, 2023. The circumstances of Gould’s rehiring were the subject of some controversy. The evidence is that in the Spring of 2023, the Employer rescinded the requirement for employees to be vaccinated. Shortly after this happened, Gould was visiting with a resident in an outdoor space on the premises. Gould knew the resident from the knitting club that she belonged to. Wallis drove up on his motorcycle and there was an exchange between Wallis and the resident. According to Gould, the resident said to Wallis, “Hey, Scarla is looking for a job again”, and then asked if Wallis had a job or an application for her. Gould and Wallis testified that they hadn’t had any contact since her termination.

[54] Gould testified that Wallis told her to come see him “after”, and (in cross by the Union) she said that she talked to him immediately after. She went to see him in the main office, and he said that they had a term position for one month (June) for a night shift porter. When asked by the Union if it had come up in the conversation that she had been previously terminated, she responded “no”.

[55] Wallis testified that the accidental meeting was an uncomfortable situation. It caught him off guard. At the time, he didn’t give Gould any indication that it was something he was considering. He testified that, when he thought about it, given the predicament with the porters (there was a shortage of porters due to a complicated mix of circumstances)[20], it seemed like an opportunity to solve a problem. In his version, there was no immediate meeting. Instead, he sent an email to Zelichowski to ask if they could hire someone who had been terminated for not following the vaccination policy, and then followed up with Gould. To do that, he said he must have obtained Gould’s contact information from the business manager.

[56] Gould testified that she submitted an application for the job a few days later. The position was supposed to be for the month of June, but it fell through, so she went to “casual part-time” so that she could fill in whenever needed. She did a bit of everything. The person who was supposed to be on leave in June left in October, so she worked full time as a porter in October.

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[20] He testified that in February 2023 he had put up a poster for internal hiring, but no one internal was interested in the position. They did hire one person from the community, but they were still short on porters.

[57] Reynolds testified that the Union had no information about the position she was hired into and did not receive an appointment letter. He testified that the Union "just recently" received information that Gould was in a porter position. Epp confirmed that there was no formal posting for the position Gould was rehired into.

[58] Epp testified that he had lingering concerns about the circumstances around Gould's rehiring. When he spoke with Wallis, he was advised that she was to fill in for someone on holidays.

[59] Epp testified that Gould and Wallis had a relationship outside of work, and that they went to the same church. His testimony was based entirely on hearsay. Both Gould and Wallis testified that they were not friends.

[60] Only a few weeks into her re-employment, Gould had more time, so she googled how to remove the Union. There, she found the Labour Watch website. She tried to follow the direction as closely as possible.

[61] In early to mid-June Gould began canvassing employees for signatures for the decertification application. She was working nights, and she lived close to the workplace, so she came to the workplace whenever she had time, for instance, at the shift changes. She obtained the employees' shifts by consulting the posted schedules.

[62] She learned from Labour Watch not to speak to people while they were working, so she showed up before or after their shift. She would find the employees in the locations where they were taking their breaks (various locations on the premises). She didn't ask management if she could come on site while she wasn't working. She testified that no one from management was present at or aware of the conversations she was having.

[63] When she spoke with the employees, she told them her "story". She told them that if they were dissatisfied with the absence of a union, they could just vote another one in. In cross by the Union, she explained her "story" being that the Union didn't help her "but obviously I didn't file everything correctly".

[64] Gould acknowledged in her examination in chief that she had asked Wallis for a list of employees. He told her he couldn't help her.

[65] According to Wallis, shortly after she was rehired Gould asked him for his thoughts on the Union (in front of the management team) and he sternly advised they could not discuss it. He testified that she asked for the contact information after she filed the application and he said he could not give it to her.

[66] Wallis testified that he had only two conversations with her about decertification and that he wasn't aware she was discussing decertification with other employees in the workplace.

[67] Epp testified that he first became aware of the decertification drive through a very brief conversation with another employee about a month before receiving notice from this Board (or mid to late June). He didn't speak to Gould or Wallis about it.

[68] He contacted Reynolds the same day.[21] No plan of action was proposed at the time. Reynolds' response was to just wait and find out what happens and see if it actually "goes through". Epp left things alone because he didn't want to disrupt the workplace. To the best of Epp's knowledge, Reynolds didn't attend the workplace to talk to the employees about it.

[69] Around the same time, on June 12, 2023, Reynolds wrote to Wallis outlining specific issues with the Employer's alleged non-compliance with the CBA. Since May, there had been no follow up with respect to this issue. Wallis again forwarded the email to Zelichowski (and Johnson).

[70] Wallis testified that he had no idea who was supposed to prepare the lists that had been requested. He and Zelichowski had not spoken about it. Zelichowski had made it quite clear over the years that he didn't appreciate "managing up", Wallis was to "stay in [his] lane", and Zelichowski was to handle union "administration".

[71] Then, on June 13, 2023, Reynolds sent an email to Wallis stating that the "Union has not asked or been involved regarding Ms. Scarla Gould, canvasing the employees".[22] The subject line of the email was "Union business on employer's time". He gave no other information. Reynolds testified that he wanted it to be clear to Wallis that the Union hadn't been involved and didn't want to see Gould disciplined for having canvassed the employees. Wallis didn't follow up with Reynolds.

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[21] He couldn't recall if this conversation was by phone or by email.
[22] U-21.

[72] On June 15, Zelichowski emailed Reynolds stating, “I think it is prudent that we have a conversation”. He asked for Reynolds’ availability. Reynolds testified that, before this email, he had never heard of Zelichowski. Wallis testified that he was unaware that this email or later emails had been sent. Reynolds responded the same day that “[p]rior to a conversation, it would be prudent for you to look into these violations”, and then listed alleged violations of the CBA.

[73] Also on June 15, Dana Sture, the Union dues and membership administrator, emailed payroll to ask for a contact list and to inquire about the problem with membership cards. Rhonda McIntosh from payroll replied the next day that she was awaiting a response from her Director. Sture followed up again on June 22 and June 28, and on July 3, forwarded the email string to McConnell.

[74] On June 16, Reynolds emailed Zelichowski, copying Wallis, advising that it had come to the Union’s attention that the Union had only one membership card for the whole facility. He asked why. Wallis testified that there were no membership cards in the facility and that, during his tenure, no Union representative prior to Reynolds had ever asked for them.

[75] On June 19, Zelichowski emailed Reynolds:

> *Hi Kelly,*
>
> *Sorry, not sure where the sarcasm and animosity is coming from – no need to requote my words. I merely wanted to open the door for a conversation between us to understand the Union’s concerns, underlining these many emails. Unfortunately, we have not worked in the past together, I had a good working relationship with Cam, Judy and Sinda and others at the SEIU office… Many of your recent concerns have never been brought up.*
>
> *If it is your intention that we follow the strict letter of the CBA; the Employer will as well… I had hoped we could chat about the root cause of the most recent concerns and talk through it.*
>
> *Again, I am hoping we can have a chat…*

[76] A couple of hours later, Reynolds replied, “[p]rior to a conversation, investigate these violations by the employer” and then listed the allegations.

[77] On June 20, Zelichowski emailed Reynolds (with a copy to Wallis) indicating that the Employer had received multiple emails from “various parties at the SEIU-West office”, then naming the offending individuals: Reynolds, Epp, Sture, and Joanne Poitras. He continued that all email communications would be considered “unofficial” and “null”, with reference to Article 2.02 of the CBA. Zelichowski directed the Union to send its communications to the Employer’s postal

address. Later that day, Reynolds replied that Zelichowski had "now tied the Union's hand for any alternative communications. (such as calls)".

[78] The following day, June 21, Zelichowski emailed, reminding Reynolds that he had suggested on two separate occasions to have a conversation, quoting Reynolds' previous replies, and advising that he "was happy" to have a conversation and would "agree to waive the language of 2.02". He provided availability "before 1pm ET on Friday".

[79] At some point in the midst of the foregoing exchange, Wallis sent a note to Zelichowski and Johnson because the issue was escalating. Due to his concern, he believed that his intervention was justified.

[80] On the morning of June 22, Wallis found out that Zelichowski was no longer employed with the company. With Zelichowski's departure, the labour relations responsibility would eventually transfer to someone else,[23] but in the meantime, Johnson was to be the contact person. In other words, Wallis was still not authorized to take over the administration of the CBA. He clarified that he was responsible for human resources at Primrose Chateau but he "wasn't responsible for human resources regarding the Union and administration of the Union[.]"

[81] Given the circumstances, Wallis emailed Reynolds indicating that Zelichowski was no longer working with the company and asking him to forward the meeting invitation so that Johnson could attend in his place. Reynolds testified that he had never heard of Johnson.

[82] Reynolds emailed Wallis and Zelichowski (no copy to Johnson) on June 23:

> *I'm unavailable on Friday.*
>
> *"Again, I am happy to have a discussion about the issues that the Union has raised; and would agree to waive the language of 2.02".*
>
> *The Union requires this waiver to be in writing.*
>
> *Send letter to:*
>
> *[Union mailing address]*

[83] Wallis forwarded this email to Johnson.

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[23] Brian Newman and then Trevor Leuck.

[84] At some point Reynolds and McConnell spoke about what was going on. The situation was escalating even further. McConnell got involved.

[85] On June 26, McConnell sent a skillful email to Zelichowski indicating that he had heard that there were communication problems between the Union and the Employer and asking for a phone call. He closed with, “Please help me to present a peaceful and collaborative solution to those above me in the Union’s organizational structure”. McConnell testified that he offered a phone call because it would afford Zelichowski an opportunity to say things that he might not want to have on the written record. In cross, he repeatedly acknowledged that sometimes a phone call is the best way to get to the root of an issue.

[86] On June 27, McConnell wrote to Johnson to ask him to direct the new person charged with Zelichowski’s responsibilities to contact Reynolds. He also suggested that a formal complaint could be made if the communication issue was not resolved. Then on June 28, the Employer’s lawyer, Trevor Lawson, wrote to McConnell that he (counsel) had been asked to speak with McConnell. An exchange ensued to set a time. A conversation occurred shortly after.

[87] On July 4, Reynolds wrote to Wallis indicating that the Union had received no response from him and that his lack of response would be forwarded to Ventas Canada.

[88] There are multiple policy grievance reports in evidence, filed by the Union in June and July, 2023. McConnell emailed those grievances to Lawson on July 4, 2023. At the same time, he advised that he had arranged to have 60 new membership cards sent to Primrose Chateau to the attention of Wallis. A few minutes later, he emailed Wallis advising him of the plan to drop off cards. Wallis testified that he received the cards a few days later, and on the same day, he set a plan in motion to have the cards signed.

[89] On July 12, Gould filed the decertification application. It was written in her handwriting and included a few mistakes.[24] GT had notarized it on July 10 at his residence. Gould was not on shift at the time. She explained that she had asked GT if he was willing to help facilitate the application and he had said that he was. She didn’t say when this occurred, but she insisted that she had spoken with GT on only two occasions.

[24]Including the referenced provision of the Act and the disordered Labour Watch materials.

[90] She mailed the application on her own from the Shoppers Drug Mart. She included with the application some pages from the Labour Watch materials so that everyone would know who her "helper" was.

[91] The reasons given for the application were as follows:

> 1. *Dissatisfied with lack of service;*
> 2. *People feel they do not get value for the dues they are paying.*

[92] She explained that by "lack of service" she meant that she was dissatisfied with the grievance process because nothing had come of it. With respect to the statement, "do not get value", she testified that "we are paying a lot" in union dues. She acknowledged that she didn't know how much she was paying in union dues (she doesn't look at her paystub). However, when asked what she meant by "people" in the line "people feel they do not get value", she said that she meant the "staff in general".

[93] On July 13, McConnell asked Lawson for an employee contact list and advised that membership cards were sent to the facility on July 4 and that they had heard nothing since. Lawson replied on the same day that he would review the email with the client.

[94] On July 14, Reynolds emailed Gould advising that he was the Union representative and asking if she had ever replied to Cathcart's email dated March 3, 2022. Gould had never dealt with Reynolds before. Gould replied:

> *I did try to contact Sinda a few months ago to check the status of my grievance and received a reply that she's on [leave] til August. Since then I have been rehired at Primrose and am now trying to get the union voted out.*
>
> *So please close my account all is well.*
>
> *Thank you for checking in on me.*

[95] Gould testified that she should have said "close my grievance" because that's what she meant. Reynolds asked whether she called or emailed Cathcart. Gould replied that she had emailed, and that based on the response she did not "pursue" the grievance. She explained:

> *…I love Primrose Chateau and the residents and staff. I would prefer to try a Canadian Union, as I believe we will have better representation. I do not have the time nor energy to chase a case…*
>
> *Please close my grievance, as I am not interested in pursuing anything. I am very happy to be back working there again.*

[96] She testified that she believed that SEIU-West was an American union.

[97] This was the last exchange she had with the Union about a grievance. According to Gould, neither Reynolds nor any other representative contacted her about her concerns with the Union. Nor did she see any Union representative in the building after she was rehired.

[98] In the meantime, Reynolds testified that he investigated and found no evidence that Gould had submitted a completed grievance form. He also, however, testified in chief that there was no "email ever found" in reference to Gould's email of February 12, 2023.

[99] On July 17, McConnell again wrote to Lawson to follow up on the requests that the Union had made. On July 18, Lawson replied that the Employer was distributing the membership cards, would return them when signed, and indicated that other requests were in the process of being fulfilled.

[100] On the same day, Wallis wrote to McConnell apologizing for the delay, and indicating that there had been a vacancy in the HR Director role, which had now been filled, therefore providing direction to move forward with the Union's requests. He enclosed a copy of the current employee list, including contact information, classification, and date of hire/seniority. He advised that Tara Hessie was dropping by shortly to pick up the signed member cards that had been dropped off the week before. He also addressed the job opening posters and the letters of appointment.

[101] Wallis testified that shortly after receiving the membership cards, he had set out to have them signed. The completed cards were eventually picked up. Since then, cards have been mailed to the Union's office.

[102] He was later told by Epp that the format for the seniority list was wrong.[25] On July 19, Wallis emailed McConnell and Reynolds, attaching a couple of postings and an amended seniority list that had been posted in the staff room. Before he had left, Zelichowski would send Wallis the PDF copies of the posters once completed, and Wallis would post them. Zelichowski was in charge of forwarding them to the Union. Now Wallis creates the postings.

[25] The Employer had used date of hire instead of cumulative hours, and the wait staff were to be broken out from the kitchen/culinary.

[103] Wallis testified that he had recently been told that the local management could administer the Union's requests for information. He clarified that he still has to get HR's approval for responses.

[104] Lolacher and her colleague, Hessie, became involved with the Union's response to the decertification drive a few days, within a week, after the filing of the decertification application. She would eventually speak to Reynolds about the Union's next steps. Before speaking with him, she did some preliminary work, for example, checking the member database. There were no membership cards to be found at that time.

[105] Lolacher testified that she received the contact list provided by the Employer very shortly after it was sent. She had a conversation about it with Reynolds for the first time on July 20.[26] In that conversation, she suggested Reynolds contact the members. He reported back to Lolacher on July 24. After that, Lolacher doubted anyone returned his calls because, if they had, she would have received a subsequent report.

[106] Epp testified about his role in canvassing the employees in anticipation of a vote. He testified in chief that he understood not to ask employees how they would vote. He testified that he spoke with the employees about the importance of the Union. He admitted that when he spoke with the employees, he told them that, as a strong union member, he would be among the first to be terminated - he didn't say that anyone else would be terminated. He also told the employees that the Employer can choose what to do with employees' wages.

[107] Epp had about a month to canvass employees before the vote. He tried to engage with as many employees as he could. He spoke with about 10 to 15 employees in the public area of the workplace when they clocked in or out.

[108] Reynolds suggested that, during the organizing drive, the Employer was targeting Epp, and that corrective action taken against him was related to this effort. In response to this evidence, the Employer presented some evidence about the merits of the corrective action taken against Epp.

[109] On July 20, 2023, the Employer left a memo in the front office, the staff room and on the kitchen door ("Application to Labour Relations Board")[27]. Wallis had prepared it. He testified that

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[26] In her testimony (on cross), she presumed that she had the list when she spoke with Reynolds the first time, even though the conversation wasn't about the list in particular.
[27] U-12.

he had heard concerns from the employees about conversations they had had about job losses, including with Epp, and he wanted to reassure them. He also wanted to prevent conversations between employees and management.

[110] Lolacher testified that, with exceptions, this was a standard memo that comes out in a decertification process. Despite this, more than one employee contacted the Union about it. With respect to the inaccurate statutory reference in the memo (the Saskatchewan Labour Act), the Union was concerned that the Employer was promising to comply with something that doesn't exist.

[111] Epp found this memo, and subsequent Employer memos on the kitchen door. He sent copies to Lolacher and Hessie but didn't copy Reynolds. He didn't ask Wallis about them or raise concerns with him.

[112] The first Union memo[28] was distributed towards the beginning of the voting period and includes a passage that states:

> *Leaving SEIU-West puts your job security and collective agreement at risk…*

[113] Lolacher testified that "objectively they would have less of it".

[114] Another passage in this memo stated:

> *The employer decides your wage and benefits. They decide who gets a raise, who doesn't, or if there will ever be one.*

[115] Lolacher acknowledged that this was a way of advising the employees that without a union their wages could be at risk.

[116] On July 23, the Employer left a second memo in the front office, the staff room and on the kitchen door ("Application to Labour Relations Board Part 2")[29]. In this memo, the Employer stated that it had come to the Employer's attention that some employees had been told that their wages and job security were at risk and were asked how they intended to vote.

[117] The Union was again contacted by employees about the memo. Lolacher testified that she liked "most" of this memo. She had concerns, however, about the statement that the Union

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[28] E-1, pages 7, 8.
[29] U-13.

had been advising employees that their “wages and job security will be threatened”. She stated that the Union would never do this.

[118] The Board issued a direction for vote on July 24, 2023. On the same day, the Board provided the direction for vote and the notice of vote to the Employer (and parties) by email, indicating that both were to remain posted until August 7, 2023. Ballot packages were also sent on July 24 with voting to conclude on August 7.

[119] The notice of vote was posted in the workplace that day. There was an error in the notice, in that Gould was listed as representative, as follows:

> *TAKE NOTICE THAT, pursuant to a direction of the Labour Relations Board, a true copy of which is annexed, a vote is being conducted by secret ballot via Mail in Ballot by an agent of the Labour Relations Board to determine whether or not the employees to whom this notice is directed wish be [sic] represented by the Scarla Gould, for the purpose of bargaining collectively with their employer.*
>
> *[emphasis added]*

[120] The Union raised concerns with the Board. Two days after the direction was issued, on July 26, 2023, the Board sent a follow-up email to the parties, which stated:

> *Good afternoon,*
>
> *It has come to our attention that there was an error in Notice of Vote for LRB File No. 102-23.*
>
> *The top paragraph listed the Applicant as the representative Union rather than the Union. The Board has advanced the attached cover letter and amended Notice of Vote to each of the voters. Nothing other than the typographical error has been changed in the Notice of Vote.*
>
> *Voters are encouraged to contact the Board should they have any questions.*
>
> *…*

[121] The Board did not give the Employer instructions to post the new notice at that time. The new notice was not immediately posted in the workplace.

[122] Lolacher testified that during the week of July 24, she and Hessie travelled to Saskatoon. She also testified that there was a unit meeting during the same week, however, the documentation makes clear that the unit meeting occurred on July 31.

[123] When they were in Saskatoon, they met with Epp and then delivered information to employees' homes except where the employees lived in apartments (these were mailed) and where the addresses were found to be wrong. It was unclear how many addresses were wrong.

[124] Lolacher and Hessie also had phone numbers for the employees.[30] Employees who wanted to be contacted would tell Epp or another employee. Lolacher, Hessie, or Epp would contact them. Some employees had made up their minds and just wanted to be kept aware of what was happening. Lolacher couldn't recall how many employees she phoned but she didn't meet with the majority of the employees.

[125] The approach the Union took to contacting employees is revealed through the following exchange:

> *Counsel: So this is the employee list that you indicated you had a copy of. Did you or Ms. Hessie attempt to make contact with every employee on this list before the vote?*
>
> *Lolacher: no*
>
> *Counsel: You didn't*
>
> *Lolacher: Make attempt to contact every employee before the vote?*
>
> *Counsel: Every employee on this list.*
>
> *Lolacher: Yeah. So they have a…yeah, no.*
>
> *Counsel: No. Um, how come?*
>
> *Lolacher: Why not? er…They are an organized unit with a Union rep and a negotiator. Um, we did have contact with some of the workers but not all of them and also not everything on this list was correct.*
>
> *…*
>
> *Workers were primarily talking to each other…..if they wanted more information from us they…were free to contact us based on the information that we distributed.*

[126] In the meantime, within two days of the direction for vote being issued, the Union distributed a second memo. This memo referred to the Employer's mistaken reference to the "Saskatchewan Labour Act", stated that if employees leave the Union, they "will be at the mercy" of the Employer, and that the Employer "can terminate your employment for almost any reason".

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[30] The employee list contained phone numbers.

[127] On July 26, the Employer left a third memo in the same locations as previously ("Application to Labour Relations Board Part 3")[31]. This memo made specific comparisons of the rights contained in the employee Handbook, the Act, and the CBA, and indicated that those documents were available in the lunchroom. Wallis testified that initially he left copies of these documents in the lunchroom, but they were disappearing, so he left some copies in the office as well.

[128] Lolacher testified that she liked a good portion of this memo too, but less than the second memo. The Union was again alerted to this memo by an employee or employees. Lolacher testified that the Union had concerns, but it had other issues to address in its communications and "this wasn't it".

[129] Wallis testified that he wrote all three memos. He stated that he did so to ensure that Employer communications were in writing and were neutral. He also testified that he called HR and legal to confirm that the terms and conditions would remain the same.

[130] McConnell testified that he didn't ask that the Employer's memos be removed and didn't know if anyone else did.

[131] Also on July 26, Gould wrote a letter to the employees about the decertification application [Gould Letter]. It is worth reproducing the Gould Letter in its entirety:

> *Hi everyone!*
>
> *This is Scarla, texting about the union vote. This is very serious business! Please exercise your right to vote. So many of you signed papers, standing with me to decertify the union that has so poorly represented us as staff. The more I learn, the more confident I become, that we are a strong team of very hard working, responsible individuals. We all really care about the residents at Primrose Chateau, by giving them our very best service every day. I am thankful to have the privilege of working with each of you side by side. If you haven't already taken the time to read and compare your Atria Employee Handbook to the union collective agreement... please believe me when I say .... they are basically the same. If you find a discrepancy, please look on he [sic] Saskatchewan labour board website and it is most likely there. We also have a strong and approachable management team available to talk to daily if we have questions or concerns about work related issues, costing us 0$.*
>
> *I heard a rumour that if the union is gone ... that we all lose our jobs. I went straight to Dale and asked ... Are we losing our jobs if the union gets decertified? He said absolutely not! Do you think Dale and the managers can run Primrose Chateau by themselves? No! You are valuable and necessary to the day to day operations of Primrose Chateau!*

[31] U-14.

One other story I heard is that Seiuwest offers scholarships. One of our valuable, union fee paying staff members inquired about this option for her son .... never to hear a response back.

Many of you, but not all of you have heard my story of how I was the only staff member here to refuse the covid shot. I lost a full time position here that I loved so much! The day I got fired was March 1, 2021. Chris Epp (our union rep) was present when Dale was forced by head office to terminate my employment. Chris's solution to my jobless situation was ... that any resident who refused the covid shot, should be forced to move out. What?!!! No! I said. That is not a solution at all! I am still jobless, but now elderly people are homeless too?! No way I disagree!!!! So, I filed a grievance to get my job back. After several months I inquired about the status of my grievance, only to get a response from the person working on it. ... that she is on stress leave[32] until August of 2023. Since submitting decertification paperwork, union representatives are now reaching out to see if I would like to move forward with this case. I said no thank you, we are in the process of decertifying your company, please close my file. I am happily rehired at Primrose Chateau and do not have time to chase a case.

One other thing I have heard, is that we are missing out on financial bonuses! Like a $500.00 anniversary bonus! What? Every year, on your anniversary date of hire, you get five hundred bucks!

The union fees are way more than this for a lot of staff ... and the union provides nothing extra for you, as proven in the stories above. Without the union, you may be able to negotiate your wage according to your experience and abilities, straight with your manager!

In conclusion, I personally see a very bright union free future for all of us, with a closer team atmosphere. Don't you?

Anyway, thank you for your time. You are all amazing!!!!

Sincerely,
Scarla Gould

[…] text if you have any questions or talk to your supervisor and or Dale[33]

[132] Gould testified that the story she had been telling the employees was consistent with the contents of this letter.

[133] She prepared the letter at home. She printed 20 to 40 copies at the public library. She left the copies on a credenza in the main office shared by two out-of-scope managers, where employees clock in. The credenza is the spot for communications.

[134] In her chief, Gould acknowledged that she could have done a better job of the Gould Letter, for example, by distributing individual letters in envelopes. She said she didn't want to be

[32] McConnell testified that Cathcart went on leave to decide whether to stay abroad, not due to stress. Gould testified that she received an automatic reply from Cathcart indicating that she was on "stress leave", which is a very unlikely "auto-reply". The Board interprets this as Gould's spin on Cathcart's circumstances.
[33] Spaces added for ease of reading.

pushy. She didn't want to force employees to take her letter if they didn't want it. She had intended to email the Gould Letter to the employees, but she wasn't able to obtain their email addresses.

[135] She testified that she hadn't spoken to management about the letters. She acknowledged that the managers are constantly in and out of that office, even though there likely were not any managers around when she left the letter in the office.

[136] Epp testified that he found the Gould Letter at the end of his shift at around 3:30 p.m. on July 26 or July 27. Another employee had told him about it, so he knew to look for it. He took a copy for himself and then sent a copy to Reynolds. He was directed to remove them. According to Epp, he removed them in the morning after he saw them[34], and later went back during his shift at around 11 a.m. to see if they would re-appear. He found another batch. He took those as well and destroyed them. There were no more Gould Letters after that.

[137] Wallis accesses the office from time to time. He saw copies of the Gould Letter in the front office and staff room. He acknowledged that he didn't take steps to remove the letter, but no one demanded that he remove them either and he didn't interfere with the Union memos that were distributed.

[138] The Gould Letter refers to a conversation between Gould and Wallis about the employees losing their jobs. In cross by the Union, Gould could not recall when she had that conversation, but she did recall that it happened at his desk. She told him she heard the rumour, asked if it was true and he said "no". She said she didn't have a lot of conversations with him because she wasn't supposed to. Gould said she felt that the employees should be able to speak with Wallis if they were concerned about their jobs. She felt that Wallis could give them peace of mind about job security, as their boss. According to Gould she asked him for permission to direct her coworkers to speak to him. (She didn't ask the supervisors.)

[139] Wallis testified that he may have had the conversation with her, but didn't recall it, and some employees came to him with questions, which is the reason he drafted the memos. He wanted to ensure his responses were in writing so there wasn't any "inflection".

[140] Gould indicated that she was not familiar with the CBA or the Handbook, but said she reviewed them in advance of preparing the Gould Letter. She asked one of the managers (she

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[34] Gould testified that she had replenished the copies on July 28.

couldn't remember who) for copies so she could review them. She couldn't recall if she informed them of the reason. She admitted that her review was not particularly careful.

[141] Epp stated that Gould's description of his "solution" (that any resident who refused the covid shot, should be forced to move out) was taken out of context, and that he had offered to file a grievance.

[142] Other than confiscating the Gould Letter and planning to answer any related questions, the Union took no action in response.

[143] On July 31, there was a unit meeting held to discuss the decertification application at the SEIU-West office. A notice about the meeting was hung up in the workplace with Wallis's permission.

[144] At the unit meeting, Lolacher and Hessie stated that they couldn't say what would happen to the employees' wages, but that if they were negotiating with the Employer, the Employer would decide.

[145] On August 2, counsel for the Union wrote to this Board to advise that the original copy of the Notice of Vote remained posted in the workplace. Shortly after, the Registrar emailed the Employer indicating that he required the Employer to replace the posted Notice with the Amended Notice and post the clarification letter. Wallis replaced the notice within a matter of minutes after receiving this email. He testified that, before receiving his email, he didn't know he was required to and hadn't been asked by anyone to do so.

[146] August 2 was approximately five days before the votes were to be received by the Board. There were no further concerns about the posting of the Notice.

[147] The third Union memo was distributed shortly after the vote closed. It provided the employees with some information about next steps, an invitation to recertify if applicable, and an encouragement to call the Board if any employees had voted to decertify based on false information.

[148] The last Union memo was distributed a week or two after the ULP application was filed (which was August 8).

[149] After the Union filed its ULP application and the voting period was over, Gould and Wallis discussed the Union's allegations. This conversation happened at the workplace.

[150] On August 17, the Employer and the Union discussed the policy grievances. That call was summarized in an email, dated October 25. Wallis testified that the email is an accurate reflection of the August discussion. The email suggests that, for four of the grievances, the parties had reached an agreement about the actions the Employer could take to resolve the Union's concerns. For the remaining grievance, the Employer had explicitly taken the position that no breach had been committed. On November 7, 2023, three of the policy grievances were withdrawn.

[151] Although there was some confusion about the dates, it appears that Gould began filling in as ELC in September or October.

[152] Gould testified that she took over the ELC position in January or February 2024. Epp testified that he had seen recent postings for the ELC position.

[153] Wallis had received two applications for the position, including Gould's. The other candidate had also been backfilling. No one else from the bargaining unit had approached him about it. The Engage Life Department conducted the interviews. Gould was chosen. According to Wallis, even though the position reports directly to him, head office made the hiring decision.

[154] Gould was not provided with an appointment letter. Wallis testified that the Employer has never provided appointment letters and Reynolds is the only person who has ever asked for them. When Wallis asked Reynolds to comment on his preferred format he received no response.

Statutory Provisions:

[155] The parties have relied on the following provisions of the Act:

> ***6-17****(1) An employee within a bargaining unit may apply to the board to cancel a certification order if the employee:*
>
> > *(a) establishes that 45% or more of the employees in the bargaining unit have within the 90 days preceding the date of the application indicated support for removing the union as bargaining agent; and*
> >
> > *(b) files with the board evidence of each employee's support that meets the prescribed requirements.*
>
> *(2) On receipt of an application pursuant to subsection (1), the board shall direct that a vote be taken of the employees in the bargaining unit.*

(3) If a majority of the votes cast in a vote directed in accordance with subsection (2) favour removing the union as bargaining agent, the board shall cancel the certification order.

(4) An application must not be made pursuant to this section:

(a) during the two years following the issuance of the first certification order;

or

(b) during the 12 months following a refusal pursuant to this section to cancel the certification order.

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.

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:*

(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Part;

(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;

…

> *(r) to contravene an obligation, a prohibition or other provision of this Part imposed on or applicable to an employer.*
>
> ***6-106*** *The board may reject or dismiss any application made to it by an employee or employees if it is satisfied that the application is made in whole or in part on the advice of, or as a result of influence of or interference or intimidation by, the employer or employer's agent.*

[156] The parties have also referenced various provisions of the CBA which are included in Appendix "A".

Arguments:

Gould

[157] Gould's submissions were brief. She didn't expect that this application would result in such a significant time commitment. Many of the Union's allegations, in relation to both the decertification and the ULP application, consisted of lies, false information, and hearsay. This is further proof that the employees don't need a union. Moving forward, the Board should count the votes or automatically decertify because of the problems revealed through the hearing process.

[158] In her written submissions, Gould also made various submissions referencing facts that were not in evidence (which the Board has had to disregard).

Union

Decertification Application:

[159] The decertification application should be dismissed.

[160] The Employer's conduct fits into both categories as outlined in *Williams*[35] – the Employer was the real motivating force and the employees lost independent capacity to decide the representation question.

[161] Gould's stated motives are suspect. She claimed that her motivation was that she was dissatisfied with the lack of service and the employees were not receiving value for their dues. In such a short period of time following her rehiring it is difficult to imagine Gould discerning that the members were not receiving good value for the dues they were paying. In the Gould Letter she misrepresented the facts – she did not pursue a grievance – and she refused to provide Wallis's

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[35] *Williams v United Food and Commercial Workers, Local 1400 and Affinity Credit Union (Hague Branch)*, 2014 CanLII 63996 (SK LRB) [*Williams*].

name on the form. Her stated dissatisfaction with her grievance and her reluctance to involve Wallis amounts to a lack of plausibility.

[162] Gould's decision to bring a decertification application is more plausibly explained by the circumstances surrounding her rehiring. She was rehired in a manner that was inconsistent with the CBA requirements, that undermined the Union's authority to address issues through the grievance process, and that resulted in her returning to her original position. The circumstances of her being rehired into her old position outwardly express preferential treatment. While there is no evidence of a direct personal relationship between Gould and Wallis, there is evidence of a friendly workplace relationship. The totality of the facts suggests that there was a *quid pro quo* arrangement between them.

[163] The Employer worked or appeared to work in concert with Gould in support of her application and allowed that appearance to prevail. Wallis knew that the Gould letter had been placed in the workplace, had even reviewed it, but then left it there. He knew that Gould was canvassing employees in the workplace. Wallis did not post the corrected notice of vote in a timely fashion. In each of these instances, by doing nothing, Wallis engaged in tacit approval of Gould's activities. The Employer intervened through the distribution of false and misleading materials to the members of the bargaining unit. The Employer repeatedly failed to provide the Union with up-to-date information about the employees in the bargaining unit.

[164] The circumstances of Gould's rehiring are analogous to an employer negotiating directly with an employee. By flouting the requirements of the CBA and placing Gould in a preferential position, the Employer was suggesting, indirectly, that decertifying would result in a benefit to the employees.

[165] If the decertification is allowed to proceed the Union's reputation will suffer, and the Board will have tacitly approved the Employer's hiring of a purportedly "temporary" but anti-union employee, its non-compliance with the CBA, and its passive approval of that employee's workplace distribution of materials.

ULP Application:

[166] The Employer's impugned conduct consists of its inappropriate communications (6-62(1)(a)) and failure in its duty to provide information to the Union (6-41, 6-62(1)(b) and (r)).

[167] With respect to the allegations under clause 6-62(1)(a), the Employer has posted memos with the intention of persuading employees that decertifying the workplace is to be preferred. The memos asserted that the terms and conditions of employment would remain the same post decertification, highlighted that employees would no longer have to pay union dues, and stated that employees would negotiate directly with the Employer.

[168] The Employer's communications were not neutral. Employees could easily be persuaded by the Employer's representations.

[169] Although both the Union and the Employer engaged in communications with the employees, the Union is not defending a ULP allegation and does not stand on the same footing as the Employer in communicating with employees in relation to the representation question.

[170] By failing to provide information, the Employer interfered with the Union's ability to communicate with the employees and managed to fly under the radar when rehiring Gould. The issues weren't resolved until long after the conclusion of the decertification vote.

[171] Nothing turns on the Employer's assertion that the Union should have been more proactive or assertive in claiming its rights. Reynolds began requesting information early on, long before the decertification vote began. Over a lengthy period of time, the Employer simply ignored the requests. The Union was seeking information that was clearly required under the terms of the CBA.

[172] The Employer's conduct constituted interference with the employees' free choice in determining the representation question.

[173] Next, by failing to provide information to the Union the Employer has interfered with the administration of the Union and has breached its obligations under the CBA. Clause 6-62(1)(b) focuses on whether the conduct interfered with the administration of the Union as an organization with an emphasis on the impugned conduct and its significance for the Union's integrity. By failing to provide the information, the Employer effectively frustrated the Union's representation of employees in the workplace. That conduct had the effect of interfering with the Union in respect of the representation question.

Delay:

[174] The circumstances of the ULP allegations involve a pattern of ongoing neglect of obligations on the part of the Employer - not a discrete set of events – as well as new, recent contraventions. The Employer failed to provide extensive information that it was clearly required to provide. There is no dispute that the Employer had provided none of the requested information prior to the filing of the decertification application. Recent examples of the Employer's breaches include its hiring of Gould without a job posting or a letter of appointment, its failure to provide a current seniority list in March 2023, and its failure to provide a list of employees and their contact information in April. The Union made several requests for the information, including on May 30 and June 16, 2023 and thereafter.

[175] Any prejudice suffered by the Employer is insignificant. In contrast, the central rights at stake are of sufficient importance that the Board should exercise its discretion to hear the application. The Employer's position reveals its lackadaisical attitude toward the provision of information, which has presented an obstacle to the Union's representation of its members. The Board's refusal to hear the application could have the effect of severing the Union's relationship with its members.

Employer

[176] The Union's allegations are grounded in mere suspicion. The Union has failed to present evidence to satisfy its onus to establish that the Employer engaged in conduct that constitutes a breach of the Act.

[177] A compelling labour relations justification is necessary for the Board to interfere with the right of employees to decide the representation question. In deciding whether to interfere, the Board must weigh the right of the employees to revisit the representation question against the need to be alert to signs of employer influence. The Board assesses the employer's conduct and measures the likely impact of that conduct on employees of reasonable fortitude giving due consideration to the circumstances in the workplace. The test is an objective one. The employer's conduct must be of a nature and significance that the probable impact would be to compromise the ability of the employees (of reasonable fortitude) to freely exercise their rights under the Act.

[178] There is no personal relationship between Wallis and Gould. Gould was rehired for legitimate business reasons. She was not acting as an agent of the Employer. There is no direct evidence to substantiate this allegation, nor is there any direct evidence to establish that any

member of management worked in concert with Gould, provided her with advice, influenced her, intimidated, or had any other involvement in the application that she made. She prepared and filed the application without the assistance of the Employer. She prepared and distributed the Gould Letter by herself. She did not ask for permission to leave it on the credenza. She was not permitted to use any Employer resources in relation to the application. Gould took active steps to conceal her organizing activities and the Employer had no knowledge of the application until after it was filed with the Board.

[179] The Employer did not withhold information from the Union or interfere with the Union's representation of its employees. There is no direct evidence that the Union's representative activities were thwarted or frustrated by the Employer not providing information. To the contrary, the Union displayed a "long-standing pattern of indifference and lack of representation".[36] It "made no serious effort" to represent the employees.[37]

[180] Other than the unit chair, the Union representatives were basically absent from the workplace. Reynolds knew that Zelichowski was the Human Resources Director, but he insisted on communicating directly with Wallis. Even then, the first time he communicated with Wallis was through email five months after he took over responsibility for the workplace. After sending that email, he was silent for a period of nine months. He testified that he didn't consider his request to be urgent. Although Reynolds attended a BBQ on the premises in or around June 2023, Reynolds and Wallis did not meet in person until January 2024.

[181] The evidence demonstrates that the Employer and its agents acted at all material times in a manner that was responsive and respectful toward the Union and its representatives. The only animus demonstrated by any person was that which was displayed by Reynolds in his dealings with management. Zelichowski repeatedly attempted to speak with Reynolds about his requests, but his attempts were met with sarcasm and resistance. When McConnell stepped in, he asked Zelichowski to call him. Two days later a call was scheduled (with counsel). The call occurred a few days later and then the Employer moved quickly to address all of the concerns that McConnell had identified.

[182] The Union had the information it needed to respond to the decertification application. By the time the Union began managing its response to the application, it had a full and complete list

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[36] Employer's Brief, at 34 and 35.
[37] Employer's Brief, at 35.

of employees. It was able to deliver written communications to employees, speak with them by phone, speak with them in person, and invite them to attend the unit meeting.

[183] Furthermore, the Union delayed in advancing its allegations about the provision of information. The Union was aware of the Employer's alleged failure to provide information since Reynolds' email of September 6, 2022. Despite this, the Union filed the ULP application more than 11 months after he sent this request. No witnesses provided any direct information to explain the delay or to identify any aggravating or extenuating circumstances. The Employer has suffered significant labour relations prejudice as a result of the delay given the corrosive effect of both applications (decertification and ULP). On delay alone, the Union's allegations about the alleged failure to provide information should be dismissed.

[184] The Employer's memos complied with section 6-62 of the Act. Section 6-62 states that clause 6-62(1)(a) does not prohibit an employer from communicating facts and its opinions to its employees. Furthermore, there is no direct evidence that the Employer's memos interfered with, restrained, intimidated, threatened and/or coerced employees of reasonable intelligence and fortitude in the exercise of their rights under the Act.

[185] Wallis prepared the memos because the Union was communicating to employees that their jobs and wages were at risk. His goal was to prevent conversations between employees and management, to remain neutral, and to communicate factual information. He checked with HR and Legal to confirm that he could truthfully state that the employees' employment would continue on the same terms and conditions. He later heard from employees that the Employer's written commitment was too vague. He then drafted a memo to provide more specifics.

[186] Lolacher's testimony suggested that, for the most part, the contents of those memos were not offensive. Despite the Union being aware of the memos, the Union did not make any attempt to remove them from the workplace. The Union simply responded to the memos with their own communications.

[187] The probable effect of the memos could not have been to interfere with, restrain, intimidate, threaten and/or coerce employees of reasonable intelligence and fortitude in the exercise of their rights.

[188] As for the amended Notice of Vote, this allegation is baseless. Besides, the Union failed to provide any direct evidence of harm that the Union or employees allegedly suffered as a result of the delay in posting.

Analysis:

Decertification Application:

[189] The first issue is whether the decertification application was made in whole or in part on the advice of, or as a result of influence of or interference or intimidation by, the Employer or Employer's agent.

[190] It is the Union's onus to prove, on a balance of probabilities, that the application was made in the manner described in section 6-106 of the Act. The evidence led must be sufficiently clear, convincing, and cogent.

[191] The application need only be made in part on the advice of, or as a result of the influence of or interference or intimidation by the Employer or Employer's agent. It is not necessary for the Board to find that the Employer's or its agent's actions were the sole or even the primary influence for the application.

[192] Section 6-106 grants the Board a discretionary power to dismiss an application if it is satisfied that the circumstances set out in that provision are established. As explained in *Legary*:[38]

> *[79] In deciding whether to exercise its discretion, the Board is guided by the scheme of the Act which seeks to facilitate the employees' right to join a union and recognizes that the right to join a union is a function of employee choice, as carried out within the majoritarian model. As a function of that choice, employees are entitled to periodically revisit the representation question. The Board seeks to determine whether the votes to be tabulated will reflect the true wishes of the employees, within the constraints of the vote.*

[193] The circumstances in which an employer's conduct will prevent a decertification application from proceeding will take two general forms, as described in *Williams*:

> *[31] Generally speaking, the cases where this Board has invoked s. 9 of The Trade Union Act have generally fallen into one of two (2) categories:*
>
> > *1. Circumstances where the Board had compelling reason to believe that the real motivating force behind the decision to bring a rescission application was the will of the employer rather than the wishes of the employees. […]*
> >
> > *2 Circumstances where the Board lost confidence in the capacity of the employees to independently decide the representational question because the nature of an employer's improper conduct was such that it likely impaired them of their capacity to freely do so. […]*
> >
> > *[citations removed]*

[38] *Mary Anne Legary v United Food and Commercial Workers Union*, 2020 CanLII 95887 (SK LRB).

[194] In *Legary*, the Board explained how it determines whether the evidence meets either of these two sets of circumstances:

> *[81] By virtue of the nature of and circumstances in which decertification applications are made, it is a rare case in which there is overt or direct evidence of interference or other impugned conduct on the part of the employer. It is for this reason that the Board must be alert to the existence of unusual circumstances, inconsistencies, or other hallmarks of suspicious conduct, and the Board is permitted, and in some cases must, infer from the circumstances the nature and extent of the employer's conduct.*
>
> *[82] This does not mean that every "statement made or action taken by an employer will necessarily lead to the conclusion that a rescission application has been made as the result of improper influence, interference, assistance or intimidation by the employer". In deciding whether to exercise its discretion, the question that the Board will consider is whether the employer's conduct is of a nature and significance that the probable impact of that conduct would be to compromise the ability of employees, of reasonable fortitude and intelligence, to freely exercise their rights under the Act. The Board gives due consideration to the circumstances occurring in the workplace at the relevant time, including the maturity and status of collective bargaining. This is an objective test.*
>
> *[citations removed]*

[195] While each case must be assessed on its facts, the Board routinely examines the following factors:[39]

> *a) The plausibility of the applicant's motives for bringing the application;*
>
> *b) The relationship between the applicant and management, or the provision of special treatment;*
>
> *c) The provision of information or resources to the applicant, on behalf of the employer;*
>
> *d) Words or conduct, on behalf of the employer, that suggest, whether indirectly or overtly, that decertifying will result in a benefit to the employees; and*
>
> e) *Demonstrated conduct on behalf of the employer that has hindered bargaining and damaged the union's reputation.*

[196] The Board will proceed to consider these factors, and any others with relevance to the existing circumstances.

[197] To begin, it is worth mentioning the credibility issues that arose in relation to the testimony of some of the witnesses. The Board in *Parenteau*[40] explained its approach to issues of credibility:

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[39] *Mitchell Wentworth v Teamsters Canada Rail Conference*, 2019 CanLII 83972 (SK LRB) [*Wentworth*], at para 75.
[40] *Conrad Parenteau v Saskatchewan Government and General Employees' Union*, 2019 CanLII 57379 (SK LRB).

> *[70] While the Board assumes that witnesses attempt to be truthful, it must assess the reliability of witness evidence, considering various indicia of credibility such as: powers of observation, relationship to parties in the dispute, self-interest, consistency, and a failure to produce material evidence if necessary. Issues with reliability do not equate to a finding of dishonesty. Witnesses' capacity to recall events is fallible, limited by memory, sensory perception, and perspective…*
>
> *[citation omitted]*

[198] To be clear, in attempting to discern the truth, no witness's testimony should be held to a standard of "perfection" or total consistency. Given the inherent limits on a witness's memory, perception, and perspective, it is to be expected that there will be some inconsistencies between the testimonies of different witnesses describing the same general circumstances. Perfect synchronicity might even be a sign of collusion and coordination.

[199] With the foregoing in mind, the Board has made the following observations about the witnesses' credibility.

[200] Gould: Gould came across as eager to please. She was easily influenced in her recollection of the facts by both Union and Employer counsel. She did, however, volunteer information that was both contrary to her interests and contrary to Wallis's recollection of events, which, at times shored up her examination in chief.

[201] Reynolds: Reynolds' testimony should be approached with caution. At times, he provided inconsistent, uncareful, and even indignant responses to questions. He was overconfident in his testimony, and when presented with contradictory facts, provided flippant explanations.

[202] Epp: While Epp was cross-examined about a potential interest in the outcome of the proceedings, he testified about events as he recalled them and admitted facts and the basis for statements (such as hearsay) that went against his self-interest. At times, he referred to context to detract from the significance of events. He also appeared, physically, to be very nervous about testifying.

[203] Lolacher: Lolacher testified in a straightforward manner with the occasional spin consistent with the Union's self-interest.

[204] McConnell: McConnell's testimony was generally measured and careful, but at times he resisted suggestions that painted the Union in a negative light.

[205] Wallis: Wallis's testimony should be approached with caution. At times, his testimony was uncareful and internally inconsistent. He denied certain events that contradicted Gould's testimony and testified to certain details, including in absolute terms, that were later contradicted through written communications put to him by the Union. He made little effort to explain the discrepancies.

[206] On occasion, Wallis denied personal responsibility – he suggested that he didn't respond to Gould's letter because no one asked him to and besides he had done nothing about the Union memos[41]; and he blamed an unintelligible division of responsibility for his own communication errors.[42]

[207] Next, the Board will review each of the foregoing factors, in turn.

a. The plausibility of the applicant's motives for bringing the application

[208] The Board has no concerns about Gould's motives for bringing the application.

[209] Gould's testimony makes clear that she was not a "union person". She had no interest in having a union in the workplace. She first considered whether to decertify during the first phase of her employment. She even spoke with GT about it then. She repeatedly testified that she was initially too busy to pursue it but then decided to go ahead when she had more time during the second phase of her employment. In respect of all of this evidence, Gould's testimony was seemingly spontaneous, not overly prepared or rehearsed, and consistent.

[210] To be sure, some of Gould's more specific explanations (for example, that the employees wanted to try a "Canadian union" or that they could certify a different union if dissatisfied with a non-unionized workplace) were harder to understand; however, these explanations did not make it any less likely that her motives for decertifying were genuine. Gould described herself as "persuasive", and the Board was left with the impression that she was willing to entertain an array of arguments in attempting to persuade the employees to decertify.

[211] Related to Gould's motives was the evidence about whether she had ever intended or had ever filed a grievance in relation to her termination. The suggestion was made that she had not intended to file a grievance and, that therefore, a central pillar of her motive was non-existent or implausible.

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[41] There is insufficient evidence that the Union memos were in the workplace other than through circulation.
[42] That is, when he chose not to advise Reynolds that he had forwarded his emails to Zelichowski.

[212] The evidence is not as clear as to suggest that Gould had never intended to file a grievance. To be sure, it is unlikely that she "replied all" to Cathcart's email. When asked, Gould was certain that she wouldn't find the email by searching for it.[43] Nonetheless, whether she "replied all" is not determinative. Cathcart sent a follow up email asking for a photo of the completed grievance form. This email suggests that Cathcart had some additional information, likely from Gould, to motivate her to request a completed grievance form. In evidence is a photo of a grievance form signed and dated as of the next day.

[213] The Union made much of the fact that the steward's signature line was absent from that grievance form. What the evidence doesn't explain is why there was also a difference in formatting at the top of the page. The Board finds it unlikely that Gould went to the trouble of manually altering the form to remove the steward's signature, as an expression of her ambivalence about filing a grievance or her resistance to the process. Even if she did, the evidence suggests that the Union did not consider this form to have been properly completed.[44]

[214] In February 2023, Gould followed up with Cathcart to check on the status of her grievance. It is implausible that Gould would send a follow-up email in anticipation of a decertification application a whole three months before her rehiring, in an effort to somehow discredit the Union. For all that she knew, Cathcart could have responded that the Union was still or was willing to become engaged. The only reasonable explanation for Gould's follow-up email is that she believed that, whether she had filed a properly completed grievance form or not, the Union might have taken steps to press forward with her grievance. Consistent with this conclusion is Gould's email to Reynolds, in July, directing him to "[p]lease close my grievance".

[215] All of this aligns with Gould's having agreed to the statements that a grievance "had never been pursued", that she "ultimately chose not to proceed with her grievance", and that "a correctly filled out grievance report was never provided by [her]". Furthermore, while Gould's responses in cross examination need to be approached with some caution, the documentary evidence shows that she was engaged in a preliminary grievance process, she wanted her job back, but she wasn't sold on all of the prerequisites to her participating. Even if she got fed up with the process (including, for example, the need for a signature line), it is likely that she had wished that the Union would do something for her.

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[43] Less telling is that she could not find the email - she testified at least three times that she didn't have specific emails, including the response from Cathcart in February 2023.
[44] Reynolds was persuaded that Gould had failed to file a completed grievance form, and Epp had never been asked to sign.

[216] Even if Gould had not intended to file a grievance, the fact remains that she had previously investigated the decertification process, that she remained interested in removing the Union, and that she was not a lone aggrieved party but, rather, was a part of a group of employees who were dissatisfied.[45]

[217] Moreover, there appears to be some truth to Gould's description of her initial conversation with Epp. They spoke about residents being vaccinated. It is entirely plausible that, even if taken out of context, she viewed the significance of that conversation in a different light than Epp did and was critical of Epp's approach.

[218] Furthermore, it is of no consequence that Gould didn't know the cost of her union dues. When she filled out the application, she made clear that "people" felt they did not get value for their dues.

b. The relationship between the applicant and management, or the provision of special treatment

[219] There is no reliable evidence of a relationship between Gould and Wallis outside of work or between the first phase of Gould's employment and the second. The only direct evidence about a relationship is the denial of it by Wallis and Gould. The indirect evidence is weak hearsay.

[220] Gould eventually included Wallis's name on the grievance form, dated March 29. Even if she chose not to follow through, her preoccupation with sparing Wallis the trouble does not mean that they had a personal relationship outside of work, or that Wallis was inclined to reward Gould for protecting him. She genuinely admired Wallis as a manager.

[221] There were legitimate business reasons for hiring Gould as a porter. The porter shortage was a problem that Wallis had been trying to solve. Even Epp, who had lingering concerns about Gould's rehiring acknowledged that when he spoke with Wallis, he had been advised that Gould's hiring was related to a holiday absence. The pay rate is a red herring given that it was consistent with the CBA.

[45] See, Gould's reference to "people" in the decertification application and Wallis's reference to disgruntled employees in his testimony.

[222] Wallis's description of the spontaneous meeting with the resident prior to the rehiring seemed genuine. There is nothing surprising about Gould having a personal visit with a resident at Primrose Chateau.

[223] When the porter position fell through, Wallis was already aware that Gould was seeking employment and that there was no impediment to her rehiring.

[224] There was some logic in Wallis's rehiring Gould to backfill other positions after they had reconnected.

[225] The Union has suggested that the awarding of the ELC position to Gould is evidence of special treatment. However, the ELC position was awarded following an interview process conducted by the ELC department. Both candidates for the position had filled in for the previous incumbent. The other candidate had more seniority but had been working in housekeeping. Gould had had previous experience in the full-time role.

[226] Although it seemed strange that Wallis would not have been involved in the interviews, he was not given the opportunity to explain why this was.

[227] Although the Union states that there was no posting for this position, or that no posting was provided to the Union, Epp had seen a posting around the time that the applications would have been submitted.

[228] Gould was not provided with an appointment letter but Gould didn't ask for one. The Employer has never provided appointment letters and Reynolds is the only person who has ever asked for them.

[229] With respect to Gould's rehiring, there are a few red flags for the Board to consider:

a. The Board believes Gould's testimony that she met with Wallis immediately after the encounter with the resident. While not necessarily indicative of an ulterior motive, Wallis's denial that this meeting occurred at that time suggests that his testimony did not provide the full picture of the circumstances surrounding the rehiring.

b. There is no evidence, other than Wallis's and Gould's testimony that Gould's rehiring was for a temporary position.

c. Without a permanent position, Gould would have had no seniority when hired as the ELC.

d. Given the scrutiny on the Employer in the Fall of 2023, one would have expected the Employer to have attempted to follow the letter of the CBA in renewing a temporary position past the three months.

e. The Employer didn't respond to Reynolds' request for information until after Gould was rehired.

[230] Taken alone, however, these red flags would not be sufficient to justify suspending the employee's right to vote in the representation question.

c. The provision of information or resources to the applicant, on behalf of the Employer

[231] Gould researched the decertification process on her own. She prepared the application and filed it with the Board without the assistance of the Employer. There is no evidence that the Employer was aware that she had been communicating with GT.

[232] She reviewed the CBA and the Handbook before preparing the Gould Letter. The Employer's July 23 memo had referenced both documents. The Gould Letter appears to be a follow up to the Employer's invitation to employees to review those documents. She asked a manager for copies - it is not apparent that management was aware of the reason for her request.

[233] On the other hand, Gould testified that, although she canvassed employees on their breaks, she did so on the premises. She might have been attempting to conceal her activities, but Wallis had testified that the workplace was small, that word got around generally, and that Gould's discontent with the Union's handling of her grievance was known. Given the evidence, it is very difficult to believe that Wallis hadn't heard about Gould canvassing employees about decertification in the workplace.

[234] When Reynolds emailed Wallis about Gould canvassing the employees, the subject line was "Union business on employer's time". Regardless of Reynolds' intent, the subject line should have been a clue to Wallis about Gould's activities, especially given the timing and the surrounding circumstances.

[235] Even accounting for the possibility that the email was too vague to be understood, the Board finds that Wallis knew about Gould's activities at the workplace but chose not to speak to her about it.

[236] He didn't speak to Gould about it, but he did talk to Epp about limiting his union business outside of work hours.

[237] Next, the Board finds it concerning that Wallis picked up the Gould Letter, read it, and then did nothing about it. The letter references him as a source of information. It directs employees to text Gould with questions "or talk to your supervisor and or [Wallis]". It tracks concepts introduced in the Employer's memo (comparing the documents and negotiating directly with the employees). It was left in the shared office of two of the managers, the AGM and the Business Director. Even if Gould wasn't coached by management, the Gould Letter left the impression of a united front, or at least, of some Employer involvement or support.

[238] The Gould Letter remained in the shared office for no more than a day or a day and a half. Still, this was enough time for some of the letters to begin circulating in the workplace at the beginning of the voting period.

[239] Wallis testified that he didn't speak to Gould about canvassing employees in the workplace because he didn't know it was happening. For the reasons as outlined, the Board does not believe this evidence. Moreover, Wallis did know that the Gould Letter was on the credenza in the shared managers' office, the Gould Letter implicated Wallis, and he still failed to do anything about it. Despite personally authoring three memos, he issued no memo to distance himself from the Gould Letter.

[240] It is well established that an employer's passive assistance to an applicant can amount to impugned conduct pursuant to section 6-106. It should not be up to a union to police and enforce an employer's conduct during a decertification drive.

[241] The Board believes Gould's testimony when she testified, in front of Wallis, that she had asked him if she could direct the employees to him. Even if she didn't communicate a link between her request and her decertification activities, it had to have been clear that the decertification drive was the relevant context.

[242] The totality of this evidence means that there was a letter circulating in the workplace linking Wallis to Gould's decertification efforts and presenting Wallis as capable of fielding employees' questions.

[243] Furthermore, Gould's version of events raises doubts about Wallis's insistence that he wrote the memos to eliminate the need for employer-employee discussions and that he greatly limited any conversations he had had (whether before or after the Gould Letter). Given the

invitation to ask Wallis "any" questions, Wallis's testimony that employees had approached him[46], and the unexplained contradictions in his testimony, the Board believes that he fielded questions from employees.

d. Words or conduct, on behalf of the employer, that suggest, whether indirectly or overtly, that decertifying will result in a benefit to the employees

[244] The Employer's memos suggest that decertifying will result in a benefit to the employees.

[245] It is entirely plausible that the employees parlayed the content of their conversations with Epp into concerns about job losses and wage reductions. Certainly, the Union's first memo (assuming it was distributed before the Employer's first memo) would have aggravated the employees' concerns.

[246] As well, it is entirely plausible that the employees found something in the conversations that they perceived to be a threat to the anonymity of the vote.[47]

[247] To some extent the Employer's memos responded to concerns around job losses and wage reductions. They also responded to the employees' desire to receive more specific information about future terms and conditions. They did not, however, provide a balanced perspective. Certainly, they indicated that the Employer was to act in a neutral capacity, but from an informational standpoint, they provided information only to support decertification.

[248] The first memo repeated the following phrase three times: "[i]f the majority of employees vote in favour of decertification". If the Employer was only responding to the employees' concerns around jobs and wages, there was no reason to state that employees would no longer have to pay union dues. In the second memo, only paragraphs three and four would have been arguably necessary to respond to the employees' concerns. The content in italics was not a response to their concerns but a plug for decertification. In the third memo, the bullets provided information allegedly requested by the employees but only after the Employer had opened the door by inviting employees to compare benefits.

[249] In all fairness to the Employer, Lolacher's and McConnell's criticisms of the memos were relatively mild. The Union didn't ask the Employer to remove them. When asked to explain the

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[46] He said this was why he wrote the memos. He also stated on more than one occasion that employees had come forward with information and questions about the decertification application. He also knew that employees were feeling harassed based on conversations with managers and based on direct conversations.

[47] To be clear, there is no evidence that the Union was discussing with the employees how they would vote.

Union's responses to the Employer's memos, the Union's concern with the reference to the "Saskatchewan Labour Act" suggests that the Union representatives were testifying, at times, in an overly exacting manner. Lolacher's main concerns with the memos were their characterization of the Union's conversations with the employees, which appeared to have some basis in fact.

[250] The Union's mild reaction to the memos cannot be lightly dismissed. On the other hand, the memos say what they say. Even considering the context, there is no way to characterize the memos as neutral. Regardless of whether the Employer was engaging in a "campaign against the Union", it stepped over the line.

[251] Even if the employees inquired as to their benefits, the memos still raise the question as to why the Employer was so obviously focused on the benefits of decertification and not at all on the disadvantages.

[252] The Employer has argued that the content of the memos is protected, and the Union issued similar if not more influential communications during the voting period.

[253] However, the Employer was not on the same footing as the Union in its communications. Section 6-106 specifically allows for the dismissal of an application if it is influenced by an employer. There is no equivalent provision in relation to a union.[48]

[254] Subsection 6-62(2) explicitly qualifies clause 6-62(1)(a), and not section 6-106. And even if subsection 6-62(2) can be taken as a qualification, communications occurring during a decertification campaign are subject to a more rigorous review by the Board:

> *[100] Furthermore, the historic presumption that all employer communications are inherently and inevitably intimidating or coercing for employees can not stand in face of the 2008 amendment to s. 11(1)(a). It may well be that a power imbalance exists in a particular workplace or that a particular group of employees are vulnerable for one reason or another to the wishes or influences of their employer. However, it is no longer appropriate for this Board to begin its analysis of the impugned employer conduct by presuming that employees are inherently or inevitably susceptible to the expropriation of their free will by an employer. In our opinion, absent evidence of an unusual power imbalance in the workplace, we start from the presumption that employees are capable of receiving a variety of information from their employer; of evaluating that information, even being aided or influenced by that information; without necessarily being improperly influenced, threatened, intimidated or coerced by that information. Absent evidence of a particular vulnerability of employees, we start from the presumption that employees are capable of weighing any information they receive, including information from their employer, and will make rational decisions in response to that information. In blunt words, in evaluating the probable affect*

[48] Section 6-109, for example, deals with obtaining certification by fraud.

> *of impugned communication by an employer, we do not assume that affected employees are timorous minions cowering in fear of their masters.*
>
> *[101] The context in which an impugned communication occurs continues to be fundamental to evaluating the probable effect of that communication in two (2) ways. Firstly, contextualizing an impugned communication helps evaluate the probably effect of that communication on employees of reasonable fortitude. Considering the context within which an impugned communication occurs help the Board determine if an otherwise ambiguous statement may convey a subtle message or have a different meaning in that particular context. Secondly, the circumstances in which an impugned communication occurs also guides the Board in determining the approach it will take to intervention. An analysis of the Board's jurisdiction reveals that communications occurring during an organizing campaign or during a rescission application have generally been subject to a more rigorous review by the Board. During an organizing campaign or at any time when the representational question is before employees, the Board has generally been highly alert to subtle signs of employer interference, intimidation, coercion or threats. For example, communications from an employer about the relative benefits of unionization have been found to convey a subtle message of intimidating or coercive effect when made during an organizing campaign. See: Super Valu, a Division of Westfair Foods v. United Food and Commercial Workers, Local 401, [1981] 3 Can. LR.B.R. 412, LRB File No. 121-81.*
> *[emphasis added]*

[255] Even presuming that employees are generally capable of receiving a variety of information, communications from an employer about the relative benefits of unionization made during a decertification campaign have been found to convey a subtle message of intimidating or coercive effect.

e. Demonstrated conduct on behalf of the employer that has hindered bargaining and damaged the union's reputation

[256] Although it was entirely inappropriate for the Employer to completely ignore Reynolds' email in September 2022, the Board is not persuaded that the Employer's conduct damaged the Union's reputation.

[257] The main issue of concern is Wallis's somewhat irreconcilable description of the division of responsibilities (between himself and Zelichowski) and the incomprehensible lack of communication by Wallis in relation to Reynolds' requests. To be sure, the Board believes that Wallis was walking a fine line. His testimony about having to "stay in his lane" was consistent with many of the communications that occurred before Reynolds' involvement.[49] He described the

[49] For example, Email exchange between Cathcart and Zelichowski in February 2022 (U15, U16); the email exchange between Zelichowski and Horsman that occurred in July 2020. It is also consistent with Wallis's forwarding of the email dated June 23, 2023 to Johnson after receipt.

issue as related to Zelichowski's management style, which is consistent with the Employer's markedly different approach after Zelichowski left.

[258] However, Wallis relied excessively on the division of responsibilities to explain his failure to communicate basic information with Reynolds about what he was doing – he did not even copy Reynolds when he forwarded the emails to Zelichowski – leaving Reynolds completely in the dark about what was happening.

[259] However, there is no evidence that the Union had made any of the related requests prior to September 2022. What the evidence reveals is a relationship in which the labour relations of Primrose Chateau were handled very casually, by both the Union and the Employer. The notion that there was not a single completed membership card, and the Union hadn't noticed this until around June 2023, is astonishing. The evidence does not explain the Union's lack of action around this issue (prior to Reynold's discovery). Even accounting for Wallis's inclination to minimize, the Union couldn't account for its limited activity over a number of years.

[260] Despite Cathcart's February 2022 email to Zelichowski, Reynolds testified that her main contact was Wallis, therefore rationalizing his initial requests to Wallis. When Reynolds was met with absolute silence from September 2022 to May 2023 he did nothing. Later, Zelichowski tried to speak with him about his requests. It was understandable that he would want to talk in person about numerous requests that appeared to challenge a well-established status quo.

[261] Reynolds did not behave in a constructive manner. While he attempted to suggest that he was willing to work towards a resolution, he was only willing to interact with Zelichowski in narrow, predetermined circumstances.[50]

[262] In cross by the Employer, Reynolds said it was easier to contact Wallis. He was asked why, and he provided a flippant response. He even acknowledged that he continued to contact Wallis because it was what he wanted to do.

[263] Instead of seeing the problem as the product of both parties, Reynolds placed all of the responsibility on the Employer and communicated in a disrespectful, and at times, sarcastic, manner. He resisted entering into a constructive dialogue.

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[50] He attempted to suggest he was providing Zelichowski with lists as a starting point for a conversation. On cross, he admitted that he didn't intend to have a discussion until Zelichowski had "investigated" his concerns.

[264] Finally, the Union argues that the Employer's failure to provide information interfered with the representation question by creating obstacles to the Union communicating with the employees.

[265] The Union has also made claims pursuant to sections 6-41, 6-62(1)(b), and 6-62(1)(r) of the Act.[51] The Board finds that the questions raised in the decertification and ULP applications are interrelated. Relevant to both is the duty of an employer to provide a union with information in the context of the bargaining relationship.

[266] In *Beardy*[52], the Board canvassed the case law applicable to an employer's informational duty, beginning with *Bernard*:

> *[118] With respect to contact information, the leading case is Bernard. There, the majority of the Supreme Court of Canada upheld the decision of the Public Service Labour Relations Board that required the employer to disclose home contact information for a Rand employee – an employee who had opted out of the exclusive bargaining relationship. The Board had found that work contact information was insufficient to enable the union to carry out its representational duties. The majority agreed with the Board's rationale:*
>
> > *[27] The Board's conclusions are clearly justified. The union's need to be able to communicate with employees in the bargaining unit cannot be satisfied by reliance on the employer's facilities. As the Board observed, the employer can control the means of workplace communication, can implement policies that restrict all workplace communications, including with the union, and can monitor communications. Moreover, the union may have representational duties to employees whom it cannot contact at work, such as employees who are on leave, or who are not at work because of a labour dispute.*
> >
> > *[28] The second rationale — equality of information between the employer and the union — further supports the Board's conclusion. The tripartite nature of the employment relationship means that information disclosed to the employer that is necessary for the union to carry out its representational duties should be disclosed to the union in order to ensure that the union and employer are on an equal footing with respect to information relevant to the collective bargaining relationship.*

[267] The Board is not persuaded that the Employer's conduct with respect to the information requests influenced the decertification application. Reynolds' first request for information was made in September 2022. He testified that the items were not urgent. He didn't follow up until May 30, 2023, after Gould was rehired, and then again in June.

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[51] During the Union's argument, the Board asked the Union how it should address the jurisdictional questions, particularly given the existence of "live" grievances. The Union replied that the Union was not seeking a ruling as to the validity of its grievances, but rather, a ruling as to whether the Employer committed unfair labour practices by failing to provide information. When asked whether it was more appropriate to consider this issue under 6-106 than 6-41, the Union indicated that it "could be" and that the important issue is whether the Employer interfered with the employees' ability to decide the representation question.

[52] *Mary-Anne Beardy v Seiu-west and Saskatoon Twin Charities Inc.*, 2023 CanLII 118987 (SK LRB).

[268] There is no evidence that the Union (besides Epp) had plans to communicate with the employees about the decertification application before it received the employee list from the Employer. The evidence suggests the opposite. Reynolds and Epp were going to wait for the application to be filed. The organizing department only suggested that Reynolds contact the employees after they were in receipt of the list.

[269] The Union also argues that the information the Employer did provide was incomplete or in error. However, Lolacher's testimony about the errors in the employee list was not detailed enough to conclude that the errors had any impact on the Union's ability to contact the employees. After stating generally that there were errors, Lolacher later stated that some of the mailing addresses were not correct but didn't provide details as to how many. There is insufficient evidence to conclude that the employees' phone numbers were also incorrect, or that any errors that did exist had any impact on the Union's efforts. The Union's evidence also suggests that it wasn't attempting to phone employees who were not interested in receiving a phone call.[53]

[270] To be clear, it was completely inappropriate for the Employer to basically ignore the September 2022 request and fail to engage in a dialogue until June 2023.

[271] However, unlike in *Beardy*, the parties in the current case enjoy a mature bargaining relationship. The parties have defined the Employer's informational duty in the CBA, which terms are binding upon them.

[272] The parties have chosen to include the Employer's obligations within the CBA, the Union has sought to enforce the CBA in part by filing policy grievances, the parties have negotiated in relation to those grievances, they have reached some agreement as to the conditions for a resolution, and the parties have made progress toward that goal.

[273] Due to the parties' negotiations under the CBA, it would be inappropriate to determine whether the Employer committed a ULP under subsections 6-41(2) and (3) or clause 6-62(1)(b).[54]

[274] Given these conclusions it is unnecessary to consider the delay issue.

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[53] Lolacher testified, only half joking, that she works in the field of "bread crumbs".
[54] The Union interference allegations flow directly from the allegations that the Employer failed to comply with its informational duty.

Conclusion on Decertification Application:

[275] Given the foregoing, the Board has decided to dismiss Gould's application to decertify pursuant to section 6-106. Although the Board believes that Gould genuinely wishes to decertify the Union, the Board has lost confidence in the capacity of the employees to independently decide the representation question because of the Employer's improper conduct. While there were a number of red flags, the Board's main concerns are Wallis's failure to speak to Gould about her activities in the workplace, his failure to take any action at all in relation to the Gould Letter, and his failure to distance himself from the Gould Letter – a letter that presented Wallis as capable of fielding the employees' questions. . Supporting the Board's concerns are its findings with respect to the reliability of Wallis's testimony.

[276] While the Board finds that the Employer's memos were not neutral, but rather communicated the benefits of decertification, the Board would have come to this conclusion in the absence of the memos.

[277] To be clear, the Board is not removing the employees' right to determine the representation question indefinitely but suspending it.

ULP Application:

[278] The remaining issue is whether the Employer has committed an unfair labour practice by preparing and posting communications that contravened clause 6-62(1)(a).

[279] The test pursuant to clause 6-62(1)(a) is well established. It is an objective test that assesses whether the probable effect of the communications, on employees of reasonable intelligence and fortitude, would have been to interfere with, restrain, intimidate, threaten and/or coerce them in the exercise of their rights under Part VI of the Act. This test requires a contextual analysis.

[280] The Board in *Securitas*[55] provided a helpful description of the analysis that it should undertake:

> *[32] While employers continue to be prohibited from interfering with, intimidating, threatening and coercing their employees, the Board is much less paternalistic in our presumptions as to vulnerability and/or susceptibility of employees to the views and opinions of their employers. In our opinion, the inclusion of the words "Clause (1)(a) does not prohibit an employer from communicating facts and its opinions to its employees" in*

[55] *United Food and Commercial Workers, Local 1400 v Securitas Canada Limited*, 2015 CanLII 43778 (SK LRB) [*Securitas*].

> *The Saskatchewan Employment Act signals a greater tolerance by the Legislature for the capacity of employees to receive information and views from their employer without being threatened, intimidated or coerced. As noted by this Board in Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, supra¸ to fall outside the sphere of permissible communications, an employer must do more than merely influence its employees. Improper communications requires conduct that is capable of infringing upon, compromising or expropriating an employee's free will. For example, the mere fact that an employer has communicated facts and its opinions to its employees and those employees may have been influenced by those views and opinions, should not now automatically lead to a finding of interference, let alone employer coercion or intimidation. Simply put, the prohibited effect targets a higher threshold than merely "influencing" employees in the exercise of their rights.*
>
> *[33] While employers now enjoy a greater capacity to [communicate] facts and their opinions to employees, there continues to be a number of important limitations on an employer's so-called "free speech". As noted by the Saskatchewan Court of Appeal in Saskatchewan Federation of Labour v. Saskatchewan, et. al., 2012 SKQB 62 (CanLII), the inclusion of the right to communicate "facts" and "opinions", does not give employers an unrestricted right to do so. The Saskatchewan Employment Act (as did its predecessor The Trade Union Act) seeks to balance a number of laudable, yet clearly competing, interests in dealing with communications by an employer, including; the interests of employers (the right to freely communicate with its employees regarding matters directly affecting its business interests, its current activities, and its plans for the future); the interests of employees (the right to exercise their associational rights free from coercion, intimidation or interference); and the interests of trade unions (the right to be the exclusive bargaining agent for organized employees). See: Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, supra. While employers may communicate with their employees, they may not do so in a manner that infringes upon the ability of those employees to engage and exercise their collective bargaining rights.*
>
> *[34] To fall outside the sphere of permissible employer communications, the Board must be satisfied that the probable effect of an impugned communication would be to compromise or expropriate the free will of a reasonable employee. Obviously, the challenge for the Board is differentiating between those communications by an employer that are permissible (because they contain useful and helpful information for employees; information that is merely "influential") and prohibited communications that stray into the prohibited grounds of threats, intimidation and coercion. […]*

[281] In considering whether a communication is offside, the Board will take into consideration the following factors:

1. *Evidence, if any, of a particular vulnerability of the subject employees to the views and opinions of their employers.*

2. *The maturity of the bargaining relationship between the parties.*

3. *The context within which the impugned communication occurred.*

4. *The evidentiary basis for and value of the impugned communication.*

5. *The balance or neutrality demonstrated by an employer in communicating impugned information.*

[282] Here, the Board's main concern is the subtle promotion of the decertification process and the context within which the communications occurred. The Board presumes, generally, that employees can receive a variety of information. Furthermore, depending on the context, a certain amount of factual spin might be expected.[56] However, as mentioned, communications from an employer about the relative benefits of unionization when made during a decertification campaign can convey a subtle message of intimidating or coercive effect. That is what happened in this case.

Conclusion:

[283] The Board hereby declares that the Employer committed an unfair labour practice pursuant to clause 6-62(1)(a) and orders:

a) That the Employer cease and refrain from contravening clause 6-62(1)(a);

b) That the Employer post a copy of the Board's Order and Reasons for Decision at the Employer's premises in Saskatoon, in a location or locations accessible to the employees, for at least 60 days, commencing within one week of the date of the Order;

c) That the application to cancel the certification order be dismissed; and

d) That the ballots in that matter be destroyed unopened.

[284] An appropriate Order will accompany these Reasons. This is a unanimous decision of the Board.

DATED at Regina, Saskatchewan, this **9th** day of **August, 2024.**

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson

[56] To a greater degree in bargaining as compared to representation campaigns.

Appendix A

Collective Bargaining Agreement Provisions

2.02 *Delivery of Communication*

All communications between the parties shall be addressed to:

[mailing addresses of Union and Employer]

4.03 *Union Business on Employer Property or During Working Hours*

Union business shall not be transacted on the Employer's property and/or during business hours, without the prior approval of the Employer. Such approval shall not be unreasonably denied.

6.04 *Staff Changes*

The Employer shall provide the Union with a monthly list of all employees hired or who have left the employ of the Employer in the previous month, along with a list of all employees in the bargaining unit, their position and their employee status.

6.05 *New Employees*

a) The Employer agrees to acquaint new employees with the fact that a Collective Agreement is in effect and with the conditions of employment set out in the Articles dealing with the Union Membership (Article 6.01) and Dues Check Off (Article 6.02). The Employer agrees to have new employees sign a dues authorization card and membership card at the time of hiring. Such cards shall be provided by the Union.

b) The Employer agrees to provide the Union office with a list of employees and their last known address and phone number no later than April 30th each year.

8.02 *Shop Stewards and Committee Members*

a) …

b) The Union shall notify the Employer in writing of its stewards and unit executive, and shall maintain the currency of such list at all times. The Employer shall not be required to recognize any individual of whom it has not been notified under this article.

10.05 *Seniority Lists*

a) The Employer agrees to post a seniority list twice yearly. The first list shall be posted by March 1st reflecting the accrued seniority of each regular employee up to the last pay period in December of the preceding year. The second list is to be posted by September 1st, reflecting the accrued seniority of each regular employee up to the last pay period in June of the current year.

b) Upon proof of error, the Employer shall revise the seniority list. Copies of the list, and revisions thereof, shall be forwarded to the Local Union Office simultaneously. These lists shall remain posted until replaced with an updated list in a place accessible to all employees.

c) The seniority list shall also indicate the job title of each regular employee.

12.02 *Job Posting*

When the Employer intends to permanently fill a vacancy in a regular bargaining unit position, it shall post a notice of such vacancy at the facility for a least seven (7) calendar days, unless the Employer and Union agree to a longer or shorter period. Copies of posting shall be forwarded to the Local Union Office.

12.04 *Filling Posted Vacancies*

. . .

c) Appointment of Applicant

Within five (5) days of awarding the position, the name of the selected applicant will be posted on designated bulletin boards for a minimum of seven (7) calendar days, with a copy forwarded to the Union Office.

12.06 *Letters of Appointment*

All positions shall be confirmed in writing by a letter of appointment which will set out the employee's status, classification and the number of weekly hours normally worked. ***Current employees shall be provided a letter of appointment upon request.***

12.08 *Temporary Vacancies*

a) When the Employer knows or reasonably ought to know, that a vacancy will be for a duration of ***three (3)*** *consecutive months or longer, it shall post and fill such vacancy under this article. This requirement does not apply when a vacancy is filled in good faith by the Employer, without posting, and such temporary assignment subsequently extends beyond three (3) months. In this eventuality, the Employer shall meet with the SEIU-West Union Representative to discuss whether it is appropriate to post a temporary vacancy at that time. The Employer shall not unreasonably refuse to do so when the assignment can reasonably be expected to continue for an additional extended period of time.* ***Where a vacancy occurs that is less than three (3) months and coverage is required such coverage shall be provided through Article 14.05.***

b) Should the temporary vacancy subsequently become a permanent position, it shall be posted and filled in accordance with this ***Article****.*

c) No temporary position shall exceed twelve (12) consecutive months unless agreed to between the Employer and the Union. The Employer agrees to review with the Union all temporary jobs on a semi-annual basis to determine whether such positions should be posted as permanent positions.