

**SHEET METAL AIR RAIL AND TRANSPORTATION (S.M.A.R.T.), LOCAL 296, Applicant v
SERVCOCANADA INC., Respondent**

LRB File Nos. 197-24 & 222-24; September 8, 2025

Vice-Chairperson, Carol L. Kraft; Board Members: Hugh Wagner and Curtis Talbot

Citation: *SMART v ServcoCanada*, 2025 SKLRB 41

Counsel for the Applicant, S.M.A.R.T., Local 296:

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Certification Application – Bargaining unit of sheet metal workers found inappropriate – ServcoCanada Inc. does not employ sheet metal workers and has no intention of doing so – Isolated engagement of sheet metal worker insufficient to support certification – Application dismissed.

Unfair Labour Practice – Board finds ServcoCanada violated s. 6-62(1)(g) of The Saskatchewan Employment Act by terminating employee in circumstances where statutory presumption was not rebutted – Declaration issued.

Unfair labour practice applications under ss. 6-62(1)(h) and (i) dismissed – Evidence insufficient to establish employer involvement or interference.

REASONS FOR DECISION

Background:

[1] Carol L. Kraft, Vice-Chairperson: The Sheet Metal Air Rail and Transportation, Local 296 (“Union” or “Local 296” or “SMART”) has applied pursuant to Section 6-9 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 (the “Act”) for an order to be designated as the certified bargaining agent for the employees of ServcoCanada Inc. (“Servco”) (the “Certification Application”). This is LRB File No. 197-24.

[2] This Certification Application was filed with the Board on October 17, 2024. The proposed bargaining unit is described as follows:

All Journeyman Sheet Metal Workers, Sheet Metal Workers, Apprentice Sheet Metal Workers, Sheet Metal Foreman Journeyman Roofers, Roofers, Roofer Apprentices and Roofer Foreman employed by SERVCOCANADA INC. within the Province of Saskatchewan.

[3] Local 296 has also brought an application pursuant to s. 6-104 of the Act alleging an unfair labour practice by Servco pursuant to ss. 6-62(1)(a), (g), (h) and (i) of the Act. This is LRB File No. 222-24.

[4] Both applications arise out of Servco's employment of a member of Local 296 for one day in October 2024.

Issues:

[5] The issues before the Board are as follows:

a. **Certification Application**

Whether the proposed bargaining unit of sheet metal workers is appropriate for collective bargaining under s. 6-11 of the Act given Servco's workforce composition and employment practices.

b. **Voter Eligibility**

Whether Mark Helland was an eligible voter for the purposes of a representation vote, and whether this issue remains live in light of the Board's findings on the bargaining unit.

c. **Unfair Labour Practice Allegations**

Whether Servco committed unfair labour practices contrary to sections 6-62(1)(g), (h), and (i) of the Act, and whether the statutory presumption under section 6-62(4) of the Act applies to Helland's termination.

d. **Remedial Relief**

Whether any remedial relief should be ordered pursuant to section 6-104 of the Act, and whether the Board should retain jurisdiction to consider further submissions.

Evidence:

[6] Local 296 called two witnesses. T.J. King and Mark Helland. It also called a reply witness, Michael Skrypnuk. Servco called four witnesses: Dawn Weatherby, Julien Lafleche, Sean McLellan and Devon Schaffer.

T.J. King

[7] T.J. King is the Business Manager for Local 296. He has been in this role for three years, and has worked with Local 296 for the past twelve years. He is a journeyman sheet metal worker and worked in the trade for 25 years before moving into an office role.

[8] He testified that sheet metal work includes HVA, duct work, architectural, flashing, and building envelope.

[9] King testified that in September 2024, Jason Smith, a Construction Manager with Servco, contacted him seeking to hire two sheet metal workers for construction work at the K+S potash mine. King understood that Servco was a new contractor to Local 296.

[10] King testified that prior to the email exchange, he had a couple of telephone conversations with Smith. During those calls, Smith inquired about manpower availability and described the nature of the work. King requested that Smith follow up by email to clarify the scope of work so that Local 296 could dispatch appropriate members. Smith did not request any specific individuals. He was simply seeking qualified sheet metal workers to perform the work.

[11] The email exchange between King and Smith, spanning September 17 to October 17, 2024, confirmed that Servco was seeking two sheet metal workers. In his September 17 email, Smith outlined two jobs at the K+S site:

- **Job #1** involved replacing two doors in a large storage barn. A door company was scheduled to install the doors, and Local 296's members were expected to complete the flashing around them.
- **Job #2** involved structural work in an MCC room, pending a response from K+S regarding Q-decking removal and finishing instructions. Aerial work platform (AWP) training was required.

[12] Smith indicated that the workers would be rotated between both jobs for approximately three weeks of 4×10-hour shifts, possibly longer, depending on K+S's direction.

[13] King testified that Smith confirmed Job #1 had been subcontracted to a door company, and that the sheet metal work to be performed by Local 296 members was limited to flashing around the doors. King testified that this is standard work within the sheet metal trade. He noted that similar flashing work had previously been performed at the same site by contractors such as Flynn Canada, Lancaster, and Brett Construction, including Brett Construction's work on the rail load-out system in January 2023.

[14] Regarding Job #2, King testified that Smith indicated Servco was awaiting direction from K+S. King advised that the decking, flashing, and sheeting aspects of the job could be performed

by sheet metal workers with the same qualifications. He stated that Q-decking falls within the jurisdiction of sheet metal workers or composite crews under the Iron Workers union.

[15] On September 25, 2024, King followed up with Smith by email, asking whether start dates for the project had been finalized.

[16] Smith replied the same day, copying Devon Schaffer and Jesse LaCharity, and asked Devon when sheet metal workers would be needed, suggesting mid-next week.

[17] On October 3, 2024, Smith emailed King confirming that Servco would require one journeyperson sheet metal worker for October 7, 2024, and asked King to call him to discuss logistics. King testified that the logistics discussed included travel arrangements and living-away allowances.

[18] Between October 3 and October 12, King and Smith continued to discuss logistics by phone. On October 12, Smith emailed King asking whether there had been any interest in the job.

[19] On October 15, King responded that he had someone available and asked Smith to call him to go over the details.

[20] King testified that he believed a call took place that evening to finalize the shift and discuss training requirements. He noted that Local 296 had previously dispatched members to the site and that the worker he had in mind already had the required GMSA certification (a 7 to 8-hour course) making him “job ready.”

[21] King identified the worker as Mark Helland, who lived a few hours outside Regina. King testified that he confirmed travel allowances would be sufficient for Helland to attend the site.

[22] Later that evening, Smith emailed King confirming that Helland could start Thursday (October 17, 2024). He indicated the work would continue for four days the following week, with further work dependent on weather and fitment. Smith attached Servco’s onboarding sheet and advised King to contact Devon Schaffer, the dayshift supervisor, if needed.

[23] King testified that during a phone call with Smith, they discussed a scope of at least two weeks of work.

[24] The onboarding document attached to Smith’s October 15 email was titled “25D1058 Overhead Door Install – ONBOARDING INSTRUCTIONS” and included requirements such as

drug and alcohol testing, GMSA enrolment, online orientations, access forms, certifications, and a personal commitment statement.

[25] On October 15, Smith sent a follow-up email apologizing for a document title error, attaching a revised version, and requesting that Viet Dang, who manages onboarding, be copied on future emails.

[26] On October 16, King sent Servco a referral form and Helland's safety certifications, indicating that Helland could start the next day if orientation was completed. He noted that Helland was updating his SCOT certification and already had his GMSA.

[27] On October 17, Smith requested a link to Local 296's collective agreement and a wage breakdown sheet, stating that payroll information online was incomplete. Later that day, Local 296's office manager sent the requested documents to Smith and King, copying Schaffer, LaCharity, and Servco's pension administrator.

[28] King testified that throughout the process, Smith was aware that Local 296 intended to file a certification application. Smith responded positively, stating that Servco was a union-friendly contractor with multiple certifications. King described the process as initially smooth.

[29] However, beginning the evening of October 17, King received multiple calls from Smith expressing frustration. Smith said he had spoken with higher-ups and that the certification process would now be more difficult. Smith referenced an upcoming job at the Louis Dreyfus plant in Yorkton and noted that Servco was working with a non-union subcontractor. King testified that the Provincial Sheet Metal Workers' Agreement contains a subcontractor clause. He said Smith apologized repeatedly and used expletives during these calls.

[30] King testified that he and Smith discussed the situation following Servco's internal reaction to the certification process. King told Smith that Local 296 would not step back from work that had already been secured.

[31] King spoke with Smith again on Friday, October 18, 2024, and was informed that Helland had been let go. King testified that Smith expressed displeasure about the termination.

[32] In cross-examination, King agreed that his role includes liaising with contractors and arranging for union members to be dispatched for work. He confirmed his familiarity with the Provincial Sheet Metal Workers' Agreement and stated that he would not knowingly dispatch a

worker outside of Local 296's jurisdiction without consulting the relevant union. He also agreed that clarity about the scope of work is essential and that he would request additional details from a contractor if needed.

[33] King was questioned about Q-decking and agreed that it is a brand name for metal decking. He testified that roof decking typically falls under the jurisdiction of sheet metal workers, while floor decking is generally under the iron workers' jurisdiction. He explained that jurisdictional assignments can vary locally depending on manpower availability and mutual agreements between unions.

[34] King confirmed that he did not advise Smith that the Q-decking work might fall outside SMART's jurisdiction, as he did not yet know the full scope of the decking work at the time.

[35] King denied any suggestion that Helland lacked the proper training or certification for the work he was dispatched to perform.

Mark Helland

[36] Mark Helland ("Helland"), a journeyperson sheet metal worker and member of Local 296 since 2010, testified that he previously worked at the K+S site from 2014 to 2015, performing roof decking and interior sheet metal work.

[37] Helland stated that he was contacted by T.J. King around October 15, 2024, regarding cladding work, which he described as architectural sheet metal work including patching and operating an aerial platform. Helland understood that the project involved patching in an electrical room where servers are kept (fireproof rooms made of sheet metal and fully cladded). He stated: "They told me I was there to do patching around there, cable trays and pipes around them."

[38] Upon arriving at the site, Helland met with Devon Schaffer and was taken directly from the parking lot to the MCC room, where he began work immediately. He worked the full day performing the tasks he had anticipated.

[39] Helland testified that the work was not completed by the end of the day and that additional patching, flashing, and touch-ups remained. He was also informed of further work in another MCC room above the one he had worked in, involving similar tasks. He was not told the job was finished or that he was being laid off. Believing the assignment would last approximately three weeks, he left his tools on site. The next day, October 18, 2024, he received a call from Schaffer informing him he had been laid off.

[40] Helland testified that later that day, he was contacted by a representative from Carpenters Local 1999 in Alberta, who invited him to transfer over. The representative provided little information about the nature of the work, stating only that the offer would return him to the K+S site. Helland declined, explaining that he preferred to continue working through Local 296. He added that he had never previously interacted with Local 1999 and was unfamiliar with the organization.

[41] On October 21, 2024, he returned to the site to retrieve his tools and complete onboarding paperwork to ensure he was paid for the day he worked.

[42] Helland confirmed that he was paid for one day of work, but the payment did not comply with Local 296's collective agreement in terms of benefits and deductions.

[43] In cross-examination, he stated that King did not mention metal flooring as part of the job and clarified that he understood the work to involve wall patching and flashing, not roof sheeting.

[44] In response to questions from the Board, Helland testified that he understood he would be performing generic sheet metal work when he arrived at the worksite. This included tasks such as patching, flashing, wall cladding, and flashing around cable trays. He explained that this understanding came from a conversation with TJ King, who informed him of the nature of the work either on the Monday or Tuesday prior to his arrival. Helland confirmed that the work he performed on site was consistent with what he had been told.

Dawn Weatherby

[45] Servco's witness, Dawn Weatherby ("Weatherby"), is the company's payroll manager. She testified regarding the payments made to Helland and described Servco's workforce as diverse, including trades such as millwrights, mechanics, pipefitters, general labourers, and scaffolders. She noted that there may be additional roles she did not list. When asked about non-union positions, she explained that these include office staff and some general labourers.

[46] Weatherby outlined the standard procedure for onboarding new union employees at Servco. Upon hire, an email is sent containing the employee's start date, address, Social Insurance Number (SIN), a void cheque, driver's licence, and a completed TD1 form.

[47] Regarding Helland's hire, Weatherby stated she was away during the week he was brought on. She was shown an email dated October 22, 2024, from Viet Dang, a Servco Project

Administrator, addressed to Payroll and Servco Orientation. The subject line read "Re: Mark Helland Onboarding," and the message requested that Helland be set up in the system to allow entry of hours worked on Thursday, October 17, noting that he had only worked that one day and had since been laid off.

[48] Weatherby testified that this email was the first indication she received that Helland had been laid off.

[49] She explained that orientation emails are automatically triggered by the onboarding app to ensure new hires receive the necessary information. The payroll email is used for inquiries and follow-up questions.

[50] Weatherby was also shown an email from Devon Schaffer, Mechanical Supervisor, dated October 21, 2024, addressed to Payroll and copied to others. It stated: "Hi please find attached Mark Helland onboarding."

[51] When asked whether this was her first communication regarding Helland's employment, Weatherby said she wasn't entirely certain but acknowledged it might have been. She commented that receiving onboarding documents directly from a supervisor via email is not standard practice, particularly when paper copies are attached.

[52] She was asked what she did in response to receiving this email and she said she needed more information to complete Helland's setup. She said she was told he belonged to Union 296, and she responded that Servco did not have Local 296 set up in their payroll system.

[53] Weatherby described the next steps: she received an email from Julien Lafleche indicating that Helland was not part of Local 296 and requesting assistance in paying him for one day of work. She needed basic information such as SIN, address, date of birth, rate of pay, and banking details. She stated that a complete "hire package" was required, and she needed to determine the appropriate payment method since Local 296 was not set up in Servco's system.

[54] She was shown a screenshot of a conversation dated October 23, 2024, between herself, Julien Lafleche (Servco's controller), and her direct supervisor. She explained that the conversation was prompted by an email from Lafleche instructing her to set Helland up as a general labourer and to pay him at a rate equivalent to Local 296 plus 15%.

[55] Weatherby testified she processed Helland's hours using a comparable rate and submitted the payroll entry to the controller for review and approval. She understood that Lafleche and the controller had discussed adding a "live out allowance" (LOA). To confirm, she then sent a Teams message to Lafleche asking if he wanted the LOA included in Helland's pay, to which he replied, "Yes, please."

[56] Weatherby testified that Helland was paid for regular hours, overtime, vacation, statutory holiday pay, travel, and LOA. He was classified as a non-union labourer in Servco's system.

[57] As payroll manager, Weatherby confirmed she had no prior dealings with the SMART union. When asked why, she explained that Servco was not affiliated with that union and had never used it. She also confirmed that she had never processed payroll for a sheet metal worker on a Saskatchewan project, either before or after Helland's hire.

[58] During cross-examination, Weatherby confirmed receiving an email from Lafleche instructing her to set Helland up as a general labourer. She acknowledged that she would have seen this email in order to process the payroll and agreed that the payroll was processed after Helland had completed his work. When asked whether that email had been entered into evidence, she stated that she did not recall seeing it among the exhibits. Nonetheless, she was confident that she had received and reviewed the email, explaining that she would have needed it in order to process Helland's payroll. She also agreed that this payroll setup occurred after Helland had completed his work.

[59] Weatherby further testified that she had not seen the current year's Wage Sheet for Local 296. She agreed that the Wage Sheet outlined specific deductions applicable to Local 296 members, and confirmed that those deductions were not applied to Helland's pay. She was unaware whether Servco had requested or received information from Local 296. She confirmed that Helland's payroll was processed based solely on Lafleche's instructions, without reference to any documentation from Local 296.

[60] Weatherby acknowledged that if Helland had performed sheet metal work, classifying him as a general labourer would not accurately reflect the nature of his work.

[61] On redirect examination, Weatherby was asked whether Servco's payroll system included a specific trade code for sheet metal workers. She responded that there was no such code available, stating that as far as she knew Servco had never had sheet metal workers in its system.

Julien LaFleche

[62] Julien Lafleche ("Lafleche") testified in his capacity as CEO, President, and part owner of Servco, a role he has held since 2019. His tenure with the company began in 2004, during which he served as Foreman, General Superintendent, and General Manager. He is a certified Journeyman Steamfitter with over three decades of experience in the heavy industrial sector.

[63] Lafleche stated that he has extensive experience working with unions. He was a member of the United Association of Plumbers and Pipefitters from the age of 18 until he transitioned into ownership. Over the past ten years, in his management role, he has participated in bargaining processes involving various trades, including pipefitters, electricians, structural steel workers, and millwrights. He currently serves as Chair of the Construction Labour Relations Association of Manitoba (CLRM).

[64] He described Servco's core services as including pipefitting, structural steel, electrical work, millwrighting, and insulation. The company also operates fabrication shops in both Winnipeg and Regina. Lafleche explained that Servco occasionally acts as a prime contractor, hiring subcontractors for trades outside its core offerings. Their work is exclusively in the heavy industrial sector; they do not engage in light industrial projects.

[65] He testified that Servco has been active in Saskatchewan since 2004, originally under the name "DMS."

[66] Lafleche clarified that the company operated as DMS from 2001 to 2010, after which it was renamed Servco. Prior to that, it was known as Dirkson Mechanical Services, a spin-off of Dirksen Plumbing & Heating.

[67] In his current role, Lafleche is involved across multiple departments. He works closely with the vice-presidents of construction, operations, and estimation, and regularly collaborates with Sean McLennan, Servco's regional operations manager in Regina. Departments such as safety, quality control, payroll, and finance report directly to him, and he also maintains relationships with clients. His involvement in hiring is limited to senior management positions.

[68] He estimated that he communicates with McLennan between two and five times per week.

[69] With respect to projects in Saskatchewan, Lafleche testified that immediate supervisors report to Sean McLennan, who is also involved in defining project scope.

[70] When asked how Servco determines which trades to hire for a given project, Lafleche explained that the process is generally straightforward. Most senior managers have trade backgrounds and can identify the required trades based on the scope of work provided by the client.

[71] He listed the trades Servco typically hires: electricians, pipefitters, welders, plumbers, boilermakers, millwrights, ironworkers, and insulators. Occasionally, they engage equipment operators when using their own cranes, although this work is usually subcontracted. For tasks outside their expertise, such as painting, Servco hires subcontractors.

[72] Lafleche identified several trades that Servco does not typically employ directly: painting, sheet metal, air balancing, refrigeration, concrete work, scaffolding, and roofing. Craning is performed only in limited, straightforward situations. He emphasized that Servco does not fabricate or install sheet metal and does not employ sheet metal workers. When non-core trades are required, Servco relies on trusted subcontractors in specific regions. He noted that there are limitations on the number of subcontractors they can engage, citing strict client requirements and high standards for quality control, which necessitate a short list of approved partners.

[73] When asked why Servco does not hire non-core trades directly, Lafleche explained that the company lacks the expertise to perform that work. His management team consists of individuals with hands-on trade experience in Servco's core areas. The trades he listed earlier are not part of Servco's core business, and the company is not structured to support them. He stated that the volume of work in those areas does not justify creating a new department or division. Establishing a new service line would require significant capital investment and operational complexity, which Servco is not prepared to undertake for trades outside its core focus.

[74] Lafleche described Servco's relationship with Saskatchewan trade unions as strong and longstanding. He testified that Servco has worked with unions since its inception and values the trust and skill they provide. He noted that union workers are properly certified and apprenticed, making it easier for Servco to scale its workforce up or down compared to hiring from the open labour market.

[75] Lafleche described Servco's process for hiring employees for a project. He explained that each union in each province has its own version of a requisition or call-out sheet, though the terminology may vary. These forms generally request details about the type of worker needed,

required experience, whether working at heights is involved, and the expected duration of the assignment. Servco completes these forms as thoroughly as possible and works closely with the union's business manager to ensure the right candidate is dispatched. Lafleche emphasized that mobilizing a worker to a site involves costs, so accuracy is important to avoid sending workers back to the hall. He was shown sample requisition forms from UA Local 179, Local 771, and Local 99.

[76] Lafleche testified that Servco does not use a similar requisition process for sheet metal workers because they have never employed them. He stated that Servco does not offer sheet metal services and, to his knowledge, aside from Helland, has not employed sheet metal workers. He confirmed that Servco does not anticipate hiring sheet metal workers in Saskatchewan in the future, as it is not a service they plan to provide.

[77] When asked about hiring roofers in Saskatchewan, Lafleche responded that Servco has no history of employing roofers. He explained that the company does not have the necessary expertise, knowledge, skill set, or equipment to perform roofing work. He added that this situation is similar to Servco's approach to sheet metal work.

[78] Lafleche testified regarding the circumstances surrounding the hiring and subsequent layoff of Helland. Lafleche confirmed that Helland had been engaged to work on a maintenance outage project at the K+S site, where Servco was providing services such as pipefitting and boilermaker work. He explained that Servco has a longstanding and ongoing presence at the K+S site, regularly performing industrial work.

[79] Lafleche identified Smith as the Servco supervisor responsible for the project. He said Smith, a millwright by trade, was tasked with overseeing the crew, coordinating with the client, and managing work orders. His responsibilities included contacting union business agents and completing call-out forms to arrange for labour. Lafleche confirmed that Smith is no longer employed with Servco, having left voluntarily for another opportunity.

[80] Lafleche testified that Servco had never previously engaged with SMART Local 296 and that sheet metal work was not part of Servco's service offerings. He emphasized that this type of work falls outside the company's core competencies and is typically subcontracted to specialized firms. In his view, Smith overstepped his authority by requesting a sheet metal worker. He said "Jason tried to do a bit more for the client than he should have...he should not have been hiring sheet metal workers.

[81] While acknowledging that Smith may have been attempting to assist the client, Lafleche stated that the approach taken was inconsistent with Servco's standard practices. He maintained that the appropriate course of action would have been to subcontract the work to a qualified company with the necessary expertise, safety protocols and tooling.

[82] Lafleche further testified that he was not involved in the hiring of Helland and only became aware of the situation when Servco's payroll department contacted him. The payroll team inquired whether the company was signing on with a new union, prompting Lafleche to investigate.

[83] He explained that only he and his business partner, Brad Mason, have the authority to enter into union agreements on behalf of Servco. When the payroll department contacted him about Helland's employment, Lafleche investigated and determined that it was not appropriate to sign a new union agreement for what he described as a "one-off job." He added that he was not even sure the work was going to proceed, and in those circumstances, the amount of administrative effort involved in signing up a new union did not make sense.

[84] As a result, Lafleche directed the payroll team to process Mr. Helland's pay but not to proceed with onboarding under the SMART agreement. He made the decision to terminate Helland's employment, concluding that the engagement had been unauthorized and inconsistent with Servco's operational model.

[85] In cross-examination, Lafleche confirmed his involvement in the payroll process on October 23, 2024, referencing the screenshot of his conversation with Dawn Weatherby in which he approved the inclusion of a live out allowance (LOA) in Helland's pay. He stated that he had likely been involved a few days prior but did not believe he had any role in payroll while Helland was still actively employed. He testified that the payroll issue was his first point of involvement in Helland's employment.

[86] Lafleche was asked about his decision to lay off Helland. He explained that he had chosen not to add a new union to Servco's payroll system, and as a result, Helland was laid off. He confirmed this decision in response to the following exchange:

- Q. *So it was your decision not to engage with local 296 that resulted in him being laid off?*
 A. *Correct and there was no work for him either.*
 Q. *So when did you make the decision to not engage with the sheet metal workers?*
 A. *When payroll asked me if we were setting up a new payroll in our ERP system then when I found out what it was for and the amount of work we had to do and*

the work was being put on hold it didn't make sense, like I said. The exact time I don't know but that date. It was prior to this date (October 23, 2024) based on whenever this Teams message was sent to me.

[87] When asked whether the layoff occurred on October 18, 2024, and whether that was before his involvement in payroll, Lafleche said he was unsure of the exact timing but believed it was likely around the same time.

[88] In cross examination, Lafleche also reiterated his testimony that Servco never employed sheet metal workers. He was then asked and answered the following questions:

- Q. *Our information is that Servco did request a sheet metal worker and had one dispatched in 2018?*
- A. *I have no information about that.*
- Q. *Would Servco's records have that information?*
- A. *We've change out our system over the last five years and I would need specifics on the project itself.*
- Q. *If I put to you a Fletcher Parisien was dispatched in 2018, you would have no basis to dispute that?*
- A. *No.*

Devon Schaffer

[89] Devon Schaffer ("Schaffer") testified on behalf of Servco. He is a millwright by trade with 21 years of experience and has worked with the millwright union hall throughout his career. For the past two years, he has been employed by Servco as a mechanical supervisor and superintendent. He described the superintendent role as primarily administrative, often serving as a placeholder when Servco is bidding on contracts.

[90] Schaffer outlined his daily responsibilities, which include organizing crews, supervising various trades, and ensuring that assigned tasks are completed. He listed millwrights, ironworkers, boilermakers, and pipefitters among the trades he supervises.

[91] He described Servco's relationship with unions as positive. However, he stated that he was not involved in decisions about which unions Servco works with. Those decisions are made by individuals in higher-level roles, such as the construction manager or project manager.

[92] When asked about the process Servco follows when working with unions to deliver services, Schaffer explained that they first assess manpower needs and then contact the relevant trades. He confirmed that this process involves completing a request form. He has seen such forms used for ironworkers, millwrights, boilermakers, and pipefitters.

[93] Schaffer testified that he does not participate in preparing the scope of work documents. By the time he arrives at the site, all necessary documentation has already been provided. He does not verify certifications or orientations himself, relying instead on the safety department to flag any missing requirements.

[94] When asked about which trades Servco hires directly versus those subcontracted, Schaffer explained that trades not typically handled by Servco are usually subcontracted. He gave painting and scaffolding as examples. Regarding sheet metal work, he stated that it would also be subcontracted if needed, explaining that Servco is not a signatory to the Sheet Metal Workers' local.

[95] Schaffer said he was unsure how frequently Servco performs sheet metal work, but based on his own experience, he believed they do not.

[96] Schaffer was asked several questions about the Scope of Work for the K+S project (Servco Document 14 entered as Exhibit E-21) ("Scope of Work"). He described it as the document Servco would have submitted when bidding on the project, explaining that it outlines the specific tasks Servco was being asked to perform.

[97] Upon reviewing the document, particularly Sections 3.01 through 3.3, Schaffer consistently identified the work described, including modification of existing steel structures, installation of new steel, and related structural tasks, as falling squarely within the jurisdiction of iron workers. He emphasized that this type of work, including the installation of durasteel panel flooring, was typical of iron worker responsibilities because of its structural nature and the anchoring requirements involved.

[98] Schaffer testified that the work performed by Helland was not included in the original scope outlined in Exhibit E-21, the Scope of Work document. He described Helland's tasks, which involved flashing and sealing inside an electrical room, as additional work that may have resulted from a Request for Information rather than being part of the initial contract.

[99] Schaffer was referred to a document titled Request for Information Number 5, tendered as Servco Exhibit E 22 ("RFI #5"). This document was submitted by Servco to K plus S on September 26, 2024, and indicates that responses were provided on or about October 10, 2024.

[100] Schaffer explained that the RFI #5 addressed dimensional issues in the MCC room and involved moving structure steel components, specifically C-channels. He described a C-channel as a structural element, not a high beam, but still part of the steel framework. He was clear that this type of work was iron worker jurisdiction, not sheet metal. He stated that the RFI was part of the process of clarifying added scope, and that if Servco had to move the channels, it would be iron workers who performed the work. He did not recall submitting the RFI himself but acknowledged that it was part of the job and confirmed its relevance to the structural work being done.

[101] Schaffer recalled Helland, describing him as someone who was sent to the site. He stated that Helland arrived at the K+S site and completed flashing work on the roof cladding inside an electrical E-room. According to Schaffer, Helland came to the site, performed the required task, and completed it.

[102] When asked about his plans for Helland on that day, Schaffer said the goal was to just finish sealing the underside of the E-room.

[103] Schaffer testified that Helland did not return to work after that day. He said that he received a call on Friday from Regional Manager Sean McLennan instructing him to let Helland go, as Servco was not supposed to have hired him. He said McLennan said we had no authorization to hire anybody.

[104] As a result of that call, Schaffer contacted Helland and advised him that he had to be let go. Schaffer stated that he was not involved in the decision to terminate Helland's employment, and that the conversation was brief because he was heading back into the field at the time.

[105] When asked if he knew the reason for Helland's dismissal, Schaffer said he had no idea and was not interested in finding out.

[106] Schaffer was asked about the Job Description in the email chain between King and Smith. He was asked if sheet metal workers would be needed for the job at all and whether he spoke to Smith about this. He said that he and Smith had a discussion where Schaffer said he needed a guy for that MCC room¹. When asked if they discussed having a sheet metal worker specifically,

¹ The term "MCC room" is used by Helland to describe the location where he performed sheet metal work. Schaffer confirmed in his testimony that he told Jason Smith he "needed a guy for that MCC room", and clarified that the work required was to "finish off the Q-decking." Other witnesses refer to the location more generally as the E-room or electrical room. Based on the testimony and context, it is understood that the MCC room, E-room, and electrical room all refer to the same physical location at the K+S worksite.

he said “he sent me who he sent me”. He said he spoke to Helland later that day and he told Helland he had to let him go.

[107] When asked whether Helland’s hiring followed normal procedure, Schaffer said it was clearly not a standard manpower request. He added that he was unfamiliar with how sheet metal workers are typically dispatched, but noted that the process did not align with how other unions operate.

[108] Schaffer confirmed that Servco did not hire anyone else to complete the work Helland had been doing. He stated that Helland had finished the job.

[109] Finally, Schaffer testified that he had no knowledge of any certification application being submitted during this time. He said that Smith never mentioned anything about it to him.

[110] During cross-examination, Schaffer reaffirmed that he supervised several trades, including ironworkers, boilermakers, and pipefitters. He also recalled overseeing operating engineers on a Servco project at SaskPower. Schaffer acknowledged that he does not hold professional qualifications in any of the trades he supervises.

[111] Schaffer agreed that Helland’s work on site involved cladding, flashing, and patching. However, he disputed the suggestion that Helland was expected to work on a second electrical room. He stated there was only one E-room on the site.

[112] When asked whether he was aware that Helland had left his tools on site because he believed he would be returning to work the following week, Schaffer testified that Helland was expected to return to assist the millwrights and to complete work on an overhead door. Specifically, Helland was to install a hood on the door. Schaffer confirmed that the task described in Job #1 of the email chain (installing a cover on the overhead door) was the same work the millwrights were performing during Helland’s time on site.

[113] Schaffer testified that he had a discussion with Jason Smith in which he stated that he “needed a guy for that MCC room.” When asked to clarify what he meant by that, Schaffer explained that the work required in the MCC room was to “finish off the Q-decking.”

[114] When asked whether the work Helland performed, including cladding, flashing, and patching, was part of Servco’s original scope of work, Schaffer responded that it was not. He also

confirmed that the Q-decking was not included in the original scope. When asked how he received instructions to carry out work that was outside the initial scope, Schaffer suggested that a Request for Information (RFI) may have been involved, although he did not submit one himself.

[115] Similarly, Schaffer agreed that the installation of the hood on the overhead door was not included in the scope of work document. He said he did not know one way or the other whether a separate scope of work document had been prepared to cover that task.

Sean McLennan

[116] Sean McLennan ("McLennan") testified on behalf of Servco. He has been a journeyman pipefitter for 30 years and began working for Servco in September 2020. Initially, he held the position of estimator and project manager, where he was responsible for preparing Requests for Proposals (RFPs). If the RFP was successful, he would manage the project and oversee its execution with the client.

[117] In January 2022, McLennan was promoted to Saskatchewan Operations Manager. His current role is primarily office-based. While he continues to assist with RFP estimations, his involvement is less direct. He now oversees job site crews to ensure they have the necessary resources, manages the fabrication shop in Regina, and participates in head office matters, including senior management responsibilities, financials, costing, training, and client sales.

[118] McLennan described Servco's business as that of an industrial contractor. He identified typical job sites as potash mines and projects for SaskPower and the Water Security Agency, noting that Servco bids on any work involving mechanical process systems.

[119] When asked about the trades Servco typically works with, McLennan identified pipefitters, millwrights, and boilermakers as the core trades. He noted that ironworkers are occasionally used.

[120] McLennan testified that Servco does not generally engage carpenters, sheet metal workers, or operators such as crane operators. If a client requested services in these areas, Servco would subcontract the work.

[121] He described Servco's relationship with unions as very positive.

[122] McLennan stated that hiring is handled by site supervisors, and he does not participate in that process. He explained that the standard procedure involves completing a request form specifying the type of worker needed, the location, and expected hours. This form is submitted to

the union hall, which then provides suitable workers. He confirmed that he does not deal with these forms in his current role.

[123] McLennan testified that he has no knowledge of Servco's history in the sheet metal industry and, to his understanding, Servco does not perform sheet metal work. He also stated that roofing services are subcontracted and could not recall any specific instance where a client requested such services.

[124] McLennan confirmed that Smith was his site supervisor at the K+S project. However, he stated that he was not familiar with the project details and had no involvement in its pricing.

[125] When referred to the email chain between King and Smith, McLennan testified that he was unaware of the request at the time it was made.

[126] He stated that making a request for workers via email was unusual and that the standard form was not used. While he was unsure whether a form existed for that particular union hall, he assumed one would.

[127] McLennan testified that Smith did not have the authority to retain a sheet metal worker through an email chain and should have used the formal request process. He noted that Smith, being an experienced millwright, should have known to follow a more formal procedure.

[128] He stated that Servco has no plans to engage in sheet metal work in the future, describing it as outside the company's scope. He emphasized that "you stick to what you know," and taking on unfamiliar work poses too much risk.

[129] When asked if he recognized the name Mark Helland, McLennan said he only knew of him through this case and had not heard of him previously.

[130] McLennan testified that he was not involved in the scope of work documentation for the K+S project and had no knowledge of an overhead door or fire stop insulation being part of the project.

[131] He was asked several questions about the Scope of Work for the K+S project (Servco Document 14 entered as Exhibit E-21) ("Scope of Work"). He understood the project involved modifications to the E-Room, specifically the removal of smaller steel and installation of larger beams to support future equipment. He confirmed that he had not seen the scope of work documents during or prior to the project. However, he testified that the scope of work for the K+S

project involved structural steel modifications to support the future installation of switchgear. He reviewed the Scope of Work document and confirmed that the described tasks fell within the jurisdiction of iron workers, not sheet metal workers. McLennan stated that Servco does not perform sheet metal or roofing work and would subcontract such services if required. He further testified that Servco had no prior relationship with SMART Local 296 and that sheet metal work was not part of the company's core operations.

[132] McLennan confirmed that Smith, the supervisor who initiated the request for a sheet metal worker, lacked the authority to do so and failed to follow Servco's standard requisition procedures.

[133] McLennan recalled that Helland was let go after one day of work but had no involvement in the decision. He was informed that Helland was no longer needed because the work was completed. He did not know who made the decision or how Helland was notified. He also had no knowledge of any union organizing activity at the time and did not recall any discussions with Smith regarding a certification application.

[134] In cross-examination, McLennan confirmed that Servco's work in Saskatchewan is entirely industrial. He noted that in Manitoba, Servco engages in additional work such as concrete and underground excavation.

[135] He reiterated that Servco does not frequently engage carpenters, sheet metal workers, or operators. When asked if Servco is certified with the operating engineers in Saskatchewan, he said he could not be certain and had no experience working with operating engineers on a Servco site.

[136] McLennan stated that he was not involved in estimating a job at the Yorkton Louis Dreyfus facility and did not know who was responsible for that estimation.

[137] When asked whether union certification would affect costing, McLennan said it would not be a factor he considers. He agreed that labour is a cost input in bidding and acknowledged that being bound by a collective agreement could potentially affect labour cost estimates. However, he stated that Servco does not bid on work involving non-union labour.

[138] When asked whether he would bid on work involving non-union subcontractors, McLennan said he had not done so and did not know whether Servco does.

Reply Evidence

[139] The Union called Michael Skrypnyk (“Skrypnyk”) as a reply witness. Although Servco objected to the admissibility of his testimony, the Board determined it would hear the evidence and reserve its ruling.

[140] Skrypnyk, formerly Business Manager and Financial Secretary Treasurer of Local 296, testified regarding a 2018 dispatch of a sheet metal worker, Fletcher Parisien, (“Fletcher”) to DMS Industrial. He relied on contemporaneous logs and referral documents prepared in the ordinary course of his duties, as well as remittance records confirming Fletcher worked 63 hours in September 2018 and was paid in accordance with the collective agreement.

[141] Skrypnyk’s testimony clarified that the employer identified itself as “DMS” and denied any recollection of the name Dirksen Mechanical. He acknowledged the use of abbreviations and acronyms in his records. While he could not confirm the nature of Fletcher’s work or the circumstances of his layoff, he assumed it was a standard layoff based on Fletcher’s return to the hiring board.

[142] The Union argued that this evidence was responsive to Servco’s unexpected reliance on DMS Industrial, which had not been disclosed in its pleadings or written materials. The Union submitted that it only became aware of the relevance of DMS during Julien Lafleche’s testimony and promptly searched its records, producing relevant documents during a break in cross-examination. Servco opposed the admission, arguing that the evidence constituted improper case-splitting and violated the rule in *Browne v Dunn*, as Servco’s witnesses were not given a fair opportunity to respond.

[143] Having considered the parties’ submissions, the Board finds that the reply evidence is relevant to the central issue of whether Servco employed sheet metal workers. The evidence confirms a single instance of such employment in 2018, which supports Servco’s position that it does not regularly engage sheet metal workers. The Board finds the evidence helpful and non-prejudicial and, accordingly, sees no need to formally rule on its admissibility. The evidence has been considered for its probative value.

Argument on behalf of Local 296:

[125] Local 296’s position is as follows:

- (a) The bargaining unit applied for is appropriate. It consists of the standard sheet metal

craft bargaining unit as consistently defined in the Board's jurisprudence, and reflects the work for which Helland was hired and which he performed.

- (b) Any ballot cast should be counted on the basis that at the time of the vote, Helland had a continuing interest in the Certification Application due to the filing of the ULP Application, and on the basis that but for Servco's unfair labour practices, Helland would have been employed as of the date of a vote in the normal course of events.
- (c) Servco ought to be found to have committed unfair labour practices pursuant to sections 6-62(1)(g), (h) and (i) of the Act by:
 - i. Engaging in discriminatory action (laying off Helland) with a view to discouraging membership and activity in Local 296, under circumstances where the employer onus under s. 6-62(4) applies;
 - ii. Requiring as a condition of employment that Helland abstain from pursuing his rights under Part VI of the Act, including his right to pursue collective bargaining and his right to be represented by a bargaining agent of his choice; and
 - iii. Interfering in the selection of a union, particularly by providing Helland's contact information to another bargaining agent for the purpose of having Helland dispatched without Local 296's involvement.

Argument on behalf of Servco:

[144] Servco's position is as follows:

- (a) The Proposed Bargaining Unit Is Inappropriate:
 - Servco does not employ sheet metal workers or roofers.
 - The hiring of Mark Helland (a sheet metal journeyman) was a one-day mistake due to a misinterpretation of the scope of work.
 - Servco typically subcontracts sheet metal and roofing work and lacks the expertise and infrastructure to perform it in-house.
 - The work Helland performed was actually within the jurisdiction of the Iron Workers' union, not SMART.
 - Servco argues that the proposed bargaining unit is not viable or appropriate for collective bargaining.

(b) No Unfair Labour Practice Occurred:

- Helland was laid off for legitimate business reasons, not due to anti-union animus.
- Servco was unaware of SMART's Certification Application until after Helland was terminated.
- Servco maintains positive relationships with other unions and hires through union halls voluntarily.
- The termination decision was made based on the nature of the work, not union involvement.
- SMART has not provided clear, cogent evidence of any violation under SEA section 6-62.

Relevant Statutory Provisions:

[145] The Board's authority to determine an appropriate bargaining unit is set out in s. 6-11:

Determination of bargaining unit

6-11(1) *If a union applies for certification as the bargaining agent for a unit or a portion of a bargaining unit or to move a portion of one bargaining unit to another bargaining unit, including a bargaining unit comprised of supervisory employees, as defined in clause 6-1(1)(o) of this Act as that clause read before the coming into force of The Saskatchewan Employment Amendment Act, 2021, the board shall determine:*

- (a) if the unit of employees is appropriate for collective bargaining; or*
- (b) in the case of an application to move a portion of one bargaining unit to another bargaining unit, if the portion of the unit should be moved.*

...

(7) In making the determination required by subsection (1) as it relates to the construction industry within the meaning of Division 13, the board shall:

- (a) make no presumption that a craft unit is the more suitable unit appropriate for collective bargaining; and*
- (b) determine the bargaining unit by reference to whatever factors the board considers relevant to the application, including:*
 - (i) the geographical jurisdiction of the union making the application; and*
 - (ii) whether the certification order should be confined to a particular project.*

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:*

...

(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 or 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;*

(h) *to require as a condition of employment that any person shall abstain from joining or assisting or being active in any union or from exercising any right provided by this Part, except as permitted by this Part;*

(i) *to interfere in the selection of a union;*

...

(4) *For the purposes of clause 1(g), there is a presumption in favour of an employee that the employee was terminated or suspended contrary to this Part if:*

(a) *an employer or person acting on behalf of the employer terminated or suspends an employee from employment; and*

(b) *it is shown to the satisfaction of the board or the court that employees of the employer or any of them had exercised or were exercising or attempting to exercise a right pursuant to this Part.*

Analysis and Discussion:

[146] Based on the evidence presented, the Board makes the following findings of fact:

Initiation of Contact and Dispatch

1. In September 2024, Servco initiated contact with Local 296 through its Construction Manager, Jason Smith, seeking to hire two sheet metal workers for work at the K+S potash mine. Smith provided the scope of work via email, which included flashing, cladding, patching, and aerial platform operation, tasks that fall within the jurisdiction of the sheet metal trade. Based on this communication, T.J. King dispatched Mark Helland, a qualified journeyman sheet metal worker and long-standing member of Local 296.
2. Helland performed the described work on October 17, 2024, and left his tools on site, anticipating a multi-week assignment. He was informed of his layoff the following day and paid for one day of work. His payroll was processed as that of a non-union general labourer, without the deductions and benefits required under Local 296's collective agreement.

Nature of Work Performed

3. The work performed by Helland was consistent with standard sheet metal tasks and within the scope of the trade. Helland's testimony confirmed that he performed patching, flashing, and cladding in the MCC room, consistent with the job description provided by Servco. King's testimony corroborated that the work described in the email chain was standard to the sheet metal trade.

Servco's Workforce Composition and Practices

4. Helland's employment was not representative of Servco's usual workforce composition. Servco does not currently employ sheet metal workers and has no intention of doing so in the future. This conclusion is supported by consistent and credible testimony from Servco's witnesses. The Chief Executive Officer explained that sheet metal work is not part of Servco's core services and is subcontracted due to the company's lack of internal expertise, tooling, and infrastructure. The Payroll Manager confirmed that Servco is not configured to process payroll for Local 296 and had never previously employed a sheet metal worker in Saskatchewan.
5. The hiring of Helland was a mistake, arising from a misunderstanding of the scope of the work and a deviation from Servco's established internal procedure. The only other instance of sheet metal employment occurred in 2018, involving a short-term dispatch of Fletcher Parisien for 63 hours. This isolated engagement, like Helland's, does not establish a pattern of employment and further supports the conclusion that sheet metal work is not part of Servco's regular operations.

Hiring, Scope of Work and Jurisdictional Mismatch

6. The Board finds that the hiring of Helland, a sheet metal worker, was a mistake arising from a misunderstanding of the scope of work and a deviation from Servco's established internal procedures. The original scope of work for the K+S project, as outlined in the Scope of Work and clarified through RFI #5, involved structural steel modifications and installation tasks that fell within the jurisdiction of iron workers. The document described tasks such as the modification and installation of structural steel components, none of which involved flashing, cladding, or any sheet metal work.
7. Witnesses including Schaffer and McLennan confirmed that the scope was consistent with Servco's core trades and did not include sheet metal tasks. Schaffer testified that RFI #5

addressed dimensional issues in the MCC room and involved relocating structural steel components, including C-channels, and drilling anchor points. He described C-channels as structural elements and confirmed that the work involved was squarely within the jurisdiction of iron workers. He was clear that this type of task did not involve flashing, cladding, or any work typically performed by sheet metal workers.

8. Lafleche testified that Jason Smith, the Servco supervisor who initiated the request for a sheet metal worker, acted outside his authority and should have recognized that the work was better suited to subcontracting. Servco does not employ sheet metal workers and had no prior relationship with SMART Local 296; such work would ordinarily be subcontracted. Helland was paid as a general labourer and was not properly onboarded, further indicating that Servco lacked the infrastructure to support his engagement. The decision to hire him was made by Smith, who lacked the authority to initiate union certification or engage trades outside Servco's core operations.
9. The Board accepts the evidence of Lafleche, Schaffer, and McLennan and concludes that Helland's hiring was not consistent with the scope of work or Servco's standard practices.

Procedural Irregularities and Termination

10. Neither party called Jason Smith to testify, despite his central role in initiating contact with Local 296, describing the scope of work, and communicating expectations regarding the duration of the assignment. Smith's emails and conversations with King formed the basis for the Union's understanding of the nature of the work and the projected timeline. Servco's position relies on the assertion that Smith acted outside his authority and misunderstood the scope of the project, yet no direct evidence from Smith was presented to support or clarify this claim. Similarly, the Union did not call Smith to corroborate its position regarding the appropriateness of the bargaining unit. In the absence of Smith's testimony, the Board must rely on the accounts of other witnesses. This absence does not alter the Board's findings, but it does underscore the evidentiary limitations faced in assessing the true nature of the engagement and the decision to terminate Helland.
11. The Board also finds that the evidence surrounding Helland's termination was not supported by a coherent or credible explanation. Testimony from Servco's witnesses was inconsistent regarding who made the decision and when. While Lafleche claimed responsibility, he was only involved after the fact. Schaffer testified that he was instructed by McLennan to terminate Helland, but McLennan denied involvement. The Board is

unable to identify with certainty who made the decision to terminate Helland. This lack of clarity and consistency across Servco's leadership leads the Board to conclude that Servco has failed to rebut the statutory presumption under section 6-62(4) of the Act.

12. Further, the Board finds that Servco was aware of Helland's affiliation with Local 296 and of the Union's intent to pursue certification, as communicated by King to Smith. Smith's knowledge is imputed to Servco.

Pattern of Employment

13. Servco does not maintain an employment relationship with sheet metal workers. The engagements of Helland in 2024 and Fletcher in 2018 were isolated, short-term occurrences that do not reflect any ongoing or established pattern of employment.
14. This conclusion is further supported by the fluid and uncertain nature of the projected work schedule communicated by Smith. While an early email referenced approximately three weeks of work, later correspondence narrowed the scope to a single Thursday, followed by four days the next week, with further work contingent on direction from K+S. These shifting projections reinforce the finding that Helland's engagement was not part of a stable or ongoing employment pattern.

Additional Findings regarding Contact from Local 1999

15. On the same day Helland was laid off, he was contacted by a representative of Carpenters Local 1999 in Alberta, who invited him to transfer over and return to work at the K+S site. Helland testified that he declined the offer, preferring to continue working through Local 296. He stated that he had never previously interacted with Local 1999 and was unfamiliar with the organization. Helland also testified that someone on site may have mentioned the possibility of being dispatched through another local, but he could not recall who made the comment. The source of the contact remains unidentified, and no direct evidence was presented linking Servco to the outreach.

Appropriateness of the Proposed Bargaining Unit

[147] Pursuant to section 6-11(1) of the Act, the Board must determine whether the proposed bargaining unit is appropriate for collective bargaining. There is no dispute that the Union bears the onus on such an application and is required to demonstrate on a balance of probabilities that it should be certified as the bargaining agent for the proposed bargaining unit. To satisfy this

burden, the Union is required to present evidence that is “sufficiently clear, convincing and cogent.” (See for example: *Canadian Union of Public Employees v Resort Village of Candle Lake*, 2022 CanLII 66266 (SK LRB); *UFCW Local 1400 v Verdient Foods Inc.*, 2019 CarswellSask 363 paras 61-65.)

[148] Before the Board can assess whether the proposed bargaining unit is appropriate for collective bargaining, it must first determine whether the employer actually employs individuals who fall within the scope of the proposed unit. This is a threshold question. While the Act does not preclude certification of a bargaining unit consisting of a single employee, there must nevertheless be an employment relationship between the employer and at least one individual performing work within the scope of the proposed unit. If Servco does not employ sheet metal workers then the proposed unit cannot be considered appropriate and must fail at the outset.

[149] In this case, the Board finds that Servco does not employ sheet metal workers and has no intention of doing so in the future. The hiring of Helland for one day was an anomaly and does not establish an employment relationship with the proposed classification. As a result, the proposed bargaining unit cannot be considered appropriate.

Voter Eligibility

[150] In light of the Board’s finding that Servco does not employ sheet metal workers and that the proposed bargaining unit is therefore not appropriate, it is unnecessary to address the issue of voter eligibility. Without a viable bargaining unit, the question of who may vote in a representation vote does not arise.

Unfair Labour Practice

[151] Although the certification application is dismissed due to the inappropriateness of the proposed bargaining unit, the Board must still consider the Union’s unfair labour practice allegations. The Board’s jurisdiction to consider such matters is independent of the certification outcome and remains engaged where the statutory criteria are met.

Section 6-62(1)(g), s. 6-62(4)

[152] The Union alleges that Servco terminated Helland because of his union affiliation and its reluctance to engage with Local 296. The Board must determine whether the statutory presumption under section 6-62(4) of the Act applies, and if so, whether Servco has provided a credible and coherent explanation for the termination.

[153] Clause 6-62(1)(g) of the Act represents an important safety net for employees. This provision prevents an employer from using coercion or intimidation from discriminating in the treatment of its employees because of their support for a union; because of their desire to be unionized; or because they have exercised a protected right: *International Brotherhood of Electrical Workers Local Union 2038 v Clean Harbors Industrial Services Canada*, 2014 CanLII 76047 (SK LRB) at para 87; 2015 SKQB 232 (CanLII).

[154] Further, clause 6-62(4) creates a presumption in favour of the employee where certain conditions are met. Specifically, if an employee is terminated and it is shown that the employee was exercising or attempting to exercise a right under the Act, the burden shifts to the employer to demonstrate that the termination was not motivated by anti-union considerations.

[155] The Board is satisfied that the two statutory preconditions under section 6-62(4) of the Act have been met:

1. First, Helland was terminated from his employment with Servco on October 18, 2024.
2. Second, the evidence establishes that Helland was exercising a right under Part VI of the Act at the time of his termination. He was dispatched to the site as a member of Local 296, and the Union advised Servco through its representative Jason Smith that it intended to pursue a certification application. Smith acknowledged this and indicated that it would not be a problem. The Board finds that Smith's knowledge of the certification application must be imputed to Servco. Helland's affiliation with Local 296 was known to Servco throughout the process, and the Servco received documentation from the Union in anticipation of his employment under the terms of the collective agreement. These facts satisfy the requirement that Helland was exercising or attempting to exercise a right under the Act at the time of his termination.

[156] Lafleche's testimony conveyed a clear distinction between Servco's general stance on unionization and its specific response to the circumstances surrounding Helland's engagement. He emphasized that Servco was not opposed to union representation in principle, stating, "if we ever decided to open a new area that did this kind of work, we would be the first ones at the door wanting to be a member." He explained that the decision not to sign a union agreement with Local 296 was based on the limited and short-term nature of the work, rather than any anti-union animus. This testimony was consistent with his broader evidence that Servco had no prior

relationship with Local 296, had never employed sheet metal workers before, and that only he and Brad Mason had authority to enter into union agreements.

[157] While the Board accepts that Helland's hire was a mistake resulting from a misunderstanding of the scope of work, this does not resolve the issue of his termination. The statutory presumption under section 6-62(4) of the Act applies regardless of the circumstances surrounding the initial hire. Even if the engagement was irregular or unauthorized, once Helland was hired and performed work, the employer assumed the obligation to justify his termination with clear, credible, and cogent evidence. The fact that the hire may have been unintended does not relieve the employer of its burden under the Act. In this case, the evidence fails to meet that standard.

[158] The Board discussed the reverse onus on an employer under s. 6-62(4) in *Canadian Union of Public Employees v Warman (City)*, 2017 CanLII 30130 (SK LRB):

[52] Determinations under section 6-62(1)(g) and 6-62(4) are factually driven. Once the onus is shifted to the employer, as is the case here, the onus falls upon the employer to show a credible or coherent reason for dismissing an employee other than his or her union activity. This onus, as noted by the Board in SGEU v. Saskatoon Food Bank[8] at paragraph 52a, "while extremely heavy – the Employer must satisfy the Board that trade union activity played no part in the decision to discharge the employee – is not impossible to satisfy." As noted by the Board in both Sakundiak[9] and SEIU v. Chinook School Division No. 211[10], such explanation must be credible and coherent. (footnotes omitted).

[159] This is not a discretionary assessment; the Board is required to find a violation unless the employer rebuts the presumption with clear, credible, and cogent evidence. In this case, the Board finds that Servco has not discharged that burden.

[160] To determine whether Servco has rebutted the statutory presumption, the Board examined the evidence concerning the circumstances of Helland's termination. Schaffer testified that he received a phone call from Servco's regional manager, McLennan, advising him that there was no authorization to hire Helland and instructing him to let Helland go. However, McLennan denied having any involvement in the decision to terminate Helland and stated that he was merely notified after the fact that Helland had worked one day and was no longer needed.

[161] This inconsistency between Schaffer's and McLennan's accounts further underscores the lack of clarity and coherence in Servco's evidence regarding who made the decision to terminate Helland and when. As noted above, Lafleche also claimed responsibility but acknowledged that his involvement began only after the termination. These conflicting accounts prevent the Board

from identifying a clear decision-maker or rationale for the termination. The absence of a consistent and credible explanation fails to rebut the statutory presumption. Accordingly, the Board is compelled to find a breach of section 6-62(1)(g).

[162] In light of the foregoing, the Board finds that Helland was terminated under circumstances influenced, at least in part, by his union affiliation and Servco's reluctance to engage with Local 296. Servco's failure to provide a credible explanation for the termination, combined with the statutory presumption, requires the Board to conclude that the termination was not for good and sufficient reason.

[163] For these reasons, Servco is in breach of Section 6-62(1)(g) of the *Act*.

Section 6-62(1)(h)

[164] The Union argues that an unfair labour practice under s. 6-62(1)(h) is triggered particularly by the circumstances following Helland's layoff.

[165] The evidence from Helland was that the same day he was laid off, he was contacted by a representative of Carpenters Local 1999 offering to return him to work at K+S if he would be dispatched through them. The Union submits that no explanation was provided, nor can any reasonably be inferred on the evidence, as to how any party was in a position to make this contact other than through Servco's involvement. Accordingly, the union argues the appropriate finding of fact is that as a result of Servco's actions, Helland was offered the explicit choice between being laid off while a member of Local 296, or being returned to same work by Local 1999.

[166] The evidence also indicated that when asked if he had ever authorized anybody to give Local 1999 his contact information, Helland testified that "maybe inadvertently", but he did not do it on purpose because "they had said maybe they can get me out with this other local and I said ok skeptically and then local 1999 called". When asked whose "they", Helland said he could not remember, he thought it might be Devin, but he might be wrong.

[167] The Union bears the burden of proving the alleged unfair labour practice under s. 6-62(1)(h) of the *Act* on a balance of probabilities. To meet this threshold, the evidence must be clear, convincing and cogent: *United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 179 v Yorkton Plumbing & Heating Ltd./YPH Mechanical*, 2019 CanLII 107150 (SK LRB), ["Yorkton Plumbing"] para. 11.

[168] As outlined in *Yorkton Plumbing* at para. 26, an unfair labour practice under s. 6-62(1)(h) requires proof that the employer, implicitly or explicitly, imposed a condition of employment requiring a person to abstain from union activity or from exercising rights under Part VI.

[169] To effectively establish this claim, the Union must present evidence that is sufficiently clear, convincing, and cogent. While the events described by Helland may raise questions, and the Board does not question the credibility of his testimony, the evidence does not establish that Servco arranged the contact from Local 1999 or imposed any condition of employment. The source of the contact remains unidentified, and there is no direct evidence linking Servco to the communication. As such, the Board finds that the evidence does not meet the threshold required to support a finding under s. 6-62(1)(h).

[170] The Board acknowledges that it is entitled to draw reasonable inferences from circumstantial evidence. However, in this case, the evidence does not clearly identify who initiated the contact with Local 1999 or establish Servco's involvement in facilitating it. While the timing and context may suggest a connection, the Board finds that the evidence is too vague and speculative to support a finding under s. 6-62(1)(h). Accordingly, the Board declines to draw an inference of employer involvement in the absence of sufficiently clear, convincing, and cogent evidence.

[171] For these reasons, the application by SMART under Section 6-62(1)(h) is dismissed.

Section 6-62(1)(i)

[172] To establish an unfair labour practice under section 6-62(1)(i) of the Act, the union must prove, on a balance of probabilities, that the employer interfered with an employee's selection of a union: *Saskatchewan Government and General Employees Union v Lac La Ronge Indian and Child Services Agency Inc.*, 2015 CanLII 80539 (SK LRB) ["Lac La Ronge"] at para 45.

[173] The test is objective and requires that the union present evidence that the conduct of the employer would affect a reasonable employee in respect of his or her choice of union: *Lac La Ronge* at para 46.

[174] The union argues that on the facts before the Board, Helland's layoff had the direct effect of interfering with the processing of the certification application independent of any action which an employee could avoid or resist. Further, it created a substantial amount of pressure on Helland

respecting both his determination as to whether to accept being pushed to accept a different bargaining agent and his participation in the certification vote once one was ordered.

[175] The Board finds that the evidence regarding the call and offer from a Local 1999 in Alberta is insufficient to ground a finding that Servco interfered with an employee's selection of a union. While the timing and nature of the contact may raise questions, there is no evidence identifying who initiated the communication or establishing that Servco was involved in facilitating it. For example, there is no indication that Servco provided Helland's contact information to Local 1999 or directed the outreach. Without such evidence, the Board cannot conclude that Servco's conduct interfered in the selection of a union.

[176] For these reasons, the application by SMART under Section 6-62(1)(i) is dismissed.

Remedy:

[177] Having found that Servco committed an unfair labour practice under section 6-62(1)(g) of the Act the Board must now determine an appropriate remedy.

[178] The Board has broad remedial discretion under the Act. Any remedy must be rationally connected to the breach and aligned with the policy objectives of the legislation. As affirmed by the Supreme Court of Canada in *Royal Oak Mines Inc. v. Canada (Labour Relations Board)*, 1996 CanLII 220 (SCC), [1996] 1 SCR 369, a remedy must address the consequences of the breach and promote the statute's underlying purposes. A remedy that lacks this connection or contradicts the Act's objectives would exceed the Board's jurisdiction.

[179] Common remedies include declarations, cessation orders, and posting of the Board's decision. Posting promotes transparency and awareness in the workplace. A declaration clarifies legal rights, and a cessation order prevents further breaches.

[180] In this case, Helland, a journeyperson sheet metal worker and long-standing member of Local 296, was dispatched to Servco's K+S project with the expectation of a three-week assignment. This expectation was based on conversations with King and information from Servco's representative, Smith. Helland worked one day on October 17, 2024, performing tasks consistent with his trade. He left his tools on site, anticipating a return, but was informed the next day by Schaffer that he had been laid off. He was not dispatched to another job until November 1, resulting in a two-week gap in employment.

[181] The Board has found that Servco violated section 6-62(1)(g) by terminating Helland in circumstances where the statutory presumption of anti-union animus was not rebutted. However, the Board declines to order monetary compensation. While Mr. Helland expected a three-week assignment, this was not confirmed by Servco's management or supported by documentary evidence. The actual duration of work remains unclear. Helland's engagement was atypical and did not reflect an established employment relationship within the proposed bargaining unit. Moreover, the Board notes that Helland resumed employment within a relatively short period following his termination, and there is no evidence of ongoing economic harm or loss of opportunity attributable to Servco's conduct. In light of these findings, the Board concludes that a declaratory remedy is appropriate and sufficient to address the breach and uphold the policy objectives of the Act.

Conclusion and Order:

[182] As a result, with these Reasons, the following Orders will issue:

1. That the application for certification in LRB File No. 197-24 is dismissed on the basis that the proposed bargaining unit is not appropriate.
2. The application by SMART in LRB File No. 222-24 under s. 6-62(1)(g) of the Act is granted;
3. The Board declares that Servco breached Section 6-62(1)(g) of the Act.
4. The application by SMART in LRB File No. 222-24 under Sections 6-62(1)(h) and (i) is dismissed.

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

[184] 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 **8th** day of **September, 2025**.

LABOUR RELATIONS BOARD

Carol L. Kraft
Vice-Chairperson