INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2067, Applicant v SASKATCHEWAN POWER CORPORATION, Respondent

LRB File Nos. 172-24, 200-24 & 213-24; March 3, 2025
Vice-Chairperson, Carol L. Kraft (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*
Citation: *IBEW v SaskPower,* 2025 SKLRB 10

Counsel for the Applicant, International Brotherhood of Electrical Workers, Local 2067: Dan LeBlanc

Counsel for the Respondent, Saskatchewan Power Corporation: Susan B. Barber, K.C.

Application to Consolidate – Test to be applied – IBEW did not meet the test

REASONS FOR DECISION

Background:

[1] **Carol L. Kraft, Vice-Chairperson:** The Union applies to consolidate three applications presently before the Board, LRB File Nos.: 172-24, 200-24 and 213-24.

[2] LRB File No. 172-24, was filed with the Labour Relations Board on September 11, 2024. In it, IBEW claims SaskPower committed an unfair labour practice when it created a new out-of-scope position of "Specialist, Environmental Assessment & Approvals (Lead)" (the "Position") and failed to provide IBEW proper notice. IBEW claims the Position is in-scope and seeks a ruling from the Board that the Position is within the scope of IBEW 2067's bargaining unit and covered by the Parties' existing Collective Agreement.

[3] IBEW says on September 9, 2024, SaskPower emailed IBEW to advise that SaskPower had created the Position. In its Reply, SaskPower says at the time it provided the September 9, 2024, notice to IBEW the Position had not yet been posted.

[4] SaskPower pleads and relies on a scope clause (the "Scope Clause") in the Collective Agreement which provides:

> *1.01A The Collective Agreement shall apply to those employees represented by the Union pursuant to an Order of the Labour Relations Board, unless otherwise determined in accordance with 1.02 below.*

1.02A Process

(i) Whenever a new in scope job or classification is created by the Employer, the employer shall have the right to assign the job or classification to the bargaining unit in which the Employer reasonably determine the job should be appropriately placed.

(ii) If either IBEW or UNIFOR fail to agree to the appropriate bargaining unit if any new job or classification, they shall be responsible for resolving any such disagreements on an expedited basis….If IBEW and/or UNIFOR do not agree as to the scope status of any such new job, they shall have the right to advance an appropriate form of application with the Saskatchewan Labour Relations Board.

(iii) The Employer shall have the right to create new management jobs that fall outside the scope of the bargaining units represented by IBEW and/or UNIFOR and to fill any such positions on an immediate basis. If IBEW and/or UNIFOR do not agree as to the scope status of any such new job, they shall have the right to advance an appropriate form of application with the Saskatchewan Labour Relations Board.

(a) Challenges pursuant to 1.02(ii)A and 1.02(iii)A hereof must be advanced within Thirty (30) days of notification to all parties of the creation of any new job, failing which the right to challenge the bargaining unit assignment or scope status of any new job will be forfeited.

[5] SaskPower denies that it has or is engaging in unfair labour practices. It says the Position is properly out-of-scope, and that it followed the process outlined in Article 1.02A(iii) of the collective agreement.

[6] IBEW's application in LRB File No. 200-24 seeks a declaration that certain positions fall with the scope of its bargaining unit. It also claims that SaskPower has committed an unfair labour practice. IBEW says that since the 2013 Certification Order, "SaskPower has unilaterally created dozens of purportedly out-of-scope positions" and that it did not advise the Union that it was creating these positions. IBEW states further that each of these positions fall within the definition of "employee" and that they do not fall within either the managerial or confidentiality exclusions of section 6(1)(h) of *The Saskatchewan Employment Act.*

[7] IBEW states Article 1.02A of the Collective Agreement includes a process for challenging new positions. Any challenge must be made within 30 days of notification to all parties of the creation of any new job, failing which the right to challenge will be forfeited. IBEW says that SaskPower has yet to provide notification of any of the 65 disputed positions.

[8] IBEW requests the Board declare the persons in 65 positions outlined in the application to be "employees" who are properly included within the scope of IBEW's bargaining unit. IBEW further requests a declaration that SaskPower has committed an unfair labour practice by

allegedly unilaterally placing the 65 positions out of scope, in the absence of Union consent or an Order of the Board.

[9] In its Reply in LRB File No. 200-24, SaskPower says the scope of the contested positions must be determined in accordance with the parties' Collective Agreement. It says the Board has no jurisdiction to amend the certification order to vary the terms of the Scope Clause collectively bargained by the parties. It says the Scope Clause supercedes and amends the Certification Order. In relation to the disputed positions, by virtue of the Scope Clause, the Certification Order is spent.

[10] SaskPower further says in its Reply that the Union's failure to challenge the creation or scope of the disputed positions over a substantial period of time is a clear and unequivocal representation through silence and inaction that these positions are properly out-of-scope, and relies on the principles of estoppel.

[11] IBEW's claim In LRB File No. 213-24, is similar to 200-24. It seeks a declaration that certain positions fall with the scope of its bargaining unit. It also claims that SaskPower has committed an unfair labour and says that since the 2013 Certification Order, "SaskPower has unilaterally created dozens of purportedly out-of-scope positions" and that it did not advise the Union that it was creating these positions. The Union states further that each of these positions fall within the definition of "employee" and that they do not fall within either the managerial or confidentiality exclusions of section 6(1)(h) of *The Saskatchewan Employment Act.*

[12] IBEW seeks the same relief in LRB File No. 213-24 as in LRB File No. 200-24 in relation to "dozens" of positions impacted by the application. Notably, in paragraph 4(i) of the application in 213-24, IBEW states its position "that the Positions listed above – as well as the "Specialists" referenced in LRB File No. 200-24 – are within the terms of the Certification Order." No reference is made to LRB File No. 172-24.

[13] SaskPower's Reply to 213-24 is the same as its Reply in 200-24. SaskPower agrees that it is appropriate to consolidate 200-24 and 213-24, and consents to a consolidation order. With respect to LRB File No. 172-24, SaskPower submits that the issues in this file are not the same as the issues in the 200-24 and 213-24.

Discussion and Analysis:

[14] In its application to consolidate, IBEW says that all three applications claim that it was improper for SaskPower to unilaterally exclude new positions from the IBEW 2067 bargaining unit. However, the claim that arises out of 172-24 is based on a different set of circumstances.

[15] LRB File No. 172-24, relates to SaskPower's creation of a new position: "Specialist, Environmental Assessment & Approvals (Lead). The Union was notified of the new position by SaskPower on September 9, 2024. The Union claims the notice does not satisfy the requirements of the *Battleford Principle*. The Union also states its understanding that the job description for the new position is "largely a replication of SaskPower's 'Specialist' template job description.

[16] SaskPower's position is that it followed the process outlined in Article 1.02 A(3) of the Collective Bargaining Agreement between the Union and SaskPower (the "CBA") when it exercised its right to create a management job outside the scope of the bargaining units represented by the Union and Unifor and it did not commit an unfair labour practice. SaskPower says that after notifying IBEW and Unifor of the creation of the new management position, IBEW and Unifor had the right to advance an appropriate form of application to the Board to challenge the scope status of the new position with a determination to be made by the Board. Such a challenge has been made by the Union. SaskPower says that if the Board determines that the position is properly in scope, SaskPower reserves the right to determine in which bargaining unit – i.e.: the IBEW or Unifor – the job should be placed.

[17] SaskPower says that it anticipates that, in relation to LRB File No. 172-24, the Board will hear evidence as to the job duties of the Position to determine the scope status of the Position. The applications in 200-24 and 213-24 are different than 172-24 None of the more than 100 positions the Union has outlined in those applications are new positions. SaskPower says that its evidence will be that all of the positions outlined in those applications existed before the 2013 certification order referenced in the applications, or since the 2013 certification order but well before the Union's applications. SaskPower submits the Board will have to address such issues as delay, estoppel and jurisdiction. Moreover, it is anticipated that there will be extensive evidence in relation to the more than 100 positions identified by the Union as to when the positions were created and when the Union knew or ought to have know of their existence. SaskPower submits that no such issue is engaged in relation to the single position outlined in the Union's application in LRB File No. 172-24.

[18] SaskPower Submits that there is no efficiency or judicial economy to be achieved by consolidating the application in LRB File No. 172-24 with the applications in LRB File Nos. 2000-24 and 213-24. SaskPower says there is no enhancement to the administration of justice by addition LRB File No. 172-24 to the other two applications because they engage fundamentally different issues.

[19] The Union submits that SaskPower's defence to all three applications asserts that the CBA scope clause supersedes the certification, that the scope clause allows it a management right to create the Positions and that as it followed the collective agreement, no issues arise.

Decision:

[20] The Board can take some guidance from the Court of King's Bench, with respect the consolidation provision in King's Bench Rule 3-81, which provides:

> ***3-81****(1) The Court may order one or more of the following:*
>
> *(a) that 2 or more claims or actions be consolidated;*
> *…*
>
> *(2) An order pursuant to subrule (1) may be made for any reason the Court considers appropriate, including, without limitation, that 2 or more claims or actions:*
>
> *(a) have a common question of law or fact; or*
>
> *(b) arise out of the same transaction, occurrence or series of transactions or occurrences.*

[21] The decision of *Qaisar v SGI Canada*, 2019 SKQB 68 at paras 111-114, also cited in the Union's Brief, is helpful in assisting the presiding judge's exercise of discretion to consolidate actions:

> *[111] This Rule allows the court to consolidate two or more claims that have common questions of law or fact, or that arise out of the same transaction, series of transactions or occurrences. Consolidation of actions is rooted in considerations of economy and justice. Economy of time and expense to litigants is usually best realized by avoiding unnecessary multiple actions and trials. Justice and the perception of justice are often enhanced by joinder to avoid the risks of inconsistent determinations of common issues in separate actions and trials: Remai Financial Corp. v 568320 Saskatchewan Ltd. (1996), 1996 CanLII 7100 (SK KB), 150 Sask R 292 (QB).*
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> *[112] The party seeking consolidation bears the onus of demonstrating that the actions should be consolidated: Wong v Leung, 2011 ABQB 722, 530 AR 91. Deciding whether to consolidate actions involves an exercise of discretion. It requires the court to consider a number of factors, including*

> *(i) the extent to which there are common claims and disputes, (ii) the possibility that consolidation may save time and resources in both pre-trial procedures and at trial; and*
>
> *(iii) the potential prejudice to parties that may arise from consolidation: Munro v Munro, 2011 ABCA 279, 341 DLR (4th) 635.*
>
> *[113] Where, for instance,*
>
> *(i) the plaintiffs in the actions have common counsel, as do the defendants;*
> *(ii) the facts as pled in each statement of claim are identical;*
> *(iii) the legal issues in the claims are identical;*
> *(iv) the evidence about liability will be the same;*
> *(v) expert testimony in each action will be the same; and*
> *(vi) the applicable law in each action will be the same, these are all factors that weigh heavily in favour of consolidation: Brass v LeRoux, 2006 SKQB 336; Romanchuk v Jemi Fibre Corp., 2018 SKQB 46, 19 CPC (8th) 385.*
>
> *[114] However, where the main issues in the actions are independent, and an order for consolidation would lead to delay and inconvenience, then consolidation should be refused: Herman v Miller, (1986), 1986 CanLII 3027 (SK KB), 55 Sask R 72 (QB).*

[22] SaskPower takes no issue with the Board's authority to consolidate, nor does SaskPower challenge the case authorities cited by IBEW. SaskPower agrees that proceedings should be consolidated in the interests of fairness, efficiency and judicial economy where it is appropriate to do so.

[23] All three applications deal with the "Specialist" positions within SaskPower. IBEW presumes "there are some 'job family' job duties in common among 'Specialists'." It says: "Tendering this common evidence in parallel hearings is both inefficient and creates the risk of inconsistent decisions. It says the position disputed in 172-24 is a small but somewhat representative, portion of the class of positions disputed in 200-24."

[24] The issues and evidence in relation to 172-24 are limited to the job duties of the new Position, a determination of the scope status of that position, and whether SaskPower committed an unfair labour practice by the process it followed in providing notice and posting the job. The issues in the applications in 200-24 and 213-24 are different: None of the more than 100 positions in those applications are new positions. SaskPower anticipates there will be extensive evidence as to when the positions were created and when the Union knew or ought to have known of their existence. SaskPower further anticipates the Board will need to address issues such as delay, estoppel and jurisdiction. None of these issues exist in 172-24.

[25] IBEW says that if SaskPower is unsuccessful in arguing that the Specialist positions in LRB File Nos. 200-24 and 213-24 fall within the negotiated scope clause of the collective

agreement and that the certification order is spent, then the common question underlying all applications is whether SaskPower requires either Board order or Union consent to treat new positions as out of scope.

[26] The Board does not agree with IBEW's position that all three applications must be heard together to avoid inconsistent decisions on the application of the *Battlefords Principle.* That issue, in the Board's opinion, is dependent on the facts of each case. In 172-24, the Union has challenged SaskPower's creation of the Position within the 30-day requirement set out in Article 102A of the Collective Agreement. Unlike 200-24 and 213-24, SaskPower acknowledges that IBEW and Unifor have the right to apply to the Board to challenge the scope status of the new Position in 172-24. The facts in 172-24 are different than that facts in the other two applications.

[27] All three applications refer to the same Scope Clause in the Collective Agreement, all deal with "Specialist" positions, and the parties and their counsel are the same. However, the circumstances giving rise to the claims are different. Further, the issues and evidence regarding 200-24 and 213-24 are much more extensive than those in 172-24. Several of the issues, as well as the evidence, regarding 200-24 and 213-24 have no application to 172-24. The issues raised by 172-24 are less complex, and consolidating 172-24, with the other two applications would result in unnecessarily delaying its resolution.

Conclusion:

[28] The Board finds it is not appropriate to consolidate 172-24 with 200-24 and 213-24. Accordingly, the Board orders that Applications in LRB File No. 200-24 and 213-24 are to be consolidated. The Application to consolidate LRB File No. 172-24 with 200-24 and 213-24 is dismissed.

[29] The Board thanks the parties for the helpful submissions they provided, all of which were reviewed and considered in making a determination in this matter.

DATED at Regina, Saskatchewan, this **3rd** day of **March 2024.**

LABOUR RELATIONS BOARD

Carol L. Kraft
Vice-Chairperson