SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicant v VALLEY HILL YOUTH TREATMENT CENTRE INC., Respondent and MNP LLP, Respondent

LRB File Nos. 185-24, 230-24 and 235-24; March 19, 2025
Chairperson, Kyle McCreary; Board Members: Don Ewart and Linda Dennis
Citation: *SGEU v Valley Hill Youth Treatment Centre*, 2025 SKLRB 11

Counsel for the Applicant, Saskatchewan Government and General Employees' Union: Lindsey Hjorth

Counsel for the Respondents, Valley Hill Youth Treatment Centre Inc. and MNP LLP: Gordon Hamilton

Application for Deferral – Essential nature of most of dispute relates to bargaining – bargaining dispute should be heard by Board –portion of dispute that relates to payments under collective bargaining agreement is deferred to arbitration

Application for Pre-Hearing Production – Board unable to assess privilege claim without reviewing document – Board orders document over which privilege is claimed to be disclosed under seal for Board to evaluate privilege claim

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** Saskatchewan Government and General Employees' Union ("SGEU" or the "Union) has filed an unfair labour practice application against Valley Hill Youth Treatment Centre Inc. ("the Employer") and MNP LLP ("Chartered Accountancy and Business Advisory") or ("CA/BA").

[2] The parties are subject to a certification Order in LRB File No. 024-13. The parties had a collective bargaining agreement ("CBA") with a term of January 1, 2016 to December 21, 2018.

[3] In September 2018, SGEU gave notice to the Employer to commence bargaining on a new agreement.

[4] SGEU and the Employer engaged in bargaining and on May 31, 2024 signed a Memorandum of Agreement with agreed revisions to the CBA (the "MOA").

[5] SGEU members ratified the MOU on June 26, 2024.

[6] On August 26, 2024, SGEU filed a grievance related to wages that it alleges are owed under the terms of the MOA and the amended CBA.

[7] On August 29, 2024, MNP LLP was appointed the Administrator of the Employer by the Minister of Health.

[8] The Employer did not ratify the amendments to the CBA prior to the appointment of the Administrator and has not ratified since the appointment.

[9] SGEU filed the ULP application in LRB File No. 185-24 with this Board on September 24, 2024.

[10] Subsequent to its appointment, the Administrator prepared a report for the Minister of Health with recommendations regarding the ongoing needs assessment of the facility.

[11] SGEU has requested the Administrator's Report. The Employer has refused the request and has argued against its relevance and claimed privilege in its submissions to this Board.

[12] The Employer has requested that the ULP application in LRB File No. 185-24 be deferred in favour of grievance arbitration.

Relevant Statutory Provisions:

[13] The Board's authority over these preliminary motions and to determine the same without an oral hearing is pursuant to Section 6-111, which reads in part:

> ***6-111****(1) With respect to any matter before it, the board has the power:*
>
> *(a) to require any party to provide particulars before or during a hearing or proceeding;*
>
> *(b) to require any party to produce documents or things that may be relevant to a matter before it and to do so before or during a hearing or proceeding;*
> *…*
>
> *(h) to order preliminary hearings or procedures, including pre-hearing settlement conferences;*
> *…*
>
> *(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;*
> *…*
>
> *(q) to decide any matter before it without holding an oral hearing;*

Analysis and Decision:

Should the Board defer the ULP Application to Arbitration?

[14] The test the Board applies when considering an application to defer to arbitration is set out in the Court of Appeal's decision in from *U.F.C.W., Local 1400 v. Saskatchewan (Labour Relations Board)*, 1992 CanLII 8286 (SK CA)

> *[16] Morris Rod Weeder speaks of "an alternative remedy of the same grievance" and makes clear the principle that where a trade union elects both the grievance-arbitration procedure provided for in the collective agreement between the parties and an application to the Board for an unfair labour practice order to resolve the same dispute, the Board may consider the trade union's election to use the grievance-arbitration procedure as a relevant factor in determining whether to dismiss the application. The case is authority for the proposition that for such an election to constitute a relevant (as opposed to an "extraneous" or "irrelevant") consideration three preconditions must coexist: (i) the dispute put before the Board in the 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 under the collective agreement must be a suitable alternative to the remedy sought in the application to the Board. There appeared to be no question between the parties in that case that these three preconditions coexisted to constitute the necessary foundation for the court's holding that the trade union's election was a relevant consideration.*

[15] This test predates the Supreme Court of Canada's decisions on the exclusivity of arbitration in *Weber v. Ontario Hydro*, 1995 CanLII 108 (SCC), [1995] 2 SCR 929; *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, 2000 SCC 14 (CanLII), [2000] 1 SCR 360; and *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 (CanLII), [2021] 3 SCR 107.

[16] Whether the test as it is formulated in *UFCW* complies with the exclusive jurisdiction of arbitrators has been questioned by this Board, but the Board has continued to apply the test with increased emphasis on the essential nature of the dispute. The Board agrees with the approach as set out in *UFCW* decision, *610539 Saskatchewan Limited (Operating as Heritage Inn Saskatoon) v The United Food and Commercial Workers Union*, 2024 CanLII 15859 (SK LRB)

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

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

[17] The first question the Board must consider is what is the essential nature of the dispute. The Board considers there to be two distinct issues raised. One relates to the events leading up to the MOA, the Employer's failure to ratify the MOA, and whether a collective bargaining agreement was reached, and one relates to compliance with the payment terms of a collective bargaining agreement.

[18] The essential nature of the dispute of the first issue is a bargaining dispute within the Board's supervisory jurisdiction over collective bargaining. The question the application raises relates to whether the Employer bargained in compliance with Part VI in concluding the MOA, whether the refusal to ratify the MOA was also in good faith, and whether a collective bargaining agreement was reached. These are matters within the Board's jurisdiction. In their essential nature, the issues do not relate to the alleged violation of the CBA, they relate to the alleged violation of s. 6-62 of the Act. These are not matters that arise from the interpretation of a CBA or its application, they arise from the collective bargaining itself.

[19] The second issue of whether the Employer has correctly paid its employees is a question that in its essential nature arises from the interpretation and application of the CBA and is therefore within the exclusive jurisdiction of an arbitrator. Questions of whether pay has been correctly administered is a question of the interpretation and application of the CBA. If the Board determines under the first issue that a CBA has been entered into, it is still within an arbitrator's exclusive jurisdiction to interpret the terms of the CBA and whether they have been breached.

[20] The result of the Board hearing the issue of bargaining and whether there is a CBA and an arbitrator hearing the wages dispute would be the same if the original test from *UFCW* were applied. The dispute is only the same dispute as it relates to allegations on the payment of wages. It is not the same dispute as it relates to the parties' behaviour in bargaining. The portion of the dispute related to wages can be effectively resolved before an arbitrator as they have the jurisdiction and remedial authority to address any allegations of unpaid wages. An arbitrator lacks remedial jurisdiction to address the bargaining complaints.

Pre-Hearing Production:

[21] The Board has reviewed the submissions of the parties on pre-hearing production. The Board is unable to reach a conclusion on either the relevance of the report or the Employer's privilege claim at this time. The Board will order the contested report to be disclosed to the Board under seal. The Board will review the document *in camera* and consider the application for pre-hearing production once it has completed the review.

Conclusion:

[22] The request to "provide employees with back payment of salary increases, provide employees with salary increases, and provide employees with $1,000 signing bonus" is deferred to arbitration. The Board will hear the unfair labour practice as it relates to bargaining and whether an agreement was reached.

[23] On pre-hearing production, the Board is unable to fully assess the claim for privilege without reviewing the documents. The Board will consider the application for pre-hearing production further once it has had an opportunity to assess the documents themselves.

[24] As a result, with these Reasons an Order will issue that the Application for deferral in LRB File No. 230-24 is granted in part and that the record sought in LRB File No. 235-24 is ordered produced to the Board under seal for review for a determination of relevance and the privilege claim.

[25] 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 **19th** day of **March, 2025.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson