Saskatchewan
Labour Relations Board

THE UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1400, Applicant v AFFINITY CREDIT UNION, Respondent

LRB File No. 053-24; February 12, 2025
Vice-Chairperson, Carol L. Kraft; Board Members: Linda Dennis & Christopher Boychuk, K.C.
Citation: *UFCW, Local 1400* v *Affinity Credit Union*, 2025 SKLRB 3

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

For the Respondent, Affinity Credit Union: Robert Frost-Hinz

Jurisdiction of Board – Board considers its jurisdiction regarding interpretation of Letters of Understanding and its authority concerning supervision of collective bargaining process – Board determines that essential character of dispute in relation to collective bargaining – Board assumes jurisdiction over dispute

Unfair Labour Practice – Employer and Union negotiated Letters of Understanding (LOUs) for short term incentive benefits and personal days off, since 2013 and 2017, respectively – In each case, LOUs expired three months before collective agreement – Union argued Employer's refusal to continue to provide benefits beyond expiry date constitutes an unfair labour practice pursuant to sections 6-5, 6-6, 6-7, 6-62(1)(a),(b) and (g) of *The Saskatchewan Employment Act* – Union's application dismissed – Parties agreed to LOUs along with expiry dates – if Union has become dissatisfied with this arrangement, then it must negotiate a new arrangement.

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 Affinity Credit Union ("Affinity") pursuant to sections 6-5, 6-6, 6-7, 6-62(1)(a), (b) and (g) of the Act.

[2] The Application arises out of the expiry of two Letters of Understanding addressing in-scope employees' entitlement to access Affinity's Short Term Incentive Plan (the "STIP LOU") and providing in-scope employees access to paid Personal Days Off (the "PDO LOU) (together the "LOUs").

Evidence:

[3] Affinity is a co-operative financial institution headquartered in Saskatoon, Saskatchewan. It has numerous locations throughout the province. Affinity operates both unionized and non-unionized locations.

[4] The terms and conditions of employment of Affinity's non-union employees are set through a combination of Affinity's internal employment policies applicable to non-union work locations, as well as the individual employment contracts entered into as between Affinity and each individual non-union employee.

[5] In contrast, the terms and conditions of employment for in-scope employees working at unionized locations are set by a combination of the applicable collective agreement – as negotiated from time to time by Affinity and the Union - and those internal employment policies applicable to Affinity's unionized work locations.

[6] UFCW is certified to represent a bargaining unit of a number of Affinity's employees working at various locations pursuant to certification Order dated April 22, 2010, in LRB File No. 135-09. The parties enjoy a mature collective bargaining relationship, having successfully negotiated several collective bargaining agreements between them.

[7] During previous rounds of collective bargaining negotiations, the parties negotiated two Letters of Understanding addressing in-scope employees' entitlements to access Affinity's Short-Term Incentive Plan (the "STIP") and providing in-scope employees access to Personal Days Off ("PDOs") (together, the "LOUs"). The STIP LOU was originally negotiated between the parties in 2013. The PDO LOU was negotiated between the parties in 2017.

[8] As per the agreement of the parties both at the time of their creation and during subsequent rounds of collective bargaining negotiations, the LOUs were not included within the body of the parties' collective agreements. The following collective agreements were tendered as evidence at the hearing:

a. Collective agreement with a term of April 1, 2020 to March 31, 2024 (the "2020-2024 CBA" or the "Collective Agreement"). The STIP LOU appended to this agreement expired January 1, 2024, and the PDO LOU expired December 31, 2023.

b. Collective agreement with a term of April 1, 2017 to March 31, 2020 (the "2017-2020 CBA"). The STIP LOU appended to this agreement expired January 1, 2020, and the PDO LOU expired December 31, 2019.

c. Collective agreement with a term of April 1, 2016 to March 31, 2017 (the "2016-2017 CBA"). The STIP LOU appended to this agreement expired January 1, 2017. As noted above, the PDO LOU was not negotiated until 2017.

d. Collective agreement with a term of April 1, 2013 to March 31, 2016 (the "2013-2016 CBA"). The STIP LOU appended to this agreement expired January 1, 2016.

[9] On December 7, 2023, Affinity sent an email to the Union that the LOUs were set to expire:

As we enter into 2024, I wanted to ensure some clarity on aspects of our collective agreement that will be expiring or have not been bargained.

1. *2024 Salary Grid*

   There is no salary grid negotiated for 2024, and as such the employees within this bargaining unit will remain on the bargained 2023 salary grid (see #4 below).

   There will be a new salary grid published but will indicate that it is not applicable to employees within the Saskatoon/Langham Collective Agreement.

2. *Letter of Understanding #9 (Short Term Incentive Program (STIP) - 2021, 2022, and 2023*

   This LOU will expire on January 1, 2024.

   Short Term Incentive Program payments related to 2023 will be paid, however employees within this bargaining unit will no longer be eligible for the organizational program after January 1, 2024.

3. *Letter of Understanding #13 (Personal Days Off (PDO)*

   This LOU will expire on December 31, 2023.

   PDOs will not be credited to employees within the bargaining unit after January 1, 2024.

4. *Letter of Understanding #14 Salary and Increment Schedule - 2022 and 2023*

   This LOU will expire on December 31, 2023.

   This LOU does not include the 2024 organizational grid, as such employees will not move to that grid once published.

   Even though the LOU is expired, pending a without prejudice agreement, the Employer would agree to utilize the organizational "2023 Non-Management Salary and Increment Schedule" rather than reverting employees to the "negotiated schedule" for 2023.

> *Can you please let me know if the Union is willing to discuss a without prejudice agreement related to the 2023 salary schedule?*
>
> *I would appreciate your response by 5:00 p.m. on December 11, 2023.*

[10] The Union responded on December 12, 2023, advising that they would "love to discuss all of the points addressed in the email" and identified Rod Gillies as the contact person with whom the issues could be discussed.

[11] The Union provided Affinity with notice to commence negotiations for a new or revised collective agreement on January 10, 2024. On January 29, 2024, Affinity acknowledged receipt of the Union's notice to bargain and advised that Affinity also intended to seek revisions to the Collective Agreement.

[12] On February 1, 2024, the Union sent the following email correspondence to Affinity:

> *I would like to bring your attention to Letters of Understanding #9 and #13. These letters outline the STIP and PDO benefits. I have been advised that these benefits are no longer being provided to the in-scope employees. I have also been advised that Affinity CU maintains policies that provide these benefits to Affinity's non-union employees, though these employees do the same work in the same manner as the in-scope employees.*
>
> *If my understanding is correct, we would be requesting that these benefits be reinstated immediately, as it is our position that the differential treatment of these two groups amounts to discrimination.*

[13] Affinity provided the following email response on February 6, 2024:

> *In reference to your email below related to Letters of Understanding #9 and #13 I would like to turn your attention to an email I sent to the Union on December 7, 2023, which you were included in the reply on December 12, 2023. This email outlines specific articles and highlights 3 letters of understanding that at that point in time were gong to expire, and now since have expired. This notice was provided to the Union as a courtesy in early December, clearly highlighting expiry to the Union, including the offer of a without prejudice agreement related to LOU #14.*
>
> *For reference:*
>
> > *LOU #9 expired on January 1, 2024.*
> >
> > *LOU #13 expired on December 31, 2023.*
>
> *These items have been collectively bargained in clear language outlining an expiry that is offset to a date that is earlier than the expiry of the contract. This has been the same general language since the letters were initially bargained, with LOU #9 first negotiated in 2013 and LOU #13 first negotiated in 2017.*

[14] On February 8, 2024, the Union responded.as follows:

> *I acknowledge receipt of your email dated February 7 (sic) 2024, responding to my email of February 1, 2024. I am inferring from your response that my understanding regarding the policy providing non-union employees with the PDO and STIP benefits is indeed correct. I am also inferring from your response that the employer has no intention of providing these same benefits to their union employees. The Union's position once again, is that differential treatment of employees simply based on whether they are members of a union amounts to discrimination for union activity….*
>
> *…Negotiations in 2013, and again in 2017 included proposals to delete the letters of understanding referred to above and/or entrench same into the agreement itself. In 2021, the Union filed a grievance on this matter because of the employer's refusal to treat all employees equally, whether in-scope or out. You indicate in your email that the Union could have proposed a change to the letters of understanding in collective bargaining. As I am sure you are aware, the Union did have proposals to entrench the letters into the body of the collective agreement. Each time this occurs in bargaining, the employer insists on its position to have the letters of understanding expire prior to the contract. The employer chooses to resist any attempts to bargain these letters, and instead uses them as leverage in negotiations. The employer's tack has been consistent through many sets of negotiations: cut off these benefits to the union employees and hold the STIP payments to the union employees in abeyance pending the acceptance of whatever the employer offers. In fact, the employer insists on creating temporary letters of understanding that warn the members that if the offer isn't ratified by a certain date, they will forego any of their earned STIP from the previous year. (See Revised Best offer,dated June 28, 2021.)*
>
> *The employer makes it a condition precedent that the Union withdraw any grievances in relation to the letters before the Union is even allowed to bring an Offer to the membership. (See Employer's Best Offer, dated June 17, 2021) The withdrawal of grievance 142 C4 - 21, to which you refer in your email, was not as a result of a "respectful request". The withdrawal was a result of the condition precedent placed on the Offer by the employer.*
>
> *Therefore, as a result of the employer's actions, the letters of understanding relating to PDO's and STIP payments no longer exist. They have expired on the dates the employer insisted upon. Because of this insistence, the parties are presently left with no letters of understanding related to STIP or to PDO's, no articles related to STIP or PDO's, but simply two employer policies that provide a benefit to non-union employees and not to union employees.*

[15] The Union filed the Unfair Labour Practice ("ULP") application on March 7, 2024.

[16] The email exchanges above summarize the positions of the parties in this application.

[17] At the hearing, the Union called three witnesses. The first witness to testify was Rod Gillies. Mr. Gillies is the Director of Negotiations and in-house counsel for UFCW, Local 1400. He has been in that position since 2017. His primary responsibility is to either negotiate or oversee all of the collective agreements that the Union Local 1400 represents.

[18] His first involvement in bargaining with Affinity was in 2017. Mr. Gillies had just been hired in May 2017 and while he had experience with the Union Local 1400 as legal counsel, he did not participate in their negotiations. Accordingly, during 2017 round of bargaining, he was training and did a lot of "sit and observe".

[19] Mr. Gillies testified that he did bargain the most recent collective agreement which expired March 31, 2024 (the "Collective Agreement"), and that the parties were in the midst of bargaining at the time of the hearing.

[20] Mr. Gillies identified that the Union had two primary issues with the LOUs contained in the Collective Agreement: STIP LOU #9 which expired January 1, 2024, and the PDO LOU #13 which expired December 31, 2023. His concerns were communicated to Mr. Joyes as per the email exchange referred to in paragraphs 12 to 14 above.

[21] Mr. Gillies testified that the LOUs have been live issues throughout bargaining. He testified that the Union has tried to either have the LOUs deleted as LOUs, entrenched into the collective agreement, or have them expire with the collective agreement. He said the Union has always had proposals like that. He said that the LOUs have been the subject of grievances and unfair labour practice applications filed with the Board. However, he said as a condition precedent to bargaining, the Employer would tell the Union that the Union would have to withdraw the grievances and the unfair labour practice application in order to bring the offer to the membership to vote.

[22] In support of his evidence that the Union has brought proposals to the table to change the content of the LOUs, Mr. Gillies referred to a copy of the "Union Initial Proposals – April 28, 2020". He said this proposal makes it clear that the Union was looking to have the LOUs either deleted from the contract, made part of the contract by entrenching them into the contract, or by having them just expire with the contract, so they remain in force and effect pending negotiations. He said this Proposal shows the deletion of the PDO LOU #13. With respect to STIP LOU #9, the Proposal includes the word "DISCUSSION", which Mr. Gillies described as a "discussion marker". The reference to the year 2020 was also deleted from the last line of the LOU which provided: "This letter of understanding will expire on January 1, 2020."

[23] In support of his testimony that the Employer would insist on the Union withdrawing the grievances and the unfair labour practice application, as a condition precedent to bargaining, Mr. Gillies referred to the following provisions in Affinity's Offers:

- Exhibit U7: Affinity Credit Union Best Offer Saskatoon/Langham dated June 17, 2021:
    - *Union's withdrawal of the following grievances:*
        - *520 C4 20 – Working conditions during negotiations*
        - *142 C4 21 – Lost PDO's*
        - *143 C4 21 – Bargaining pay for union leave for employees*
- Exhibit U6: Affinity Credit Union Best Offer Saskatoon/Langham dated June 28, 2021:
    - *Union's withdrawal of the following grievances and ULP:*
        - *520 C4 20 – Working conditions during negotiations*
        - *142 C4 21 – Lost PDO's*
        - *143 C4 21 – Bargaining pay for union leave for employees*
        - *ULP 078-21 – Bargaining in bad faith*

[24] Mr. Gillies testified that the Union was forced to withdraw these applications, contrary to Mr. Joyes' email comment that Affinity respectfully requested the Union withdraw the grievances and unfair labour practice applications. Mr. Gillies said that the only reason the Union withdrew the grievances and ULP was because it was a condition of the Employer's offer.

[25] Mr. Gillies also referred to the Affinity Credit Union Best Offer Saskatoon/Langham dated July 8, 2021. This Offer does not include a similar provision to those referenced in paragraph 23 above. When asked by the Board about whether the July 8, 2021 Offer contained a similar provision, Mr. Gillies' response was that he was referring to this Offer for a different reason, namely, the reference to the "New LOU STIP" provision.

[26] In cross-examination, Mr. Gillies was asked to point out where the July 8, 2021 Offer says all grievances and ULP must be withdrawn. His response was that the grievances and ULP would already have been withdrawn because of the previous offers in June of 2021.

[27] Mr. Gillies expressed his view that the Employer uses the expiration of the LOUs as leverage to get the membership to accept an offer with expiry dates. He said when the members are faced with such proposals, they conclude that the only way they are going to get their STIP is if they ratify by a certain date. In support of this, he referred to the following provision in Affinity Credit Union Best Offer Saskatoon/Langham dated July 8, 2021:

New LOU: STIP – 2020

Eligible employees as of ratification date will receive the eligible STIP for 2020 as determined by the employer if ratified by July 16, 2021.

This Letter of Understanding will expire on August 31, 2021.

[28] Mr. Gillies also referred to the following provision in the June 17, 2021 Proposal:

New LOU: STIP – 2020
Eligible employees as of ratification date will receive the eligible STIP for 2020 as determined by the employer if ratified by June 30, 2021.

This Letter of Understanding will expire on July 30, 2021

[29] He also referred to a similar provision in the 2017-2020 CBA which provided as follows:

Variable Pay 2017
Employees as of ratification date of September 17, 2018, will receive the eligible Variable Pay for 2017 as determined by the employer if ratified by September 21, 2018.

[30] For clarity, the reference to "variable pay" in the LOUs is synonymous with STIP.

[31] In cross examination, Mr. Gillies disagreed that in each of the 2016-2017, 2017-2020 and 2021-2024 collective agreements, the LOUs were negotiated with expiry dates that preceded the expiry date of the collective agreement, and that when they expired they were not put back into force until they were renegotiated as part of the next round of bargaining. Mr. Gillies reiterated his position that these were not negotiated. He said the topic of changing those would come up but that the Employer was very insistent during bargaining that those dates were not going to change. He said there really wasn't any negotiation on it.

[32] Mr. Gillies agreed in cross examination that the nature of bargaining definitely involves "give and take". He said that both employer and union come to the table with a list of proposals to change the contract. The parties then either agree, counter or disagree with each proposal. He described prioritizing proposals and identifying what are the "hills to die on" and what are "mere fluff".

[33] Mr. Gillies also agreed that as part of the bargaining process, the parties can rely on two stages of mediation set out in the Act. Mr. Gillies described the voluntary mediation process in section 6-27 of the Act, and the more serious process under section 6-33 of the Act where a party

can access conciliation if one party believes they are at impasse. Mr. Gillies said he has utilized both these sections on many occasions.

[34] Mr. Gillies was specifically asked what stopped the Union from insisting that the LOUs not include the expiry dates. He was asked and answered the following questions in cross examination:

> *Q. What stopped you from insisting that the LOUs didn't expire on those dates?*
>
> *A. That was our proposal. Again, the negotiations stopped when the offer came out and we brought it to the membership for a vote.*
>
> *Q. So, what stopped you from saying NO - these are the expiry dates?*
>
> *A. The conversation with the Employer was that they weren't going to change them and I can say that all I want to - I can't prevent them from bringing an offer to the table asking us to bring it to the membership.*
>
> *Q. And so, when they ask you to bring a vote to the membership you have to bring it to the membership?*
>
> *A. We… if we do not voluntarily bring it to the membership then the employer definitely has the ability to apply to the board for a board ordered vote. The pressure to bring an offer to the membership, and I was trying to express this during my previous testimony, is the employer had taken away 2 of the benefits they were enjoying and told they weren't going to get them back unless it was ratified by a specific date. The pressure we feel when it gets to a period of time months or even over a year in bargaining when the non-union employees are getting these benefits right next to the union employees who are not getting it, it's a tremendous amount of pressure from the membership to bring an offer to the membership so they can vote on it. Do we have the ultimate ability to say no, we're not bringing it to the membership? Yes. The amount of pressure that we feel based on this precludes that.*

[35] Mr. Gillies agreed that the Union did not force Affinity to come to the Board to order a vote. He also agreed that when offers were made, the parties were not approaching impasse, and that the Union did not suggest voluntary mediation, or any sort of job action

[36] The Union next called Jolene Teske. Ms. Teske has worked at Affinity for 11 years. Her current position is that of personal banker. She is a shop steward, and she is a member of the Union's bargaining committee. She is currently in her third term on the bargaining committee.

[37] Ms. Teske testified regarding the "Flex Plan". She said when they negotiated their contract two contracts ago, the Employer brought forward the Flex Plan.

[38] She also testified to the fact that the Employer's HR Practices Manual is available to Affinity employees through the Employer's internal internet known as EARL. While there was

some suggestion in Ms. Teske's testimony that the HR Practices Manual, which incorporated the Flex Plan, applied to all employees, she agreed in cross examination that the Flex Plan that applied to the unionized employees was actually set out in the Collective Agreement. In cross examination the following questions were asked and answered:

> *Q. So, do you know – and I suppose you're on the bargaining committee so maybe you do – why is the Flex Plan in the Collective Agreement if you've already got it, and your position is the non-management benefit plan applies to you?*
>
> *A. When we were discussing benefits during bargaining, which is a conversation which happens within all bargaining proposals and discussions, we in-scope employees at the time were not offered the flex plan benefit. We had a different plan. It was proposed and negotiated that we move the employees to the flex plan.*
>
> *Q. So why didn't you say, "hey, the non-management benefit plan applies?"*
>
> *A. We had conversations with the in-scope employees at ratification and went over the plan thoroughly and it was voted with all the staff whether or not to accept the proposal or not.*
>
> *Q. And it was accepted?*
>
> *A. It was accepted after a few votes. We had a few different votes before that contract was accepted.*

[39] She also testified that she has been involved in the last three rounds of bargaining, and that she was part of the bargaining team that agreed to the LOUs in the 2017-2020 CBA. She said the Union had proposed that those be written in the collective agreement outside of the LOUs, but the Employer said they were not moving the LOUs and told the Union to take it to the membership. She said they took it to their membership. She said they had the conversation with the membership about having the LOUs in there, and that they voted on the contract three times before it was a "yes" vote.

[40] Ms. Teske was then asked and answered the following questions:

> *Q. And at no point did you go back to Affinity and say, well, one, "No we're not voting it until those LOU's get entrenched into the collective agreement"?*
>
> *A. The conversations were had to not have the LOUs in there. The employer would not move them out.*
>
> *Q. Did you strike?*
>
> *A. No.*
>
> *Q. Did you go to mandatory conciliation?*

A. We had conciliation.

Q. Was it mandatory conciliation?

A. No, but we had a conciliation.

Q. So, it was a voluntary conciliation?

A. Yes

Q. Did the employer apply to the LRB for an ordered vote?

A. (no answer)

Q. So, the employer said: "Hey, here's my offer I want you to go vote it" and you said "OK".

A We – I can't remember all the exact conversations – we did voice concern about those LOU's – they were a concession – the employer would not move them out of the LOU and put them into the contract. We took it to membership and had the conversations. It took 3 votes before we had a yes vote.

Q. What did you offer to the employer to entice them to take the deadlines off?

A. I don't recall.

Q. Nothing?

A. I don't recall.

Q. What about in the second round of negotiations? Did you strike over this issue? Did you go to mandatory mediation over this issue?

A. In the second contract, our STIPs were held over us. They were not issued at the beginning of the year in February like they were to all other staff members within Affinity CU, and it was in there that they would only be paid to the staff if we ratified by a specific date.

Q. And then I think we heard evidence that rather than going to mandatory mediation, rather than pursuing job action, you voluntarily took the offer to a vote, and it passed?

A. Yes.

Q. And again, what was the Union putting on the table for the employer to try to entice the employer to change those LOUs?

A. There was some grievances that were there the employer asked the Union to remove them and take it. I don't remember what….like I …. Like I don't' remember all the offers at the time.

Q. So, you can't point to or even suggest a single thing that the Union would have brought forward to Affinity to say: "Hey Affinity - we want this. It's really important to us and we're willing to do… whatever…."?

A. I don't remember.

Q. No. You just said we want it this way.

A. I don't remember.

[41] In redirect, Ms. Teske was asked and answered the following question:

Q. Over the course of all the negotiations that you were involved in, did the Union at any point make an offer to the employer to perhaps drop some of its proposals in exchange for something?

A. Yes.

[42] The Union's final witness was Adam Loehndorf. He is employed with UFCW, Local 1400 as a Service Representative. He described his role as helping members understand their rights under the collective agreement. He said he works with HR to ensure the agreement is adhered to and enforced, and he files grievances.

[43] He testified that he received a number of phone calls and emails from members expressing concern based on their inability to have their PDOs and not being able to receive their STIP payment. He tendered into evidence three emails from three members asking questions about their PDOs. The emails are dated February 9, 2024, March 8, 2024 and August 16, 2024.

[44] The Employer called one witness, Todd Joyes. Mr. Joyes is the Director of Employee Services with Affinity. He has been in the role for five years. He has worked for Affinity since 2013. His responsibilities include recruitment, employee services, labour relations, collective bargaining, and grievances.

[45] He said that Affinity was built on the back of many mergers. As a result, they have certified and non-certified employees doing similar work in different locations. There are two bargaining units: Saskatoon/Langham and Hudson Bay. This case concerns the Saskatoon/Langham unit.

[46] Mr. Joyes described how Affinity sets terms and conditions of employment for its non-certified employees (non-unionized employees). He said it includes one-on-one negotiations setting wage rates, benefit starts, pro ration, and signing bonuses. He said it is based on one's experience and Affinity's need for people.

[47] He testified about some of the differences between certified and non-certified employees. He said that non-certified and out-of-scope employees have a range of benefits that can change and do change and are different than the certified employees. Regarding certified employees, he

referenced matters in the collective agreement such as seniority and terminations. He also referenced items in the collective agreement that have firm restrictions such as bereavement leave and leaves of absence. In contrast, in a non-certified environment, there is some flexibility around these benefits. He said the collective agreement also provides certified employees with grievance procedures and arbitration. Also, regarding salary, there is some leeway in terms of where certified employees are placed in the salary grid at their initial start date, but once they are in the system, it is "by the book". For example, a certain number of hours must be met before the next pay increment will be provided, or if they are moving between certified jobs, the increase is 5%. He said there is no negotiation on these matters individually as it has already been negotiated.

[48] Mr. Joyes testified that Affinity was cautious about what they were willing to enshrine in a collective agreement and what they are not. He provided some background on the LOUs. He said that prior to 2013, the variable pay for the entire organization was different and was only available for non-certified and out-of-scope individuals. In 2013, Affinity moved to a fixed rate STIP, variable compensation, and they wanted to offer it to certified employees. He said that because of the monetary nature of STIP, it is disconnected from the contract so that Affinity can maintain some semblance of balance in terms of the cost of the contract and the figuring of total compensation.

[49] He explained that the STIP LOU has a January 1 expiry date because an employee has to be employed as of December 31 to be eligible for STIP. Accordingly, when the LOU says it applies to the years 2021, 2022, and 2023, it is clear that it applies to each of those calendar years.

[50] With respect to the PDO LOU, Mr. Joyes testified that in 2013 Affinity went through a restructuring organizationally and in that restructuring, revamped some of their total rewards programs for certified employees. One of these was to give non-certified employees PDOs or paid days off. He said they are not earned – they are an additional piece that is given to non-certified and out-of-scope employees. Then, in 2017, Affinity wanted to move employees from their "Schedule 1 Benefits Plan" (referred to as the "Old Plan"), to "Schedule 3 Benefits Plan" (the "Flex Plan"). Employees who opted for the "Flex Plan" received PDOs with that plan. Employees who remained on the Old Plan, and some employees still do remain on the Old Plan, are not entitled to PDOs.

[51] Mr. Joyes testified that the eligibility for PDOs is from January 1 to December 31 of the calendar year. On January 1, the full year's allotment is credited, and they expire at the end of the year. There is no cash payment for them. Accordingly, the PDO LOU expires December 31.

[52] The details of the Flex Plan benefit for certified employees are set out in Schedule 3 of the Collective Agreement.

[53] Mr. Joyes testified that he was not at the table when the 2020-2024 Collective Agreement was negotiated but that he was brought in at the end to get it over the finish line. He said there were a couple of pieces that Affinity wanted that they held to the end. He said it did go to conciliation, and they did get to the finish line.

[54] He was asked why the requirement that the Union withdraw certain grievances and a ULP made in the June 17 and June 28 Offers was not included in the July 8 Offer. He said that the June 17 and June 28 Offers went back and forth with the conciliator to try to get some movement. He said the Union did not want those conditions included as part of the settlement, so when Affinity prepared the July 8 Offer, they did not include these conditions (i.e.: the requirement to withdraw the grievances and ULP) as part of the settlement. In short, he said the Union had requested that those be removed, there was a lot of conversation about removing them, and they were not included in the last offer (the July 8th Offer). He said that the July 8th Offer was voted on and only one vote was taken.

[55] Mr. Joyes also testified that he was surprised by Mr. Gillies' response to his email referred to in paragraphs 12 and 14. He said the response appeared to consider the LOUs as if it was a brand-new item when they have been around since 2013. He said this was not the first time Affinity did not accrue these benefits and that Affinity's response was the same standard response: when the expiry date passes, the employees are no longer eligible to earn those benefits.

Argument on behalf of the Union:

[56] The Union's argument is as follows:

a. that the Employer is discriminating against members of the Union by withholding benefits that it provides to all other employees as a matter of course, in order to undermine support for the Union and to secure an inappropriate advantage in collective bargaining;

b. that the Employer's refusal to provide benefits to members of the Union is coercive and intimidating, and designed to compel or induce members to cease to be members of the union;

c. that, in denying benefits specifically to members of the Union, the Employer has threatened, discriminated against – with respect to terms or conditions of employment – and intimidated, coerced, and imposed a pecuniary and other penalties upon members of the Union, because they are exercising their rights to collective bargaining;

d. that, by leveraging benefits, which are provided to all other employees as a matter of course, against members of the Union, in an effort to gain an advantage at the bargaining table, the Employer has failed to approach the process of collective bargaining in good faith;

e. that, in attempting to undermine support for the Union by denying benefits specifically to members of the Union, the Employer has effectively discriminated respecting, and interfered with, the administration of the Union;

f. that the Employer's discriminatory conduct amounts to a violation of the *Charter* principles that permeate the *Saskatchewan Employment Act.*

Argument on behalf the Employer:

[57] The Employer argues:

a. that the parties bargained the collective agreement, and that the Union's argument is inherently flawed and disregards the collective bargaining process;

b. that the LOUs expired as per the clear language and Affinity ceased to provide benefits under the LOUs in accordance with that language as they had done so under the 2013-2016 CBA and 2017-2020 CBA. The Union cannot now come back and seek to nullify an expiration date that they agreed upon;

c. that providing different benefits to out-of-scope and in-scope employees is not discriminatory but rather the simple reality of labour relations;

d. that the ULP Application is an attempt by the Union to impose a term into the collective agreement that was not intended or bargained for, and the Board does not have jurisdiction over the interpretation of the LOUs;

e. that the Board does not have jurisdiction over this matter.

Jurisdiction

[58] The Board will deal with the issue of jurisdiction first.

[59] The Employer submits in its written argument that the Board does not have jurisdiction over this ULP Application. The Employer says Articles 17 and 18 of the Collective Agreement are clear that disputes and grievances under the Collective Agreement, including disputes arising out of Management Rights (Article 5) are to be dealt with at arbitration. It relies upon a decision of the British Columbia Labour Relations Board in *National Elevator and Escalator Assn. and Kone Incl, Re.* 2021 BCLRB 62 at para 25, 82 CLRBR (3d) 270. In that case, the union applied for an order that the COVID LOUs were spent and had no application between the parties. That Board determined that it was a matter of contractual interpretation that should have been dealt with at arbitration.

[60] Section 6-45 of the Act provides an arbitrator exclusive jurisdiction to decide all disputes arising from a collective agreement. It provides as follows:

> ***6-45****(1) Subject to subsections (2) and (3), all disputes between the parties to a collective agreement or persons bound by the collective agreement or on whose behalf the collective agreement was entered into respecting its meaning, application or alleged contravention, including a question as to whether a matter is arbitrable, are to be settled by arbitration after exhausting any grievance procedure established by the collective agreement.*
>
> *(2) Subsection (1) does not prevent the director of employment standards as defined in Part II or the director of occupational health and safety as defined in Part III from exercising that director's powers pursuant to this Act.*
>
> *(3) Without restricting the generality of subsection (2), the director of employment standards may issue wage assessments, issue hearing notices, take action to collect outstanding wages or take any other action authorized pursuant to Part II that the director of employment standards considers appropriate to enforce the claim of an employee who is bound by a collective agreement.*

[61] If this case dealt only with the interpretation of the STIP and PDO LOUs, the Board agrees that the matter ought to be determined at arbitration. However, the Board has a role with respect to collective bargaining agreements which arises from its jurisdiction to supervise collective

bargaining relationships. In order for the Board to fulfill its statutory role to supervise the collective bargaining relationship, it may be called upon to determine whether a party is bound by a collective agreement, determine whether a collective agreement is applicable, and in some circumstances where appropriate, interpret a collective agreement that is in force: *Saskatchewan Public Safety Agency v Fraser*, 2023 CanLII 75460 (SK LRB) at paras 43 and 60.

[62] Where an unfair labour practice application has been filed, and that application raises an issue related to the meaning, application or alleged contravention of a collective agreement, the Board shares concurrent jurisdiction with an arbitrator. The law with respect to this issue is set out by the Board in *International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 v AlumaSafway*, 2019 CanLII 120651 (SK LRB) ["AlumaSafway"]:

> *[62] The Board has on many occasions acknowledged that, where an unfair labour practice application has been filed, and that application raises an issue related to the meaning, application or alleged contravention of a collective agreement, the Board shares concurrent jurisdiction with an arbitrator. On those applications, the Board's jurisdiction arises from the unfair labour practice provisions in the Act. Many of the related cases were decided pursuant to The Trade Union Act, RSS 1978, c T-17 ["The Trade Union Act"]. In The Trade Union Act, there is neither a provision similar to section 6-41, nor a provision that creates an unfair labour practice arising from the breach of a collective agreement.*
>
> *[63] Still, deferral to an arbitrator is not automatic or even unconditional. It needs to be appropriate under the circumstances. As explained by the Board in Canadian Union of Public Employees, Local 3736 v North Saskatchewan Laundry and Support Services Ltd., [1996] Sask LRBR 54 at 60:*
>
> > *It is our view that the jurisdiction of this Board and of an arbitrator under a collective agreement must, in many cases, be viewed as concurrent. Consequently, it will continue to be necessary for this Board, depending on the circumstances of each case, to confront the question of when we should exercise our discretion to defer a question to an arbitrator.*
>
> *[64] In deciding whether to defer, the Board takes into account its proper role, as well as the important policy objective of promoting the capacity and willingness of the parties to engage in collective bargaining on their own accord. The Board must be careful not to encourage parties to come to the Board as a forum of first resort for resolving disputes as to the meaning, application or alleged contravention of a collective agreement. The Board should give full consideration to the value of ensuring that the parties are equipped to resolve their differences through collective bargaining, and after collective bargaining, through the very processes that they have established and set out in the collective bargaining agreement.*
>
> *[65] Generally speaking, the Board will defer to the grievance-arbitration process contained in a collective agreement where the dispute relates to the meaning, application or alleged contravention of a collective agreement and complete relief can be achieved through that process.*

[63] In *AlumaSafway,* in determining whether to defer an unfair labour practice application to the grievance arbitration process, the Board relied on the test established by the Court of Appeal for Saskatchewan in UFCW, Local 1400 v. Saskatchewan (Labour Relations Board) 1992 CanLII 8286:

> *(i) the dispute put before the Board in an application for an unfair labour practice order and the dispute intended to be resolved by the grievance-arbitration procedure provided for in the collective agreement must be the same dispute;*
>
> *(ii) the collective agreement must make possible (i.e. empower) the resolution of the dispute by means of the grievance arbitration procedure; and*
>
> *(iii) the remedy under the collective agreement must be a suitable alternative to the remedy sought in the application to the Board*

[64] The first step in assessing this issue is to determine the essential character of the dispute, i.e.: whether the dispute described in this matter, and the dispute arising from the facts of this matter that could be referred to an arbitrator, are the same. Part of the Union's argument that the Employer committed unfair labour practices is dependent upon a finding that the Employer has incorrectly interpreted the LOUs. It is therefore necessary for the Board to interpret the LOUs in order to determine whether the Employer has committed an unfair labour practice. Accordingly, the dispute put before the Board and the dispute intended to be resolved by the grievance-arbitration procedure provided for in the collective agreement is the same dispute.

[65] The second question is whether the dispute can be resolved by means of the grievance arbitration process in the collective agreement. While an arbitrator can make a finding on whether the unionized employees are entitled to STIP and PDO benefits beyond the expiration dates set out in the respective LOUs, an arbitrator cannot deal with whether the employer committed an unfair labour practice. The Union's allegations also include a question of whether the Employer leveraged the LOUs and the expiration dates in a manner that violates the Act, i.e.: committed an unfair labour practice. That dispute is different from the dispute which could be referred to an arbitrator.

[66] The third question is whether the remedies that could be granted by an arbitrator are a suitable alternative to the remedies that the Board could order. The remedy available through the arbitration process would not address issues regarding unfair labour practices.

[67] In light of the allegations of unfair labour practice in this case, the Board has determined that it is the more appropriate forum. However, as hereinafter set out in these Reasons, upon

hearing and reviewing all of the evidence and the submissions of the parties, the Board has found that there is no basis for the Union's allegations of unfair labour practices. The Board does reiterate the caution outlined in *Saskatchewan Government and General Employees' Union v Mobile Crisis Services Inc*., 2019 CanLII 76953 (SK LRB):

> ***[24]*** *Where an applicant brings a legitimate unfair labour practice application that engages issues of the meaning of a collective bargaining agreement, about which a grievance has been filed, the jurisdiction of the Board and an arbitrator may be concurrent. Where jurisdiction is concurrent, the question before the Board is whether to defer the matter to a more appropriate forum. If the Board determines that it is the more appropriate forum, it may then interpret a collective agreement in the context of, for example, a valid unfair labour practice application. There are many examples in which the Board has done just that, and properly so. The availability of concurrent jurisdiction, however, should not encourage applicants to re-package a matter, properly framed as a question of interpretation, as an unfair labour practice, and in so doing, expect to engage the Board's jurisdiction.*
>
> (*emphasis added)*

Analysis and Discussion:

[68] The onus of proof with respect to allegations of unfair labour practices generally rests upon the applicant. *Button v U.F.C.W., Local 1400* (2011), 199 CLRBR (2d) 114 at para 62 (Sask LRB). For the reasons that follow, the Board finds that the Union has failed to meet its onus.

[69] The facts in this case are not significantly in dispute and are set out in paragraphs 3 to 15. Based on the evidence at the hearing, the Board also finds the following:

a. The unionized and non-unionized employees of Affinity do not work side by side or shoulder to shoulder as suggested in some of the testimony and in opening argument. Unionized employees work in different locations than the non-unionized employees.

b. The Employer's last Offer of Settlement to the Union dated July 8, 2021, did not contain a requirement that the Union withdraw any grievances or ULP application. The fact that this last Offer did not contain any such requirement contradicts the Union's assertions that it was "forced" by the Employer to withdraw the grievances and ULP application, and that it could never proceed with any grievances or ULP applications because of the Employer's condition that these be withdrawn before taking the vote to the membership. The Board notes Mr. Joyes' testimony that the Employer removed any condition that the grievance or ULP application be withdrawn from the last Offer during the conciliation process. He testified that the Union had requested that those

> conditions be removed, there was a lot of conversation about removing them, and they were ultimately not included in the last Offer. Finally, the Board notes that the Union's closing argument characterized the Union's decision not to pursue any previous grievances or ULP applications as a "strategic decision" rather than because of any pre-condition imposed by the Employer.

[70] The Union argues that when the LOUs expired they ceased to be of any force and effect. It says that at that point, the Employer had a choice to either continue providing those benefits to union employees or take the actions necessary to deprive union members of the same benefits that it provided to non-union employees as a matter of course. The Union argues that when the Employer made its election to deprive the Union members of these particular benefits, that it violated several sections of the Act.

[71] The Union says the union members are entitled to STIP and PDO benefits after expiration of the LOUs because of the Employer's policies outlined in the HR Practices Manual. It argues that when the LOUs expired, the unionized employees automatically became entitled to the same STIP and PDO benefits provided to the non-unionized employees by virtue of the Employer's policy.

[72] The "Employer's policy" is a document entitled "HR Practices Manual" Version 6.4.4 Release Date March 19, 2024 (the "Policy"). It was submitted into evidence. At the outset of the Manual it states:

> *Some employees are covered by specific provisions that are outlined in the Collective Agreement that may vary from these procedures.*
>
> *Nothing in these practices will limit or amend the provisions of any Collective Bargaining Agreement entered into by Affinity Credit Union and its employees. In the event that the practices or procedures are found to be in conflict with the Collective Bargaining Agreement, the Collective Bargaining Agreement will take precedent.*

[73] The Union argues that the collective agreement is not a complete code and that the regulation of the workplace is a pastiche of different sources, such as building codes, fire codes, *The Saskatchewan Employment Act,* and employer's policies, which are often established unilaterally. The Union argues that when an employer has implemented policies that do not conflict with the collective agreement, they become rules of the workplace, and as rules of the workplace, these policies are subject to scrutiny, especially when applied unreasonably. The

Union argues that applying the benefits policies in the LOUs to "expressly disadvantage union members is unreasonable" and also constitutes several violations of the Act.

[74] The Board finds that the respective obligations and entitlements of the parties regarding STIP and PDO benefits are determined solely by the terms of the LOUs the parties negotiated. Accordingly, the Employer's policies regarding STIP and SDOs do not apply to unionized employees.

[75] The evidence shows that on December 31, 2023, and January 1, 2024, Affinity ceased to provide the benefits under the LOUs in accordance with the language in the LOUs, just as they had done under the 2013-2016 CBA and the 2017-2020 CBA. In the Board's view, the fact that the LOUs expired does not render them meaningless. Nor does their expiry create a gap which is then filled by the Employer's policies. Rather, the LOUs indicate when and how the STIP and PDO benefits are provided. They indicate that the parties have agreed that the union members will receive STIP and PDO benefits until a certain date. Upon expiry, they indicate that entitlement to those benefits ends. If the parties wish to continue or amend the provision of those benefits, it must bargain for the same. Requiring the Employer to provide these benefits after the LOUs expire extends the obligations and entitlements beyond what the parties agreed to through bargaining.

[76] The Employer argues that the ULP Application is the Union's attempt to impose a term into the Collective Agreement that was not intended or bargained for. This appears to be a legitimate concern. For example, if a finding was made that the Employer's STIP and PDO Policies apply to the unionized members upon expiration of the LOUs on December 31 and January 1, the Union would be relieved of any obligation to bargain for these benefits in the future since their members are already receiving them. In effect, the Union would secure a benefit that it did not bargain for, and the Employer would be saddled with a financial obligation to employees it did not agree to.

[77] The evidence on behalf of both parties clearly shows that these LOUs have been the subject of negotiations since their inception. Mr. Gillies in fact referred to a copy of the Union's April 28, 2020, proposal (see paragraph 23 herein) where the Union identified both LOUs as items the Union wished to change. Up until the February 1, 2024, e-mail from Mr. Gillies to Mr. Joyes when Mr. Gillies requested that these benefits be "reinstated" in accordance with the policies, there was no evidence to suggest that the parties understood that the STIP and PDO benefits were governed by anything other than the LOUs.

[78] The Union submits that it did take issue with the LOUs in the past, but that the Employer prevented the Union from pursuing such remedies by insisting that the Union withdraw any grievances and ULP applications before submitting the Employer's Offer to the membership for a vote. However, the evidence in this regard showed that such a condition precedent was not included in the Employer's Final Offer dated July 8, 2021, which Offer was submitted to the membership for vote. The Board therefore finds that the Employer did not in fact prevent the Union from pursuing any grievance or ULP application as asserted by the Union.

[79] The LOUs, with their respective expiry dates, have been negotiated between the parties for many years. The Employer has insisted on keeping the expiry dates as is in the LOUs. Mr. Joyes testified that Affinity was cautious about what they were willing to enshrine in a collective agreement and what they are not. He said that because of the monetary nature of STIP, it is disconnected from the contract so that Affinity can maintain some semblance of balance in terms of the cost of the contract and the figuring of total compensation.

[80] The Union has asked the Employer to either delete the expiry dates, have the expiry dates coincide with the expiry of the collective agreement, or incorporate the LOUs into the body of the collective agreement. However, the Union has not offered the Employer anything in exchange for its demand to change the LOUs, nor has it taken any job action to try to force the Employer to compromise. In other words, the Union has not engaged in bargaining the issue or in forcing the issue through job action. It seems it is not a "hill to die on". Rather, the Union has applied to the Board for a ruling that the Employer has committed an unfair labour practice by refusing to concede to the Union's demands and/or by refusing to continue to provide the STIP and PDO benefits beyond the expiry dates of the LOUs.

[81] The Board finds that the LOUs and the STIP and PDO benefits are items that must be bargained. If the Union wants the benefits provided through the LOUs to be renewed and appended to the collective agreement, it must negotiate this demand. If the Union wants the terms of the LOUs entrenched into the collective agreement, it must negotiate this demand. As stated in *United Steelworkers of America, Local 9011 v. Radio Shack*, 1985 CanLII 1105 (ON LRB):

> *While the Board has an obligation to ensure compliance with the laws, litigation should not be regarded as a substitute for bargaining or bargaining power; nor should the Board's process be viewed as the means of salvaging an untenable bargaining position, or securing an otherwise unobtainable bargaining objective:*

[82] The Board finds that the unionized employees are not entitled to STIP or PDOs upon expiry of the respective LOUs. As stated, entitlement to those benefits is a matter for bargaining. The Board finds the Employer never withheld or threatened to withhold benefits that the unionized employees were entitled to receive. The Employer's policies for STIP and PDOs set out in the HR Practices Manual, do not apply to the unionized members. The Union's argument that the *KVP*[1] principles require the Employer to apply its policies equally to union and non-union employees alike, is not relevant to the present application.

[83] The Board will now review the specific provisions of the Act the Union argues have been violated by the Employer.

> **Section 6-5:**
> ***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.*
>
> **Section 6-6(1)c, 6-6(2)c, and 6-6(2)(d)**
> ***Certain actions against employees prohibited***
> *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; or*
> *(d) because the person has participated or is about to participate in a proceeding pursuant to this Part.*
> *(2) In the circumstances mentioned in subsection (1), no person shall do any of the following:*
> *…*
> *(c) discriminate against or threaten to discriminate against a person with respect to employment or a term or condition of employment or membership in a union;*
> *(d) intimidate or coerce or impose a pecuniary or other penalty on a person.*

[84] The Union says that the test used by the Board to determine whether an Employer has violated section 6-5 of the Act is the same test that is commonly used to evaluate violations of section 6-62(1)(a) of the Act, as set out in *Amalgamated Transit Union, Local 615 v Battlefords Transit System* 2022, CanLII 99434:

> *[76] …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,*

[1]In closing argument, the Union raised the decision *in Re Lumber & Sawmill Workers' Union, Local 2537 and KVP Co. Ltd.*, 1965 CanLII 1009 (ON La) ("KVP). The Union submits that this is the seminal case on rules and policies unilaterally introduced by Employers. The requirements set out in KVP are commonly referred to as the KVP Rules.

> *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.*

[85] The Union submits that the "uncontested evidence clearly establishes that the Employer's conduct, withholding STIP and PDO benefits, was directly targeted at Union members." It argues that the "negative differential treatment" on the basis of union membership constitutes discrimination based upon membership in a union, as well as intimidation coercion and the imposition of pecuniary penalty. Accordingly, the Union says the Employer has violated 6-6(1)(c), 6-6(2)(c), and 6-6(2)(d).

[86] As already stated, the Employer did not withhold STIP or PDO benefits from the unionized employees. Entitlement to those benefits has been and continues to be a matter for bargaining.

[87] The Union alleges that during the collective bargaining process, the Employer threatened that employees would forgo their "earned" STIP and PDO benefits if they did not agree to the Employer's offers by certain dates. Mr. Gillies testified that this created pressure on the membership to accept the Employer's offers. For example, the STIP and PDO LOUs expired January 1, 2024, and December 31, 2023. The parties are in the bargaining process, but the employees are not and have not received any PDOs for 2024. Similarly, they are not earning any STIP for 2024. The Employer has in the past provided the benefits retroactively, upon ratification. Accordingly, the Union argues, the employees feel tremendous pressure to ratify in order to ensure receipt, or timely receipt, of these benefits for 2024 and beyond.

[88] The members may very well feel pressure to ratify in order to ensure they receive the STIP and PDO benefits. However, as further discussed at paragraphs 96 to 99 herein, parties are entitled to bargain hard for the agreement that they believe to be acceptable even if one of the parties has an overwhelming strength at the bargaining table. The Union's assertion that Affinity "wielded the expiry of the LOUs, and the tacit threats that the programs could cease to be provided to members of the Union, as leverage", disregards the bargaining process.

[89] Further, for the reasons already outlined, the Board disagrees with the Union's characterization that the Employer threatened that employees would forgo their "earned" STIP and PDO benefits. Once the LOUs expired, no benefits accrued. The employees received all the benefits earned up to the date the LOUs expired.

[90] The Union's argument that the Employer discriminated against union members is dependent upon a finding that Union members are entitled to the STIP and PDO benefits even after the expiration of the LOUs. The Board has found that the entitlement to STIP and PDOs is determined entirely by the LOUs and not by the Employer's policies. Accordingly, the Union's arguments that the Employer committed an unfair labour practice by discriminating against unionized employees by not providing them with the same STIP and PDO benefits as non unionized employees is untenable.

[91] Furthermore, the fact that non-unionized employees and unionized employees are subject to different terms and conditions of employment is not discrimination on the basis of union membership as contemplated by s. 6-6(2)(c). Unionization necessarily means that employees will be treated differently in many respects than their non-unionized colleagues. Here, the Union bargained for STIP and PDO benefits that were embodied in the LOUs appended to the collective agreements. The Union's remedy is to be found at the bargaining table.

[92] The Board agrees with the Employer's assertion that this is not discriminatory but rather the simple reality of labour relations. Affinity is not obligated to ensure that the Union negotiates a level of benefits for unionized employees so as to equal, in every way, or even meet generally those benefits which Affinity's individual non-unionized employees are able to negotiate with Affinity.

[93] The Board finds the Employer's bargaining position and demands do not constitute coercion or intimidation, and there is no violation of sections 6-5, 6-6(1)(c), or 6-6(2)(d).

Section 6-7 of the Act:

[94] This section of the Act provides:

> ***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.*

[95] The Board agrees with the Employer that the Union's assertion that Affinity "wielded the expiry of the LOUs, and the tacit threats that the programs could cease to be provided to members of the Union, as leverage", disregards the bargaining process. As this Board stated in *Moose Jaw Firefighters' Assn. No. 553 v Moose Jaw (City),* 2019 CanLII 98484 (SK LRB): "The duty to bargain is not a duty to agree".

[96] Furthermore, "hard bargaining", if the Employer's actions can be characterized as such in the circumstances of this case, does not constitute bad faith. In *PSAC v. Canada (Senate)* (2008) Carswell Nat 4695, a p. 11 the Canada Labour Board made the following comments, with which this Board agrees:

> *The duty to bargain in good faith imposes obligations with respect to the bargaining process, but it does not imply that the parties must succeed and effectively enter into a collective agreement. However, it requires that the parties undertake the bargaining process seriously and honestly, with the intent of entering into a collective agreement. As the Supreme Court stated in Royal Oak Mines Inc. "...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...". However, the duty to bargain in good faith does not preclude hard bargaining and it is important to distinguish between surface bargaining and hard bargaining*

[97] As the Board held in *Noranda Metal Industries Ltd. Canadian Association of Industrial, Mechanical and Allied Workers v. Noranda Metal Industries Limited, [1975] 1 Can. L.R.B.R. 145* at p. 25: "failure to reach a collective agreement because of a determination not to make the concessions necessary to secure the consent of the other side is not, in and of itself, an unfair labour practice. A distinction is drawn between permissible "hard bargaining" and impermissible surface bargaining. Distinguishing the two requires an assessment of a party's conduct in the context of all relevant circumstances, to determine whether that party intended to conclude a collective agreement.

[98] In *Service Employees International Union (West) v Saskatchewan Association of Health Organizations*[2] ["*SEIU (West) v SAHO*"], the Board considered in detail the role of the Board on an application alleging a contravention of the duty to bargain in good faith:

> *[127] The duty to bargain in good faith was well described in 1996 by the Supreme Court of Canada in its decision in Royal Oak Mines Inc. v. Canada (Labour Relations Board) and Canadian Association of Smelter and Allied Workers, Local 4, [1996] 1 S.C.R. 369, 1996 CanLII 220 (SCC), 133 DLR (4th) 129. At paragraphs 41 and 42, the Court said*
>
> > *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*

[2] 2014 CarswellSask 214, Rev'd on other grounds in 2015 SKQB 222; *Seiu-West v Canadian Blood Services*, 2022 CanLII 25872 (SK LRB) at para. 43.

> *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.*
>
> *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.*

[128] Together, s. 11(1)(c) and s. 11(2)(c) impose companion obligation on both employers and trade unions in organized workplaces to bargain in good faith and to make reasonable effort to conclude a collective agreement. A secondary (but not less important) purpose of s. 11(1)(c) is to secure the union's position as the exclusive bargaining agent for organized workers and to compel the employer to negotiate with the union (as opposed to directly with the employees) in good faith with a view to conclusion of a collective agreement.

[129] While ss. 11(1)(c) and 11(2)(c) of The Trade Union Act clearly imposes a duty on the parties to bargain in good faith and makes it a violation of the Act to fail to do so, the practice of this Board in enforcing these obligations has historically been one of measured restraint. Simply put, the Board takes the position that it is not our role to supervise or monitor too closely the bargaining strategies adopted and employed by the parties provided that they genuinely engage in the process. This restraint has grown from the desire of the Board to permit the parties to define and develop their own collective bargaining relations and to avoid interference in the balance of economic power that may exist between the parties. See: Noranda Metal Industries Ltd. Canadian Association of Industrial, Mechanical and Allied Workers v. Noranda Metal Industries Limited, [1975] 1 Can. L.R.B.R. 145. See also: Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Western Grocers, A Division of Westfair Foods, [1992] 4th Quarter Sask. Labour Rep. 83, LRB File No. 168-92.

[130] The reality of collective bargaining is that it is a process of resolving conflict through conflict. While The Trade Union Act may regulate that conflict, it also contemplates that a power struggle may well occur between employers and trade unions. The purpose of collective bargaining is to bring the parties together in a setting where they can present their proposals, justify their positions, and search for common ground. Although the parties may have expectations that particular proposals will be agreed to, or that certain kind of concessions will never by asked of them, or that issues will be discussed in a particular order, or that a particular result will be achieved within a certain period of time, there is no guarantee that such will be the case. Each party has the right to attempt to achieve an agreement on terms that it considers advantageous and to adopt strategies intended to advance its own self interests. The parties also have the right to hold firm in their respective positions. The results of collective bargaining flow from the skill of the negotiators, from the prevailing social and economic realities of the day, from the relative strength of the parties, and from their willingness to exercise their respective strength.

[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:

> *. . . 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.*

[99] In *United Steelworkers of America, Local 9011 v. Radio Shack*, 1985 CanLII 1105 (ON LRB), the Board set out certain statements drawn from earlier cases which bear repeating:

(1) ... [section 15] of the Labour Relations Act is not intended to redress any imbalance of bargaining power that may exist between the parties. A party whose bargaining strength allows it to force the acceptance of hard terms at the bargaining table does not thereby bargain in bad faith. The very word '~bargain" presupposes that the parties will seek to

maximize their own best interests. Hard bargaining, albeit ruthless, is not bad faith bargaining. (from Pine Ridge District Health Unit, [1977] OLRB Rep. Feb. 65.)

(2) There is no requirement that a company must make concessions or agree to a particular agenda of discussions. The parties met often and bargained hard. Because the union might have to accept an agreement '~tailored to the company's measurements", to use a modified version of Mr. Peacock's own chosen words, is no reason to conclude that the company was bargaining in bad faith.. . .There is no evidence to suggest that the company was unprepared to sign an agreement; but of course it wanted an agreement on its own terms. Collective bargaining is redolent of self-interest and without evidence to suggest that the company's terms were so unreasonable as to suggest that, in reality, it wanted no agreement and no trade union, the Board is unprepared to grant the application. (from C. C.H. Canadian Limited, [1974] OLRB Rep. 375).

(3) Accordingly, both parties are entitled to bargain hard for the agreement that they believe to be acceptable. This is so even if one of the parties has an overwhelming strength at the bargaining table and is able to achieve most or all of its needs. The exercise of such raw bargaining power in good faith does not offend the bargaining duty imposed by this Act. (from Radio Shack, [1979] OLRB Rep. Dec. 1220).

(4) The content of the agreement is for the parties to determine in accordance with their own perceived needs and relative bargaining strength. The legislation enables employees to combine together to bargain collectively and compels the employer to recognize their bargaining agent. It further provides a framework within which there can be an exploration of the parties' differences and a sincere effort to reach some accommodation. . .but the statute does not require any particular concessions, nor does it stipulate the content of a collective agreement or even that a collective agreement always must be the necessary outcome of the parties' bargaining.... Rational discussion is an important aspect of the bargaining process. So is power. Persuasion is an effective tactic to gain one's bargaining objectives. So is economic pressure....A party whose bargaining strength allows it to virtually dictate the terms of the agreement does not thereby bargain in bad faith, and that proposition is applicable whether it is the union or the employer which 'has the upper hand". (from Canada Trustco Mortgage Company Limited, [1984] OLRB Rep. Oct. 1356.)

These passages merely underline a basic characteristic of our collective bargaining system: bargaining power is the ultimate arbiter of the clash between management's drive for productive efficiency, and the workers' demand for job security and a bigger share of the "economic pie". Parties strike their own bargain, based upon a realistic appraisal of the value of their objectives in relation to their ability to obtain them. Unless the parties' bargaining power is relatively equal (a situation not compelled by statute), the agreement will inevitably reflect the wishes of the stronger party.

[100] In the present case, the Union brought an unfair labour practice application very early in the process. Furthermore, the LOUs were not a new issue. As is clear from the evidence, the parties had negotiated these two LOUs in the past. The Union is essentially asking the Board to relieve it of the effects of the bargain it reached with Affinity. The fact that the Union was historically unsuccessful in securing its desire to have them embedded into the collective agreement itself, is not bad faith bargaining on the part of Affinity. The Union's assertion that Affinity's "insistence" on expiry of the LOUs during the collective bargaining process ignores the intention and function of bargaining.

[101] This Board has consistently held that an employer is entitled to use its bargaining power to bargain for an agreement acceptable to it. There is no requirement that the employer make the concessions the union ultimately hopes to attain: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, Local 568 v Signal Industries (1998) Saskatchewan Ltd*., 2019 CanLII 98498 (SK LRB)

[102] The Union cites the description of the duty to bargain in good faith set out in *Health Services & Support-Facilities, Subsector Bargaining Assn. v. British Columbia,* 2007 SCC 27, at paras. 99 to 105 ("*Health Services")*. The conduct of the Employer in the case at hand does not meet the criteria for bad faith bargaining discussed in that decision.

[103] First, *Health Services* says at para 100, that "A basic element of the duty to bargain in good faith is the obligation to actually meet and to commit time to the process." There is no evidence that the Employer refused to meet and commit time to the process.

[104] Secondly, *Health Services* says the parties have a duty to engage in meaningful dialogue and they must be willing to exchange and explain their positions and to approach the bargaining table with good intentions. The case does caution that in some circumstances even though a party is participating in bargaining, that party's proposals and positions may be "inflexible and intransigent to the point of endangering the very existence of collective bargaining." This inflexible approach is often referred to as "surface bargaining".

[105] In the present case, it is impossible to find the Employer's behaviour "inflexible and intransigent" when it was never enticed, convinced or forced to change its position through concessions, a section 6-33 mediation, or job action. On the contrary, the one time the parties did proceed to voluntary mediation, the Employer agreed to remove the condition from its final offer that the Union withdraw a list of grievances and unfair labour practice application. The evidence simply does not indicate any suggestion of "surface bargaining" by the Employer. As *Health Services* states at para 103:

> *[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. 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."*

[106] The Union also relied upon *United Food and Commercial Workers, Local 1400 v 610539 Saskatchewan Limited (operating as Heritage Inn Saskatoon),* 2024 CanLII 14520 (SK LRB) for examples of the various ways in which a party has been found to have breached the duty to bargain in good faith in previous Board decision. These examples include:

> *a. an employer has maintained an "intransigent position on an issue of fundamental significance to trade unions" (arbitration of discharged employees)[8];*
>
> *b. a party made late first-time proposals, made delayed changes to proposals, and proposed to reserve the unilateral right to reduce wages[9];*
>
> *c. the employer took positions that were designed to unseat the union, made proposals that were unlawful, and refused to provide information[10];*
>
> *d. the employer refused to negotiate any due process for employees that it proposed to terminate and proposed zero seniority and no bumping rights of all remaining employees[11].*

[107] None of these examples, with one exception, are relevant. The one exception is with respect to the Union's allegation that the Employer's conduct was discriminatory and therefore unlawful. However, as discussed, the Board does not find that the Employer discriminated against the union employees. The Employer was not withholding or refusing to pay benefits to the union members. Rather, its obligation to pay those benefits ceased upon the expiry of the LOUs.

Section 6-62(1)(a) of the Act:

> ***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;*
> >
> > *...*
> >
> > *(g) to discriminate with respect to hiring or tenure of employment or any term or condition of employment or to use coercion or intimidation of any kind, including termination or suspension or threat of termination or suspension of an employee, with a view to encouraging or discouraging membership in or activity in or for or selection of a labour organization or participation of any kind in a proceeding pursuant to this Part;*

[108] The Union submits that in accordance with the considerations identified in *Battlefords Transit,* it is likely that the effects of the Employer's conduct is to "interfere with, restrain,

intimidate, threaten and/or coerce" members of the bargaining unit during the collective bargaining process. The Union submits that the Employer withheld both financial and quality of life benefits, specifically from Union members, in order to coerce them into accepting the Employer's bargaining mandate at the bargaining table.

[109] Again, as noted, the Board finds that the Employer has not "withheld" benefits. Entitlement to these benefits ceased upon the expiry dates set out in the LOUs. The Board has already indicated that the Employer's actions do not amount to coercion or intimidation. The Union has not explained why the Employer must give up something it clearly wants to retain in exchange for nothing. As this Board noted in *Barrich Farms (1994) Ltd. v. United Food and Commercial Workers, Local 1400*, 2009 CanLII 69340 (SK LRB) at para. 36: "[A]s has commonly been observed, collective bargaining is not a process carried out in accordance with the "Marquess of Queensbury" rules." In that case, the Board found the comments of the Board in *Westfair Foods, supra,* at page 173 and 174 instructive:

> …
> *There are, as we have intimated earlier, no rules for the bargaining process as such. Though the parties may have expectations, based on their past experience, that issues will be discussed in a particular sequence, or that there will be a particular proportionality between proposal and counterproposal, or that one party or the other can always expect to achieve improvements in its favour, there are no sanctions attached to deviations from the anticipated course. The parties may be required to adjust their expectations according to changed conditions or changes in their relative bargaining strength. They may apply any combination of rational persuasion, deployment of economic power, or other inducements which is sanctioned by the law. Each of the parties may combine and recombine their own proposals and those put forward by the other party in an attempt to find the formula which will lead to an agreement. This process may be messy, it may be unscientific, it may be unpredictable, it may on occasion be brutal, but it is bargaining.*
>
> *The essence of bargaining is that each party is trying to achieve an agreement on terms which are advantageous, and may adopt whatever strategy it considers likely to bring about this result. If one party makes an error in assessing relative bargaining strength, choosing economic weapons, selecting appropriate timing or deciding which combination of proposals might bring about movement in the direction it desires, this in itself is not suggestive that the other party has committed an unfair labour practice. If positions are changed, or proposals withdrawn, or uncompromising resistance adopted, there is not necessarily any infraction of The Trade Union Act. It is only if these clues suggest to the Board an attempt by an employer to avoid reaching an agreement or an actual refusal to recognize the trade union as a bargaining agent that the Board may draw the conclusion that an employer is guilty of failing or refusing to bargain collectively.*

Section 6-62(1)(b):

[110] The Union submits that the Employer's conduct resulted in the Union being forced to expend resources fielding complaints about improperly withheld benefits. In this regard, the Union tendered into evidence three brief emails from three of its members purporting to inquire about PDOs and/or STIP. Aside from the fact that the amount of time required to address these inquiries would have been nominal, the inquiries arose from the fact that the LOUs, which the Union agreed to, had expired. Explaining a negotiated term to members does not in any way interfere with the formation or administration of the Union, and it certainly falls within the usual duties of the Union Service Representative, Mr. Loehndorf.

[111] Further, as noted by the Employer in argument, these are three complaints or inquiries out of a collective membership of 120 or more. Three complaints or inquiries are not unexpected and appear rather insignificant.

[112] The Union argues further that it was forced to dedicate negotiators to the collective bargaining process who were forced to bargain under threat of members losing benefits. Accordingly, the Union submits that the Employer's conduct threatened the very integrity of the Union, undermining support for the Union as members suffered an inappropriate loss of benefits, an offence as described in *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union v Mosaic Potash Colonsay UILC,* 2020 CanLII 31222 (SK LRB) at para. 104. Paragraph 104 of the *Mosaic* case states the following:

> *In St. Paul's, the Board found that "direct attempts to influence the choice of trade union leadership does…fall into the category of conduct prohibited by Section 11(1)(b)" of The Trade Union Act,[11] and that "it is sufficient for the Union to establish that an employer has taken action which constitutes interference, whether or not it has any demonstrable effect".[12] In St. Paul's, the employer had suggested to individuals that they should withdraw from positions on the union executive, and then ignored or sidelined a representative that had been duly chosen by employees to act on their behalf.*

[113] The Union relies upon this passage to argue that it is enough for the Union to demonstrate that an action taken by an employer could possibly constitute interference in the administration of the Union, regardless of whether or not it actually did have that effect.

[114] In the *Mosaic* case, the Board found "direct attempts to influence the choice of trade union leadership". In *Canadian Office and Professional Employees Union, Local 342 v Canadian Union of Public Employees*, 2022 CanLII 48057 (SK LRB) this Board found the employer interfered with the ability of the union to compose its bargaining committee when it prohibited a member from

participating under threat of termination of his employment based on an unfounded allegation of misconduct.

[115] The Union says that the inability of a Union to properly represent employees in the face of impermissible employer conduct has been highlighted by the Board in consideration of breaches of section 6-62(1)(b) of the Act and cites in support *United Food and Commercial Workers Union, Local 1400 v AAA Security Group Ltd.,* 2022 CanLII 100184 ("*AAA Security")* at para 16.

> *Under the circumstances, the Board finds that the Employer has created obstacles that make it difficult or impossible for the Union to carry on as an entity devoted to representing employees. This is sufficient to establish a breach of clause 6-62(1)(b) of the Act.*

[116] The circumstances in *AAA Security* are clearly not comparable to the facts of the present case. In that case the evidence showed a lack of response from the Employer to engage in the process. In the present case, there was no evidence that the Employer created obstacles or declined engagement in the process.

[117] In *Saskatchewan Association of Health Organizations v. SEIU (West),* 2014 CarswellSask 214, 2014 C.L.L.C. 220-035, 2424 C.L.R.B.R. (2d) 44 at para. 123, the Board addressed the purpose of what was the equivalent to s. 6-62(1)(b):

> *…The purpose of s. 11(1)(b) of The Trade Union Act is to protect trade unions from interferences such as bribery, intimidation of witnesses, or interferences in the election of officers and other officials. Section 11(1)(b) is about threats to the survival of independence of a trade union. It is not about protecting trade union from the often unpleasant reality of collective bargaining, from all manner of conflict with employer, or from dissent within their ranks even if that dissent resulted from being influenced by the views and opinions expressed by the employer.*

[118] Further, as stated in *SEIU-West v Saskatchewan Association of Health Organizations,* 2015 SKQB 222 (CanLII) at para. 126, in relation to clause 6-62(1)(b): "[T]he 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."

[119] The Board does not agree that the Union's need to field "complaints" about STIP and/or PDO benefits constitutes a violation of clause (b). As well, for the reasons already outlined, the Board does not agree that the Employer's reliance on the LOUs and its manner of negotiating constitutes a violation of clause (b).

Section 6-62(1)(g) Discrimination of Employees on the Basis of Union Membership

[120] Clause 6-62(1)(g) makes it an unfair labour practice not only to discriminate with respect to conditions of employment but also to use coercion or intimidation of any kind, including by threatening termination or suspension. The Union's reliance on this clause is based on an argument that the Employer's conduct amounts to an attempt "to truncate collective bargaining, and to force the Union simply to accept the Employer's bargaining agenda". The Union says the Employer's conduct amounts to an effective attempt to discourage participation in the process of collective bargaining for Union members, an activity protected by Part VI of the Act; therefore, the Union submits the Employer has violated s. 6-62(1)(g) of the Act.

[121] The Board disagrees with the Union's characterization that the Employer attempted to "truncate collective bargaining". The evidence in this case shows that the Union did not take any measures to try to force the Employer off its position. The Union could not point to anything it put on the table to try to entice the Employer to change the LOUs. It did not go to mandatory mediation or strike. The Union had tools available to it to extend bargaining if it so desired. That the unionized employees may have felt pressure to accept the Employer's offer in order to ensure they receive STIP and PDO benefits in a timely manner, is not evidence of coercion, intimidation or threatening behaviour. It is simply part of the bargaining process and the parties' decisions to accept or refuse offers.

Decision and Order:

[122] The LOUs were previously negotiated by the parties. The LOUs have expired, along with the benefits they provide. If the Union is unsatisfied with the bargain it struck in the past and wants to change the agreement between the parties going forward, then it must negotiate that change. The Union, however, appears to hold the view that the Employer must simply give up something for nothing. The Union has expressed frustration; however, the evidence established that the Union has not taken any action whatsoever to try to force the Employer to move off its previous position on the LOUs.

[123] Similarly, the Union's failure to negotiate the LOUs into the body of the Collective Agreement is not indicative of threats or coercion on the part of Affinity. The Employer was not withholding any benefits that the unionized employees were entitled to receive. The employees would receive their STIP and PDO up to January 1, 2024, and December 31, 2023, respectively.

Their entitlement to those benefits beyond the expiry dates is dependent on what the parties negotiate in the future.

[124] The Union argues that the different expiry dates between the LOUs and the Collective Agreement gives the Employer leverage. The Parties agreed to these LOUs along with the expiry dates included therein. If the Union has become dissatisfied with the arrangement, then it must negotiate a new arrangement. Unequal bargaining power and the fact that one party may have the upper hand, does not in and of itself meet the criteria for an unfair labour practice. The Union bargained and agreed to the LOUs. Affinity abided by the LOUs until their bargained expiry date. The Board agrees with the Employer's assertion that the Union cannot now bring the ULP Application to change the outcome. Affinity is under no obligation to gratuitously provide additional monetary benefits to in-scope employees outside of those negotiated with the Union. Refusing to abide by the expired LOUs does not amount to discrimination or bad faith bargaining. Parties are entitled to bargain, and bargain hard, for the agreement that they believe acceptable. The very word "bargain" presupposes that the parties will seek to maximize their own best interests.

[125] Accordingly, with these Reasons, an Order will issue that the Union's Unfair Labour Practices Application in LRB File No.053-24 is dismissed.

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

[127] This is a unanimous decision.

DATED at Regina, Saskatchewan, this **12th** day of **February, 2025**

LABOUR RELATIONS BOARD

Carol L. Kraft
Vice-Chairperson