Saskatchewan
Labour Relations Board

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant v SASCO DEVELOPMENTS LTD. o/a HERITAGE INN – MOOSE JAW, Respondent

LRB File No. 099-23; April 30, 2025
Chairperson, Kyle McCreary; Board Members: Christopher Boychuk, K.C. and Maurice Werezak
Citation: *UFCW v Sasco Developments Ltd.*, 2025 SKLRB 21

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

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Unfair Labour Practice – Bargaining in bad faith – Employer displayed significant impatience but found not to have bargained in bad faith

Unfair Labour Practice – Interference in administration of the Union – Hard bargaining found not to constitute interference in the Union without other activity that directly impacted the Union

Unfair Labour Practice – Breach of the Statutory Freeze – Alleged Breach found to have been raised outside the limitation period and Board declined to exercise its discretion to waive the limitation

Unfair Labour Practice – Threaten to close plant – Employer discussing financial position found not to constitute a threat

Unfair Labour Practice – Intimidation or coercion – Employer found not to have coerced or intimidated through letter to employees

REASONS FOR DECISION

Background:

[1] Kyle McCreary, Chairperson: United Food and Commercial Workers, Local 1400 ("UFCW" or the "Union") has brought an unfair labour practice application against Sasco Developments Ltd. ("Sasco" or "the Employer") alleging that the Employer has breached Sections 6-7 and 6-62(a), (b), (k) and (n) of *The Saskatchewan Employment Act* ("the *SEA*").

[2] The Union called two witnesses, Mr. Gillies and Mr. Polupski. Mr. Gillies was the Union's negotiator, and Mr. Polupski is an employee of the Employer and a member of the bargaining committee. Numerous exhibits were filed by the parties. The Employer argued that there was a credibility problem with the Union's witnesses. The Board disagrees. The Board found both

witnesses credible. There were reliability issues as it relates to memory and to the extent that the testimony conflicts with the documentary evidence, the documentary record is preferred.

[3] The Employer operates the Heritage Inn in Moose Jaw ("the Hotel"). UFCW is the certified bargaining agent of the employees at that location pursuant to a certification order in LRB File No. 051-01. The parties have a mature bargaining relationship and have completed collective bargaining agreements in the past with the most recent Collective Bargaining Agreement having a term of July 1, 2016 to June 30, 2019 ("the CBA").

[4] The parties originally began bargaining in 2019 and made progress towards a renewal. Bargaining was put on hold due to the Covid-19 pandemic. The parties were in contact in late 2022 and began bargaining again in January 2023. By agreement of the parties, bargaining restarted for a CBA in January 2023 and the previous negotiations were discarded.

[5] On January 18, 2023, the Employer provided its initial proposals to the Union. The Employer sought significant changes to the CBA in its proposals including numerous concessions.

[6] On January 19, 2023, the Union provided its initial proposals to the Employer. The Union sought wage increases and several other amendments to the CBA.

[7] On January 24 and 25, 2023, the parties met in Moose Jaw and exchanged further proposals. These were hybrid meetings with some individuals in person and some appearing virtually.

[8] On February 14, 2023, the Employer changed from paper pay stubs to electronic pay stubs.

[9] On April 5, 2023, the parties met for bargaining again in Moose Jaw and exchanged proposals. On April 5, 2023, the parties agreed to seek mediation assistance with bargaining.

[10] On April 7, 2023, the Employer sent a letter to employees ("the Impugned Communication"). The Impugned Communication sets out in general terms the Employer's concerns with bargaining and with its financial situation.

[11] On April 12, 2023, the Union sent a letter to the Minister seeking mediation pursuant to s. 6-27. The Minister appointed Kevin Eckert to assist with bargaining.

[12] On June 1, 2023, mediated bargaining took place. After mediated bargaining, the Employer served notice of impasse pursuant to s. 6-33 of the *SEA*.

[13] On July 4, 2023, the Union filed the within Unfair Labour Practice.

[14] On July 20, 2023, the Employer sent information to the mediator including a response to the Union's response of June 1.

[15] The Employer withdrew from s. 6-33 conciliation bargaining on July 20, 2023, the same day that it began.

[16] The Employer declared an impasse on July 20, 2023, very shortly after withdrawing from conciliation bargaining.

[17] On July 21, 2023, the Employer filed a reply in this matter.

Argument on behalf of the UFCW:

[18] UFCW argues that the Employer committed an unfair labour practice by bargaining in bad faith. UFCW argues that this can be found from the Employer's approach to bargaining, the Employer's proposals, the Employer's preparation for bargaining, and the speed that the Employer moved through bargaining to reach impasse.

[19] In terms of the proposals themselves, the Union raises the following evidence in support of bad faith:

> *(a) The Employer has inundated the Union with multiple lengthy volumes of, essentially, the same document, a document which is undated, confusing, and rife with errors (see Exhibits U20, U22, U25, U31, P1, and Pg 30 of Tab 1 of the Union's Second Book of Exhibits (accidentally marked as a second Exhibit U32));*
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> *(b) The uncontroverted testimony of Mr. Gillies is that he received three (3) separate copies of the Employer's "proposal" document on January 25, 2023 alone, all of which were nearly identical;*
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> *(c) The Employer's proposals involve crushing concessions, to most of which the Union could not possibly agree, including:*
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> > *a. allowing the Employer the sole discretion to extend probationary periods for employees for 90 days (Article 2.01(d));*
> >
> > *b. excluding more than a dozen additional employees from the bargaining unit (Article 3.01(b));*

c. *eliminating the prohibition on managers performing the work of the bargaining unit (Article 3.02);*

d. *adding a mandatory mediation step into the grievance procedure, delaying recourse to arbitration (Article 8.02);*

e. *removing the requirement of the Employer to issue discipline within three (3) days of an alleged infraction (Article 9.01(a));*

f. *removing the requirement for a shop steward, or employee witness, to attend discipline meetings (Article 9.01(b));*

g. *removing the "sunset clause" for employee discipline (Article 9.02(a));*

h. *removing the guarantee of seniority as a consideration for the purposes of scheduling, promotions, recalls, call-ins, selection of vacations, and reductions in the work force (Article 10.01(a));*

i. *adding the ability of the Employer to terminate employees on medical leave after 12 months (Article 10.03(f));*

j. *proposing to undermine departmental seniority by conferring discretion to the Employer in hiring for new positions or vacancies (Article 11.02(a) and Article 11.02(b));*

k. *removing the ability of an employee to move into a previous position after accepting a temporary position (Article 11.03(a));*

l. *eliminating paid bereavement leave (Article 12.04(a)), eliminating certain parenting leave benefits (Article 12.06);*

m. *eliminating the requirement for overtime pay after 40 hours per week and 8 hours per day (Article 13);*

n. *eliminating the requirement for meal breaks to be paid and uninterrupted (Articles 13.06(b) and 13.06(d));*

o. *removing the requirement that work be allocated on a "fair and equitable basis" (Article 13.07(d));*

p. *removing workload management provisions for housekeepers (Article 13.11);*

q. *eliminating the possibility of eighteen (18) and twenty four (24) year employees to earn additional holidays (Article 16.02(d) and 16.02(e));*

r. *conferring sole discretion in the Employer for how holidays are paid (Article 16.06); and*

s. *that most wages drop to minimum wage, or nearly so (see Exhibit U32).*

[20] The Union argues that the Employer breached ss. 6-62(1)(a) and (k) through the Impugned Communication. In particular, the Union takes issue with the following passages:

"We have been operating at a loss which is not sustainable;"

> *"The hotel cannot continue to operate at a loss indefinitely;"*
> *If the parties are "unable to get a deal with the mediator, ... we could face a labour dispute (strike or lockout) situation;"*
> *"We are committed to continuing bargaining in good faith and to get a deal where the hotel can operate without incurring losses;" and*
> *"We will provide further updates on the bargaining process as developments arise. If you have any questions or concerns, do not hesitate to reach out to us."*

[21] The Union argues that the approach to bargaining above also continues a breach of s. 6-62(1)(b).

[22] Lastly, the Union argues that the change from detachable pay stubs or statements of earnings to electronic pay stubs constitutes a breach of the statutory freeze in s. 6-62(1)(n).

[23] The Union seeks a declaration that unfair labour practices have been committed, an order that the unfair labour practices cease, and the further remedy of binding arbitration to settle the terms of the CBA.

Argument on behalf of Sasco:

[24] In general, the Employer's response is that it engaged in hard bargaining as did the Union. It notes it provided detailed proposals, the response to many of which was simply a one word no from the Union. It explains its position based on concerns with the hospitality industry following the pandemic.

[25] In terms of the specific proposals that the Union objects to, the Employer disputes the Union's factual characterization of the various proposals. The Employer also argues against the Board reviewing individual proposals and submits they should only be reviewed for illegality.

[26] The Employer contends that an employee of reasonable fortitude would not be intimidated by the Impugned Communication and that it does not constitute a threat to close the hotel.

[27] On the statutory freeze issue, the Employer takes the position that the issue has been raised beyond the statutory time limit.

[28] The Employer takes the position that even if the breaches are established the Board lacks jurisdiction under the SEA to order binding arbitration.

Relevant Statutory Provisions:

[29] The primary allegation in this matter is pursuant to s. 6-7:

Good faith bargaining
6-7 *Every union and employer shall, in good faith, engage in collective bargaining in the time and in the manner required pursuant to this Part or by an order of the board.*

[30] The Union has raised the clause 6-62(1)(a), (b), (k), and (n) in this application:

Unfair labour practices – employers
6-62*(1) It is an unfair labour practice for an employer, or any person acting on behalf of the employer, to do any of the following:*

(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Part;

(b) subject to subsection (3), to discriminate respecting or interfere with the formation or administration of any labour organization or to contribute financial or other support to it;

(c) to engage in collective bargaining with a labour organization that the employer or a person acting on behalf of an employer has formed or whose administration has been dominated by the employer or a person acting on behalf of an employer;

. . .

(k) to threaten to shut down or move a plant, business or enterprise or any part of a plant, business or enterprise in the course of a labour-management dispute;

. . .

(n) before a first collective agreement is entered into or after the expiry of the term of a collective agreement, to unilaterally change rates of pay, hours of work or other conditions of employment of employees in a bargaining unit without engaging in collective bargaining respecting the change with the union representing the employees in the bargaining unit;

. . .

(2) Clause (1)(a) does not prohibit an employer from communicating facts and its opinions to its employees.

(3) Clause (1)(b) does not prohibit an employer from:

(a) permitting representatives of a union to confer with the employer for the purpose of collective bargaining or attending to the business of a union without deductions from wages or loss of time while so occupied; or

(b) agreeing with any union for the use of notice boards and of the employer's premises for the purposes of the union.

[31] The request for arbitration raises the breadth of Sections 6-103 and 6-104:

General powers and duties of board

6-103*(1) Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed on it by this Act or that are incidental to the attainment of the purposes of this Act.*

(2) Without limiting the generality of subsection (1), the board may do all or any of the following:

(a) conduct any investigation, inquiry or hearing that the board considers appropriate;

(b) make orders requiring compliance with:

(i) this Part;

(ii) any regulations made pursuant to this Part; or

(iii) any board decision respecting any matter before the board;

(c) make any orders that are ancillary to the relief requested if the board considers that the orders are necessary or appropriate to attain the purposes of this Act;

(d) make an interim order or decision pending the making of a final order or decision.

Board powers
6-104*(1) In this section:*

(a) "former union" means a union that has been replaced with another union or with respect to which a certification order respecting the union has been cancelled;

(b) "replacing union" means a union that replaces a former union.

(2) In addition to any other powers given to the board pursuant to this Part, the board may make orders:

(a) requiring an employer or a union representing the majority of employees in a bargaining unit to engage in collective bargaining;

(b) determining whether an unfair labour practice or a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board is being or has been engaged in;

(c) requiring any person to do any of the following:

(i) to refrain from contravening this Part, the regulations made pursuant to this Part or an order or decision of the board or from engaging in any unfair labour practice;

(ii) to do any thing for the purpose of rectifying a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board;

Analysis and Decision:

Objection on Admission of News Article

[32] The Union sought to introduce into evidence a news article authored by a Chef at the Hotel. The individual was not called as a witness, as such the article is hearsay and is presumptively inadmissible under the rules of evidence. Further, the failure to call the witness or provide evidence as to why they could not be called is determinative of whether the document should be admitted under the principled exception to hearsay. The newspaper article does not meet either the procedural or substantive reliability requirements for principled exemption to hearsay nor does it meet the necessity criterion. There was no evidence on why the author could not testify to establish necessity. This also undermines procedural reliability as there was no substitute for challenging the evidence. The Board has concerns about substantive reliability as the evidence that was called provided no basis for assuming the individual knew of the Employer's motivations.

[33] Even though the News Article is not admissible under the rules of evidence, the Board has the power to admit this evidence pursuant to s. 6-111(1)(e) of the *SEA.* The Board discussed this discretion in *Grain & General Services Union v Western Producer Publications Limited Partnership/western Producer Publications GP Inc*., 2023 CanLII 118607 (SK LRB)

> *[43] The Board has previously stated that it tries, as much as possible and practical, to follow the evidentiary rules employed by the courts. This is for good reason. The rules employed by the courts are designed to ensure procedural fairness. However, clause 6-111(1)(e) of the Act establishes that they are not required to be adhered to, without exception. Ultimately, the Board may rely upon evidence that may not be admitted in a court provided doing so is reasonable and fair, keeping in mind the context of the proceeding and the purpose for which the evidence is tendered.*

[34] The Board does not find that it is reasonable and fair to admit the article. The prejudicial effect clearly outweighs the probative value. The evidence did not establish that the author of the article was involved in bargaining or the decision to lockout in any substantive manner. Despite this lack of evidence connecting the author to the facts in issue, the Union asks the Board to draw an adverse inference on motive based on the statements in the article. The Board declines to admit the article under s. 6-111(1)(e) or the principled exception to hearsay.

Did the Employer Bargain in Bad Faith?

[35] While the Board is very concerned with the Employer's impatience and decision to not spend more time at the bargaining table, the Board finds that the Employer has not bargained in

bad faith. Both the Union and the Employer engaged in very hard bargaining, the Employer was seeking concessions, and the Union was unwilling to engage in concessionary bargaining. The parties made very little progress over several bargaining sessions, but the Board attributes this lack of progress to the positioning of the parties and not to the Employer either failing to bargain in good faith or being unwilling to reach an agreement.

[36] The Supreme Court of Canada set out the two primary aspects to the duty to bargain in good faith in *Royal Oak Mins Royal Oak Mines Inc. v. Canada (Labour Relations Board),* 1996 CanLII 220 (SCC), [1996] 1 SCR 369:

> *XLI. Every federal and provincial labour relations code contains a section comparable to s. 50 of the Canada Labour Code which requires the parties to meet and bargain in good faith. In order for collective bargaining to be a fair and effective process it is essential that both the employer and the union negotiate within the framework of the rules established by the relevant statutory labour code. In the context of the duty to bargain in good faith a commitment is required from each side to honestly strive to find a middle ground between their opposing interests. Both parties must approach the bargaining table with good intentions.*
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> *XLII. Section 50(a) of the Canada Labour Code has two facets. Not only must the parties bargain in good faith, but they must also make every reasonable effort to enter into a collective agreement. Both components are equally important, and a party will be found in breach of the section if it does not comply with both of them. There may well be exceptions but as a general rule the duty to enter into bargaining in good faith must be measured on a subjective standard, while the making of a reasonable effort to bargain should be measured by an objective standard which can be ascertained by a board looking to comparable standards and practices within the particular industry. It is this latter part of the duty which prevents a party from hiding behind an assertion that it is sincerely trying to reach an agreement when, viewed objectively, it can be seen that its proposals are so far from the accepted norms of the industry that they must be unreasonable.*
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> *XLIII. Section 50(a)(ii) requires the parties to "make every reasonable effort to enter into a collective agreement". It follows that, putting forward a proposal, or taking a rigid stance which it should be known the other party could never accept must necessarily constitute a breach of that requirement. Since the concept of "reasonable effort" must be assessed objectively, the Board must by reference to the industry determine whether other employers have refused to incorporate a standard grievance arbitration clause into a collective agreement. If it is common knowledge that the absence of such a clause would be unacceptable to any union, then a party such as the appellant, in our case, cannot be said to be bargaining in good faith.*

[37] The Majority of the Supreme Court of Canada discussed good faith bargaining in *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 (CanLII), [2007] 2 SCR 391, in the following way:

> *103 The duty to bargain in good faith does not impose on the parties an obligation to conclude a collective agreement, nor does it include a duty to accept any particular contractual provisions (Gagnon, LeBel and Verge, at pp. 499-500). Nor does the duty to*

bargain in good faith preclude hard bargaining. The parties are free to adopt a "tough position in the hope and expectation of being able to force the other side to agree to one's terms" (Canadian Union of Public Employees v. Nova Scotia Labour Relations Board, 1983 CanLII 162 (SCC), [1983] 2 S.C.R. 311, at p. 341).

104 In principle, the duty to bargain in good faith does not inquire into the nature of the proposals made in the course of collective bargaining; the content is left to the bargaining forces of the parties (Carter et al., at p. 300). However, when the examination of the content of the bargaining shows hostility from one party toward the collective bargaining process, this will constitute a breach of the duty to bargain in good faith. In some circumstances, even though a party is participating in the bargaining, that party's proposals and positions may be "inflexible and intransigent to the point of endangering the very existence of collective bargaining" (Royal Oak Mines, at para. 46). This inflexible approach is often referred to as "surface bargaining". This Court has explained the distinction between hard bargaining, which is legal, and surface bargaining, which is a breach of the duty to bargain in good faith:

> *It is often difficult to determine whether a breach of the duty to bargain in good faith has been committed. Parties to collective bargaining rarely proclaim that their aim is to avoid reaching a collective agreement. The jurisprudence recognizes a crucial distinction between "hard bargaining" and "surface bargaining" ... Hard bargaining is not a violation of the duty to bargain in good faith. It is the adoption of a tough position in the hope and expectation of being able to force the other side to agree to one's terms. Hard bargaining is not a violation of the duty because there is a genuine intention to continue collective bargaining and to reach agreement. On the other hand, one is said to engage in "surface bargaining" when one pretends to want to reach agreement, but in reality has no intention of signing a collective agreement and hopes to destroy the collective bargaining relationship. It is the improper objectives which make surface bargaining a violation of the Act. The dividing line between hard bargaining and surface bargaining can be a fine one.*

(Canadian Union of Public Employees, at p. 341; see also Royal Oak Mines, at para. 46)

105 Even though the employer participates in all steps of the bargaining process, if the nature of its proposals and positions is aimed at avoiding the conclusion of a collective agreement or at destroying the collective bargaining relationship, the duty to bargain in good faith will be breached: see Royal Oak Mines Inc. To the words of Senator Walsh, that collective bargaining does not go beyond the office door, we would add that, on occasion, courts are nevertheless allowed to look into what is going on in the room, to ensure that parties are bargaining in good faith.

[38] This Board discussed the distinction between surface bargaining and hard bargaining in *Service Employees International Union (West) v Saskatchewan Association of Health Organizations*, 2014 CanLII 17405 (SK LRB):

[131] The function of this Board is to ensure that the parties engage in a process of collective bargaining; that they agree to meet; that they come to the bargaining table prepared to enter into a collective agreement and/or resolve the issues in dispute between the parties through collective bargaining; that their negotiators have authority to bind their principals; that they explain their proposals and disclose relevant and necessary information that could affect their collective bargaining relationship; and that they not misrepresent the facts or their proposals to the other party. See: Saskatchewan Government Employees' Union v. Government of Saskatchewan and the Honourable Bob Mitchell, [1993] 1st Quarter Sask. Labour Rep. 261, LRB File No. 264-92. Simply put, it is

the responsibility of the Board to ensure that the parties engage in a process of collective bargaining; it is not the function of this Board to ensure that a particular substantive result is achieved or avoided through collective bargaining.

[132] The parties are best able to fashion the terms of their relationship and, in the event of impasse in collective bargaining, each has recourse to economic sanctions. Each round of collective bargaining is a new beginning and many external factors can influence the relative economic power (or perception thereof) of the parties. As a consequence, this Board does not judge the "reasonableness" of the proposals advanced by the parties at the bargaining table unless we conclude that the proposals being advanced or the positions being taken by a party are indicative of a desire to subvert, frustrate or avoid the collective bargaining process. While holding firm on proposals or hard bargaining is permissible, surface bargaining or merely going through the motions of collective bargaining without any real intention of concluding a collective agreement is not consistent with the duty to bargain in good faith. The difficulty of distinguishing "hard bargaining" from subversive behavior was acknowledged by this Board in Saskatchewan Government Employees' Union v. Government of Saskatchewan & Saskatchewan Association of Health Organizations, [1999] Sask. L.R.B.R. 307, LRB File No. 109-98 wherein the Board made the following comments:

> *In mature bargaining relationships, such as this one, it is often difficult for the Board to discern if the bargaining behaviour falls within the realm of "tough, but fair" or if it crosses over into an unacceptable avoidance of collective bargaining responsibility. In Canadian Union of Public Employees v. Saskatchewan Health-Care Association, [1993] 2nd Quarter Sask. Labour Rep. 74, LRB File No. 006-93, the Board described this dilemma in the following terms, at 83:*
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> > *. . . when an allegation of an infraction under s.11(1)(c) is brought before us, the Board is faced with the somewhat delicate task of evaluating the bargaining process to determine whether there is any employer conduct which endangers or threatens to subvert that process, while at the same time, not intervening so heavy-handedly that the process ceases to reflect the strength, aspirations and historical relationship of the parties themselves. The distinction between process and substance has a will-o'-the-wisp quality at the best of times, but this is particularly the case where a tribunal is trying to discern whether the conduct goes beyond the generous limits of the tolerable in collective bargaining, or whether it merely reflects a permissible exploitation of strength or skill by one party to gain advantage over the other.*

[17] In Saskatchewan Government Employees Union v. Government of Saskatchewan et al., [1982] May Sask. Labour Rep. 44, LRB File No. 563-81, the Board considered whether a party is entitled to require the other party to discuss and negotiate individual items during collective bargaining. In that instance, the union alleged that the government refused to bargain collectively with respect to the union's proposals on dental, disability and pension plans. The Board adopted the principles set out by the British Columbia Board in Pulp and Paper Industrial Relations Bureau and Canadian Paperworkers Union, [1978] 1 CLRBR 60 and held that it is not a per se violation of the duty to bargain in good faith to refuse to discuss a specific item at the bargaining table. The British Columbia Board stated as follows, at 80:

> *The legal duty to bargain imposed by the Labour Code is a single, global obligation to negotiate a settlement of an entire collective agreement. Section 6 does not create a set of separate duties to bargain, duties which are attachable to each of the items placed on the bargaining table by the other side. While making bona fide and reasonable efforts to settle a collective agreement with the CPU, the Bureau is legally entitled to refuse to discuss with the CPU the one issue of pension benefits*

> *for retired workers. That stance leaves it up to the union membership to decide whether retiree benefits are sufficiently vital to their conditions of employment that they should take strike action in order to change the Bureau's mind.*

[133] In SGEU v. Saskatchewan & SAHO, supra, the Board went on to make the following conclusions following an extensive survey of jurisprudence:

> *In summary, the cases demonstrate that while Boards generally will not delve into the reasonableness of the bargaining positions taken by either party during collective bargaining, Boards may find that a specific proposal does constitute bad faith bargaining if: (1) the proposal contains some illegality; (2) the proposal in itself or in conjunction with other conduct indicates a subjective unwillingness to conclude a collective agreement; and (3) the proposal is or should be known to go against bargaining standards in the industry and to be generally unacceptable to either include or refuse to include in a collective agreement, i.e. it has the effect of blocking the negotiation of a collective agreement.*

[39] The British Columbia Board discussed a similar approach to determining surface bargaining in *Van-Air Holdings Ltd Dba Radisson Blu Vancouver Airport Hotel & Marina*, 2024 BCLRB 144 (CanLII):

> *54 Specifically, the Board is mindful of any party's attempt to avoid its good faith collective bargaining obligations by "going through the motions" or, stated another way, engaging in "surface bargaining" (Certain Employees of Lender Services Ltd., BCLRB No. B289/2006, para. 90).*
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> *55 The Board has defined "surface bargaining" as follows:*
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> > *Surface bargaining occurs when one party to a negotiation goes through the motions of bargaining with no real intention of concluding a collective agreement. It arises from a desire to avoid concluding a collective agreement and is often aimed at avoiding or ending the collective bargaining relationship itself. "It is only when the conduct of the parties on the whole demonstrates that one side has no intention of concluding a collective agreement, notwithstanding its preservation of the outward manifestations of bargaining, that a finding of surface bargaining can be made": Lafarge Canada Inc., IRC No. C219/91.*
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> > *(SGS, para. 41)*
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> *56 The Board determines "surface bargaining" by assessing the impugned collective bargaining as follows:*
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> > *… The Board considers both the background to and conduct of the bargaining. It examines the circumstances leading up to and following the certification to determine whether a pattern of delaying tactics, roadblocks to bargaining, pre-conditions to comprehensive bargaining, animus, unfair labour practices, etc., establishes the absence of one party's intention to conclude a collective agreement.*
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> > *(SGS, para. 42)*

[40] In summary, the Board is supervising the process of collective bargaining. In doing so, the Board reviews a case to ensure that parties are bargaining in good faith and making all

reasonable efforts to come to a collective agreement. Individual proposals will only be evaluated to the extent that they might support an inference that a party is not making all reasonable efforts to conclude an agreement by taking positions to impasse that are illegal, intended to destroy the bargaining relationship, or avoid reaching agreement. Parties are permitted to engage in hard bargaining and seek concessions or significant increases. Reaching impasse when seeking concessions or significant increases is not an unfair labour practice in itself.

[41] The Board finds that the Employer did not engage in bad faith bargaining. The Employer tabled proposals and attended bargaining. Both parties took hard positions in bargaining, the Employer sought concessions, and the Union refused to grant concessions and sought increases to wages and improvements to the terms of the CBA.

[42] The Board is concerned with the Employer's impatience. As the Employer called no witnesses, there was no explanation provided for why the Employer proceeded to impasse at the point it did. However, it is the Union's onus to establish a breach. The evidence before the Board establishes that bargaining was not progressing, and the Board declines to infer that the declaration of impasse was done in bad faith.

[43] The Union takes issue with whether the Employer was prepared to bargain and the length of time it took to table a monetary proposal. The timeline establishes that bargaining was on hold because of the pandemic and when a request was made to restart bargaining in November 2022, the Employer had a proposal on wording of the CBA by January 2023. A monetary proposal was tabled by April 2023. This does not evidence a lack of preparation or an unwillingness to bargain. The evidence does not establish that the parties were unable to bargain on terms without the wage proposal, and the Employer did provide a wage proposal prior to impasse.

[44] The Union took specific issue with several of the Employer's proposals that were taken to impasse. In evidence, the Union highlighted arbitration procedure issues, seniority, most available hours, benefits, and scope. The Board will consider each proposal in turn as to whether they are indicative of an intention not to reach an agreement.

[45] In testimony the Union took issue with a clause to permit a court reporter at arbitration, and in argument takes issues with a mediation step as part of the grievance process. Neither of these suggestions are illegal, nor can it be inferred that the intent of recording an arbitration or seeking pre-hearing resolution of grievances is intended to prevent reaching a collective

agreement. As it relates to mediation, the *SEA* specifically contemplates resolving grievances by mediation in ss. 6-49(3)(h) and 6-53.

[46] The Union took the position that seniority is sacrosanct, and that the Employer's proposals were offensive to this position. The Board would agree if the Employer was seeking to abolish seniority in the CBA, however, that was not the Employer's proposals. The Employer was proposing modifications to seniority and how it applied in the CBA. This is not equivalent to its repeal. The Employer is entitled to seek to modify seniority language without committing an unfair labour practice. It is not illegal to modify seniority, nor does the Board agree that the modifications proposed to the various seniority provisions support an inference that the Employer was engaged in surface bargaining.

[47] The Union also took issue with amendments to the "most available hours" clause. The Employer contends that the clause is of limited application and related to overall amendments to the wording of the CBA. The Board does not find this proposal to be illegal nor evidence of bad faith bargaining. The Employer was seeking to make substantial language changes, and this is a change related to other modifications to seniority language.

[48] The Employer was seeking concessions related to vision benefits. The Employer initially proposed concessions on dental benefits but the documents filed reflect that that proposal was withdrawn. The Board does not find it to be illegal to seek concessions, nor does the Board find removing vision benefits to be evidence that the Employer did not wish to seek an agreement. Nor did the Union's evidence establish that removing vision benefits was a violation of industry standards.

[49] The Union contends the Employer proposals would remove a dozen employees from the Bargaining Unit, the Employer put it to the Union's witness that the proposal only impacted two individuals. The Union's witness did not necessarily agree but testified to the Union's projections. Scope is a matter that is frequently bargained, and pursuant to various decisions of this Board, is an issue that the Employer must bargain. The Board does not find that the Union has proven a dozen positions would be affected and bargaining to exclude managers and supervisors from a bargaining unit is not illegal or support an inference of an intention to avoid reaching a collective agreement.

[50] In argument, the Union has identified numerous other individual provisions where the Employer was seeking wording changes and arguable concessions. This level of review is offside

the Board's role in ensuring bargaining in good faith. Unless a provision is illegal or supports an inference that a party is not seeking to reach an agreement, the Board will not review the reasonableness of a party's proposals at bargaining. In asking the Board to consider workload management issues, changes to holiday entitlements, meal breaks, and various matters related to discipline, the Union is asking the Board to consider the reasonableness of individual proposals. The Board declines to do so. The Employer has proposed numerous changes, however, none of them support an inference of seeking to avoid a collective agreement. The Union has not established that the reason for the large number of proposals is bad faith bargaining or an intention to not conclude a collective agreement. It is the Union's onus to establish that the Employer was bargaining in bad faith in seeking amendments to the CBA and the Board finds the Union has not met its onus.

[51] It could be inferred that seeking wholesale changes is a method of preventing bargaining by overwhelming the Union with proposals. However, the Union managed to respond to all of the proposals in very little time. There were a limited number of proposals where the Union was seeking further discussion, the majority of proposals were simply rejected as the Union did not intend to engage in concessionary bargaining. Despite the volume of proposals, the Board declines to infer that the purpose of the broad changes was to avoid reaching a collective agreement.

[52] The Board also finds the complaints about typos, dating of documents, and the specific level of preparation for bargaining to not constitute a breach of the duty in this case. A party's obligation is to bargain in good faith, the Union is seeking to imply into that duty a responsibility to have documents free from errors and be formatted in a specific fashion. The Board does not agree that this is within the content of the duty. A party must be prepared to bargain and generally have proposals to discuss and be able to explain the content of the proposals. There is no prescribed form of those proposals as long as a party's approach to bargaining meets the duties set out in the *SEA*. The evidence does not support a finding that the Employer was not prepared to bargain, and the Board's record includes numerous voluminous proposals of specific wording of the CBA that were provided by the Employer to the Union.

[53] The Union makes an allegation that the Employer has taken a receding horizons position on wages. It is debatable whether this issue was raised in the application. However, on the facts the Board does not find it to be made out because the parties agreed to discard previous positions and begin bargaining from the previous CBA. The wages offered by the Employer are increases

from the wages in the previous CBA. Considering inflation, the wages may not be an increase in real dollars, but they are an increase from the previously bargained wages. The parties agreed to start bargaining from the last CBA, the Board will not evaluate the discarded bargaining as the parties agreed to not continue bargaining from the previous proposals.

[54] The Board raised for the parties the impact of the decision in *United Food and Commercial Workers, Local 1400 V 610539 Saskatchewan Limited (operating as Heritage Inn Saskatoon)*, 2024 CanLII 14520 (SK LRB) ("*Heritage Inn Saskatoon*"). This decision was upheld on Judicial Review in *610539 Saskatchewan Ltd. v UFCW, Local 1400* (21 March 2025) Saskatoon, KBG-SA-00290-2024 and 00389-2024 (Sask KB). It is understood that the Employer is seeking to appeal the Court's decision at the Court of Appeal.

[55] *Heritage Inn Saskatoon* is a decision related to bargaining that occurred at the same time in relation to the Heritage Inn in Saskatoon. The Union took the position that the cases were indistinguishable and that the Board's finding in *Heritage Inn Saskatoon* supported a finding of bargaining in bad faith in this case. The Union also argued that the Board should consider the Employer's actions as continuation of the previous findings against the Employer in *Heritage Inn Saskatoon*. The Employer took the position that the case could be distinguished on the facts and also argued against the Board's application of the law in *Heritage Inn Saskatoon*. The Board finds that the cases are distinguishable as it relates to bargaining.

[56] While the overall pattern of bargaining was similar, the offers were materially different, two of the offers the Board found problematic in *Heritage Inn Saskatoon* were not present in this hearing. The two proposals from *Heritage Inn Saskatoon* that were not present in this case are the removal of the dental and the removal of a guarantee of full-time employment. The weight put on these offers by the Board in *Heritage Inn Saskatoon* can be seen at paragraphs 120, 126, 152, and 155 of the decision. These proposals were clearly part of the Board's analysis in finding an unfair labour practice and the absence makes the cumulative offers distinct. The Board agrees with the law of good faith bargaining as articulated in *Heritage Inn Saskatoon*, however, each case must be evaluated on its own merit and considering the materially different proposals, the Board finds that unlike in *Heritage Inn Saskatoon*, the Employer was trying to reach an agreement in this case.

[57] As it relates to the argument to consider this Employer's actions in light of the findings against the Employer in *Heritage Inn Saskatoon*, the Board declines to do so. Sasco Development Ltd. o/a the Heritage Inn - Moose Jaw is a legally distinct employer from the

numbered corporation at issue in *Heritage Inn Saskatoon*. The Union asked the Board to attribute the actions of the Numbered Corporation in *Heritage Inn Saskatoon* to Sasco. No evidence was called on the relationship between the corporations and the Board declines to find the corporations are related in the absence of such evidence.

[58] In summation, the Board does not find the Employer bargained in bad faith. The Employer tabled proposals, attending bargaining several times over the course of months and provided responses to the Union's proposals. Both parties engaged in hard bargaining and little progress was made. None of the proposals that the Employer took to impasse are of a nature to justify the Board evaluating the reasonableness of the Employer's position. The Employer showed a concerning lack of patience in proceeding through bargaining. While this panel of the Board does not find the Employer bargained in good faith, the Employer could, and probably should, have spent more time at the bargaining table before proceeding to impasse.

Did the Employer Breach the Statutory Freeze by using electronic pay stubs?

[59] UFCW has alleged that Sasco violated the statutory freeze on rates of pay, hours of work, and other conditions of employment by changing from paper to electronic statements of earnings on February 14, 2023. LRB File No. 099-23 was filed on July 4, 2023.

[60] The Employer asserts that this filing is beyond the 90-day period for filing a ULP contained in s 6-111(3) of the *SEA*. In reply, UFCW claims that this is essentially a recurring breach and therefore the limitation period begins anew each month employees do not receive a paper pay stub. The Board finds that the Union knew or ought to have known that the Employer changed its method of providing pay stubs on February 14, 2023, this was a discrete event.

[61] The Union argues that this is a continuing breach and therefore the time limit does not apply. The Board discussed *United Steel, Paper And Forestry, Rubber, Manufacturing, Energy, Allied Industrial And Service Workers International Union Local 1-184 v. Premier Horticulture Ltd.,* 2019 CanLII 10580 (SK LRB)

> *[35] This means that the application was filed out of time. The Employer did not waive the late filing. The Board would note, however, that as of the date of the hearing, the unfair labour practices were continuing. This is similar to the situation in Saskatchewan Government and General Employees' Union v Saskatchewan (Government), 2009 CanLII 30466 (SK LRB) where, after finding that the unfair labour practice was founded on a particular fact situation, and therefore the application was filed after the 90-day deadline had expired, stated the following, at paragraph 30:*

> *That having been said, however, as noted in the Toppin case, supra, at para. 29 "Delay may be excused where the complaint concerns a continuing policy or practice rather than a discrete set of events: UNA, Loc. 23 et al v. Chinook RHA [2002] Alta. L.R.B.R. LD-056." This case clearly concerns a continuing policy implemented by the Employer which may have a considerable impact on its current and future employees. It was in force throughout the period in question and remains in force at present.*

[62] The Board views this change as a discrete event and not a continuing breach. The Employer made a change to the form of provision of a statement of earnings. There is no allegation that statement of earnings are not being provided. The Employer was not failing to meet its statutory duty, it had made a discrete choice to change the method of compliance. This distinguishes this case from the ongoing breach cases.

[63] However, it must be noted that in *Premier Horticulture* the Board considered the continuing breach to be a factor to consider when determining whether to waive the time limit, and not necessarily determinative of the analysis. The Board agrees with this approach, even if the Board is wrong and this is a continuing breach, the question the Board must answer is whether the situation justifies exercising the Board's discretion under 6-111(3). In *Premier Horticulture*, the Board set out the principles to consider in exercising this discretion:

> *[22] In Saskatchewan Polytechnic Faculty Association v Saskatchewan Polytechnic, 2016 CanLII 58881 (SK LRB) ["Saskatchewan Polytechnic"] the Board set out the principles to be applied in determining when it should exercise its discretion to dismiss an unfair labour practice application filed beyond the 90-day deadline:*
>
> - *Applications alleging an unfair labour practice must be filed within 90 days after the applicant knew or ought to have known about the misconduct giving rise to the allegation (ss.6-111(3)).*
> - *The 90 day limitation period reflects the fact that time is of the essence in addressing labour relations disputes and timely resolution of such disputes is essential to ensuring amicable labour relations in Saskatchewan (Dishaw, at para. 36; Peterson, at para. 29; SGEU, at paras. 13-14).*
> - *It is important to identify with precision when the 90 day limitation commences. Typically, the alleged misconduct will be founded upon a particular fact situation and the clock starts running from that date (SGEU, at para. 29).*
> - *A complaint may be based on a "continuing policy or practice rather than a discrete set of events". This fact makes it more difficult to ascertain the commencement of the 90 day limitation period and may make it easier to justify a delay (Toppin, at para. 29; SGEU, at para. 30).*
> - *The Board will adjudicate applications filed outside the 90 day limitation period provided the other party consents or otherwise waives the application of the limitation period (ss. 6-111(4)).*

- *Where no such consent or waiver is given, the Board possesses discretion to adjudicate the application (ss. 6-111(3); SGEU, at para. 24).*

- *When exercising this discretion, the Board should apply the non-exhaustive list of counter-vailing factors identified in Toppin (SGEU, at paras.26-27; Toppin, at para. 30)*

- *Prejudice is presumed in all late filings; however, if actual prejudice could result from hearing the application it will be dismissed.[3]*

[23] The Toppin guidelines mentioned above, were established by the Alberta Labour Relations Board [4]:

1. The 90-day time limit is a legislative recognition of the need for expedition in labour relations matters.

2. "Labour relations prejudice" is presumed to exist for all complaints filed later than the 90-day limit.

3. Late complaints should be dismissed unless countervailing considerations exist.

4. The longer the delay, the stronger must be the countervailing considerations before the complaint will be allowed to proceed. There is no separate category of "extreme" delay.

5. Without closing the categories of countervailing considerations that are relevant, the Board will consider the following questions:

> *(a) Who is seeking relief against the time limit? A sophisticated or unsophisticated applicant?*
>
> *(b) Why did the delay occur? Are there extenuating circumstances? Aggravating circumstances?*
>
> *(c) Has the delay caused actual litigation prejudice or labour relations prejudice to another party?*
>
> *(d) And, in evenly balanced cases, what is the importance of the rights asserted? And what is the apparent strength of the complaint?*

[64] Considering these factors, the Board declines to exercise its discretion to waive the time limit. The delay is relatively short, it should have been filed by May 14 and was filed on July 4. This is under two months of delay but is presumed to be prejudicial. The UFCW is a sophisticated applicant and aware of the provisions on timeliness in the *SEA*. There has been no explanation for the delay from May until this application was filed.

[65] The primary extenuating circumstance relates to the allegation of continuing breach. The Board disagrees that it is a continuing breach. However, assuming it is a continuing breach and considering the relatively short delay, the Board will also consider whether the strength of the case favours waiving the period.

[66] The strength of case of the Union's case weighs against waiving the limitation period. The Union argues that it was an implied condition of employment to receive the pay stub in a physical form, however this is counter to the express terms of the *SEA*.

[67] Under s. 2-37 of the *SEA*, an employer may either provide a paper statement of earnings that is detachable from a cheque, or an electronic version that is printable. Section 2-37 of the *SEA* reads in part:

> ***Statement of earnings required***
> ***2-37****(1) An employer shall provide a statement of earnings to an employee:*
>
> *(a) on every payday; and*
>
> *(b) when making payments of wage adjustments.*
>
> *(2) A statement of earnings required pursuant to subsection (1) must:*
> *…*
>
> *(b) be in a form that:*
>
> *(i) is separate from, or readily detachable from, any form of cheque or other type of voucher issued in the payment of wages; or*
>
> *(ii) if an employee is provided with an electronic statement, permits the employee to print off a copy of the statement of earnings.*
>
> *(3) Unless the contrary is established, wages and other amounts that are not included in a statement pursuant to subsection (2) are deemed not to have been paid.*

[68] The statutory terms and conditions of employment in the *SEA* are implied terms of the CBA, *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42 (CanLII), [2003] 2 SCR 157. UFCW's argument is essentially that the custom of providing a paper statement of earnings eliminated the Employer's option under the *SEA* to provide either a paper or electronic statement of earnings. There is no provision of the CBA that supports that the Employer has waived this option, and the Board does find the strength of this argument to support waiving the limitation period.

[69] The Union provided hearsay evidence that unidentified employees were unable to access their electronic statements of earnings. That is an issue properly put to an arbitrator. An employer has a duty to provide a statement of earnings to an employee on every payday. If employees are not receiving their statements of earnings, that is a matter that the union can grieve as an implied term of the CBA.

[70] The Board finds that the allegation related to a breach of the statutory freeze was brought beyond the 90 day time limit and declines to exercise its jurisdiction to waive the time limit. The Union's application as it relates to s. 6-62(1)(n) is dismissed.

Did the April 7, 2023 letter to employees breach s. 6-62(1)(a)?

[71] UFCW alleges that Sasco breached s. 6-62(1)(a) with its communication of April 7, 2023. The Board discussed the test under s. 6-62(1)(a) in *United Food and Commercial Workers, Local 1400 v Securitas Canada Limited*, 2015 CanLII 43778 (SK LRB)

> *[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.

[72] With this framework in mind, the wording at issue must be considered. The Impugned Communication reads as follows:

April 7, 2023

Dear Team,

Re: Collective Agreement Bargaining Update

As you may already know, the Heritage Inn and UFCW Local 1400 have been bargaining the collective agreement which is your employment contract with the hotel. The Union represents all employees, and they have the authority to negotiate on your behalf. Management cannot bargain directly with employees in a unionized work environment.

The previous collective agreement expired in 2019, but bargaining was put on hold due to the pandemic. In January 2023, we restarted bargaining and resumed this past week. Although some progress has been made, the parties remain far apart.

The hotel industry faces an uncertain future and continues to be seriously affected by the pandemic and the anticipated recovery period will be years, with questions about whether there will ever be a return to pre-pandemic levels. We have been operating at a loss which is not sustainable.

The Heritage Inn seeks flexibility to operate the hotel amidst the pandemic's challenges, and we want to establish a cooperative and collaborative workplace, where both management and employees can work together efficiently to resolve workloads and issues. This flexibility and workplace cooperation means that the Heritage Inn is proposing a number of changes to the collective agreement.

We are committed to achieving a collective agreement that benefits you, and the hotel as well. We have proposed wage increases and cross-training opportunities for employees to enhance their skills, expand their knowledge and grow with the company.

These past two bargaining dates have yielded minimal progress, as the Union has rejected most of the Heritage Inn's proposals. The hotel cannot continue to operate at a loss indefinitely, and it is essential to reach an agreement that enables us to run the hotel successfully. On April 5 the Hotel and Union agreed to seek government mediation and assistance.

We are hopeful that the mediator will be able to help us make progress. If we remain far apart or are unable to get a deal with the mediator, the existing agreement could remain in force, or worse still, we could face a labour dispute (strike or lockout) situation.

We are committed to continuing to bargain in good faith and to get a deal where the hotel can operate without incurring losses.

We will provide further updates on the bargaining process as developments arise. If you have any queries or concerns, do not hesitate to reach out to us.

The Heritage Inn Moose Jaw Management Team

[73] The letter is a mixture of facts and opinion. Much of the letter is relatively straightforward. The only parts that are of some concern to the Board relate to issues about the Employer's financial position and the positions of the parties at bargaining.

[74] The Union argues that this was a vulnerable workforce. The Board does not find the evidence persuasive that the workforce did not have the reasonable fortitude assumed of all employees. In coming to this conclusion, the Board is mindful that this is a mature bargaining relationship and that at the time the communication was sent there was no labour conflict in the workplace. The workplace had been without a current CBA for years, but there were no surrounding events to give particular weight to the Impugned Communication.

[75] The Board finds that an employee of ordinary fortitude would not be intimidated by this communication. Further, this falls within the protection of s. 6-62(2), the Employer is communicating facts and opinions. While the evidentiary basis was not strong, there was evidence brought out in cross examination that the hotel industry was impacted by the Covid pandemic. The comments in the Impugned Communication on bargaining were supported by the proposals filed with the Board. The Union alleges that these are misrepresentations, but the Board finds that the Impugned Communication falls within the level of acceptable spin and does not cross the line into misinformation or unnecessary amplification.

[76] On the reference to a labour dispute, there is no threat, it is stated that if a new deal can be reached, the existing CBA remains in force or there could be a labour dispute. This is an accurate description of the status of a CBA if a deal is not reached. The Board does not find the comment on a dispute to be intimidating or threatening.

[77] The Board dismisses the Union's application as it relates to s. 6-62(1)(a).

Did the Employer Interfere in the Administration of the Union?

[78] The Union alleges that the Employer's approach to bargaining imposed such a burden on the Union to constitute interference with the administration of the Union. The Board dismisses this allegation. Clause 6-62(1)(b) protects the legal entity of the Union itself. There was no evidence that the Employer took any action to interfere with union elections or collections of money or other activities of the Union. The allegation is that collective bargaining imposed an administrative burden through the volume of the Employer's proposals such that it impacted the viability of the Union. The Board finds this is far beyond the recognized protection of the clause

and this set of facts do not support considering expanding the interpretation previously given by the Board.

[79] The Board discussed the previous decisions on s. 6-61(1)(b) in *Moose Jaw Firefighters' Association No. 553 v City of Moose Jaw*, 2019 CanLII 98484 (SK LRB):

> *[112] Clause 6-62(1)(b) prohibits employer interference with the formation or administration of a trade union.[22] The Board in SEIU (West) v SAHO considered its previous jurisprudence with respect to the application of section 11(1)(b) of The Trade Union Act, the predecessor provision:*
>
> *. . .*
>
> *[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).*

> *[120] In Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Canada Safeway Limited, et. al., [1995] 3rd Quarter Sask. Labour Rep. 170, LRB File No. 093-95, this Board adopted the above descriptions of the legislative purpose of s. 11(1)(b) and came to the following conclusions with respect to the application of this provision:*
>
> *We have stated above our view that not every instance of employer conduct which has an effect which is not expected, welcomed or approved of by a trade union constitutes "interference" of a kind which is prohibited under Section 11(1)(b). This comment seems equally applicable to an allegation of an infraction of Section 11(1)(b). In the relationship between a trade union and an employer, there will be many occasions when the strategy pursued by the union does not have the anticipated result, or the union must make concessions in the face of the superior bargaining power of the employer. This is the nature of collective bargaining. It cannot be the case that every action of an employer which does not serve the best interests of the trade union can be viewed as an infraction of Section 11(1)(b). As we indicated in the cases cited above, this provision must, in our view, be taken to govern conduct which threatens the integrity of the trade union as an organization, or creates obstacles which make it difficult or impossible for the trade union to carry on as an organizational entity devoted to representing employees.*
>
> *[113] According to the Board in SIEU (West) v SAHO, clause 6-62(1)(b) is about the formation or administration of a trade union. It is intended to protect the integrity of the trade union as an organization. On review, in SEIU-West v Saskatchewan Association of Health Organizations, 2015 SKQB 222 (CanLII), 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).*

[80] The Board agrees that s. 6-62(1)(b) relates to the protection of the union as an independent legal entity. Hard bargaining that consumes resources does not amount to a violation of s. 6-62(1)(b). There was no evidence lead to establish that the Employer's approach to bargaining undermined the independence of the union. More is required than hard bargaining or allegations of bad faith bargaining to engage this section. Evidence would need to establish how the independence of the union as a legal entity was impacted by the approach to bargaining before the Board would consider expanding the current test for interference in administration of the Union. The evidence in this case has not demonstrated an impact on union administration.

[81] The Board dismisses the Union's application as it relates to the allegation under s. 6-62(1)(b) as the evidence does not meet the legal test of interference with administration of the union.

Did the Employer threatened to shut down the Hotel?

[82] The Union alleges that the Employer contravened s. 6-62(1)(k) by threatening to close the plant. The Employer denies this allegation. The Union relies on the references to inability to operate at a loss indefinitely contained in the Employer's communication of April 2023.

[83] A plain an ordinary reading of s. 6-62(1)(k) is that an employer is prohibited from threatening to close a business during the course of a labour-management dispute. This can be an express threat or an implied threat, but there must be a threat.

[84] This communication contains no overt threat to close the Hotel. The Employer in the April 7th letter makes reference to operating at a loss and being unable to operate at a loss indefinitely. This is not an overt threat. It is also not an implied threat. No business can operate at a loss indefinitely, it is not an implied threat to comment on the economic situation of a business. An employer is permitted to offer justifications for seeking changes or concessions to the CBA. Economic justifications are not automatically threats to close a business. To be considered a threat, the context must support that a reasonable person would construe the commentary as an implied or overt threat to close a business if a specific course of action is not taken. The Employer did not approach this threshold. The Union has not established a breach of s. 6-62(1)(k).

Does the Board's Remedial Jurisdiction Include Binding Arbitration?

[85] The Board does not need to address the question of its jurisdiction to order binding arbitration, but without deciding the issue the Board would note the comments of the Supreme Court of Canada in *Royal Oak Mines:*

> *LXIV. Section 99(2) of the Canada Labour Code gives the Board jurisdiction to require an employer "to do or refrain from doing any thing that it is equitable to require the employer . . . to do or refrain from doing in order to remedy or counteract any consequence of the contravention or failure to comply that is adverse to the fulfilment of [the] objectives" of the Code. (Emphasis added.) The duty of the parties to bargain in good faith and make every reasonable effort to reach an agreement is an important precondition to achieving the larger purposes of the Code. The appellant was found by the Board to have failed to comply with this duty. Accordingly, the Board had authority to remedy the effects of that violation. It is significant that the wording "to do or refrain from doing" bestows broad powers on the Board which enables it to impose both positive and negative duties on the party in breach.*

[86] This would suggest that the remedial jurisdiction granted to the Board under s. 6-103 and s. 6-104 is sufficient to permit an order for binding arbitration if the facts support the Board ordering such relief. The Employer's general point on statutory interpretation, that specific provisions override general provisions is accepted, however, the specific provisions on arbitration relate to

first collective agreements. There are no specific provisions that restrict the Board's broad remedial jurisdiction in relation to subsequent collective agreements.

[87] The Board has the remedial power to require any person "to do any thing for the purpose of rectifying a contravention of this Part". If the test as set out in the various cases including *Egg Films, Inc. and IATSE, Local 849, Re*, 2015 CarswellNS 943 at para 149, were to be met, this would include ordering parties into binding arbitration. As the Board has not found an unfair labour practice in this case, the Board does not have remedial jurisdiction to order the matter to arbitration.

Conclusion:

[88] As a result, with these Reasons, an Order will issue that the Application in LRB File No. 099-23 is dismissed.

[89] Pursuant to Section 6-115 of the *SEA*, the decision of the Board is final.

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

[91] Board Member Boychuk concurs.

[92] Board Member Werezak dissents with reasons to follow.

DATED at Regina, Saskatchewan, this **30th** day of **April, 2025.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson