SEIU-WEST, Applicant v SASKATOON TWIN CHARITIES INC. OPERATING AS CITY CENTRE BINGO Respondent

LRB File No. 069-25; August 25, 2025
Chairperson, Kyle McCreary (sitting alone pursuant to subsection 6-93(3) of *The Saskatchewan Employment Act)*
Citation : *SEIU-West v City Centre Bingo*, 2025 SKLRB 39

Counsel for the Applicant, SEIU-West: Scott Newell
Christina Kerby

Counsel for the Respondent, Saskatoon Twin Charities Inc. operating City Centre Bingo: John Gormley, K.C.

Board procedure – Written hearing – Board finds there is no Charter right to an oral hearing

Board procedure – Written hearing – Board finds procedural fairness does not require an oral hearing – Considering issues of fact and law raised in the case, matter directed to a written hearing

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** SEIU-West ("the Union") filed an unfair labour practice against the Employer alleging breaches of Sections 6-7 and 6-62(1)(b) of *The Saskatchewan Employment Act,* SS 2013, c S-15.1 ("the Act"), in the bargaining of a first collective agreement, and in particular took issue with the Employer questioning the participation of an individual on the bargaining committee whose employment status was the subject of *SEIU-West v City Centre Bingo*, 2025 SKLRB 34. The history of the parties bargaining is fully discussed in *Mary-Anne Beardy v SEIU-West and Saskatoon Twin Charities Inc.*, 2023 CanLII 118987 (SK LRB). The Employer denies the allegations of refusing to bargain and bargaining in bad faith and raises issues of delay and whether the Board should decline to hear the allegations pursuant to s. 6-111(3).

[2] At appearance day, the Board raised the possibility of this matter proceeding by written submissions and invited the parties' positions. The Union filed submissions that the matter should proceed by written submissions. The Employer opposes the matter proceeding by written

submissions raising an argument pursuant to Section 7 of the Charter and the right of parties to have an opportunity to challenge the evidence of the other party.

[3] For the reasons that follow, the Board orders the matter to proceed via written submissions. The parties shall have an opportunity to file affidavits and written arguments. The panel determining this matter on the merits may determine an oral hearing in full or in part is required after the review of the materials the parties may file.

Relevant Statutory Provisions:

[4] The duty to bargain in good faith is in s. 6-7 of the Act:

> ***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.*

[5] The unfair labour practice of failure to engage with union representatives is in s. 6-62(1)(d) 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:*
>
> *. . .*
>
> *(d) to fail or refuse to engage in collective bargaining with representatives of a union representing the employees in a bargaining unit whether or not those representatives are the employees of the employer;*

[6] The Board's power to dismiss an unfair labour practice for delay is in s. 6-111(3)-(4):

> ***Powers re hearings and proceedings***
> ***6-111****(1) With respect to any matter before it, the board has the power:*
>
> *. . .*
>
> *(3) Subject to subsection (4), the board may refuse to hear any allegation of an unfair labour practice that is made more than 90 days after the complainant knew or, in the opinion of the board, ought to have known of the action or circumstances giving rise to the allegation.*
>
> *(4) The board shall hear any allegation of an unfair labour practice that is made after the deadline mentioned in subsection (3) if the respondent has consented in writing to waive or extend the deadline.*

[7] The Board's authority to determine any matter without an oral hearing and to accept written evidence and information is in s. 6-111(1)(e) and (q):

Powers re hearings and proceedings
6-111*(1) With respect to any matter before it, the board has the power:*

. . .

(e) to receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the board considers appropriate, whether admissible in a court of law or not;

. . .

(q) to decide any matter before it without holding an oral hearing;

Analysis and Decision:

Charter Issue

[8] The Employer has argued that Section 7 of *the Canadian Charter of Rights and Freedoms* ("the Charter") requires the Board to conduct an oral hearing in this matter. The principles of fundamental justice include several aspects including a fair hearing. The Employer asserts that a fair hearing requires oral evidence. The Board finds that Section 7 of the Charter does not require the Board to hold an oral hearing in this case.

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[9] The primary reason Section 7 does not require an oral hearing is that the Employer does not have rights under Section 7. The Employer is a Corporation and therefore is not afforded the protection of Section 7, as was stated by the Majority of the Supreme Court of Canada in *Irwin Toy Ltd. V. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 SCR 927:

> *That is, read as a whole, it appears to us that this section was intended to confer protection on a singularly human level. A plain, common sense reading of the phrase "Everyone has the right to life, liberty and security of the person" serves to underline the human element involved; only human beings can enjoy these rights. "Everyone" then, must be read in light of the rest of the section and defined to exclude corporations and other artificial entities incapable of enjoying life, liberty or security of the person, and include only human beings. In this regard, the case of R. v. Big M Drug Mart Ltd., supra, is of no application. There are no penal proceedings pending in the case at hand, so the principle articulated in Big M Drug Mart is not involved.*

[10] Similarly, these proceedings are not penal in nature. Proceedings before the Board are civil in nature, the offence sections of the Act are distinct and outside of the Board's jurisdiction. Section 7 does not apply to the Employer before Board. The Board also finds that relief sought by the Union does not raise security of the person concerns as it relates to the Employer.

[11] Even if Section 7 did apply to this proceeding, an oral hearing is not required by Section 7 of the Charter in all circumstances, as stated by the Supreme Court of Canada *Suresh v.*

Canada (Minister of Citizenship and Immigration), 2002 SCC 1 (CanLII), [2002] 1 SCR 3 at para 121:

> *121 Weighing these factors together with all the circumstances, we are of the opinion that the procedural protections required by s. 7 in this case do not extend to the level of requiring the Minister to conduct a full oral hearing or a complete judicial process. However, they require more than the procedure required by the Act under s. 53(1)(b) — that is, none — and they require more than Suresh received.*

[12] The Board is required to maintain procedural fairness in its adjudicative process. Procedural fairness under Part VI of the Act does not include a requirement of an oral hearing.

Whether the Application Should Proceed by Written Submissions

[13] The Board has the statutory authority to determine any matter without an oral hearing. This is explicitly stated in clause 6-111(1)(q). The Board is also explicitly granted the authority to accept affidavit or other written evidence by clause 6-111(1)(e).

[14] The statutory authority to decide any matter without an oral hearing is determinative of the question of whether the Board is required by procedural fairness to hold an oral hearing. The content of the duty of procedural fairness is informed by the statutory context: *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817. Where the legislature has provided clear statutory authority, it overrides a common law requirement: *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52 (CanLII), [2001] 2 SCR 781, at para 22. Here the legislature has provided clear authority to decide any matter without an oral hearing and to accept evidence and information in affidavit or otherwise, this clear statutory authority overrides any common law right to have an oral hearing and to cross-examine witnesses.

[15] Further, the duty of procedural fairness, and particularly *audi alteram parterm*, does not require that a hearing must be held: *Commission des Relations de Travail du Québec c. Canadian Ingersoll-Rand Company Limited et al.*, 1968 CanLII 795 (CSC), [1968] RCS 695; *International Brotherhood of Electrical Workers Local 1739 v. International Brotherhood of Electrical Workers*, 2007 CanLII 65617 (ON SCDC), at para 57. Parties must receive notice of a case to meet and an opportunity to meet it. This may be done in written form and does not require an oral hearing.

[16] This was noted in relation to the Canada Industrial Relations Board in *Grant v Unifor*, 2022 FCA 6:

> *[5] First, the applicant submits in his memorandum of fact and law that the Board was procedurally unfair by deciding the matter on the basis of written materials. The applicant had requested an oral hearing. The Board denied his request on the ground that it considered the written materials sufficient.*
>
> *[6] This was not procedurally unfair to the applicant. We are satisfied that the applicant had an opportunity to make his case fairly and fully on all issues before the Board. Indeed, the nature and breadth of the materials shows that he availed himself of that opportunity fully. In upholding the Board's decision to proceed by way of written materials, we note that the Board has a wide discretion as to the mode of hearing and the Code expressly authorizes determinations on the basis of written materials. The Board's ability to proceed by way of written materials—where, as here, it is appropriate—furthers the statutory objectives of efficiency, conservation of resources and speed.*

[17] Similar to the Canada Industrial Relations Board, written hearings further the statutory objectives of efficiency and speed of this Board. Speed is important in bargaining disputes because as is often stated "labour relations delayed is labour relations denied". The Board must seek the most efficient process to determine bargaining disputes to ensure it is able to adequately allocate resources to the matters that come before it. A written hearing can likely be determined this fall, an oral hearing would be unlikely to be scheduled, heard, and determined on the same timeline. The Board must conserve oral hearing time for hearings that require it.

[18] The Board has recently considered its authority to determine matters without an oral hearing in *Canadian Union of Public Employees, Local 5430 v Ruben G. Palao*, 2024 CanLII 121582 (SK LRB); *Stephen-McIntosh v SEIU-West*, 2025 SKLRB 2 (CanLII)("*Stephen-McIntosh*"); and *Scheller v UFCW, 1400*, 2025 SKLRB 27 (CanLII). As discussed in those cases, the Board must seek the most proportionate method of determining cases and ensure that that method is procedurally fair. The Board considers the sections of the Act in issue, the nature of the allegations and the factual record before the Board in considering the adequacy of written submissions.

[19] The Board requires further evidence to determine the legal issues raised related to ss. 6-7, 6-62(1)(d), 6-62(1)(4) and 6-111(3) of the Act. However, based on the Application and the Reply, many of the material facts are not in dispute as to their existence, more as to their interpretation and details. The desire to cross-examine the other sides' witnesses is not a sufficient reason for the determination of a matter to be delayed through an oral hearing.

[20] Considering the legal issues raised in this hearing and the potential delay in coming before the Board, the Board finds it is proportionate to proceed by written hearing. An oral hearing is not generally required for procedural fairness and the record does not disclose any exceptional circumstances. The factual issues do not present material and substantial disagreements as to

what occurred, and the legal issues are not of a level of complexity for the Board to require an oral hearing to determine the questions raised.

[21] The Board is providing clear notice to the parties to provide fulsome written materials. The panel determining this matter will review the materials filed in response to this direction to ensure the Board can fairly determine the questions before it. The parties in those submissions may still address why an oral hearing is procedurally required but should proceed on the assumption that the matter may be determined without an oral hearing.

[22] As a result, with these Reasons, an Order will issue that the Application for an Unfair Labour Practice in LRB File No. 069-25 is to be heard by written submissions. The Registrar is directed to set timelines for the filing of affidavits and written arguments. The Union shall file its affidavit and written argument first, with the Employer having an opportunity to file evidence and argument in response, and the Union having an opportunity to file reply evidence and argument.

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

DATED at Regina, Saskatchewan, this **25th** day of **August, 2025.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson