610539 SASKATCHEWAN LIMITED (operating as Heritage Inn Saskatoon), Applicant v THE UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1400, Respondent

LRB File Nos. 139-23 and 129-23; February 29, 2024
Vice-Chairperson, Barbara Mysko; Board Members: Aina Kagis and Kris Spence

Counsel for the Applicant, 610539 Saskatchewan Limited (operating as Heritage Inn Saskatoon): Steve Seiferling

Counsel for the Respondent, United Food and Commercial Workers Union, Local 1400: Heath Smith

Application to Defer – Alleged No Jurisdiction – Sections 6-41 and 6-45 of *The Saskatchewan Employment Act* – Original Unfair Labour Practice Application – Allegations of Breach of Collective Agreement – Matters Arising from Collective Agreement – Deferral Granted.

Application for Summary Dismissal – Original Unfair Labour Practice Application – Union Alleges Breaches of Sections 6-4, 6-62(1)(a), 6-62(1)(b), and 6-62(1)(e) of the Act – Lockout and Picketing.

Application for Summary Dismissal – Employer Alleges No Arguable Case – Matters Relating to Sections 6-4, 6-62(1)(a), and 6-62(1)(b) – May Proceed – Not Patently Defective.

Application for Summary Dismissal – Clause 6-62(1)(e) – No Allegation Relating to Negotiations with Employer – Patently Defective – Summary Dismissal Granted.

REASONS FOR DECISION

Background:

[1] Barbara Mysko, Vice-Chairperson: These are the Board's Reasons for Decision in relation to an application for summary dismissal and deferral brought by 610539 Saskatchewan Ltd. operating as Heritage Inn Saskatoon [Employer]. The original application is an unfair labour practice application filed by the United Food and Commercial Workers Union, Local 1400 [Union] on September 12, 2023.

[2] The parties have been engaged in collective bargaining for the renewal of a collective agreement (CBA) but have not concluded an agreement. On September 5, 2023, the Employer served lockout notice effective September 7, 2023. The Union alleges that, before and after the

lockout commenced, the Employer breached sections 6-4, 6-41, 6-62(1)(a), 6-62(1)(b), and 6-62(1)(e) of *The Saskatchewan Employment Act* [Act].

[3] The Union previously filed an interim application seeking relief pursuant to the CBA on September 12, 2023. That application was dismissed by Order of the Board on September 20, 2023. Reasons for Decision were issued on October 2, 2023 [*Interim Decision*].[1] The Board found that it did not have jurisdiction to grant the interim relief requested.[2] With respect to the underlying application, the Board indicated:

> *[46] Finally, the Board's conclusions are not necessarily determinative of the existence or scope of jurisdiction that it might have over the underlying matter. The current matter is an interim application with a focus on the enforcement of the CBA. The Employer has also indicated that it is prepared to argue jurisdiction on the substantive matter. Therefore, the Board will hear the jurisdictional arguments with respect to the underlying matter in due course.*

[4] In the original application, the Union makes the following allegations:

> *10. Negotiations between the parties continued, sporadically, throughout the early portion of 2023.*
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> *11. On, or about, May 29, 2023, the Union filed an Unfair Labour Practice Application (the "May ULP Application") against the Employer, alleging various unfair labour practices, and other violations of The Act, including that it violated ss. 6-7, 6-62(1)(a), 6-62(1)(b), 6-62(1)(k), and 6-62(1)(n).*
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> *12. The Board has scheduled the May ULP Application for [a] hearing between November 20th and 23rd, 2023.*
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> *13. On, or about September 5, 2023, the Employer served notice that [it] intended to lock out its employees, effective September 7, 2023.*
>
> *14. Also on, or about, September 5, 2023, the Union informed the Employer that its representatives intended to hold meetings with members at the Employer's premises, pursuant to the terms of the CBA, prior to the commencement of the Employer's lockout.*
>
> *15. The Employer has routinely failed to provide the Union with updated contact information for members, in violation of the provisions of the CBA.*
>
> *16. In response to the notice the Union provided, the Employer denied access to the workplace. Consequently, the Union was not able to meet with all employes prior to the commencement of the lockout.*
>
> *17. On, or about, September 7, 2023, the Employer did, in fact, lock out its employees. Several of the employees with whom the Union was unable to meet, after the Employer issued lockout notice, have continued to work for the Employer and have had no contact with the Union.*
>
> *18. Also on, or about, September 7, 2023, Union members began picketing activity along the perimeter of the Employer's property, establishing a picket line. Union officials also*

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[1] *UFCW, Local 1400 v Heritage Inn Saskatoon*, 2023 CanLII 89626 (SK LRB) [*Interim Decision*].
[2] *Interim Decision*, at para 45.

attended at the workplace, to attempt to provide informational leaflets to the employees with whom the Union was unable to communicate prior to the commencement of the lockout.

19. In response to Union officials' attempts to engage with members at the workplace on September 7, 2023, counsel for the Employer emailed certain Union officials directly. In the email, counsel for the Employer purported to provide "trespass notice" to Union officials, and claimed that they were "not permitted on the property." Counsel for the Employer further indicated that, if any Union officials attend at the workplace, "the local police will be contacted." The police did, in fact, attend at the workplace.

20. On, or about, September 8, 2023, two members that had worked for the Employer the day prior joined the picket line. After the two members joined the picket line, the Employer's General Manager approached the picket line and individually photographed each of the two members.

21. Also on, or about, September 8, 2023, shortly after 2:00 pm, the Employer's Kitchen Manager drove his vehicle past the picket line, yelling "stop it!" at the assembled picketers.

[5] In the present application, the Employer divides its argument into two parts. First, it says that the Board does not have jurisdiction to hear certain complaints raised by the Union in the original application. For this argument, the Employer relies on section 6-45 of the Act. Second, it says that the Union has failed to plead facts that disclose an arguable case with respect to its other claims. To be specific, the Union has not pled material facts which, if taken as true, would substantiate claims made under sections 6-4, 6-62(1)(a), 6-62(1)(b), or 6-62(1)(e) of the Act.

[6] The Union, in response, states that the Board has concurrent jurisdiction with grievance arbitrators. The Union has clearly presented, at least, an arguable case for all of its five claims against the Employer.

[7] Those five claims may be summarized as follows:

a. First, the likely effect of the Employer's conduct (preventing Union representatives from attending at the workplace; contacting police based on a legal theory that it ought to have known was wrong; photographing and yelling at employees on the picket line) was to discourage participation in and assistance to the Union.

b. Second, the parties are bound by the CBA. The Board can make a determination with respect to an alleged breach of the CBA and, in this case, the parties have no grievance process available to them because the CBA has ceased to be effective.

c. Third, the Employer's conduct presents an arguable case of a violation of clause 6-62(1)(a).

d. Fourth, the Employer has refused to allow Union representatives to attend at the workplace and has attempted to dissuade leafletting and picketing, thereby breaching clause 6-62(1)(b).

e. Fifth, by stopping the Union representatives from attending at the workplace, the Employer has, arguably, "prevented the Union from discovering, investigating, and resolving disputes with the Employer". The Employer's invocation of trespass has likely had a chilling effect on members. These allegations establish an arguable case of a breach of clause 6-62(1)(e).

Applicable Statutory Provisions:

[8] The Union's original application engages the following provisions of the Act:

> ***6-4****(1) Employees have the right to organize in and to form, join or assist unions and to engage in collective bargaining through a union of their own choosing.*
>
> *(2) No employee shall unreasonably be denied membership in a union.*
>
> ***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;
. . .

(e) to refuse to permit a duly authorized representative of a union with which the employer has entered into a collective agreement or that represents the employees in a bargaining unit of the employer to negotiate with the employer during working hours for the settlement of disputes and grievances of:

(i) employees covered by the agreement; or

(ii) employees in the bargaining unit;

[9] The Employer also raises section 6-45:

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

(2) Subsection (1) does not prevent the director of employment standards as defined in Part II or the director of occupational health and safety as defined in Part III from exercising that director's powers pursuant to this Act.

(3) Without restricting the generality of subsection (2), the director of employment standards may issue wage assessments, issue hearing notices, take action to collect outstanding wages or take any other action authorized pursuant to Part II that the director of employment standards considers appropriate to enforce the claim of an employee who is bound by a collective agreement.

Analysis:

[10] The relevant Board powers are found at section 6-111 of the Act:

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

…
(l) to defer deciding any matter if the board considers that the matter could be resolved by mediation, conciliation or an alternative method of resolution;
…
(o) to summarily refuse to hear a matter that is not within the jurisdiction of the board;

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

[11] Pursuant to these provisions, the Board has the following powers: to defer deciding any matter if it considers that the matter could be resolved by an alternative method of resolution; to summarily refuse to hear a matter if it finds that the matter is not within its jurisdiction, and to summarily dismiss a matter if the Board forms the opinion there is a lack of evidence or no arguable case.

[12] The Employer did not raise clauses 6-111(1)(l) or (o) in its application. However, it has made an application for deferral on the basis of jurisdiction. The Board will proceed to consider the Employer's jurisdictional argument pursuant to clauses 6-111(1)(l) and (o).

[13] The Employer has relied on the following test for deferral to arbitration:[3]

> *[22] Our Court of Appeal in United Food & Commercial Workers, Local Union 1400 and The Labour Relations Board et al., established the following criteria for the Board to exercise its authority to defer to arbitration:*
>
> > *(i) the dispute put before the Board in an application for an unfair labour practice order and the dispute intended to be resolved by the grievance-arbitration procedure provided for in the collective agreement must be the same dispute;*
> >
> > *(ii) the collective agreement must make possible (i.e. empower) the resolution of the dispute by means of the grievance arbitration procedure; and*
> >
> > *(iii) the remedy sought under the collective agreement must be a suitable alternative to the remedy sought in the application before the Board.*

[14] This test has been found to be consistent with the "exclusive jurisdiction model" which "directs that if the essential character of the dispute in question, arises out of the interpretation, application or violation of a collective agreement, its resolution falls to be decided through the grievance arbitration process".[4]

[15] To be sure, whether this test is consistent with the exclusive jurisdiction model, or with concurrent jurisdiction, may be subject to reasonable debate.[5]

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[3] *Communications, Energy & Paperworkers Union of Canada, Local 911 v ISM Information Systems Management Canada Corporation (ISM Canada)*, 2013 CanLII 1940 (SK LRB).

[4] *International Brotherhood Of Electrical Workers, Local 2038 v PCL Intracon Power Inc*., 2017 CanLII 68787 (SK LRB).

[5] This test implicitly acknowledges the potential for concurrent jurisdiction in relation to overlapping factual allegations and the different remedial powers, as between an arbitrator and the Board, in relation to those allegations. In the third stage, for instance, the Board could theoretically take up the dispute if the remedy sought was not suitable. In practice, however, if the dispute is otherwise found to arise from the collective agreement but there are potentially residual remedial issues, the Board has deferred but remained available to deal with remedy.

To understand the case law in this area it is necessary to appreciate the following factors: on the one hand, there is the deference shown to the arbitration and grievance process through legislation and case law and the concern for

[16] However, where a grievance-arbitration process is invoked as an alternative method of resolution, whether pursuant to a deferral request or a dismissal request, the central task for the Board is to consider the "essential character of the dispute" and to do so in the following way:[6]

> *[30] In assessing the essential character of the dispute, the Board is to account for "the factual circumstances underpinning the dispute".[5] In other words, the Board is to inquire into the facts alleged, rather than the legal characterization of the matter.[6] The Board is also to consider the "ambit of the collective agreement".*

[17] This approach requires the Board to inquire into the nature of the dispute, based on the facts alleged, and determine whether the dispute arises from the collective agreement to which the parties are bound.

[18] Given the Employer's argument, the Board will also consider whether the CBA makes possible the resolution of the dispute and whether the remedy that could be sought under the CBA is suitable.

[19] In the *Interim Decision*, the Board made the following findings about its jurisdiction to provide interim relief:

> *[30] … In the present case, the factual circumstances revolve around the requests made under the CBA and the resulting communications. The ambit of the CBA very clearly covers the central issues and relates directly to the remedies that have been raised.*
>
> *[31] In the interim application and the supporting documents, the Union's primary claims are that the Employer has breached two provisions of the CBA. These provisions govern the right of the Union to conduct meetings with its members during regular work hours and the obligation of the Employer to provide the completed membership cards for new employees to the Union. The primary remedies sought, and the only remedies that are truly substantive, seek that the Board enforce the provisions of the CBA that the Union alleges have been breached. The dispute revolves around the alleged breaches of the CBA and the proposed interim solution invokes the enforcement of those same provisions of the CBA. The dispute that is at the heart of the present application, in its essential character, arises from the CBA.*
>
> *[32] Moreover, Article 7.01 provides for a grievance procedure through which complaints, disagreements, or differences of opinion concerning "any alleged violation" of the agreement are to be addressed.*

[20] At paragraphs 14 and 15 of the original application, the Union outlined essentially the same factual allegations as had been described in the *Interim Decision*:

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judicial and administrative economy; on the other hand, there is the factual overlap between Labour Relations Board and grievance-arbitration proceedings and the Board's practical appreciation of its role in supervising the collective bargaining relationship.

[6] *Interim Decision.*

> *14. Also on, or about, September 5, 2023, the Union informed the Employer that its representatives intended to hold meetings with members at the Employer's premises, pursuant to the terms of the CBA, prior to the commencement of the Employer's lockout.*
>
> *15. The Employer has routinely failed to provide the Union with updated contact information for members, in violation of the provisions of the CBA.*
>
> *16. In response to the notice the Union provided, the Employer denied access to the workplace. Consequently, the Union was not able to meet with all employees prior to the commencement of the lockout.*
>
> *17. On, or about, September 7, 2023, the Employer did, in fact, lock out its employees. Several of the employees with whom the Union was unable to meet, after the Employer issued lockout notice, have continued to work for the Employer and have had no contact with the Union.*

[21] Now, the Union asks the Board to find that the Employer committed an unfair labour practice as a result of having breached the CBA and to order that the Employer cease breaching the Act. It also asks the Board to order that the Employer compensate it for the costs of the lockout.

[22] The Union argues that its five claims are "discrete, independent, and non-contingent allegations". It asserts that it is not necessary for the Board to find a breach in respect of one allegation in order to find a breach in respect of another.

[23] However, the Union also says that each of these allegations provides context for the other and, together, the allegations assist in developing an understanding of the atmosphere allegedly created by the Employer. The Union argues that the Employer has insulated the membership from vital sources of information about the members' rights and the Employer's responsibilities. If the Board appreciates that the Employer has breached the CBA, it will understand the context of the other alleged violations which occurred after.

[24] The Union urges the Board to invoke the jurisdiction that arises from the Board's supervisory role over the collective bargaining relationship and from its authority to find that a breach of a collective agreement is an unfair labour practice.

[25] In the Board's view, the dispute's essential character arises from the CBA. Before the Board could find that the Employer committed unfair labour practices, it would have to review the CBA, determine what obligations are created by the relevant provisions of the CBA, and decide whether the Employer failed to comply with those obligations. The Union has acknowledged that

the Board has to find that the Employer has breached the CBA before it can find an unfair labour practice.

[26] Furthermore, the CBA empowers the resolution of the dispute by means of the grievance arbitration procedure.

[27] The Union argues that it does not have access to the grievance process because the CBA is no longer in effect. The Union made a similar argument in relation to the interim application. In its decision, the Board observed:

> *[40] The Union acknowledges that the alleged breaches occurred prior to the commencement of the lockout. Furthermore, the Union had notice of the lockout, meaning that it had notice that the time for filing a grievance was expiring. However, it states that it did not file a grievance during this time because of the 30-day time limit for the resolution of the initial grievance Steps.*

[28] The Board also briefly described the case law that has held that rights are vested when a grievance is filed.

[29] The Union did not file a grievance despite having notice.

[30] The Union has not explained how the 30-day time limit for processing Step1 and Step 2 would prevent the vesting of rights with the filing of a grievance. Article 7.02 states that the complaint is to be submitted within seven days (Step 1) after a verbal response. Article 7.03, which provides for grievances on behalf of a group of employees or the Union (as opposed to grievances on behalf of individual members), allows Step 1 to be by-passed, and the grievance presented within 21 days “of the event giving rise to the grievance”.

[31] Pursuant to section 6-45, an arbitrator is empowered to determine whether a matter is arbitrable, which would include interpreting these provisions to determine whether the Union has complied with the time limits. Instead of filing a grievance, it appears that the Union is now asking the Board to intervene.

[32] The Union also alleges that the Employer “routinely failed” to provide contact information pursuant to the terms of the CBA. In relation to this claim, the underlying facts occurred before the lockout notice was provided. The Union does not indicate that it has filed a grievance and/or received an arbitral decision in relation to a grievance on this issue.

[33] The Union's allegation that the Employer routinely failed to provide contact information is interrelated with its allegation that the Employer denied the Union access to its membership. The Union claims that these actions, combined, are what purportedly resulted in the Union being unable to meet with all of the employees prior to the lockout.

[34] There is no indication that the Union has initiated or filed a grievance in relation to either of these allegations. It is not appropriate for the Board to intervene and provide an alternative avenue for the Union to correct its course.

[35] Finally, the remedy that could be sought under the CBA would be a suitable alternative to the remedy sought in the application before the Board. That is, an arbitrator would be able to enforce the terms of the CBA. The Union has asked the Board for an order that the Employer cease committing the unfair labour practice which is, in essence, a request that the Board enforce the CBA.

[36] The Board is not persuaded that having a more detailed picture of the overall atmosphere means the Board should find that it has jurisdiction over this matter, which so clearly arises from the CBA.

[37] As for the request for lockout compensation, the link to the unfair labour practice claim has not been made clear.

[38] In any event, these aspects of the application may be renewed before the Board by either party on notice to the other side should there be outstanding issues remaining between them that were not resolved by the grievance process, should the Union proceed to have them determined through that avenue.

[39] The Employer has sought deferral, presumably in case there are unfinished remedial issues following the conclusion of the arbitration. The Board will grant the order requested and defer the Union's allegations made pursuant to section 6-41 of the Act.

[40] That leaves the Union's allegations that the Employer breached sections 6-4, 6-62(1)(a), 6-62(1)(b), and 6-62(1)(e). The Employer argues that these allegations disclose no arguable case.

[41] Here, the question for the Board to consider is whether, assuming the Union proves the allegations, the claim has no reasonable chance of success, that is, whether it is plain and obvious that the original application should be dismissed as disclosing no arguable case. In deciding

whether to summarily dismiss, the Board may consider the subject application, any particulars provided, and the documents (referred to within the application) upon which the Union relies. The Board assumes that the facts alleged in the original application can be proven.[7]

[42] The Board may summarily dismiss only if it is plain and obvious that the original application will not succeed.[8] The Board must avoid weighing evidence, assessing credibility, or evaluating novel statutory interpretations. The Employer, as the party seeking summary dismissal, has the onus to demonstrate that the original application is patently defective.

[43] The Board will address, first, the allegations pursuant to sections 6-62(1)(a), 6-62(1)(b), and 6-4.

[44] With respect to clause 6-62(1)(a), the Employer argues that the Union has failed to make any allegations that any of the employees have been interfered with, restrained, intimidated, threatened, or coerced. The Employer acknowledges the Union's allegation that members of management took photos of people on the picket line and drove past the picketers yelling "stop it". However, the Employer indicates that there "is no pleading that anyone was threatened, coerced, intimidated, restrained, or otherwise, with respect to any interactions" and that "the evidence is that the members continued to assemble, and picket, as is their right in a lockout situation".[9]

[45] It is well established that the test pursuant to clause 6-62(1)(a) is an objective test in which the Board considers the likely or probable effect of the Employer's conduct on the employees in the workplace, assuming that the employees are possessed of reasonable intelligence, resilience and fortitude. To establish "the likely or probable effect" it is not a legal requirement that there be evidence of "actual" impact on an employee. It is necessary that there be evidence of the context within which the Employer's conduct occurred. Depending on the case, impact evidence may be more or less helpful in understanding that context.

[46] To be sure, the Board has on at least one occasion refused to find a breach of clause 11(2)(a) of *The Trade Union Act* due to an absence of impact evidence:[10]

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[7] *Roy v Workers United Canada Council*, 2015 CanLII 885 (SK LRB) [*Roy*], at para 9.
[8] *Ibid*.
[9] *Brief of Employer*, at para 27.
[10] *International Brotherhood of Electrical Workers Local Union 2038 v Magna Electric Corporation*, 2013 CanLII 74458 (SK LRB).

> *[43] However, as noted in the cases cited, the test to be applied is an objective one. That test is to determine the likely effect of the impugned conduct upon an employee of average intelligence and fortitude. Unfortunately, we have no evidence before us that any employee was so impacted. We are, therefore, unable to reach any conclusion based upon objective factors as required by the test under Section 11(1)(a).*

[47] In that decision, the Board provided little explanation of the relationship between impact evidence and the objective test.

[48] In our view, it is not logical to require subjective evidence of impact to satisfy the objective test pursuant to clause 6-62(1)(a). Evidence that goes to impact could provide helpful context in assessing the likely or probable effect of the conduct, but it could not be described as a basic legal prerequisite to finding a breach. For this reason, the absence of an impact pleading is not a critical defect.

[49] It is not plain and obvious that the Union's allegations of a breach of clause 6-62(1)(a) of the Act will fail.

[50] With respect to clause 6-62(1)(b), the Union alleges, among other things:

- *The general effect of the Employer's conduct has been to deny a segment of its employees access to their Union and to maintain a captive audience for itself, leaving the Union unable to provide information about members' rights and about the Employer's obligations…*
- *The Union submits that by denying the Union access to members, the Employer has effectively denied the affected members an opportunity to assist their Union in addressing issues in the workplace…*
- *The Union further submits that the Employer's conduct constitutes interference in the administration of the Union…*[11]

[51] The Employer argues that the Union has not pled facts that disclose interference with the formation or administration of the Union, nor financial or other support for it; the Union pled only facts relating to the alleged breaches of the CBA.

[52] However, the claim that the Employer "insulated" the members has to do not only with the alleged breaches of the CBA but also with the Employer's conduct following the commencement of the lockout. The question remains whether these allegations disclose an arguable case of a breach of clause 6-62(1)(b).

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[11] *Union's Brief*, at 9.

[53] In *Saskatoon Downtown Youth Centre*, the Board formulated a question to determine whether a breach had occurred, based on the recent case law:[12]

> *[39] The second ground on which SGEU made this application was that EGADZ contravened clause 6-62(1)(b) of the Act. With respect to this ground SGEU takes issue with what it characterizes as EGADZ falsely implying that it acted improperly in contacting employees using contact information obtained from an employee contact list. Further, it says, EGADZ provided information about the internal workings of the organizing drive, its motivations, its objects, the identity of its principal, and the character of its associates. This, SGEU argues, was interference with the organizing and its internal workings.*
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> *[40] In Saskatoon Co-operative, in finding a contravention of clause 6-62(1)(b), the Board made the following findings:*
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> > *[106] On review, in SEIU-West v Saskatchewan Association of Health Organizations, 2015 SKQB 222 (CanLII) [SAHO QB], the Court found, at paragraph 57:*
> >
> > > *The board decided that s. 11(1)(b) related only to the protection of unions as an independent legal entity, and went on to say at para. 123 that "the fact that the views and opinions being expressed by SAHO and the respondent employers made the jobs of the applicant trade unions more difficult" could not amount to a violation of s. 11(1)(b). That it concluded the independence of the union was not adversely affected by the respondents' conduct is not unreasonable, but it does leave open the question of whether an employer making the union's life difficult can ever be the subject of an unfair labour practice as the board has stated such submission does not belong in either s. 11(1)(a) or s. 11(1)(b).*
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> > . . .
> >
> > *[126] Further, in relation to clause 6-62(1)(b), the focus is on whether the Employer interfered with the administration of the Union. This provision governs conduct that threatens the integrity of the Union as an organization - with an emphasis on the impugned conduct and its significance for the Union's organizational integrity.*
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> *[41] <u>Can the comments in the memo that SGEU objects to be characterized as adversely affecting SGEU's independence, threatening its integrity as an organization, interfering with its administration or creating obstacles that make it difficult or impossible for SGEU to carry on as an entity devoted to representing employees?</u> SGEU has not provided the Board with evidence that the memo had that effect. The Board does not agree that the comments objected to by SGEU contravene clause 6-62(1)(b). While they could lead, and the evidence indicated they did lead, to employees asking SGEU questions, that result does not prove a contravention of clause (b).*
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> *[42] The application to find a contravention of clause 6-62(1)(b) is dismissed.*
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> [Emphasis Added]

[54] If the Board were to adopt the same approach, the question is whether the Employer's conduct can be characterized as adversely affecting the Union's independence, threatening its

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[12] *Saskatchewan Government and General Employees' Union v Saskatoon Downtown Youth Centre Inc*., 2021 CanLII 19681 (SK LRB).

integrity as an organization, interfering with its administration or creating obstacles that make it difficult or impossible for the Union to carry on as an entity devoted to representing employees.

[55] In *Saskatoon Co-op*, the Board considered two decisions about allegations made pursuant to clause 11(1)(b) of *The Trade Union Act*, a substantially similar provision to clause 6-62(1)(b):[13]

> *[117] In further support of its argument, the Employer relies on FW Woolworth Co v UFCW, Local 1400 (1994), 22 CLRBR (2d) 123 (WL) (SK LRB) [Woolworth Co] and Wal-Mart Corp v UFCW, Local 1400 (2012), 217 CLRBR (2d) 103 (WL) (SK LRB) [Wal-Mart Corp].*
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> *[118] In Woolworth Co., the Employer had refused to provide to the Union the addresses and telephone numbers of newly-hired employees. The Board in that case found that there was no reason "to sanction a practice which fails to serve any legitimate interest of the employer and is designed merely to frustrate and obstruct the union's access to rights clearly accorded to it".[8]*
>
> *[119] In Wal-Mart Corp., the Board found that the Employer had committed an unfair labour practice when it denied union officials the opportunity to periodically inspect the notices posted on its behalf in the workplace. The issue was not whether the union was entitled to post notices, which it was; it was whether union officials could periodically inspect those notices, which they could not. In this way, the employer interfered with the union's ability to ensure the visibility and continuity of its message in the workplace.*

[56] Each of these cases dealt in different ways with the union's access to its members through communications.

[57] The present allegations also put in issue the Union's access to its members. In this way, the pleadings disclose an arguable case that the Employer's conduct interfered with the Union's administration or created obstacles that made it difficult or impossible for the Union to carry on as an entity devoted to representing employees.

[58] It is worth noting that the threshold to find an arguable case is low. The Union's allegations pursuant to clause 6-62(1)(b) are not extensive. Even a challenging case, however, is not equivalent to a patently defective case. Whether the Union had the right to access its members in the precise time and manner as disclosed by the evidence cannot be determined at this stage but should be subject to argument at the hearing.

[59] With respect to section 6-4, the Employer argues that the Union has made no claim that any employee has been denied the right to organize in, to form, join or assist the Union, or to

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[13] *United Food and Commercial Workers, Local 1400 v Saskatoon Co-operative Association Limited*, 2020 CanLII 10516 (SK LRB).

engage in collective bargaining, or that any employee was unreasonably denied membership in the Union.

[60] The Union's allegations are that the employees have the rights to participate in and to assist the Union and that the Employer has violated those rights. Members of management are purported to have impeded the Union's access to its members and to have negatively interacted with members who were walking the picket line in support of the Union. Given these facts, it is not plain and obvious that the Union will not be able to establish a breach of section 6-4.

[61] Finally, the Union's last allegation is that, by stopping the Union representatives from attending at the workplace and invoking trespass, the Employer has "prevented the Union from discovering, investigating, and resolving disputes with the Employer", and has thereby breached clause 6-62(1)(e).

[62] Clause 6-62(1)(e) states:

> ***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:*
>
> ***. . .***
>
> *(e) to refuse to permit a duly authorized representative of a union with which the employer has entered into a collective agreement or that represents the employees in a bargaining unit of the employer to negotiate with the employer during working hours for the settlement of disputes and grievances of:*
>
> *(i) employees covered by the agreement; or*
>
> *(ii) employees in the bargaining unit;*

[63] This provision deals with negotiations between union and employer representatives during working hours. The purpose of the provision was made clear in *Bridgeview Manufacturing*:[14]

> *[20] With respect to clause 6-62(1)(e), the Union referred the Board to United Food and Commercial Workers International Union, Local 226-2 v Western Canadian Beef Packers Inc., [1998] Sask LRBR 743 (SK LRB), which quoted the following comment from Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v Regina Exhibition Association Limited[8]:*
>
> > *In our view, Section 11(1)(d) is intended to make clear that an employer cannot insist that discussions with employees who are chosen to represent their fellow employees for the purpose of resolving disputes or handling grievances take place outside working hours, or that wages be deducted for the time taken up by this process.*

[14] *International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local Union No. 838 v Bridgeview Manufacturing Inc.*, 2019 CanLII 83973 (SK LRB).

> *[21] The Union argues that the Employer and its rules have forbidden the Union representatives from speaking or negotiating regarding workplace grievances and concerns and otherwise collectively bargaining with the Employer. While the Union makes this assertion in its Written Submissions, it led no evidence regarding this. It admits that the Employer has not refused to meet with the Union during working hours. The Union asserts, in its Written Submissions, that the Employer has refused to permit its employees, and particularly Mr. Godlien, to conduct Union business during work hours, however no evidence was led to support this assertion. It should be noted that clause 6-62(1)(e) refers specifically to negotiating with an employer.*
>
> *[emphasis added]*

[64] The Union's allegations do not relate to negotiations with the Employer, but to discussions with the employees. The Union's attempt to link the Employer's alleged obstruction of discussions with employees to the Union's potential future negotiations with the Employer is speculative. Its allegations are not caught by the provision. The Union asks the Board to expand the scope of the provision beyond what it is intended to cover. It is plain and obvious that the alleged breach of clause 6-62(1)(e) is destined to fail.

Conclusion:

[65] In conclusion, the Board will make the following orders:

a. The Employer's application to defer is granted;

b. The Union's allegations pursuant to section 6-41 are deferred to the grievance-arbitration process;

c. The hearing of those allegations is adjourned *sine die* with the proviso that it may be renewed before the Board by either party on notice to the other side should there be outstanding issues remaining between them that were not resolved by the grievance process; and

d. The Employer's application to summarily dismiss is granted in part and the Union's allegations pursuant to clause 6-62(1)(e) are dismissed.

[66] With respect to the remainder of the Union's application, consisting of the allegations made pursuant to sections 6-4, 6-62(1)(a), and 6-62(1)(b), the Board Registrar will reach out to the parties to discuss next steps.

[67] An appropriate order will accompany these Reasons.

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

DATED at Regina, Saskatchewan, **29th** day of **February, 2024**.

LABOUR RELATIONS BOARD

Barbara Mysko
Vice-Chairperson