Saskatchewan Labour Relations Board

CARLTON TRAIL COLLEGE, Applicant v SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION LOCAL 4309, Respondent

LRB File No. 118-24; July 10, 2024
Chairperson, Kyle McCreary; Board Members: Christopher Boychuk, K.C. and Phil Polsom

Counsel for the Applicant, Carlton Trail College: Amy Gibson

Counsel for the Respondent, SGEU, Local 4309: Heather Robertson

Interim Relief – Determination of an application to exclude positions from bargaining unit on an interim basis – Test applied and it is found that one of the positions sought should be excluded on an interim basis.

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** Carlton Trail College ("the Employer") has applied for interim relief excluding, on an interim basis, the Post-Secondary Programs Manager ("PSP Manager") and the Strategic Enrolment and Foundational Learning Manager ("SEFL Manager") from the scope of its bargaining unit with Saskatchewan Government and General Employees' Union Local 4309 ("SGEU"). For the reasons that follow, the request for interim relief in relation to the PSP Manager is granted, and the request in relation to the SEFL Manager is denied.

[2] The Employer and SGEU are subject to a Certification Order of the Board dated September 20, 1985 in LRB File No. 157-85 ("the Certification Order"). The Order is an all employees bargaining unit subject to certain exclusions.

[3] Beginning in April 2024, the Employer communicated with the Union in relation to removing six new positions from the scope of the Certification Order. On June 6, 2024, the parties reached a letter of understanding in relation to four of the positions.

[4] On June 14, 2024, the Employer filed an application in LRB File No. 117-24 to amend the Certification Order. Alongside that application, the Employer filed this application for interim relief in LRB file No 118-24 related to the two positions, the PSP Manager and the SEFL Manager, that the parties did not reach agreement on.

Evidence:

[5] The Employer filed three Affidavits in support of its application for interim relief. The Affidavits are from Rachel Trann, Deanna Gaetz, and Bailey Williams.

[6] The Affidavit of Rachel Trann, who is the Adult Basic Education and Student Services Director, set out her current role as an out of scope manager and the portions of her role that will be transferred to the SEFL Manager and the job description for the SEFL Manager. It sets out the new initiatives the Employer has undertaken that are requiring the increase in resources, including a partnership with BHP, the anticipated approval of the Employer as a Designated Learning Institution, the Student Engagement Initiative and One Campus Model Initiative, a new Student Information System, and a new Enterprise Resource Planning system ("the New Initiatives"). The Affidavit also sets out the SEFL Manager's potential role in these initiatives, and the potential that without the SEFL Manager position, the Affiant will be unable to do her current job and her work related to the New Initiatives. In terms of irreparable harm the Affidavit states at para. 11:

> *An in-scope employee will not be able to adequately perform the managerial and confidential capacity duties required of the Strategic Enrolment and Foundational Learning Manager. The College will suffer irreparable harm as these job duties cannot be performed effectively, and without conflict, by an in-scope employee. Performance issues will go unmanaged, confidential business information will be shared with the Saskatchewan Government and General Employees' Union Local 4039 and the grievance procedure will be undermined. This will result in inadequate program delivery, and inadequate instructor supervision.*

[7] The Affidavit of Deanna Gaetz sets out her role out of scope role as Business & Skills Director and the portion of that position that will be transferred to the PSP Manager along with the job description for the PSP Manager. It also sets out the New Initiatives, and the anticipated role of the PSP manager in the New Initiatives. In particular, it is noted that there are six positions the PSP Manager will be responsible for overseeing that are likely to require higher levels of oversight and direction in the upcoming school year. The Affiant identifies similar risks of irreparable harm related to operational efficiency, labour relations issues, and loss of confidentiality.

[8] The Affidavit of Bailey Williams, the Human Resources Director, sets out that the Employer is an education institution under *The Regional Colleges Act*, its work locations, specifics about the bargaining unit, and communications with SGEU related to the PSP Manger and the SEFL Manager. In relation to the bargaining unit, the Affidavit sets out the history of positions previously excluded by agreement. Due to the New Initiatives, the Employer has added the equivalent of

6.8 in-scope positions. The Affidavit outlines in detail the job descriptions of the PSP Manager and SEFL Manager in comparison to other positions. The Affidavit also sets out the potential irreparable harm to the Employer of the positions remaining in-scope on an interim basis.

[9] SGEU filed three Affidavits in reply to the Employer's application. The Affidavits are from Kathy Mahussier, Kevin Glass, and Darlene Purshega.

[10] Affidavit of Kathy Mahussier, a Labour Relations Officer with SGEU, sets out the Certification Order and previous excluded positions from that order. The Affidavit sets out the history of the communications between the parties on the potential new positions as follows:

> *[38] Additionally, the position of Strategic Enrolment & Foundational Learning Manager contains responsibilities and work that is currently performed by an in-scope member Darlene Pushega, I am highly concerned with respect to loss of bargaining unit work, and particularly with respect to the ABE credit work and supervision and associated roles and tasks Darlene Pushega performs in that role.*
> *…*
>
> *[40] The Union has a significant interest in protecting bargaining unit work. Even the temporary removal of work from the bargaining unit threatens the integrity of the certification order, the erosion of which cannot be compensated by the remission of union dues or other monetary relief after the fact.*

[11] Affidavit of Kevin Glass, a Labour Relations Office with SGEU, sets out part of the history of the communications between the parties on this matter, along with position descriptions, and similar concerns related to irreparable harm as expressed by the above Affidavit, along with concerns that SGEU will suffer reputational damage related to the loss of bargaining unit work.

[12] Affidavit of Darlene Purshega, ABE Program Coordinator at the Employer, sets out what her positions duties and compares those duties with the duties of the SEFL manager. The Affidavit also sets out work done by other in-scope employees in relation to the New Initiatives.

[13] From the Affidavits of both parties, the Board finds the following timeline of communications:

- April 9, 2024, The Employer sends job descriptions with covering letters to SGEU about the PSP Manager and SEFL Manager.
- April 23, 2024, SGEU responds to the Employer and requests further information.
- April 24, 2024, The Employer provides information in response.
- May 10, 2024, Email exchange between the Employer and the Union.
- May 23, 2024, Correspondence from counsel for the Employer to the Union.

- May 27-29, 2024, Exchanges in correspondence on dates for responses between the parties.
- May 31, 2024, Correspondence from counsel for the Union to counsel for the Employer.
- June 6, 2024, Letter of understanding signed regarding 4 other positions.

Argument on behalf of the Employer:

[14] The Employer argues that it should be entitled to interim relief as it has met the test for an arguable case and that the balance of convenience favours granting relief.

[15] The Employer argues that its has followed the process for seeking exclusion of a new position, that the positions meet the statutory requirements for exclusion, and that if necessary, the evidence establishes a material change.

[16] The Employer further argues that the positions are time sensitive as it will take most of the summer to fill them and they are needed for the start of the school year due to the New Initiatives. The Employer argues it will suffer irreparable harm if either it is not able to fill the positions or the positions are filled by in-scope personnel due to the impact on operational efficiency and program delivery and the labour relations harms of loss of confidentiality and inability to effectively manage.

[17] In response to SGEU's concerns related to ABE Program Coordinator Position the Employer proposes that if the Board finds there is a risk of irreparable harm to SGEU, the following condition could be placed on the interim order:

> *The ABE Program Coordinator position cannot be abolished or receive a reduction in hours of work until a further order is issued from the Board or Carlton Trail College's Application to Amend the certification order in LRB File No. 117-24 is determined. ("the Proposed Condition").*

Argument on behalf of SGEU:

[18] SGEU argues that there is a two part test for interim relief, requiring an arguable case and a balance of convenience favouring the granting of relief. SGEU argues that the Employer has not established an arguable case and that the balance favours not granting the relief.

[19] In advancing the argument that the Employer has not established an arguable case, SGEU focuses on two issues, that the process required to exclude a position was not followed as

the Employer failed to negotiate, and that the positions do not meet the test for the managerial and confidential exclusions.

[20] On the balance of convenience, SGEU argues that the Employer has not established that there is sufficient urgency to grant interim relief especially considering the nature of the relief sought, that delay is inherent in the creation of new positions, and the Employer will not suffer irreparable harm.

Analysis and Decision:

[21] An application for interim relief under section 6-103(2)(d) *of The Saskatchewan Employment Act*, SS 2013, c S-15.1("SEA") must establish that there is sufficient merit to an underlying case and that the balancing the risks of harms to the respective parties warrants the Board exercising its discretionary powers to grant an interim order. The parties both cite the Board's two-part test for interim relief as set out in *Saskatchewan Government and General Employees' Union v. Saskatchewan (Government)*, 2010 CanLII 81339 (SK LRB):

> *[29] For purposes of its interim application, the Union focused its argument on the allegation that the Employer implemented technological change(s) in violation of s. 43 of the Act and sought interim injunctive relief directing the Employer to cease and desist from implementing further like changes, under the general headings of "Green" initiatives and/or "Lean Management" strategies. The Union also sought an Order that the Employer be directed to disclose its future plans and any documents that it may have with respect to further "Green" initiatives and/or "Lean Management" strategies. Having considered the evidence and arguments presented in these proceedings, we have concluded that the Union's application for interim relief ought to be dismissed.*
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> *[30] Interim applications are utilized in exigent circumstances where intervention by the Board is thought to be necessary to prevent harm from occurring before an application pending before the Board can be heard. Because of time constraints, interim applications are typically determined on the basis of evidence filed by way of certified declarations and sworn Affidavits without the benefit of oral evidence or cross-examination. As such, the Board is not in a position to make determinations based on disputed facts; nor is the Board able to assess the credibility of witnesses or weigh conflicting evidence. Because of these and other limitations inherent in the kind of expedited procedures used to consider interim applications, the Board utilizes a two-part test to guide in its analysis: (1) whether the main application raises an arguable case of a potential violation under the Act; and (2) whether the balance of convenience favours the granting of interim injunctive relief pending a hearing on the merits of the main application. See: Hotel Employees and Restaurant Employees Union, Local 206 v. Canadian Hotels Income Property Real Estate Investment Trust #19 Operations Ltd. (o/a Regina Inn), [1999] Sask. L.R.B.R. 190, LRB File No. 131-99. See also: Canadian Union of Public Employees, Local 4973 v. Welfare Rights Centre, 2010 CanLII 42668, LRB File No. 083-10. As with any discretionary authority under the Act, the exercise of the Board's authority to grant interim or injunctive relief must be based on a sound labour relations footing in light of both the broad objectives of the Act and the specific objectives of the section allegedly offended.*

> *[31] In the first part of the test, the Board is called upon to give consideration to the merits of the main application but, because of the nature of an interim application, we do not place too fine a distinction on the relative strength or weakness of the applicant's case. Rather, the Board seeks only to assure itself that the main application raises, at least, an "arguable case". See: Re: Regina Inn, supra. See also: Canadian Union of Public Employees, Local 4973 v. Welfare Rights Centre, 2010 CanLII 42668, LRB File No. 083-10. The Board has also used terms like whether or not the applicant is able to demonstrate that a "fair and reasonable" question exists (which should be determined after a full hearing on the merits) to describe this portion of the two-part test. See: Re: Macdonalds Consolidated, supra. Simply put, an applicant seeking interim relief need not demonstrate a probably violation or contravention of the Act as long as the main application reasonably demonstrates more than a remote or tenuous possibility.*
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> *[32] The second part of the test – balance of convenience - is an adaptation of the civil irreparable harm criteria to the labour relations arena. See: Hotel Employees and Restaurant Employees Union, Local 206 v. Chelton Suite Hotel (1998) Ltd., [2000] Sask. L.R.B.R. 434, LRB File Nos. 091-00, 110-00, 125-00, 139-00, 144-00 & 145-00. In determining whether or not the Board ought to grant interim relief prior to a full hearing on the merits of an application, we are called upon to consider various factors, including whether or not a sufficient sense of urgency exists to justify the desired remedy. See: Grain Services Union, Local 1450 v. Bear Hills Pork Producers Ltd. Partnership, [2000] Sask. L.R.B.R. 223, LRB File No. 079-00. The Board will also balance the relative labour relations harm that is anticipated to occur prior to the hearing of the main application without intervention by the Board compared to the harm that could result should a remedy be granted. See: Saskatchewan Joint Board, Retail Wholesale and Department Store Union v. Regina Exhibition Association Limited, et. al., [1997] Sask. L.R.B.R. 667, LRB File No. 266-97; United Brotherhood of Carpenters and Joiners of America, Local 1985 v. Con-Force Structures Limited, [1999] Sask. L.R.B.R. 599, LRB File No. 248-99; and International Association of Fire Fighters, Local 1318 v. South Saskatchewan 911, [2001] Sask. L.R.B.R. 97, LRB File No. 037-01. In assessing the relative labour relations harm, the Board is particularly sensitive to the potential for irreparable or non-compensable harm. See: Retail, Wholesale and Department Store Union, Local 455 v. Tai Wan Pork Inc., [2000] Sask. L.R.B.R. 219, LRB File No. 076-00.*
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> *[33] In addition, the Board had enunciated certain policy restrictions on when interim relief should be granted (or rather should not be granted). For example, the Board has stated that the relief sought may not be granted were doing so would have the practical effect of granting what the applicant might hope to obtain on the main application. See: Tai Wan Pork Inc., supra.*

[22] This test has been used consistently by the Board, including in *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union v NSC Minerals Ltd*., 2024 CanLII 14549 (SK LRB):

> *[45] The Board employs a two-part test in determining whether to grant interim relief.[81] The onus is on the applicant to satisfy both parts of the test.*
>
> *[46] First, the applicant must establish that the underlying application discloses an arguable case that a violation of the Act has occurred. This is not a rigorous standard. An applicant is not required to demonstrate a probable violation of the Act through its evidence, only that a violation is more than a remote or tenuous possibility. The Board does not pay close attention to the relative strengths or weaknesses of the applicant's case at this stage.*

> *[47] Second, the applicant must establish that the balance of convenience favours granting interim relief pending a decision on the merits in the underlying application. For this stage, the applicant is required to demonstrate a meaningful risk of irreparable harm that may ensue if interim relief is not granted. Generally, irreparable harm is harm that cannot be remedied through an award of damages, or otherwise remedied, if it occurs.*
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> *[48] In assessing the balance of convenience, the Board will typically consider a variety of factors, including (but not necessarily limited to): (1) Whether there is a sufficient sense of urgency to justify the interim relief sought; (2) the potential burden imposed upon the respondent, including whether there is a meaningful risk of irreparable harm to the respondent if the interim relief is granted; (3) whether the interim relief, in effect, grants all of the relief sought in the underlying application; and, (4) whether there is a clear labour relations purpose for granting the interim relief sought.*

[23] The factors as set out above will be applied with consideration for the fact that they are non-exhaustive, and the overriding consideration is whether the risk of irreparable harm warrants the Board exercising its discretionary powers. At the hearing, there was argument presented on the uniqueness of the relief sought. The lack of precedent for the application of the test to a specific area of labour practice is not a bar to relief. The exercise of discretionary power is not a mathematical exercise,[1] the Board must ensure that any discretion is exercised in a just and equitable manner.

Arguable Case:

[24] As stated above, the first stage of the test is not a rigorous standard. The Employer need only demonstrate that the application for an amendment is more than a remote or tenuous possibility. This standard is analogous to the standard employed by the Court's in determining injunctive relief. The Court's require there is a serious issue to be tried, which is a claim that is not frivolous or vexatious. That is a claim that is not destined to fail or brought for improper purposes. The Employer's case meets the test for arguable case as based on the materials filed the application for an amendment is not frivolous or vexatious and demonstrates that it has more than a remote possibility of success.

[25] There is agreement between the parties that the leading authority on the exclusion of positions from a bargaining unit is *Donovel v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union*, 2006 CanLII 62948 (SK LRB) [*Donovel*]. In *Donovel* the Board set out the procedure an Employer must follow in relation to a new position in an all employee bargaining unit, as set out at paras 27-29:

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[1] Mosten Investment LP v The Manufacturers Life Insurance Company o/a Manulife Financial, 2019 SKCA 141 (CanLII) at para 5.

> *[27] As the Board stated in Saskatchewan Government Employees' Union v. Wascana Rehabilitation Centre, [1991] 3rd Quarter Sask. Labour Rep. 56, LRB File Nos. 199-90 & 234-90, at 59, "where a new position is created in an 'all employee' unit, it remains in the bargaining unit unless excluded by order of the Board or agreement of the parties." Therefore, an employer is required to bargain collectively with the union in order to obtain agreement on an exclusion, or apply to the Board for an amended certification order pursuant to s. 5(j), (k) or (m) of the Act.*
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> *[28] An employer must adhere to the following steps in determining the proper assignment of the work and the position:*
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> > *1. notify the certified union of the proposed new position;*
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> > *2. if there is agreement on the assignment of the position, then no further action is required unless the parties wish to update the certification order to include or exclude the position in question;*
> >
> > *3. if agreement is not reached on the proper placement of the position, the employer must apply to the Board to have the matter determined under ss. 5(j), (k) or (m);*
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> > *4. if the position must be filled on an urgent basis, the employer may seek an interim or provisional ruling from the Board or agreement from the union on the interim assignment of the position.*
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> *[29] An employer is not entitled to act unilaterally by assigning the position as out-of-scope of the bargaining unit without obtaining the agreement of the union or, failing such agreement, without obtaining an order from the Board, or the employer will be in violation of its obligation to bargain collectively under s. 11(1)© of the Act: See, University of Saskatchewan, infra.*

[26] This approach continues to be followed by the Board under the SEA, for example in *Saskatchewan Polytechnic v Saskatchewan Government and General Employees' Union*, 2022 CanLII 45399 (SK LRB):

> *[69] In most amendment applications, the first question is whether the employer has followed the proper process. A newly created position in an all-employee bargaining unit remains within the unit unless excluded by an order of the Board or by agreement of the parties: Saskatchewan Government Employees' Union v Wascana Rehabilitation Centre, [1991] 3rd Quarter Sask Labour Rep 56, at 59. In Donovel v Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, 2006 CanLII 62948 (SK LRB), the Board set out the process for an employer to follow when creating a new position:*
>
> > *1. Notify the certified union of the proposed new position;*
> >
> > *2. If there is agreement on the assignment of the new position, then no further action is required unless the parties wish to update the certification order to include or exclude the positions in question;*
> >
> > *3. If agreement is not reached on the proper placement of the position, the employer must apply to the Board to have the matter determined…; and*
> >
> > *4. If the position must be filled on an urgent basis, the employer may seek an interim or provisional ruling from the Board or agreement from the union on the interim assignment of the position.*

[27] SGEU argues that the notification requirement in *Donovel* should be interpreted as a requirement to collectively bargain. This seems counter to the reasoning of a recent decision of the Board interpreting *Donovel*.[2] It is also counter to the reasoning of the majority of the Board in *University of Regina Faculty Association v Canadian Office and Professional Employees Union, Local 397*, 2022 CanLII 111251 (SK LRB):

> *[43] The first issue before the Board is whether the Employer followed the required procedure in this matter[20]. The Board agrees with the Employer that it did. It notified the Union of the proposed new position, and sought its agreement that the position be created outside the bargaining unit. When the Union would not agree, the Employer filed these applications. As of the date of the hearing, the Employer had not hired an EFM.*

Considering these precedents, there is a more than remote chance that the communications outlined at paragraph 13 of this decision constitute notification for the purpose of the *Donovel* test.

[28] Whether the test from *Donovel* should be interpreted to require bargaining as argued by SGEU or more rigorous notification than has previously been found by the Board is not a question to be determined on this interim application. Further, even assuming there is a higher standard, there is a more than a remote chance the Employer has met it based on the communications outlined above and detailed in the evidence filed by the parties.

[29] Relatedly, SGEU has raised an issue that there is no arguable case due to an argument that including information in a cover letter and not the job description itself is not notice. This is a matter for the panel hearing the merits to determine. For this panel, the question is whether it is more than a remote chance that using a cover letter to convey information alongside a job description is sufficient notice. The panel finds that there is a more than a remote chance this constitutes notice when comparing the job descriptions in the Employer's Affidavits with the April 9 job descriptions and cover letters.

[30] The Employer takes the position that it does not need to demonstrate a material change as the interim order relates to new positions. However, as the Employer is seeking an amendment and not just a provisional determination, it is arguable that it may need to demonstrate a material change when this matter is heard in full. Based on the Certification Order dating from 1985, and the recent changes and expansion in the size of the Employer's workforce, it is accepted that

[2] University of Regina Faculty Association v Canadian Office and Professional Employees Union, 2024 CanLII 23836 (SK LRB) at para 32.

there is a more than remote chance the Employer will be able to demonstrate a material change if required.

[31] The Employer argues that it has made out an arguable case that the PSP Manager position and the SEFL Manager position meet the test for exclusion as set out in the SEA. The Union argues that the Employer has not met the test as set out in the case law for the exclusions.

[32] Based on the job descriptions in the Affidavits of the Employer, along with the explanations of the job responsibilities in the Employer's Affidavits, and the previous job descriptions provided to the Union, including covering letters, there is a more than remote chance the PSP Manager position and the SEFL Manager position meet the tests for exclusion. The Union's arguments as to the interpretation of the case law and whether the primary duties are managerial and confidential are matters requiring the weighing of evidence that are not properly within the scope of the test applicable to this application.

[33] The Board finds that the Employer has demonstrated that there is an arguable case for the purposes of the exclusion of the PSP Manager position and the SEFL Manager position from the SGEU bargaining unit.

Balance of Convenience:

[34] The heart of the test is the balance of convenience. The Board must weigh the relative risks to each party and determine whether the balancing of various factors supports granting the relief requested. No factor is determinative, and the strength of certain factors may compensate for weakness in other factors.

(1) Is there is a sufficient sense of urgency to justify the interim relief sought

[35] There is urgency to the Employer's request as the evidence demonstrates there is a meaningful risk of harm to the Employer's operational efficiency and ability to deliver all intended educational programs. This harm is more specific as it relates to the PSP Manager and the management of new personnel who will require supervision and direction that would engage labour relations and confidentiality concerns in the immediate future.

[36] It is generally set out that the New Initiatives will be impacted, but it is unclear what the specific timeline the Employer has to complete tasks related to those initiatives before the roll out of one or any of them would be delayed or prevented.

[37] Further, it is accepted that there is a meaningful risk of loss of confidential information if some of the proposed work is performed by in-scope employees, and the loss of confidential business information has been found to constitute irreparable harm. *SCH Maintenance Services Ltd. v Teamsters Local Union No. 395*, 2021 SKQB 314 (CanLII)

[38] As the Employer is an educational institution, it is also noted that the public interest is potential harmed if the New Initiatives are delayed or prevented from being implemented.

[39] As noted the general risks are established for both positions, but for the PSP Manager, the risks related to the commencement of the school year and the need for immediate increase in supervision of specific personnel is more specifically established by the evidence.

(2) The potential burden imposed upon the respondent, including whether there is a meaningful risk of irreparable harm to the respondent if the interim relief is granted

[40] The evidence filed by SGEU outlines several potential risks. The main risks are reputational damage, loss of bargaining unit work, and the loss of an opportunity to bargain.

[41] Similar to the Employer's evidence, the risk of harm is general for both positions, and only specific for one position. In this case, the risk of harm of the SEFL Manager position is more clearly established. The Affidavits set out the alleged overlap between the current work performed by an in-scope coordinator and the SEFL Manager position. This creates meaningful risk that the exclusion order may cause a loss of bargaining unit work. This establishes potential labour relations harm that is not compensable in monetary damages.

[42] The Proposed Condition of the Employer does not adequately address this risk. Similar to an undertaking as to damages in an injunction, it ensures that there is no monetary harm, but it does not address the reputational loss and the potential loss in the scope of the Certification Order.

(3) whether the interim relief, in effect, grants all of the relief sought in the underlying application

[43] This factor raises concern in granting the relief sought. While other relief is sought in LRB File No. 117-24, the exclusion of both positions is sought as part of the underlying application. This factor weighs against granting the relief sought, particularly if both interim relief were granted on both positions.

(4) whether there is a clear labour relations purpose for granting the interim relief sought

[44] There is a labour relations purpose in granting the relief sought. It preserves the need of following the process as set out in *Donovel.*

[45] The purpose is clearer on the PSP Manager position as the Employer has outlined in evidence specific concerns related to management of specific personal who are recent or new hires that would be undermined by not allowing the Employer to increase out of scope staffing. There is also evidence related to the SEFL Manager that support the Employer's labour relations purpose, but it is less specific than the evidence for the PSP position.

[46] The countervailing view is that there is also a labour relations purpose in preserving bargaining units as defined until provisional exclusions or amendments can be made unless there is a clear need for the positions to be filled in the interim by out-of-scope personnel.

Conclusion:

[47] Weighing all of these factors supports granting an interim application in relation to the PSP Manger, there is a risk of irreparable harm to the employer that outweighs the risk to SGEU. There is urgency in the request in relation to the upcoming school year, the New Initiatives, and a clear impact on the Employer's business as it relates to the supervision and direction of specific in-scope positions. The near-term supervision risks also raises a meaningful risk of labour relations harm to the employer, especially as it relates to effective management and maintenance of confidentiality.

[48] There is also the risk of irreparable harm to the Employer on the SEFL Manager position. However, the evidence of specific near-term harm is less than on the PSP Manager position. Further, SGEU has clearer evidence of a risk of harm as it relates to loss of bargaining unit work. The Proposed Condition addresses the potential monetary harm an interim order could cause, but it does not address the irreparable harm as it relates to alleged loss of scope of the bargaining unit without either a provisional or final determination of the Board, which cannot be compensated for.

[49] As a result, with these Reasons, an Order will issue that the Application for an interim exclusion of the PSP Manager from the Bargaining Unit in LRB File No. 118-24 is granted. The interim exclusion from the bargaining unit will be in effect until the conclusion of LRB File No. 117-24 or further order of this Board. The Application for an interim exclusion of the SEFL Manager position is dismissed.

[50] For clarity, this order is issued pursuant to the Board's authority to grant interim relief pursuant to section 6-103 and is not a provisional determination pursuant to section 6-105.

[51] As there was no viva voce evidence heard and no final findings of fact made, this panel is not seized of this matter for the hearings on the merits.

[52] The Board thanks the parties for the helpful written and oral submissions they provided, all of which were reviewed and considered in deciding this matter.

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

DATED at Regina, Saskatchewan, this **10th** day of **July, 2024.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson