Saskatchewan
Labour Relations Board

THE UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1400, Applicant v FIRE & FLOWER INC., Respondent

LRB File No. 108-24; March 26, 2024
Vice-Chairperson, Carol L. Kraft; Board Members: Lloyd Zwack and Kris Spence
Citation: *UFCW, Local 1400 v Fire & Flower Inc.,* 2025 SKLRB 14

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

Counsel for the Respondent, Fire & Flower Inc.: Daniel S. Weber

Unfair Labour Practice – Union argued Employer's written communications to employees during organizing campaign constitute an unfair labour practice pursuant to sections 6-5, 6-62(1)(a), (b) and (i) of *The Saskatchewan Employment Act* – Application dismissed – Union did not prove interference with employees of reasonable intelligence and fortitude in exercise of Part VI rights – Employer did not interfere with administration of Union – Integrity of Union not threatened – Application dismissed

REASONS FOR DECISION

Background:

[1] **Carol L. Kraft, Vice-Chairperson:** The United Food and Commercial Workers Union, Local 1400 (the "Union") brought an application pursuant to Section 6-104 of *The Saskatchewan Employment Act* (the "Act") alleging an unfair labour practice by Fire & Flower Inc. pursuant to sections 6-5, 6-62(1)(a), (b), (i), and 6-62(2)(d) of the Act.

[2] The Application arises out of several written communications from the Employer to its employees during the course of an organizing campaign.

Evidence:

[3] The Parties filed an Agreed Statement of Facts in advance of the hearing which included the following information:

a. Fire & Flower is registered to carry on business in Saskatchewan, carries on business in Saskatchewan in the retail cannabis industry, and is an "employer" as contemplated in Part VI of the Act.

b. Fire & Flower Cannabis Co. is a registered tradename of Fire & Flower.

c. The Union is a “union” as contemplated in Part VI of the Act, and carries on such activities in Saskatchewan.

d. On or about October 18, 2022, the Union filed an Application for Bargaining rights to be recognized as the certified bargaining agent for certain Fire & Flower Cannabis Co. employees in Saskatoon, Saskatchewan, indexed as LRB File No. 167-22 (the “Union’s Certification Application”).

e. On or about October 26, 2022, the LRB issued, in respect of the Union’s Certification Application, a Direction to Vote and Notice to Vote for a mail-in certification vote with balloting concluding November 16, 2022.

f. On or about November 8, 2022, the Union filed an Unfair Labour Practice Application against Fire & Flower in respect of matters relating to the Union’s Certification Application, indexed as LRB File No. 184-22 (the “Union ULP”).

g. On or about November 16, 2022, Fire & Flower filed an Unfair Labour Practice Application against, among others, the Union in respect of matters relating to the Union’s Certification Application, indexed as LRB File No. 187-22 (the “Fire & Flower ULP”).

h. On or about June 5, 2023, Fire & Flower and its related entities became subject to proceedings under the Companies Creditors Arrangement Act (the “CCAA Proceedings”).

i. As a result of the CCAA Proceedings, the Union’s Certification Application, Union ULP, and Fire & Flower ULP (collectively, the “Applications”) were stayed until ultimately rescheduled for hearing May 27, 2024 to Mayh 31, 2024 (the “Hearing”).

j. Prior to the Hearing, the Parties settled the ULP Applications and executed Minutes of Settlement (the “Minutes”) and filed a consent order.

k. Prior to the Parties’ agreement on the Minutes, the Parties exchanged settlement agreement proposals and five settlement agreement drafts.

l. On or about May 9, 2024, the Union withdrew the Union ULP.

m. On or about May 10, 2024, Fire & Flower withdrew the Fire & Flower ULP.

[4] In accordance with the consent order, the ballots cast pursuant to the Board’s Direction for Vote and Notice of Vote issued October 26, 2022, which were held under seal by the Board, were destroyed. The consent order further provided that a new Direction for Vote and Notice of Vote be issued. Accordingly, on May 15, 2024, a new Direction for Vote and notice of Vote was issued by the LRB.

[5] Between May 10, 2024 and May 29, 2024, Fire & Flower issued seven communications in respect of the Union's Certification Application:

a. May 10, 2024, email from Eli Mail, Vice president, Operations, Fire & Flower with an attached FAQ.

b. May 15, 2024, email from Eli Mail.

c. May 16, 2024, Fire & Flower issues a brochure entitled "Union Organizing Information".

d. May 17, 2024, email from Eli Mail re: address information.

e. May 17, 2024 email from Eli Mail re: Union Information Session Invitation.

f. On May 17, 2024, the Union wrote to Fire & Flower with respect to Fire & Flower's [unspecified] communications. On May 17, 2024, Fire & Flower responded to the Union's said communication. The Union did not respond to Fire & Flower.

g. May 22, 2024, Fire & Flower issues the agreed upon Union vetted communication regarding the Union's Certification Application meetings.

h. May 23, 2024, Fire & Flower hosts two voluntary off-site meetings regarding the Union's Certification Application. Fire & Flower had a prepared power point presentation to deliver at the session.

i. On May 27, 20924 and May 31, 2024, the Union held its voluntary meetings regarding the Union's Certification Application.

j. May 29, 2024, Fire & Flower issues an email communication regarding the Union's Certification Application.

k. On May 29, 2024, the Union and Fire & Flower corresponded and confirmed that there were not outstanding action items under the Minutes.

[6] Two witnesses testified at the hearing, being Lucy Figueiredo for the Union and Eli Mail for Fire & Flower.

[7] Lucia Figueiredo is the president of UFCW Local 1400. She testified that she is responsible for the administration of the entire Saskatchewan organization. She oversees all aspects of the Union. Prior to becoming president, she occupied most roles within the Union and has been a member since 1998.

[8] Ms. Figueiredo testified that as early as late 2021, the Union had inquiries with respect to organizing. She said that for most of 2022, the union was supporting workers and in October 2022, they had enough support to make an application for certification. She testified that on

November 8, 2022, the Union filed a ULP as its was concerned with the Employer's communications that began shortly after the application for certification was made.

[9] Through Ms. Figueiredo, copies of the Employer's communications which formed the subject of the Union's 2022 ULP were tendered into evidence. These documents were admitted for identification purposes only, and not for proof of their contents.

[10] Eli Mail testified on behalf of Fire & Flower. He is the Vice-President of Retail Operations for Fire & Flower and has been in that role since March 2023. He oversees all aspects of operations across 91 stores from Ontario to B.C. and one in the Yukon Territories.

[11] Mr. Mail testified that he was part of the settlement of the ULP Applications. He said Fire & Flower's goal in the settlement was to get a new vote and be able to communicate with its employees.

[12] He testified that his experience with unions/unionization is based on his familial connection in that his father was part of a union (IBEW) before retirement, and his mother is employed in a unionized setting (CUPE) and has been for some thirty years.

[13] Mr. Mail testified in cross examination that it was his preference that the employees not unionize. He said he did not directly see the benefit of unionization given Fire & Flower's recent leadership transformation. It was his testimony that since the CCAA Proceedings, Fire & Flower had taken steps to address organizational issues that led to the Union's Certification Application.

[14] In cross examination, Mr. Mail was referred to and questioned on various portions of Fire & Flower's communications.

[15] From the May 10, 2024 email, Mr. Mail was referred to the following portion of his email and asked about the basis for his claim:

> *It is important to consider that unionization can introduce complexities that may hinder our ability to adapt swiftly to changing market dynamics. It also creates barriers to direct communications between management and team members, potentially diluting the collaborative spirit we've worked so hard to foster.*

[16] Mr. Mail testified that based on his experience with his parents, he saw how slowly some things happen in a unionized environment, such as having to go to negotiations. He said those kinds of drawn out processes do not exist in their current environment where they are able to make decisions quickly.

[17] With respect to “barriers”, Mr. Mail testified that in today’s environment, they are able to address matters swiftly and directly with individual employees. For example, he said that if someone wants to come to a store manager to discuss their wage, the store manager is empowered to recommend an increase if they feel it is deserved. He said that would not be able to happen so easily and quickly in a union environment. Mr. Mail testified that he has seen his mother, a CUPE member for almost thirty years, go on strike multiple times and knows how her pay, or vacation leave or other benefits have been impacted or not. He said he was not saying it was bad, but he was saying it’s a reality and it could happen.

[18] Mr. Mail was asked about the following portion of the FAQ document dated May 10, 2024:

> *Q. Can a union guarantee job security?*
>
> *A. No, a union can negotiate with Fire & Flower on the matter of job security, but it cannot guarantee job security. Job security ultimately depends on the company’s success and ability to remain competitive and efficient.*

[19] When asked why he decided that particular question had to be included in the FAQ, he said that it was something he came across from the past campaign of 2022; that one of the things he was told by a former employee was that job security was something that was being talked about as something that could be negotiated. He said he just wanted to put that one to rest.

[20] Mr. Mail was also asked why he included the following in the FAQ:

> *Q. What are union dues?*
>
> *A. Union dues are fees that unions charge their members for the services provided. These dues are typically mandatory for all employees in the bargaining unit, regardless of their support for the union.*

[21] Mr. Mail said he included this because there is a financial component to unionization and he wanted employees to understand that there was a financial consideration here. He said there is a lot to consider in a union relationship, one aspect being financial.

[22] Mr. Mail agreed that union dues is one of the themes brought up multiple times in the Employer’s communications.

[23] He testified that he was unaware of the "significant scholarship on the relationship between being a member of a union and higher wages"?[1]

[24] Mr. Mail was also asked about the following Q & A:

> *Q. Where can I get more information on unionization?*
>
> *A. For more information on the union certification process, employees can contact the Saskatchewan Labour Relations Board.*
>
> *Additional information can also be found on websites like LabourWatch: http://www.labourwatch.com/home/index/php*
>
> *LabourWatch provides easy access to information about employee rights and responsibilities when they want a union in their workplace as well as when employees want to be union-free*

[25] Mr. Mail testified that he referred to LabourWatch because it seemed to present a balanced view about whether you want a union or to be union free. Mr. Mail denied the suggestion that he provided the reference to LabourWatch because it was a good source of information about remaining union free.

[26] Mr. Mail was also referred to his May 15, 2024 email which included a copy of a ballot to be sent to employees by the Board. The email states:

> *I wanted to provide you with an update on the 2022 unionization campaign.*
>
> *As expected, the Saskatchewan Labour Relations Board has now ordered a vote and you can expect to receive a letter in the mail from the Saskatchewan Labour Relations Board with the voting instruction and the following ballot: (a copy of the ballot is included here).*
>
> *The choice is yours to make, and we strongly encourage all eligible voters to vote, but we think a "No" vote is best for all.*
>
> *I continue to welcome all team members to reach out to me anytime with any questions or concerns and for those that have, thank you! You can find me on Nudge or at elimail@fireandlfower.com. Your feedback is invaluable as we continue to evolve and improve as a company….*

[27] When asked if this described an open door policy on behalf of the employer, Mr. Mail testified that that specific line was not about employees contacting him about union matters. He said he actually didn't have any conversations with employees individually on union matters. He said such a policy was the general way they were operating from the time he started at Fire & Flower in 2023. He said since having gone through CCAA, he has spent considerable time in the

[1]No evidence of this "significant scholarship" was tendered into evidence by the Union.

stores and on the road establishing the foundation of trust and transparency and availability. He said employees had never had access to their vice president before, and there are certain employees who would reach out to him from time to time. He agreed that this does constitute an open door policy and removes a lot of the hierarchical barriers that he frankly experienced in his own career, and that which he aimed to achieve as VP of Operations of the company.

[28] Mr. Mail denied that this statement was an attempt to meet individually with employees to discuss unionization, although he agreed that if they wanted to contact him with questions that they could call him. When asked if this "open door policy" was another theme in his communications - that his door is open and that employees should talk to him, perhaps rather than talking to the Union - Mr. Mail explained that this was his policy about anything, not just about unionization. He explained that it was to reinforce the culture that they worked so hard to create: "if you have any questions or concerns, give me a call". He said he says that about anything, not just about unionization.

[29] Mr. Mail was referred to the Brochure entitled "Union Organization Information" and asked why he included the following comment: "We hope that your decision about whether to unionize will be made based on facts rather than rumours or promises." Mr. Mail said that this was included because of his exposure to past materials from 2022 which resulted in the ULP application filed by Fire & Flower against the Union. He said he was making sure that if employees were hearing anything, that they were making fact based decisions. Mr. Mail pointed out that he does not say that we hope your decision about whether to unionize is based on facts rather than the Union's promises". He said it was really a balanced statement - that even if the information is coming from us, that the employees should "vet" that and make sure that those promises are true.

[30] Mr. Mail denied the suggestion that this sentence implied that there are rumours and promises coming from the Union, since he would not be warning employees against rumours he himself was spreading. He disagreed. He explained that this does not necessarily mean only him. He said it could be anybody out there. He said he is in Toronto, and this is happening in Saskatoon. If anything is mentioned by colleagues, or even a manager having a conversation with his team, (which they were told not to), he wanted everyone to know that whatever they were hearing from whomever, that they do some fact checking and make sure that they were clear on whether or not it was a rumour/promise or fact.

[31] Mr. Mail was asked about how he come up with the following list in the Brochure:

Why Does the Union Really Want to Represent You
One potential reason is that your membership means more money for the union, in the form of initiation fees and membership dues.

- *Do you know how much the initiation fees will be?*
- *Do you know how much the monthly union dues will be?*
- *Will dues go up?*
- *Are there special assessments leading to other costs?*
- *Is it worth what you will get in return*

[32] He said he thought he had copied this from earlier materials that were written in 2022 by Valerie Rother, Fire & Flower's VP, People & Culture at that time, but that he softened some of the language from the early communications. For example, he used the word "potential" rather than saying "it will happen". He said it made sense to him to include this information in the spirit of what was written in the past.

[33] Mr. Mail was asked if there were reasons he could think of for why a union might want to represent employees that he did not include in this list. He said that given the state that the company was in in 2021 or 2022, he could understand why a union would want to represent the employees because it was a much different era, much different leadership, much much lower employer satisfaction. In today's era, he said, he did not see with clarity the broad spectrum of reasons that would actually enhance employee experience given the company they had become.

[34] He did not agree with the suggestion that he saw unionization as punishment to the company for bad management. He said he saw unionization as one potential avenue for employees to organize to have a bigger voice at companies that do not allow them to have a voice. He said now they (Fire & Flower) are governed by servant leadership where the leaders work for their stores, not the other way around. In the old world, he said, the structure was very hierarchical, very top down, and in those cases, he opined, a union can help improve working conditions for employees.

[35] Mr. Mail was asked why he included the following in the brochure:

"Promises, Promises, or Real Guarantees"
You may hear promises, but what can really be guaranteed?
If the union is certified, it will only get the right to negotiate with Fire and Flower. The union cannot guarantee anything because it cannot force Fire & Flower to give anything that we are unwilling or unable to give.

We encourage you to ask your friends or family members who work in unionized workplaces whether they really believe that they have received good value from the union in return for all they have paid in union dues.

[36] Mr. Mail explained his view that nothing can be guaranteed. He said he just wanted to make a point that the employees ensure they understand the difference between what can and what cannot be guaranteed.

[37] Mr. Mail was asked why he included the following in the brochure:

> ***What will the Union Cost***
>
> ***It could cost a lot.*** *First, you might have to pay an initiation fee. Then, ongoing monthly dues. We don't know what union dues will be, but Labour Watch reports dues as being potentially $260 per year individually (or $5.00 per work or $21.67 per month) or $10,400 annually for you and your co-workers (for a unit of 40). These fees come directly off your pay and to the union.*
> *****Please Note****: The above calculation was based on a Part Time Sales Associate. Should you want to complete a complete a calculation on your own please scan the QR Code and enter the following information:*
>
> | | |
> |---|---|
> | | *Union UFCW* |
> | *QR Code* | *Local: 1400* |
> | ***Labour Watch*** | *Employee Type: Select full Time or Part Time* |
> | | *Hourly Pay: Enter your hourly rate* |
> | | *Average Weekly Hours: Enter your average weekly hours* |
> | | *Total Number of Workers: Enter 40* |
>
> ***Consider the following questions!***
> - *What will your dues be?*
> - *Will dues go up?*
> - *Where does the union dues money go?*
> - *Do your dues go to the workplace or elsewhere?*
> - *What will you get in return for the cost?*

[38] Mr. Mail replied that it was information for employees: to let them understand what it could be. It was to give them the link to do their own math if they chose to do so, and just again, a way to communicate to employees that they really consider all potential outcomes here, including cost.

[39] Mr. Mail agreed that the numbers in the example came from LabourWatch. He pointed out that the calculator on the LabourWatch website does contain notes about its accuracy. He disagreed with the suggestion that the point of including the calculator was to scare people away from paying dues. He said the point was not to scare people, just to let them know this relationship comes with a financial component.

[40] Mr. Mail was asked why he included the following section of the brochure:

> ***Dealing Directly with Your Manager***
> *If the Union is certified, you will likely be governed by a union constitution and collective agreement. Fire & Flower will likely not be able to deal with you on an individual basis in matters relating to your terms and conditions of employment, such as days off, schedules, pay, swag, benefits, and working environment.*

1. *Everyone will be dealt with in accordance with the legal contract (collective agreement).*

2. *Fire & Flower's relationship with you will be likely administered through the union, the shop steward (union representative), and the legal contract.*

[41] Mr. Mail testified that this was included to let employees know that there may be certain things that they (leadership) may not be able to deal with employees on an individual basis. He said many of the things that they do talk about, wages being a big one, are conversations that are more difficult to have in a scenario where there is a collective agreement in place versus the individual conversations they have on a regular basis with employees about things like wages, time off, things they can presently negotiate directly with us.

[42] Mr. Mail was referred to the following sections of the brochure:

FACTS ABOUT THE UNION PROCESS

- *Even if you didn't sign a card or petition to initiate this process in 2022, you can vote.*
- *Even if you did sign a card or petition to initiate this process in 2022, you can vote **"no".***
- *Even if you were not employed in 2022 when the unionization application was made, you can vote.*
- *If the union wins you will likely have to pay union dues and initiation fees - even if you did not vote for the union (or did not vote at all).*
- *Tax deductible union dues does not mean you get the dues back; rather, it means you get the taxes paid on dues back, which would be a small portion (if any).*
- *If the union is defeated, you will not have to pay union dues.*
- *The ballot is secret and no one will ever know how you voted.*
- *A simple majority (50% + 1) **of those who vote** determines whether the union wins. This is why it is crucial to vote as union voters often do – so deciding not to vote is like a yes vote for the union. **PLEASE VOTE!***
- *The Union may make promises, but there are no guarantees as matters need to be negotiated.*
- *If the Union wins the vote, the company will no longer be able to deal with your issues on an individual basis. The terms and conditions of employment will be governed by a legal contract and will need to go through the union.*
- *While you'll likely be paying regular dues to the union, there may not be any day-to-day interaction with the union.*
- *Any collective agreement will likely require that many of the issues we now deal with you directly on will be handled by and through the union and the contract.*
- *Once a union is in place, it's hard to get rid of. You can't just stop paying dues because you are not happy with the service the union provides.*
- *If you vote **"no"** to a union now, you can bring another one in or the same one in later if you're not happy.*
- *Company policy and law protect you from threats and intimidation by anyone either before or after the vote.*

[43] Mr. Mail was asked why he included the following line: "The union may make promises, but there are no guarantees as matters need to be negotiated", and asked if this was another

reference to the Union making promises and inappropriately providing guarantees that it can't make. Mr. Mail explained, that similar to what he testified to previously, he wanted the employees to know that things are up for negotiation in this situation. He said the bullet speaks to the potential that the union may make promises but there are no guarantees. He said he didn't want employees to be misled and he wanted them to do their own fact checking if they felt the need to.

[44] He was then asked about the statement: "If the Union wins the vote, the company will no longer be able to deal with your issues on an individual basis….". It was put to him that this statement is definitive. Mr. Mail explained that his understanding is that the broader terms and conditions of employment are "one for all", and he was trying to make the point that they won't be able to deal with employees on an individual basis.

[45] Mr. Mail was asked about the statement: "While you'll likely be paying regular dues to the union, there may not be any day-to-day interaction with the union." He asked what gave the employer this impression. He said he wanted employees to understand that when they show up to their average shift, they will not be working with the union steward - that they won't have that interaction with the union on a regular basis.

[46] He was asked if he'd be surprised to learn that there are in fact bargaining units that have shop stewards and union reps on site on a daily basis. Mr. Mail said that he was not surprised to hear that, but that in an operation as small as theirs, on average that would not be the case. He said it couldn't be given how they schedule and how small their stores are. He said there isn't a scenario where a union steward would be on every hour of every shift.

[47] Mr. Mail was also referred to the statement: "Once a union is in place, it's hard to get rid of. You can't just stop paying dues because you are not happy with the service the union provides." He was asked about his basis for this claim. He said it was based on the complexities of the process as he understood them from his parents' experience, his consulting LabourWatch, and general research on deunionization.

[48] Mr. Mail was also referred to a communication entitled "Potential Impacts of a Union" which lists: "Fees, potential for conflict, communications barriers, loss of individual negotiation power, restrictive work rules, limited career mobility". He was asked if there are any positive impacts that he could have included in this slide that he was aware of. Mr. Mail explained that he was aware, but that he did not include those because he assumed the union was going to tell its side of the story, and the potential positive impacts of joining a union. He did not think that the potential

negatives would be part of the union's story, and he was trying to take the balanced approach based on what he thought would not be presented at the union meeting. He wanted to present the potential negatives so that the employees could fully inform themselves with all the information they learned and then make their own decision. He said his intention was to balance what he assumed would be a similar list that might be presented at the Union meeting.

[49] Mr. Mail disagreed that this was meant to specifically encourage people not to join the union. He said: "No, it was to give them that balance of you know, we're telling you this, they're telling you that, put it together and make your own decision."

Argument on behalf of the Union:

[50] The Union argues that Fire & Flower's 2024 communications are of a similar character as those which became the subject of the Union's ULP Application. Accordingly, the Union submits that the Employer has violated the express provisions and spirit of the Settlement.

[51] The Union submits that, by virtue of the foregoing facts, the Employer has committed and is engaged in unfair labour practices, or violations of The Act, particularly with respect to section 6-5, 6-6(2)(d), 6-62(1)(a), 6-62(1)(b), and 6-62(1)(i).

[52] The Union argues the general effect of the Employer's various communications to employees is to portray the Union as deceitful and untrustworthy. It says that the Employer has provided false and one-sided information to employees in its various communications, and made false attributions to the Union as a pretext to interfere with employees regarding their choice to certify the Union.

[53] The Union further submits:

a. that the Employer has used coercion and intimidating that could reasonably have the effect of compelling or inducing employees to refrain from becoming members of the Union;

b. that the Employer has used coercion and intimidation because employees have exercised rights conferred pursuant to Part VI of the Act;

c. that the Employer's behaviour constitutes interference, restraint, intimidation, threatening, and coercion of employees in the exercise of their rights, as enshrined within Part VI of the Act.

d. that the Employer's conduct constitutes discrimination and interference with the formation of the bargaining unit, as well as the administration of the Union;

e. that the Employer has interfered with the employees' selection of Union.

Argument on behalf of Fire & Flower:

[54] The Employer argues that it did not breach the terms of the Minutes and that its communications did not amount to an unfair labour practice or violation of the Act. It asks that the Union's application be dismissed in its entirety.

Relevant Statutory Provisions:

[55] The following provision of *Act* are relevant to this Application:

> ***Coercion and intimidation prohibited***
> ***6-5*** *No person shall use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue to be or to cease to be a member of a union.*
>
> ***6-6****(1) No person shall do any of the things mentioned in subsection (2) against another person:*
> *. . .*
> *(c) because the person has made an application, filed a complaint or otherwise exercised a right conferred pursuant to this Part[.]*
>
> *(2) In the circumstances mentioned in subsection (1), no person shall do any of the following:*
> *. . .*
> *(d) intimidate or coerce or impose a pecuniary or other penalty on a person*
>
> ***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 an right conferred by this Part;*
>
> *(b) subject to subsection (2), to discriminate respecting or interfere with the formation or administration of any labour organization or to contribute financial or other support to it;*
> *…*
> *(i) to interfere in the selection of a union;*
>
> *(2) Clause 1(a) does not prohibit an employer from communicating facts and its opinions to its employees.*

Discussion and Analysis:

[56] The legal test in respect of section 6-62(1)(a) of the Act was comprehensively summarized in *Saskatchewan Government and General Employees' Union v Saskatoon Downtown Youth Centre Inc.,* 2021 CanLII 19681 (SK LRB) (**"*Downtown Youth")*** at paras. 23-25:

> ***[23]*** *The starting point in the analysis of this application is that the onus is on SGEU to satisfy the Board that EGADZ has contravened clause 6-62(1)(a). The evidence must be sufficiently clear, convincing and cogent. The test to establish the contravention is an objective test: that the probable effect of the memo, on employees of reasonable intelligence and fortitude, would have been to interfere with, restrain, intimidate, threaten and/or coerce them in the exercise of their rights under Part VI of the Act. This requires a contextual analysis.*
>
> **[24]** *United Food and Commercial Workers, Local 1400 v Securitas Canada Limited*[14] ["*Securitas*"] contains a useful description of the analysis to be undertaken by the Board:
>
> > *[31] By way of background, the substantive test for determining whether or not impugned communications by an employer represents a violation of s. 6-62(1)(a) of The Saskatchewan Employment Act involves a contextualized analysis of the probable consequences of the employer's conduct on employees of reasonable intelligence and fortitude. In other words, if the Board is satisfied that the probable effect of the impugned communications of an employer would have been to interfere with, restrain, intimidate, threaten or coerce that employer's employees, the communications are unlawful and a violation can be sustained. This test is an objective one. The Board's approach is to determine the likely or probable effects of impugned employer communications upon a so-called "reasonable" employee; being someone of reasonable intelligence and possessed of reasonable fortitude and resilience.*
> >
> > *[32] While employers continue to be prohibited from interfering with, intimidating, threatening and coercing their employees, the Board is much less paternalistic in our presumptions as to vulnerability and/or susceptibility of employees to the views and opinions of their employers. In our opinion, the inclusion of the words "Clause (1)(a) does not prohibit an employer from communicating facts and its opinions to its employees" in The Saskatchewan Employment Act signals a greater tolerance by the Legislature for the capacity of employees to receive information and views from their employer without being threatened, intimidated or coerced. As noted by this Board in Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, supra¸ to fall outside the sphere of permissible communications, an employer must do more than merely influence its employees. Improper communications requires conduct that is capable of infringing upon, compromising or expropriating an employee's free will. For example, the mere fact that an employer has communicated facts and its opinions to its employees and those employees may have been influenced by those views and opinions, should not now automatically lead to a finding of interference, let alone employer coercion or intimidation. Simply put, the prohibited effect targets a higher threshold than merely "influencing" employees in the exercise of their rights.*
> >
> > *[33] While employers now enjoy a greater capacity to communication facts and their opinions to employees, there continues to be a number of important limitations on an employer's so-called "free speech". As noted by the Saskatchewan Court of Appeal in Saskatchewan Federation of Labour v.*

Saskatchewan, et. al., 2012 SKQB 62 (CanLII), the inclusion of the right to communicate "facts" and "opinions", does not give employers an unrestricted right to do so. The Saskatchewan Employment Act (as did its predecessor The Trade Union Act) seeks to balance a number of laudable, yet clearly competing, interests in dealing with communications by an employer, including; the interests of employers (the right to freely communicate with its employees regarding matters directly affecting its business interests, its current activities, and its plans for the future); the interests of employees (the right to exercise their associational rights free from coercion, intimidation or interference); and the interests of trade unions (the right to be the exclusive bargaining agent for organized employees). See: Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, supra. While employers may communicate with their employees, they may not do so in a manner that infringes upon the ability of those employees to engage and exercise their collective bargaining rights.

[34] To fall outside the sphere of permissible employer communications, the Board must be satisfied that the probable effect of an impugned communication would be to compromise or expropriate the free will of a reasonable employee. Obviously, the challenge for the Board is differentiating between those communications by an employer that are permissible (because they contain useful and helpful information for employees; information that is merely "influential") and prohibited communications that stray into the prohibited grounds of threats, intimidation and coercion. To guide in this evaluation, the Board will generally examine:

> *1. Evidence, if any, of a particular vulnerability of the subject employees to the views and opinions of their employers. As indicated, absent evidence of a particular susceptibility of employees, we start from the presumption that employees are capable of receiving and weighing a broad range of information about matters affecting their workplace and of making rational decisions in response to that information. See: Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, supra.*
>
> *2. The maturity of the bargaining relationship between the parties. Generally speaking, in a mature bargaining relationship, employees are less vulnerable to the views and options of their employer.*
>
> *3. The context within which the impugned communication occurred. Almost as much as the words themselves, context is important in understanding the meaning and significance of an impugned employer communication. The events occurring in the workplace; the timing of the communication(s) relative to those events; the audience; and status of the bargaining relationship; are all factors to be considered by the Board. For example, context can help the Board determine if otherwise ambiguous statements may convey a subtle message or have a different meaning for the affected employees. Similar, context can also help the Board determine if a seemingly threatening communication may, in fact, contain useful and helpful information for employees. Finally, the context in which impugned communication(s) occur guides the Board in the restraint applied to its intervention. Historically, the Board has been the most interventionist when the representational question is before employees. On the other hand, the Board has adopted a more laissez faire approach to communications by the parties when they are engaged in*

> *collective bargaining; particularly so with respect to communications that occur at the table. See: Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, supra.*
>
> *4. The evidentiary basis for and value of the impugned communication. To fall within the protection of s. 6-62(2) of the Act, there must be an evidentiary basis for the facts and opinions expressed by an employer and, generally speaking, the genesis of the information must be within the business knowledge of the employer and/or the personal experience of the communicator. Furthermore, the facts and opinions communicated by or on behalf of the employer must be relevant and useful to the subject employees. The greater the utility of the information being conveyed to employees, the more likely such information will fall within the sphere of permissible communications. See: International Brotherhood of Electrical Workers Local 2038 v. Clean Harbours Industrial Services Canada & BCT Structures Inc., 2014 CanLII 76047 (SK LRB), LRB File Nos. 063-14, 071-14, 096-14, 105-14 & 106-14.*
>
> *5. The balance or neutrality demonstrated by an employer in communicating impugned information. While a certain degree of "spin" and/or self-promotion may be anticipated in employer communications (particularly with respect to collective bargaining proposals), if an impugned communication contains misinformation or unnecessary amplification or spin, the more likely it will be to stray outside the sphere of permissible communication. See: Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, supra. Furthermore, there are certain subjects, such as the representational questions, with respect to which the Board expects the most balance and patent neutrality from employers.*
> *. . .*
>
> *[39] … In our opinion, a communication does not fall outside of sphere of s. 6-62-(2) because the factual basis for an employer's views or opinions ultimately turns out to be erroneous; provided the employer's original belief in the state of facts at the time of its communication was reasonable under the circumstances.*

[25] *That description of the analysis to be undertaken by the Board is consistent with the task outlined for the Board in SAHO:*

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

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

[57] The analysis for the Board to undertake is to review the employer communications in the context of this workplace, to determine whether their probable effect, on employees of reasonable intelligence and fortitude, would have been to influence them in a permissible manner, or whether they went a step further and interfered with, restrained, intimidated, threatened or coerced them in their consideration of whether to support the organizing drive. The Board is to apply these principles in the context of this workplace. The Board has examined the memo in light of the five criteria described in *Securitas* and *Saskatoon Co-operative*: *Downtown Youth* at para 26.

[58] For the reasons that follow, the Board is not satisfied that the probable effect of the impugned communications on employees of reasonable intelligence and resilience would have interfered with, restrained, intimidated, threatened or coerced them. Employees of reasonable intelligence and fortitude would be capable of receiving this information without necessarily being threatened, intimidated or coerced.

Evidence, if any, of a particular vulnerability of the subject employees to the views and opinions of their employer:

[59] There was no evidence that these employees are particularly vulnerable to Fire & Flower's views and opinions. While Mr. Mail testified that across the 91 stores that he oversees, employees come from all walks of life (eg. retirees, newly of-age/legal employees, high school drop-outs, and

university graduates), there is no evidence before the Board that any of those individuals employed at the subject stores are particularly vulnerable. There is also no evidence of a particular susceptibility.

[60] The Union did not provide evidence that leads to a conclusion that employees of reasonable intelligence, resilience and fortitude in this workplace would be intimidated by the communications or actions of Fire & Flower. While the Union argued that employees engaging in a certification process are more vulnerable, the maturity of the bargaining unit is considered in the second factor, rather than as fulfilling both the first and second criteria. The lack of evidence on this issue constitutes a gap in the Union's construction of the context in which the Board may analyze the 2024 communications. Accordingly, the Board follows the approach set out in *Downtown Youth*, and starts from a presumption that the employees were capable of receiving and weighing a broad range of information in making a decision about whether to support the Union.

The maturity of the bargaining relationship between the parties

[61] The Union places much emphasis on the fact that the communications took place during an organizing campaign and that there is no bargaining relationship between the parties at this point.

[62] The Employer argues that the bargaining relationship between the Parties was not in its infancy as the Union's Certification Application had been ongoing for approximately one and a half years. For this reason, the Employer says this is a neutral factor in respect of the Board's vigilance in assessing the 2024 communications.

[63] The Board recognizes that there is an inherent insecurity in a prospective collective bargaining relationship, that does not exist in an established relationship. The fact that the communications occurred during an organizing campaign is not, however, in and of itself, an unfair labour practice. Rather, it only establishes a higher level of scrutiny. The communication must still be found to be coercive or intimidating.

The context within which the impugned communication occurred

[64] Fire & Flower issued seven communications to its employees, including Fire & Flower's union approved meeting communication. Fire & Flower's voluntary meeting presentation (which included the slides) was not sent out to employees.

[65] The Union argues that the context within which the communications must be considered is the fact that they occurred during an organizing drive. The Union cites the Board's reference to *SAHO* in para 25 of *Downtown Youth*, which is referred to above.

[66] Similar to the decision in *Downtown Youth,* all the communications were sent via email. Mr. Mail testified that he prepared Fire & Flower's 2024 communications via email/hardcopy/ written words as he did not want to be misconstrued; he wanted to provide information that the employees could digest on their own time; and he did not want to pressure them. There is no evidence to suggest that the context within which the communications occurred conveyed a subtle message or meaning different than the written words.

[67] With respect to the second part of the test, i.e. the circumstances in which an impugned communication occurs, the Union argues that the Employer has communicated with employees in the midst of an organizing drive. The Union argues that the Employer communicated with employees in an intimidating and coercive manner, and with the intention of impacting the ability of employees to freely decide the representational question without the interference of their Employer through fostering an environment filled with fear and confusion. The Union relies on *SAHO,* and submits that communications from an employer about the relative benefits of unionization have been found to convey a subtle message of intimidating or coercive effect when made during an organizing campaign.

[68] The circumstances in which the impugned communications occurred, does include the fact that they were made during an organizing campaign. The circumstances also include the fact that the organizing campaign began as early as 2021 and that the parties both filed unfair labour practice applications against each other in 2022. The employer was aware of some of the issues that had previously been canvassed, and addressed at least some of these in its most recent communications. While some employee turnover occurred since 2022, the fact remains that employees clearly had exposure to communications from the parties prior to the 2024 communications.

[69] The Union relies heavily on the fact that Mr. Mail referenced the LabourWatch website as research in preparing for his communications, and that his communications make direct reference to the LabourWatch website. The Union submits that the LabourWatch website is not a neutral source of information, but instead is intended not as a tool for employees, but for employers to avoid the establishment of unions in their workplace. The Union says the pages on the website are skewed towards the management side, and that Mr. Mail testified to accessing the page called "Becoming Union Free". LabourWatch is not, says the Union, a neutral source of information.

[70] In support of this proposition, the union relies on a *Canadian Union of Public Employees, Local 5412 v Paladin Security Group Ltd.,* 2023 CanLII 84313, a decision from the New Brunswick Labour and Employment Board.

[71] However, the only evidence with respect to LabourWatch is the following:

- Mr. Mails' testimony that he thought it was neutral;
- Ms. Figueiredo's evidence that the dues reported by LabourWatch were incorrect,
- Ms. Figueiredo's evidence acknowledging that LabourWatch has a qualifier with respect to its dues calculator,and
- Ms. Figueiredo's acknowledgment that LabourWatch's home page contained that following opening statement: "Welcome to LabourWatch We believe that all employees in Canada should be able to easily access information about their rights and responsibilities when they want a union in their workplace as well as when employees want to be union-free".

[72] Further, there is no evidence that any employee even accessed the LabourWatch website.

[73] The Employer submits this Board held in *United Food and Commercial Workers, Local 1400 v 610539 Saskatchewan Limited* (operating as Heritage Inn Saskatoon), 2024 CanLII 14520 (SK LRB) that steering employees to LabourWatch, in and of itself and without further evidence, does not provide grounds for finding a breach of either section 6-62(1)(a) or (b) of the Act. In that case, the Board stated:

> ***[203]*** *The Union also alleges that the Employer posted the LabourWatch document to generally undermine the Union. In making this allegation, the Union asks the Board to accept that LabourWatch is not a neutral source of information. The Union relies for this proposition on two cases in which the respective Boards either analyzed the content of specific LabourWatch materials or the content of the LabourWatch website: Relying on Canadian Union of Public Employees, Locals 5412 v Paladin Security Group Ltd., 2023*

> *CanLII 84313 (NB LEB) and Saskatchewan Government and General Employees' Union v Quint Development Corp., 2019 CanLII 79286 (SK LRB).*
>
> ***[204]*** *In this case, the materials that have been entered into evidence consist of two general substantive pages and a section on decertification from the website (as well as the sections about the "advisors"). The general sections raise employee rights and make a few questionable statements, such as, a tongue in cheek reference to "forced dues" and an assertion that "union members will lack help to address alleged employer unfair labour practices". The internet links that are included focus on taking action against a union, with one line about "employees who want to become or remain unionized". However, there is also a short section referring employees to union websites for "excellent resources".*
>
> ***[205]*** *According to the website excerpts that were entered, the Canadian LabourWatch Association is "independent" of unions and financially supported by "national and provincial industry associations and law firms".*
>
> ***[206]*** *In summary, the general materials focus on a particular understanding of employee rights and on the potential for taking action against unions. However, the pages provided are few, the information contained therein is limited, and there is nothing particularly egregious within that information.*
>
> ***[207]*** *The specific information about decertification is detailed and purports to provide factual information about how to apply for decertification. Overall, it is not particularly surprising or concerning. To better assess this information, it would have been more helpful to have had the opportunity to compare the decertification information with whatever information exists on the website about certifying a union.*
>
> ***[208]*** *However, there is, again, no evidence that any employees were exposed to any of this information. There is no evidence of what happened if and when an employee called the phone number. Nor is there evidence of any additional information provided to the employees about what they should be looking for on the LabourWatch website.*
>
> ***[…]***
>
> *[213] The Union has alleged that the Employer interfered with the Union's members by providing the LabourWatch poster. For the reasons as outlined, the evidence about the LabourWatch poster is too weak to establish that the Employer interfered with employees in this workplace of reasonable intelligence, resilience and fortitude, in the exercise of their Part VI rights.*

[74] The Board similarly finds here that there is insufficient evidence to establish that the Employer's reference to LabourWatch in its communications interfered with employees in this workplace of reasonable intelligence, resilience and fortitude, in the exercise of their Part VI rights.

[75] In terms of Fire & Flower's voluntary meeting and presentation, there is no evidence to suggest that it was a captive audience meeting. The evidence showed that Fire & Flower's meetings on May 23, 2024, at the Delta Saskatoon Downtown were held offsite at a neutral location. Mr. Mail testified he did not want anyone to feel pressured; there was no financial incentive as employees were paid whether or not they attended. Only three out of approximately

40 employees attended the morning session and no employees attended the afternoon session. Further, Mr. Mail said he did not take attendance.

[76] Also, the Board must consider the timing of the communications. As noted, the Union filed a certification application on October 18, 2022. Subsequently, both Parties filed unfair labour practice applications.

[77] The Board does not accept the Union's characterization that the Employer communicated with employees "in an intimidating and coercive manner, and with the intention of impacting the ability of employees to freely decide the representational question without the interference of their Employer through fostering an environment filled with fear and confusion." The evidence does not support such a conclusion.

The evidentiary basis for and value of the impugned communication

[78] With respect to the question of whether there was an evidentiary basis for the facts and opinions expressed by the employer, the Union argues the Employer's communications provide half-truths to employees, and presents information entirely from the point of view of the Employer. The Union submits that the Employer has provided employees only with information on the negatives of unionization. The Union submits that an Employer is not permitted to provide employees with communications that have some evidentiary basis, but that conveniently leave out other important details, with the purpose of dissuading employees from supporting the Union, and creating confusion about the potential results of unionization.

[79] The Union argues that the Employer has been, at best, reckless in its communications to employees, often communicating unverified, incorrect, so-called facts. At worst, it says, the Employer has knowingly communicated distorted or even false information. The Union refers to the LabourWatch website in support of its contention. The Union argues that Mr. Mail's claim that the site was neutral or at least an unbiased source of information "couldn't be further from the truth". The Union argues it has been held by various Labour Boards and courts to not be a neutral source of information.

[80] The evidence of Mr. Mail in this regard was that for all of the 2024 communications authored by him, his experience with unions and unionization was based on his familial connection and/or his research. Mr. Mail was not able to refer to specific research articles he reviewed. He said it was general research. When asked in cross examination about what research he did that led him specifically to conclude that unionization can lead to complexities, he

testified that it was general research around collective bargaining, striking, negotiations being drawn out, things like that, things that you hear on the news, how strikes impact us personally as people in Canada and service interruptions.

[81] Upon reviewing all of the communications, and Mr. Mail's testimony, the Board finds that Mr. Mail's belief in the information he communication was reasonable in the circumstances. Further, the Union has not provided evidence showing that any of the information provided by the Employer was in fact false.

[82] The Union argues that the evidence shows that the calculation of union dues provided in the LabourWatch calculator were incorrect. However, the Board finds that the reference to the calculator was not intended as a means to provide a calculation of the user's actual dues. The LabourWatch website included a disclaimer that reads as follows:

> *Accuracy of Information and Disclaimer: We do our best to ensure that the information used by this calculator is accurate, up to date and complete. Please note that the information is difficult to obtain due to the lack of readily available date on union websites about their dues and strike pay. As a result, our information is sourced from unionized workers, internet chat rooms, libraries the internet and labour lawyers. We make no representations whatsoever that the information is accurate, reliable or up to date and accept no liability for any direct, indirect or consequential loss or damage caused by reliance on this information.*

[83] In cross examination, it was put to Mr. Mail that he "clearly view(ed) LabourWach as a source of information with which you agree?" Mr. Mail's response was that he doesn't agree or disagree with it, but pointed out on the next page of the website itself it seemed to present that balanced view about whether you want a union or to be union free. This is why, he explained, he was looking at LabourWatch as a balanced source and gave the reference to employees so they could access that. Mr. Mail was firm in his denial that he knew LabourWatch to be a good source for information about remaining union free, and that he provided the reference to employees for precisely that reason.

[84] The employer in its written submission also points to the LabourWatch home page which reads as follows:

> *Welcome to LabourWatch. We believe that all employees in Canada should be able to easily access information about their rights and responsibilities when they want a union in their workplace as well as when employees want to be union free.*

[85] The second part of the analysis of this criterion, as described in *Securitas,* is that the facts and opinions must be relevant and useful to the employees. The Union argues that even if the Employer's communications were found to have an evidentiary basis or were of some value, the context of the Union's organizing drive comes into play, as "communications from an employer about the relative benefits of unionization have been found to convey a subtle message of intimidating or coercive effect when made during an organizing campaign."

[86] The Union again relies heavily upon the fact that the communications were made during an organizing campaign and says that this is relevant to the fourth consideration of *Securitas*. The Union cites the following passage from para 101 of *SAHO* in support of its submission:

> *…During an organizing campaign or at any time when the representational question is before employees, the Board has generally been highly alert to subtle signs of employer interference, intimidation, coercion or threats. For example, communications from an employer about the relative benefits of unionization have been found to convey a subtle message of intimidating or coercive effect when made during an organizing campaign. See: Super Valu, a Division of Westfair Foods v. United Food and Commercial Workers, Local 401, [1981] 3 Can. LR.B.R. 412, LRB File No. 121-81.*
>
> *For example, communications from an employer about the relative benefits of unionization have been found to convey a subtle message of intimidating or coercive effect when made during an organizing campaign. See: Super Valu, a Division of Westfair Foods v. United Food and Commercial Workers, Local 401, [1981] 3 Can. LR.B.R. 412, LRB File No. 121-81.*

[87] As previously stated, the fact that the communications occurred during an organizing campaign is not, in and of itself, an unfair labour practice. Rather, it only establishes a higher level of scrutiny. The communication must still be found to be coercive or intimidating. As this Board stated in *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, Local 179 v. Reliance Gregg's Home Services*, 2018 CanLII 127677 (SK LRB):

> ***[26]*** *While acknowledging that the Board needs to be aware of potential imbalances during an organizing campaign and when the parties have a mature relationship, the test to be employed by the Board does not change and the objective standard remains to be applied. In making its analysis, the Board looks to the context, content, accuracy and timing of employer communications in discerning their purpose and effect.*

[88] Also, Adams in *Canadian Labour Law* at paragraph 10:980 states as follows:

> *A much less "laissez faire" approach is taken where a board is not dealing with a mature and established bargaining relationship. This is particularly the case in the context of union organizing. By examining objectively, the circumstances of the case and drawing*

> *inferences about the probable effect of the impugned employer communication, labour boards attempt to establish whether the employees' free expression of their wishes has be thwarted by employer comments. Factual statements, comments about an employer's ability to remain competitive and the issue of job security—by themselves and without otherwise incriminating surrounding circumstances may not constitute illegal communications.*

[89] The *Super Valu* decision was a 1981 decision. Since that time, there have been various statutory amendments. These were summarized by the Court of Appeal in *Cypress (Regional Health Authority) v Service Employees' International Union-West*, 2016 SKCA 161 (CanLII):

> *[71] Section 11(1)(a) of the Act is aimed at prohibiting employer behaviour and communication that interferes with, restricts, intimidates, threatens or coerces employees in the exercise of their rights under the Act. It has a significant legislative history and, in order to understand the interpretational challenges faced by the Board in these proceedings, it is necessary to know something of that history.*
>
> *[72] As of 1978, The Trade Union Act, RSS 1978, c T-17, provided as follows:*
>
> *11(1) It shall be an unfair labour practice for an employer … :*
>
> *(a) to interfere with, restrain or coerce an employee in the exercise of any right conferred by this Act;*
>
> *[73] Section 11(1)(a) was amended in 1983 after the election of a Conservative government. As amended by The Trade Union Amendment Act, 1983, SS 1983, c 81, s 6(1), it read this way:*
>
> *11(1) It shall be an unfair labour practice for an employer … :*
>
> *(a) to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of any right conferred by this Act, but nothing in this Act precludes an employer from communicating with his employees.*
>
> *[74] The section was re-amended following the election of a New Democratic Party government in 1991. By virtue of The Trade Union Amendment Act, 1994, SS 1994, c 47, s 8(1), it was changed to provide:*
>
> *11(1) It shall be an unfair labour practice for an employer … :*
>
> *(a) in any manner, including by communication, to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of any right conferred by this Act;*
>
> *[75] The pendulum swung again in 2008 when the Saskatchewan Party government introduced further amendments by virtue of The Trade Union Amendment Act, 2008, SS 2008, c 26, s 6. Those changes, which put in place the wording of the provision underpinning this appeal, led to s. 11(1)(a) reading as follows:*
>
> *11(1) It shall be an unfair labour practice for an employer … :*
>
> *(a) to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of any right conferred by this Act, but nothing in this Act precludes an employer from communicating facts and its opinions to its employees.*

> *[76] The meaning or implications of the 2008 amendment were front and centre for the Board when it came to consider the Unions' allegations of a violation of s. 11(1)(a). As noted above, the Board concluded that the amendment had not changed the description of the prohibited conduct, i.e., "interfere with, restrain, intimidate, threaten or coerce." However, at the same time, the Board found that the amendment had to be given meaning. In this regard, it concluded the amendment should be taken to have recognized a greater capacity on the part of employees to receive information from employers without being interfered with, restrained and so forth. The Board went on to find that, in light of the amendment, it was no longer appropriate to presume all employer communications are inherently and inevitably intimidating or coercive. Absent evidence of an unusual power imbalance in the workplace, the Board said it would start with a presumption that employees are capable of receiving a variety of information from their employers and evaluating it without necessarily being improperly influenced, threatened, intimidated or coerced.*
>
> *[77] Insofar as its views were relevant to the interpretation of s. 11(1)(a) itself, the Board summarized them as follows at para 96:*
>
> *1. In our opinion, the substantive test for determining whether or not impugned conduct represents a violation of s. 11(1)(a) is much the same as it was prior to the 2008 amendment. The test continues to involve a contextualized analysis of the probable consequences of impugned employer conduct on employees of reasonable intelligence and fortitude. We also note that the change to s. 11(1)(a) did not substantively alter the kind of prohibited effect that the legislature seeks to avoid. The legislature seeks to avoid employer conduct that would compromise or expropriate the free will of employees in the exercise of their rights under The Trade Union Act.*
>
> *2. The change to s. 11(1)(a) clearly signalled a greater tolerance by the legislature for the capacity of employees to receive information and views from employers without being interfered with, coerced or intimidated (i.e.: without their free will being compromised or expropriated). A corollary of this conclusion is a general weakening of the historic presumption that all communications by an employer are invariably and inherently coercive or intimidating for employees.*

[90] The Board finds that the communications from the Employer are relevant and useful to employees. The content and topics addressed by Mr. Mail in his communications were applicable to this bargaining unit. While the Union clearly challenged Mr. Mail on the Union's views that the communications did not contain information about the benefits of unionization, Mr. Mail was not challenged on cross examination as to the relevancy or usefulness of the information he provided.

[91] As summarized by the Employer in its submissions, the content of topics addressed in Mr. Mail's communications was supported by the cross-examination evidence of Ms. Figueiredo, where she testified as follows:

a. When the Union gets certified with respect to an employer – that changes the way the employer operates, including the way or subject matter of what an employer can communicate with employees;

b. Although the union can opine on what it expects to accomplish through collective bargaining, neither the Union nor a respective employer can guarantee the results of collective bargaining because the terms and conditions of employment, post-certification, must be negotiated. This would also apply to wages, benefit, scheduling and job security.

c. If the Union was certified by way of the Union's Certification Application, it would have to negotiate with Fire & Flower over the majority of terms and conditions of employment.

d. If the Union was certified by way of the Union's Certification Application, the Union would eventually charge Union's dues to the certified employees (after ratification of a collective agreement), and the Union would use those dues to operate.

e. The Union benefits from increasing its membership/representation of employees by virtue of increased dues.

f. The Union may use union dues for the benefit of other unions, such as the National Defence Fund.

g. The Union has a constitution government it and its members affairs.

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

[92] The final consideration from *Securitas* examines the balance or neutrality demonstrated by an employer in communicating impugned information.

[93] First, there is no obligation on the Employer to communicate the benefits of unionization. The "balance or neutrality" referred to in the final test from *Securitas* does not require the Employer to advocate for the union. For example, the Employer in several instances in its communications with employees referred to union dues. It suggested to employees that they calculate the potential cost of union dues, and it suggested that the Union used those dues for purposes beyond assisting the employees immediate workplace. The Union suggested that the Employer ought to have included information about the benefits unionization brings to employees such as higher wages and better benefits. Aside from the fact that the Union proferred no evidence to support theses assertions but suggested that the Board take judicial notice of same, the Board is of the opinion that an employer is not required to outline the potential benefits of unionization. It is reasonable to assume, as Mr. Mail did, that the Union will tell its side of the story, and outline the potential benefits of unionization.

[94] The Union argues that the Employer's communications fail to meet the standard of neutrality required, as they are one-sided, and biased towards the Employer's perspective. It submits that the Board expects the most balance and patent neutrality from employers during organizing drives and that if an impugned communication contains misinformation or unnecessary amplification or spin, the more likely it will be to stray outside the sphere of permissible communication. The Union further submits that through the Employer's communications consisting of half-truths and fear-mongering related to unionization, it has added "unnecessary amplification or spin" to its communications, and has demonstrated a complete lack of neutrality in its communications with its employees who are especially vulnerable to the opinions of their Employer during an organizing drive.

[95] The Board does not accept the Union's characterization of the Employer's communications as consisting of "half-truths" and "fear-mongering related to unionization". There is no doubt that the Employer expressed its preference for remaining union free; however it also maintained balance in its communications. For example, the FAQ document appended to the May 10, 2024, email from Mr. Mail, contained the following:

> ***Q.*** *What is the company's position on union representation?*
>
> ***A.*** *Fire & Flower respects the rights of employees to decide whether they want a union or not. The company believes that employees can be involved in decisions that affect their employment without union representation. Fire & Flower encourages employees to become knowledgeable about the issues involved.*
>
> ***Q.*** *Do you know what your union dues will be and what other rules you may be bound by if you join the Union?*
>
> ***A.*** *Fire & Flower does not have that information. If you are interested, you should ask the union what dues (and/or initiation fees) you will have to pay if they get certified, and also ask for a copy of their constitution and bylaws, so you know what rules you will have to follow if you become a union member.*
>
> *(emphasis added)*

[96] The May 15, 2024 email providing employees with a copy of the ballot they can expect to receive from the Labour Relations Board, says: *The choice is yours to make, and we strongly encourage all eligible voters to vote,* but we think a "No" vote is best for all."

[97] In the document entitled "Union Organizing Information" states:

> *As many of you are now aware, in 2022 UFCW applied to unionize certain Fire & Flower employees.*

> *Following our exit from the CCAA, the next step in the process is a secret ballot vote held by the Saskatchewan Labour Relations Board.*
> *We hope that your decision about whether to unionize will be made based on facts rather than rumours or promises.*
>
> *Our goal is to provide you with information and answers some of your questions with this document. We believe that open and honest discussion of the issues is an important part of this process.*
>
> ***Our preference is that you vote "NO" in the unionization vote.***
>
> *A simple majority (50% + 1)* ***of those who vote*** *determines whether the union wins. This is why it is crucial to vote as union voters often do – so deciding not to vote is like a yes vote for the union.* ***PLEASE VOTE!***

[98] The Union argued that some of the content of the communications implied that the Union was underhanded or deceitful. This included the following headings from the "Union Organizing Information" document:

> ***Why Does the Union Really Want to Represent You?***
> *One potential reason is that your membership means more money for the union, in the form of initiation fees and membership dues*
>
> ***Promises, Promises or Real Guarantees***
> *You may hear promises, but what can really be guaranteed?*
> *If the union is certified, it will only get the right to negotiate with Fire & Flower. The union cannot guarantee anything because it cannot force Fire & Flower to give anything that we are unwilling or unable to give.*
> *We encourage you to ask your friends or family members who work in unionized workplaces whether they really believe that they have received good value fom the union in return for all they have paid in union dues.*
>
> ***What Will the Union Cost***
>
> ***You Can't Test Drive a Union***
>
> ***Total Compensation Package***
> ***The Union may tell you that it can negotiate better wages and benefits***
> *At Fire & Flower we have a highly competitive total compensation package, we have a team member discount, our Employee Family Assistance Program, Swag and various Employee Purchase Plans.*
> ***If unionized, these current benefits would likely be subject to negotiation and there is no guarantee they would stay the same.***

[99] The Employer says that as testified to by Mr. Mail, the 2024 communications took a softer and more balanced approach compared to the 2022 communications, and in this regard, did not speak in certainties, with the exception of one bullet located in the "Facts About the Union Process" which states: "If the union wins the vote, the company will no longer be able to deal with your issues on an individual basis." The Employer referred to use of the words "may" and "potential" in its communications. For example: The May 10, 2024, email from Mr. Mail states:

> *It is important to consider that unionization can introduce complexities that may hinder our ability to adapt swiftly to changing market dynamics. It also creates barriers to direct communication between management and team members, potentially diluting the collaborataive spirit we've worked so hard to foster. I urge each of you to really think about the decision to unionize and what it might mean for our business as a whole and for your personally.*

[100] The last paragraph of that email goes on to say:

> *Under the law, every employee has the right to freely decide whether they wish to join a union. While the law protects employees' rights to organize with a union, the law also protects employees' rights to refuse becoming organized or to oppose union organizing activities. The right to choose (and the next step in this process) will occur shortly via a secret vote conducted by the Saskatchewan Labour Relations Board (the "Board").*

[101] The FAQ attached to the May 10, 2024 email also contains references to "may" such as "how our work environment may change". The FAQ also refers employees to contact the Saskatchewan Labour Relations Board if they have any concerns about the union's actions. The FAQ also states more than once that "voting is conducted by secret ballot". It "encourages employees to become knowledgeable about the issues involved". It refers the employees to the union if they are interested in what union dues will be and what other rules they may be bound by if they join the Union.

[102] The May 15, 2024, email which included a copy of the ballot advised employees that it is their choice to make, and that Fire & Flower strongly encourage all eligible voters to vote. The "Union Organizing Information" contains references to one "potential reason" the union wants to represent you is more money for the union. Another page says "you may hear promises". With respect to dues, it says "we don't know what union dues will be". Fire & Flower's relationship will "likely be administered through the Union". This document also advises employees that there will be a secret ballot vote held by the Board. It encourages employees to speak to third parties, at advises employees that there will be a secret ballot and "no one will ever know how you voted", and it advises of company policy and law the protects employees from threats and intimidation.

[103] In the May 17, 2024, email, the Employer states that they will also be sending out notices of the union's meetings, and goes on to say:

> *Please be advised that both Fire & Flower's sessions and the union's sessions are voluntary meetings. It is each employee's individual choice to attend these meetings. Fire & Flower employees will be paid for one hour for each meeting regardless of attendance.*

> *Fire & Flower respects the rights that each of you have under this democratic process. Every team member has the right to decide whether you want to become a unionized employee. The decision is yours and yours alone. In addition to statutory rights to engage in collective bargaining, team members have statutory rights if they are feeling pressured regarding their vote, please let us know if you are feeling pressured and/or have any questions or concerns. I am here to support our teams throughout this process.*

[104] The Board notes that at certain times throughout Mr. Mail's cross examination, Union's counsel put certain propositions or understandings to Mr. Mail in an attempt to prove certain of Mr. Mail's statements as incorrect or unbalanced. For example, Union's counsel put it to Mr. Mail that contrary to Mr. Mail's statement, Union membership rates are increasing, or that higher wage rates are associated with Union membership. However, none of the purported facts put to Mr. Mail by union's counsel are in evidence. The Union did provide evidence showing that any statements made by the Employer were false.

[105] Counsel for the Union also referred Mr. Mail to a document titled "WalMart A Manager's Toolbox to Remaining Union Free." This document was not tendered into evidence and Mr. Mail testified that he had never seen the document previously.

[106] At the end of his cross examination Mr. Mail was asked and answered the following question:

> Q. Does it surprise you to learn that Ms. Rother's communications so closely mirror the WalMart Union busting guide?
>
> A. Would it surprise me? Ummm No.

[107] The portions of the Walmart document referred to Mr. Mail are as follows:

- We believe in maintaining an environment of open communication among all associates, both hourly and management.
- The Open Door
- Unions cannot make various guarantees
- Union organizer/union promises and making guarantees to potential members
- Union fees and union dues

[108] Mr. Mail was then asked whether it was simply coincidence that his materials "very closely mirror the Wal mart Union busting guide"? Mr. Mail's response was as follows:

> *I really would have to go back to Valerie Rother emails and communications because some of that which is contained in the Wal Mart manual we just went through, I think some of it*

> *is in there, and if I got anything that looked like it came from this guide, it would have been repurposed from those communications. I have not seen this guide before.*

[109] The Board finds no probative value in the testimony regarding the Wal Mart document. The portions from the document put to Mr. Mail form part of the communications prepared and sent by Mr. Mail. That is not in dispute. However, as reviewed in these Reasons, the communications fall within the realm of permissible. Simply because some of the wording may have been taken from the Wal Mart document does not, in and of itself, go to proof of improper communications.

[110] The Employer says that while the communications do not voice outright support for certification, the communication cannot be said to be as one-sided as in *Downtown Youth* where the employer's impugned communication spoke in certainties, but were nevertheless found to be onside the Act:

> ***[35]*** *The last question is whether EGADZ demonstrated balance or neutrality in the memo. The memo includes facts or opinions not in favour of a union. For example, EGADZ said it did not think a union would improve employment; it* ***does not have*** *money for raises, extra vacation or benefits; employees* ***will have to*** *pay union dues; employees* ***will*** *lose flexibility in the application of workplace rules.* ***However, it also says employees have a legal right to join and support a union; it will accept whatever the staff chooses; it will not know what each employee's personal decision is.*** *The Board is of the view that this demonstrates that the information provided by EGADZ was reasonably balanced. The last statement, that EGADZ will not know what any employee's personal decision is, is particularly compelling in this analysis. [emphasis added]*

[111] The Board found that the memo did not, on its face, contain language that is intimidating, threatening or coercive.

[112] The Employer submits that if any of the language in the communications is "off-side" it is coupled with the kind of balancing language referred to in *Downtown Youth.* The Board agrees.

[113] It is clear that the Employer stated its preference in the communications that it did not want a union. The communications also include a suggestion from the Employer that the union's efforts to unionize may be motivated by its self-interest, that the Union cannot guarantee anything like wages or job security, that unionization may create barriers to communication between employees and management, and that the employees will have to pay union dues. The communications also contain several instances where the Employer advises the employees that the decision is theirs to make, to consult the union if they have questions about union dues, to speak to friends and family, and that the vote is done by secret ballot.

[114] The Board finds that the Employer communications do not contain language that is, on its face, intimidating, threatening or coercive. The communications do not rise to the level that is contemplated and prohibited by s. 6-62(1)(a) of the Act. The prohibition imposed by s. 6-62(1)(1) of the Act targets a higher threshold then merely "influencing" employees in the exercise of their rights. This Board has repeatedly held that the mere fact that an employer has communicated facts and its opinions to employees, and those employees may have been influenced by those views and opinions, does not automatically lead to a finding of interference.

[115] The Union needed to provide the Board with evidence that proved that, in the context of this workplace, it would have had that effect on employees of reasonable intelligence and fortitude. That it did not do. The Board does not have sufficient evidence on which it could make a determination that the communications went beyond influence and into the realm of interference. The onus is on the Union to prove a contravention of clause 6-62(1)(a). It did not provide the Board with clear, convincing and cogent evidence to meet its onus of proof.

[116] In summary, the Board finds that the Employer's communications do not fall outside the sphere of permissible employer communications. The Board is not satisfied that the probable effect of the impugned communications would be to compromise or expropriate the free will of a reasonable employee.

Clause 6-62(1)(b)

[117] The Union argues that the Employer has interfered in the administration of the Union through the various communications it has distributed to its employees.

[118] The Union submits that in order to establish a breach of clause 6-62(1)(b), it must be demonstrated that the Employer has put into place obstacles that make it difficult or impossible for the Union to carry on as an entity devoted to representing employees. The Union says that there is ample evidence in this case of the Employer's interference in the Union's ability to represent employees.

[119] In *United Food and Commercial Workers, Local 1400 v Saskatoon Co-operative Association Limited,* 2020 CanLII 10516 (SK LRB) (***"Saskatchewan Co-operative",*** in finding a contravention of clause 6-62(1)(b), the Board made the following findings:

[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).*

. . .

[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.

[120] The legal test in respect of s. 6-62(1)(b) of the Act was considered in *United Food and Commercial Workers, Local 1400 v Saskatoon Co-operative Association Limited,* 2020 CanLII 10516 (SK LRB) (***"Saskatchewan Co-operative")*** at paras, 40,105-107, 110-111 and 126:

> ***[40]*** *On the present Application, the onus of proof rests with the Applicant, the Union. The Union bears the onus to prove, on a balance of probabilities, that the Employer breached clauses 6-62(1)(a) and 6-62(1)(b) of the Act. The evidence before the Board must be sufficiently clear, convincing, and cogent.*
>
> *[…]*
>
> ***[105]*** *The Board notes that it has had few opportunities to consider and apply clause 6-62(1)(b) of the Act. For this reason, the Board relies on previous jurisprudence with respect to the application of section 11(1)(b) of The Trade Union Act, the predecessor provision to clause 6-62(1)(b). The Board in Service Employees International Union (West) v Saskatchewan Association of Health Organizations, 2014 CanLII 17405 (SK LRB) [SAHO LRB] considered its previous case law with respect to the application of section 11(1)(b) of The Trade Union Act, as follows:*
>
> > *[118] Section 11(1)(b) of The Trade Union Act has been considered by this Board on relatively few occasions. In Saskatchewan United Food and Commercial Workers, Local 1400 v. Federated Co-operatives Ltd, [1985] May Sask. Labour Rep. 30, LRB File No. 213-83, the Board described the legislative purpose of this provision as follows:*
> >
> > > *Section 11(1)(b) of The Trade Union Act prohibits an employer from interfering with the formation or administration of any labour organization. The Canada Labour Relations Board considered the phrase "interference with the formation or administration of a trade union" as it appears in Section 184(1)(a) of The Canada Labour Code in National Association of Broadcasting Employees and Technicians v. A.T.V. New Brunswick Limited (C.K.C.W.-T.V.) 1979 3 CLRB 342 and stated at p. 346-7:*
> > >
> > > > *The administration of the union. This is directed at the protection of the legal entity, and involves such matters as elections of*

> *officers, collection of money, expenditure of this money, general meetings of the members, etc. In a word, all internal matters of a trade union considered as a business. This is to assure that the employer will not control the union with which it will negotiate and thus assure that the negotiations will be conducted at arm's length.*
>
> *A union's right to discipline its own members is as much an administrative function of the union as the election of its officers. Section 11(1)(b) prohibits an employer from interfering with that function. Interference could occur in a number of ways. Some of the most obvious include, for example, attempting to bribe, intimidate or improperly influence witnesses or union officials involved in discipline proceedings.*

[119] This definition was quoted with approval by this Board in Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Westfair Foods Ltd. and United Food and Commercial Workers Union, Local 1400, [1995] 3rd Quarter Sask. Labour Rep. 140, LRB File Nos. 246-94 and 291-94. The Board further commented on the legislative purpose of s. 11(1)(b) as follows:

> *In our view, this passage suggests the appropriate focus for this section. We see it as intended to protect the integrity of the trade union as an organization, not to speak to all of the types of conflict which may arise between a trade union and an employer in the course of their dealings. Insofar as meetings between an employer and employees are permissible – and we have outlined the perils which they face on other grounds – it is to be expected that they will be planned by the employer so that the persuasive impact of the information conveyed will be maximized. This in itself, however annoying, does not constitute "interference with the administration" of a trade union within the meaning of Section 11(1)(b).*

[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).*

[107] *When the matter made its way to the Court of Appeal, there was no consideration of clause 11(b) due to the absence of a cross-appeal by the unions.[7]*

[…]

[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. This interpretation is supported by the phrase "interfere with…administration of any labour organization", as opposed to the phrase used in clause 6-62(1)(a), "interfere with… an employee in the*

> *exercise of any right", which if transposed into clause 6-62(1)(b), might read, "interfere with… a labour organization in the exercise of its administration". It is also supported by the case law. Indeed, even attempts to bribe, intimidate or improperly influence witnesses can constitute interference in the administration of a union. Therefore, the fact that the March Update may have been less determinative of the employees' choices, than the entire suite of communications, does not mean that the Employer has not contravened clause 6-62(1)(b). Likewise, the fact that the Union did not fine its members at the close of the strike does not remove the potential for a contravention, because only the Union (with its members) can make that decision.*

[121] The Union argues that the Employer's comments about the Union's ability (or purported inability) to deliver on promises that Union representatives have made to employees and the Employers' speculated reasons for the Union's certification application constitute interference in the administration of the Union. The Union submits these comments misrepresent the Union as a dishonest entity that is unable to achieve any of the things it promises. This, the Union says, is clearly "conduct that threatens the integrity of the Union and that prevents the Union from exercising its function as an organization devoted to representing employees.

[122] The Union submits that the Employer's conduct could have a significant impact on the Union's organizational integrity, as the Employer has continuously painted the Union in a negative light, and communicated to employees that the Union is, in essence, not to be trusted. The Union alleges that the Employer's communications falsely casts the Union as untrustworthy or deceitful.

[123] The Board does not agree that when viewed objectively, the communications lead to a conclusion that the Union is a "dishonest entity that is unable to achieve any of the things that it has promised", as the Union submits. The Board does not agree that the comments objected to by the Union contravene clause 6-62(1)(b). While they could lead to employees asking questions of the Union, as the Employer suggested or urged in several of its communications, this does not prove a contravention of clause (b).

[124] Clause 6-62(1)(b) speaks to interference with the formation or administration of a union. As outlined in the *Saskatoon Co-operative,* this is directed at the protection of the legal entity:

> *This is directed at the protection of the legal entity, and involves such matters as elections of officers, collection of money, expenditure of this money, general meetings of the members, etc. In a word, all internal matters of a trade union considered as a business. This is to assure that the employer will not control the union with which it will negotiate and thus assure that the negotiations will be conducted at arm's length.*

[125] In this case, there is no evidence that the integrity of the Union as an organization was threatened. Furthermore, the Union has not demonstrated what in fact was allegedly inaccurate.

[126] The legal test in respect of s. 6-62(1)(i) of the Act was summarized in Saskatchewan Government and General Employees Union v Lac La Ronge Indian and Child Services Agency Inc., *2015 CanLII 80539 (*"***Lac La Ronge")*** (SK LRB), at paras. 45-47:

> ***[45]*** *SGEU also alleges that ICFS breached this provision of the SEA that prohibits interference by an employer in the choice by its employees of a trade union. Again, the onus falls upon SGEU in this case, and they have failed to provide evidence to support any finding with respect to this provision.*
>
> ***[46]*** *The Union correctly points out in its arguments that the test is an objective one which requires that there be evidence that conduct or actions of the employer would affect a reasonable employee in respect to his or her choice of a union. There is no such evidence.*
>
> ***[47]*** *We do have evidence of a meeting in February 2015 wherein the employer provided its views regarding joining a union vs. not joining a union. While we have evidence of this meeting having been held and some of the elements discussed, there is no causative link between the matters discussed at the meeting and a choice by an employee regarding a trade union. At the time that this meeting was held, SGEU had pretty much abandoned its organizing efforts.*

[127] The Union submits that the Board has made clear that anti-union animus is an important consideration in analyzing potential violations under this section of the Act, and has stated that "if the Board is satisfied that the employer's actions were motivated, even in part, by an anti-union animus", a violation of section 6-62(1)(i) of the Act may be found, even if the Employer had a valid reason for the actions its took. It cites *Amalgamated Transit Union, Local 615 v Battlefords Transit System,* 2022 CanLII 99434 (SK LRB) ("*Amalgamated Transit")* in support of its submission.

[128] However, the cases referred to in *Amalgamated Transit,* namely *Clean Harbours and The Newspaper Guild v. The Leader-Post, a Division of Armadale Co. Ltd., [1994] 1 st Quarter Sask. Labour Rep. ("Leader-Post)* do not support the Union's interpretation and application of anti-union animus to clause 6-62(1)(i). Those cases both dealt with terminations, where anti-union animus does come into consideration.

[129] The legal test in respect of section 6-5 of the Act was considered in *Amalgamated Transit Union, Local 615 v Battlefords Transit System,* 2022 CanLII 99434 (SK LRB) (**"*Battlefords*"),** at paras. 76-77 and 70:

> ***[76]*** *The Union argues that the Employer contravened section 6-5 and clauses 6-62(1)(a), (g) and (i) of the Act, by interfering with, restraining, intimidating, threatening or coercing its employees in the exercise of their right to support the Union. The test to establish the contravention is an objective test: that the likely effect of the Employer's actions, on employees in this workplace of reasonable intelligence, resilience and fortitude, would have*

been to interfere with, restrain, intimidate, threaten and/or coerce them in the exercise of their rights under Part VI of the Act. This requires a contextual analysis.

[77] *The onus is on the Union to satisfy the Board that the Employer's actions were motivated, even in part, by anti-union animus. In Clean Harbors, the Board stated:*

> *[92] However, even if the Board is satisfied that there were valid reasons for the actions that the employer took, the Board may nonetheless still find a violation has occurred if the Board is satisfied that the employer's actions were motivated, even in part, by an anti-union animus. See: The Newspaper Guild v. The Leader-Post, a Division of Armadale Co. Ltd., [1994] 1 st Quarter Sask. Labour Rep. 242, LRB File Nos. 251-93, 252-93 & 253-93. Such is the case because there are few signals more intimidating for an employee or can send a more powerful message through the workplace than an indication that your employment relationship may be in jeopardy because of your support for a trade union. Therefore, even if an employer demonstrates a credible explanation for the actions it took, it is nonetheless a violation of the Act if we find that a component of the employer's decision-making process involved a desire to punish an employee because of his/her support for a trade union or to signal to other employees that unionization was undesirable. . . .*

[…]

[79] *The Board assessed the notice added to the contact list by considering it in light of the five factors established in United Food and Commercial Workers, Local 1400 v Securitas Canada Limited[45], and makes the following findings respecting their application in this matter.*

[130] The Board finds that the evidence does not establish that the Employer's communications would affect a reasonable employee in respect of his or her choice of a union. The Board finds no breach of clause s. 6-62(1)(i) of the Act.

Breach of Settlement Agreement

[131] Included with its Unfair Labour Practice Application, is a claim by the Union that the Employer breached the terms of the Minutes of Settlement. In its Reply and in its opening argument, the Employer objected to the Union including this in its Application. The Employer argues that the Union's reference to the Settlement constitutes a breach of the terms of the Settlement, and misuses the Board's complaint process to circumvent the non-disclosure (confidentiality) terms of the Settlement.

[132] The Employer argues this is an abuse of the Board's process. To violate the terms of the Settlement is harmful to labour relations and deserves sanctions particularly in light of the fact that the parties expressly negotiated the confidentiality provisions of the Settlement, and agreed to keep the Settlement and its terms in the strictest confidence, except (1) "as communicated to the Board for the purpose of obtaining a consent order, (2) "to the CCAA Court for advising the court, (3) "as required by law", and (4) "for the purposes of a party arguing no precedent or

prejudice". Of note, says the Employer, the Union attempted to negotiate the non-disclosure (confidentiality) term out of the Settlement as part of negotiations, but was unsuccessful.

[133] The Settlement specifically states that "The Parties agree that a dispute between them, regarding the interpretation or implementation of this agreement, will be referred to the Board for determination, subject to the jurisdiction of a Court of competent jurisdiction." Fire & Flower denies that it breached the Settlement and submits that an unfair labour practice application is not the appropriate application to address an alleged breach of the Settlement.

[134] The Union says the Board has the authority to remedy any irregularities in proceedings before it, and if the Board finds the Union's inclusion of a breach of the Settlement is an irregularity, that the Board grant leave to hear it.

[135] The Union's ULP Application states under "Grounds for Making the Application" the following:

> *17. The Union submits that the Employer's recent communications are of a similar character as those which became the subject of the Union's (2022) ULP Application. Accordingly, the Union submits that the Employer has violated the express provisions and spirit of the Settlement.*
>
> *18. The Union further submits that by virtue of the forgoing facts, the Respondent has committed an is engaged in Unfair Labour Practices, or violations of the Act, particulars with respect to section 6-5, 6-6(2)(d), 6-62(1)(a), 6-62(1)(b) and 6-62(1)(i), and such further and other sections as counsel may advise…*

[136] The Board sees merit in the arguments of both Parties. However, the Board has determined that there is no prejudice to the Employer in hearing the Union's claim that the Employer breached the terms of the Settlement concurrently with the Union's ULP Application. Further, the Board finds that there is efficiency to be gained by considering the claim alongside the ULP Applications.

[137] The Union is seeking a declaration that the Employer violated the "express provisions and spirt of the Settlement". The Union's ULP Application says that the Parties reached a settlement of the issues between them, codified in Minutes of Settlement (the "Settlement"). The Union claims:

> *14. The Settlement specifies, inter alia, that any disputes between the Parties regarding the Settlement will be brought before the Board. Furthermore, the Settlement specifies that the Employer will remove its anti-union campaign materials from the workplace.*

[138] This however, is not an accurate summary of this provision in the Settlement. The Settlement specifically states that "Fire & Flower agrees to remove all current Company campaign materials from the stores".

[139] There is no dispute that Fire & Flower removed all the Company campaign materials from the stores. The Union argues, however, that after the Employer took down the materials as required by the Settlement, it but shortly thereafter began or continued issuing electronic communications to employees which communications are of a similar character as those which became the subject of the Union's ULP Application.

[140] The Employer denies that it breached the Settlement. The Settlement did not preclude Fire & Flower from communicating with its employees in respect of the Union's certification application. Further, the Employer says in its Reply that there was no finding of Fire & Flower's alleged actions in 2022 being unfair labour practices and/or contraventions of the Act. Fire & Flower and the Union explicitly agreed that the Settlement (and the 2022 ULP Applications withdrawal) was a compromise of disputed claims, was on a non-admission basis and was without prejudice.

[141] The Union through its witness, Ms. Figueiredo, introduced Union Exhibits 1-9 which were the 2022 Employer communications which gave rise to the 2022 ULP Application. Ms. Figueiredo agreed in cross examination that these communications were not simply resent by Fire & Flower after Settlement and Consent Order.

[142] As noted, the Settlement specifically states that "Fire & Flower agrees to remove all current Company campaign materials from the stores". There is no dispute that Fire & Flower did that. There is nothing in the Settlement that prohibited Fire & Flower from providing information to its employees post Settlement. Accordingly, the Board finds that the Employer did not breach the Settlement.

[143] As stated in *Sattva Capital Corp v Creston Moly Corp,* 2014 SCC 53, at para 47:

> *[47] …[T]he interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine "the intent of the parties and the scope of their understanding."…To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances know to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their wone, because words alone do not have an immutable or absolute meaning.* *(footnotes omitted)*

[144] As to the role and nature of the "surrounding circumstances", the Court stated at para 57:

> *(b) The Role and Nature of the "Surrounding Circumstances"*
>
> *[57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement (Hayes Forest Services, at para. 14; and Hall, at p. 30). The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract (Hall, at pp. 15 and 30-32). While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement (Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc. (1997), 1997 CanLII 4085 (BC CA), 101 B.C.A.C. 62).*
>
> *[58] The nature of the evidence that can be relied upon under the rubric of "surrounding circumstances" will necessarily vary from case to case. It does, however, have its limits. It should consist only of objective evidence of the background facts at the time of the execution of the contract (King, at paras. 66 and 70), that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting. Subject to these requirements and the parol evidence rule discussed below, this includes, in the words of Lord Hoffmann, "absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man" (Investors Compensation Scheme, at p. 114). Whether something was or reasonably ought to have been within the common knowledge of the parties at the time of execution of the contract is a question of fact.*
>
> *(c) Considering the Surrounding Circumstances Does Not Offend the Parol Evidence Rule*
>
> *[59] It is necessary to say a word about consideration of the surrounding circumstances and the parol evidence rule. The parol evidence rule precludes admission of evidence outside the words of the written contract that would add to, subtract from, vary, or contradict a contract that has been wholly reduced to writing (King, at para. 35; and Hall, at p. 53). To this end, the rule precludes, among other things, evidence of the subjective intentions of the parties (Hall, at pp. 64-65; and Eli Lilly & Co. v. Novopharm Ltd., 1998 CanLII 791 (SCC), [1998] 2 S.C.R. 129, at paras. 54-59, per Iacobucci J.). The purpose of the parol evidence rule is primarily to achieve finality and certainty in contractual obligations, and secondarily to hamper a party's ability to use fabricated or unreliable evidence to attack a written contract (United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Ltd., 1993 CanLII 88 (SCC), [1993] 2 S.C.R. 316, at pp. 341-42, per Sopinka J.).*
>
> *[60] The parol evidence rule does not apply to preclude evidence of the surrounding circumstances. Such evidence is consistent with the objectives of finality and certainty because it is used as an interpretive aid for determining the meaning of the written words chosen by the parties, not to change or overrule the meaning of those words. The surrounding circumstances are facts known or facts that reasonably ought to have been known to both parties at or before the date of contracting; therefore, the concern of unreliability does not arise.*
>
> *[61] Some authorities and commentators suggest that the parol evidence rule is an anachronism, or, at the very least, of limited application in view of the myriad of exceptions to it (see for example Gutierrez v. Tropic International Ltd. (2002), 2002 CanLII 45017 (ON CA), 63 O.R. (3d) 63 (C.A.), at paras. 19-20; and Hall, at pp. 53-64). For the purposes of this appeal, it is sufficient to say that the parol evidence rule does not apply to preclude evidence of surrounding circumstances when interpreting the words of a written contract.*

[145] The starting point to the analysis is the Settlement itself. The Settlement is to be read as a whole, but for the purposes of this application, the salient portions are paragraphs 4 to 6. In reviewing these paragraphs, and giving the words used their ordinary and grammatical meaning, it is apparent that the Parties intended Fire & Flower to send out a written meeting invitation for the Union's meeting (paragraph 4), that the written communication must be first approved by the Union (paragraph 5), and that the communication needs to include certain information (i.e. employees' statutory rights and that the decision to join a union is their choice) (paragraph 5).

[146] Paragraph 6 states "Fire & Flower agrees to remove all current Company campaign materials from the stores."

[147] The Employer argues that on a plain reading, the Settlement agreed to and drafted by the Parties did not restrict Fire & Flower's future communications with its employees beyond the written invitation for the Union's meeting specifically stipulated at paragraph 5, and the remove of "current" materials from the stores as stipulated at paragraph 6. The Employer says it is evident on a plain reading of the Settlement that no such restriction was agreed to regarding future communications. The Employer submits the Board must give meaning to the words used in the Settlement, specifically, "current", as set out in paragraph 6 of the Minutes. "Current" is defined as "occurring in or existing at the present time", https://www.merriam-webster.com/dictionary/current.

[148] The Employer also submits that it is evident that the surrounding circumstances support that no such restriction was agreed to, and Fire & Flower emphasized the following surrounding circumstances:

a) Mr. Mail's testimony that Fire & Flower's goal in the settlement was to get a new vote and be able to communicate with its employees;

b) Ms. Figueiredo's testimony that leading up to the Settlement and Consent Order, the Union understood and expected that Fire & Floer would be communicating with its employees with respect to the prospective certification vote;

c) Ms. Figueiredo's testimony that as part of the settlement of the 2022 Applications, the Union wanted to restrict the content of Fire & Flower's communications;

d) Ms. Figueiredo's testimony that the Union relented and agreed in the Settlement to not restrict Fire & Flower's communications with its employees, subject to how it facilitated the Union's voluntary meeting;

e) A May 2, 2024, draft of the Union's settlement agreement included the Union's desired restriction of future communications as follows:

> *The communications to Employees described in paragraph 5 above will be approved by the Union and will also include a statement that Employees have a statutory right to engage in collective bargaining and that the decision regarding whether to join a Union is their choice (the "Communication"). A copy of the Communication will be provided to the Union.* ***Fire & Flower further agrees that any other statements to employees regarding the Union's application for certification will be answered in a manner that is consistent with the Communication.*** *[emphasis added].*

f) A draft of Fire & Flower's May 3, 2024 settlement agreement included Fire & Flower's rejection of the Union's proposed restriction by striking out the following portion of the Unions draft:

> *A copy of the Communication will be provided to the Union. Fire & Flower further agrees that any other statements to employees regarding the Union's application for certification will be answered in a manner that is consistent with the Communication*

[149] The Board accepts the Employer's argument that the governing principles of contractual interpretation, including a plain reading of the contract, and consideration of the surrounding circumstances, support that the Settlement cannot be interpreted as imposing a contractual restriction on Fire & Flower's ability to communicate with its employees, whether by email or in store. In other words, the Fire & Flower's interpretation of its communication rights is ultimately consistent with the surrounding circumstances known to the Parties at the time of the negotiation and formation of the Settlement.

[150] The Board further accepts the Employer's argument that applying *Queensway,* it is also untenable for the Union to argue that Fire & Flower's communications breached the "spirit" of the Minutes. Restrictions on communications were clearly contemplated and negotiated by the Parties and Fire & Flower's position ultimately prevailed. It would thus be absurd to now suggest that the spirit of the Settlement precluded Fire & Flower from issuing the communications at issue or having a restriction of communications.

[151] Furthermore, and in any event, the Board finds that the 2024 communications were sufficiently different from the Valerie Rother 2022 communications. For example:

a) Mr. Mail testified that he attempted to soften the language in the 2024 communications and make them more balanced. For example, rather than using definitive statements of what will he occur he used "potential";

b) Ms. Figueiredo testified that, unlike the 2022 communications, the 2024 communications did not allege unlawful campaigning by the Union and others; and

c) Ms. Figueiredo testified that, unlike the 2022 communications, the 2024 communications did not allege that the Union was misrepresenting information.

Conclusion:

[152] As a result, with these Reasons, an Order will issue that UFCW, Local 1400's Unfair Labour Practice Application in LRB File No. 108-24 is dismissed. The Board's agent is directed to unseal the ballots and to tabulate the vote that was directed in this matter pursuant to s. 27 of *The Saskatchewan Employment (Labour Relations Board) Regulations, 2021.*

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

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

DATED at Regina, Saskatchewan, this **26th** day of **March, 2025.**

LABOUR RELATIONS BOARD

Carol L. Kraft
Vice-Chairperson