FOWZIO ELMI, Applicant v SEIU-WEST, Respondent and SASKATOON MISBAH SCHOOL INC., Respondent

- and -

SEIU-WEST, Applicant v SASKATOON MISBAH SCHOOL INC., Respondent

LRB File Nos. 064-24, 082-24 & 083-24; September 8, 2025
Chairperson, Kyle McCreary; Board Members: Don Ewart and Linda Dennis
Citation: *Elmi v SEIU-West*, 2025 SKLRB 42

Counsel for the Applicant, Fowzio Elmi:	Jared McRorie and Nathan Sgrazzutti
Counsel for the Respondent, SEIU-West:	Scott Newell
Counsel for the Respondent, Saskatoon Misbah School Inc:	Gordon Hamilton

Decertification – Test for decertification – Distinction between test to decertify and test to dismiss for employer inference – Application dismissed for employer inference due to direct and indirect inference

Unfair Labour Practice – Failure to bargain and failure to bargain in good faith – Meeting only once and never tabling a proposal in almost three years constitutes a failure to bargain and a failure to bargain in good faith

Objection to the Conduct of the Vote – Dismissed as moot as application ordering the vote dismissed

REASONS FOR DECISION

Background:

[1] Kyle McCreary, Chairperson: Fowzio Elmi has applied for SEIU-West ("the Union") to be decertified as the bargaining agent for certain employees at Saskatoon Misbah School Inc. (the "Employer") in accordance with *The Saskatchewan Employment Act,* SS 2013, c S-15.1 *("the SEA")*. The decertification application, LRB File No 064-24, was filed on March 19, 2024 (the "Decertification Application"). The Board directed a vote on Ms. Elmi's application on March 26, 2024. The Union filed an objection to conduct of the vote on April 19, 2024. The Union filed an unfair labour practice on April 19, 2024 (the "ULP Application").

[2] In a decision dated October 11, 2024, the Board directed that the ULP Application and the Decertification Application should be heard together, along with the objections to the conduct of the vote.

[3] The hearing occurred on March 10, 12 to 14 and March 21, 2025. Ms. Elmi testified in support of the recission application. The Union called Angela Hosni, Cameron McConnell, Larry Buchinski, Matthew Lantz, Mohamed Hajinoor, Maimuna Mohamed and Yurdaghul Ferhatoglu. The Employer called Dr. Mohammad Abushar and Shafii Mohamed. The Union and the Employer filed an agreed statement of facts related to bargaining.

[4] Based on the agreement statement of facts filed, the Board's records, and the evidence called at the hearing, the Board finds the following facts.

[5] The Employer runs an Islamic school in Saskatoon. The school was an associate school affiliated with the Saskatoon Public Schools until 2024. In 2024, the Employer became a certified independent school. Mr Hajinoor was the principal of the Employer at all material times and left in April 2024. Mr. Shaffi was the Director of the Employer at all material times and left in November 2024. Ms. Elmi is a caretaker at the Employer as of the date of the hearing and has been one since January 2021. Dr. Abushar became a member of the Board of the Employer in 2023 and remains on the Board.

[6] The Union was first certified with the Employer on May 21, 2021, by a Board order in LRB File No. 036-21.

[7] Cameron McConnell, a Negotiations Officer employed by the Union, sent a letter to the Employer on behalf of the Union to initiate bargaining on June 1, 2021.

[8] Counsel for the Employer responded June 10, 2021. The Employer had different Counsel for the hearing than was involved in the communications related to bargaining in 2021 to early 2024.

[9] On June 16, 2021, Mr. McConnell emailed Counsel for the Employer seeking various employee and employer information required by the Union prior to bargaining.

[10] On July 14, 2021, Mr. McConnell emailed Counsel for the Employer and stated he would not be prepared for bargaining until September or October. Mr. McConnell repeated the Union's

request for information and sought clarification related to the June 1 communication as the registered mail had been returned unclaimed.

[11] On July 14, 2021, Counsel for the Employer responded on the information requests and stated that it would be provided in the next few days.

[12] On September 27, 2021, Mr. McConnell emailed Counsel for the Employer and repeated the requests for the information. Mr. McConnell also made the Union's first proposal of bargaining dates in November and December 2021.

[13] On October 12, 2021, Mr. McConnell emailed Counsel for the Employer. The November bargaining dates were no longer available, and Mr. McConnell sought the Employer's position on the December dates. This is the second time the Union asked the Employer about bargaining dates.

[14] On October 12, 2021, Counsel for the Employer responded and stated she would follow up with the Employer again on the suggested bargaining dates and requested information.

[15] On October 15, 2021, Counsel for the Employer provided Mr. McConnell with a list of current employees and their contracts for the current year.

[16] October 18, 2021, Mr. McConnell emailed Employer Counsel and requested specific employee contracts and related information and whether the Employer would be willing to provide leaves of absence for employees serving on the Union's bargaining committee.

[17] On November 15, 2021, Counsel for the Employer provided Mr. McConnell with some of the requested documents including employee contracts and a benefits summary booklet. Counsel advised that the Employer's bargaining committee was unavailable for the proposed December bargaining dates and sought the Union's availability for January 2022.

[18] Neither side followed up on the possibility of January dates.

[19] On March 2, 2022, Mr. McConnell emailed Counsel for the Employer. Mr. McConnell proposed securing bargaining dates in June or July, 2022. This was the third time the Union specifically sought bargaining dates.

[20] On March 29, 2022, Mr. McConnell emailed Counsel for the Employer regarding the Employer's availability for June and July, 2022. This is the fourth time the Union sought bargaining dates.

[21] On March 29, 2022, Counsel for the Employer responded to Mr. McConnell and advised that the Employer would not be available in July 2022 and asked for Mr. McConnell's dates in June 2022.

[22] Mr. McConnell emailed Counsel for the Employer regarding his limited June availability on April 4 and May 16, 2022.

[23] In June 2022, the Union reassigned bargaining on the file to Mr. Buchinski, Southern Negotiations Officer.

[24] On June 27, 2022, Mr. Buchinski emailed Counsel for the Employer introducing himself and seeking to follow up on securing bargaining dates.

[25] On August 3, 2022, Mr. Buchinski emailed counsel for the Employer seeking availability to for a phone call to discuss bargaining.

[26] On December 13, 2022, Mr. Buchinski emailed Dr. Morshed Chowdhury, a member of the Board of the Employer, seeking a phone call to discuss bargaining.

[27] On January 16, 2023, Ms. Angela Hosni, Deputy Director of Contract Bargaining and Enforcement for the Union, emailed Dr. Chowdhury, Counsel for the Employer, and the Director of the School. Ms. Hosni sought the Employer's availability for February and March, 2023.

[28] Ms. Hosni was formerly on the Board of the School but resigned immediately prior to certification. Ms. Hosni became involved in bargaining as she was concerned about the lack of progress in negotiations. At the hearing, the Employer and Ms. Elmi raised concerns about conflict of interest in Ms. Hosni's participation in bargaining. No evidence was called to demonstrate what the conflict would be and no objection to Ms. Hosni's participation was raised at the time. The Board finds these concerns to lack any evidential foundation or relevance to this proceeding.

[29] Counsel for Ms. Elmi challenged Ms. Hosni's testimony as it relates to her prior knowledge of certification, that is that Ms. Hosni had no knowledge of the Union organizing at the Employer

until the day before the application for certification being filed and resigned upon finding out. The Board found Ms. Hosni's explanation to be credible that the Union is protective of organizing activities even within the Union to prevent interference with organizing drives. In addition to finding this information credible, the Board would also note the various interim decisions related to alleged employer actions during organizing drives, see: *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union v NSC Minerals Ltd.*, 2024 CanLII 14549 (SK LRB); *United Steel, Paper And Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union (United Steelworkers) v. Evraz Wasco Pipe Protection Corporation*, 2016 CanLII 98635 (SK LRB); *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union v Comfort Cabs Ltd,* 2013 CanLII 62414 (SK LRB).

[30] On January 24, 2023, Mr. Mohamed emailed Ms. Hosni stating that the Employer would be available in the final week of March, 2023 and seeking the Union's proposal for a date and time. Over January, February, and March, 2023 there was a series of communications setting tentative bargaining dates for the end of March. The March potential dates ended up not proceeding due to a death in Mr. Mohamed's family.

[31] The parties exchanged communications related to scheduling bargaining in May, July, August, September and October, 2023. The first bargaining session for a unit certified on May 21, 2021, was scheduled for October 19, 2023.

[32] On October 19, 2023, the Union and the Employer met for bargaining at the Union's office. Bargaining began in the morning and took a lunch break and continued in the after until approximately 3:00 pm. The Union presented a proposal based on another educational unit it represented. The Employer did not have a proposal. The Employer advised the Union that it would provide a counter proposal in due course.

[33] On October 24, 2023, Mr. Mohamed emailed Mr. Buchinski and provided certain of the requested documents.

[34] On December 11, 2023, Mr. Buchinski emailed the Employer. Mr. Buchinski noted that the Union had not received a response from the Employer on the Union's proposal and sought further documentation and bargaining dates.

[35] On January 8, 2024, Mr. Buchinski sent a follow up email to the Employer seeking a response and further bargaining dates.

[36] In January 2024, Mr. Lantz spoke to Mr. Mohamed by phone. One of the issues discussed was the Employer confirming the Union would receive a response to its proposal.

[37] On March 19, 2024, Ms. Elmi filed an application for decertification. In paragraph 5, the reasons why the applicant submits that the order ought to be rescinded were:

> *I don't believe this union represents our interest or negotiates adequately on our behalf regarding, wages, benefits, and working conditions. It is almost 3 years since the initial certification, and no collective agreement in place. We prefer direct negotiation with the employer and believe this will yield us better outcomes and a better working environment.*

[38] Ms. Elmi testified that she had never wanted the Union and had told Angela with the Union that she was not joining. Ms. Elmi thought she was paying union dues and did not want to pay them. The Union witnesses testified to not collecting any dues until a first collective agreement was ratified. Ms. Elmi said that she had authored the application but had received some assistance from a friend whose last name she did not remember. Ms. Elmi admitted writing the above reason for decertifying but said the primary reason related to union dues and never wanting the Union. Ms. Elmi admitted she regularly talked to the School's Director, but said she never discussed the decertification application with him. The Board found the testimony to be evasive and dissembling particularly as it relates to Ms. Elmi's relationship to management and assistance in bringing the application. Further, Mr. Mohamed in his testimony had difficulty remembering specifics on many questions and the Board finds his denial of involvement to not be persuasive given the difficulties the witness had with recalling information.

[39] On March 26, 2024, the Board issued a Direction for Vote and Notice of Vote. The voting period was March 26, 2024 to April 16, 2024. The vote was conducted by mail.

[40] At some point in early April 2024, the Employer had a meeting with in scope employees. The subject of the meeting was the certification of the school as a certified independent school. Members of the Board of the Employer addressed some questions related to conditions of employment at this meeting.

[41] The Union filed an objection to the conduct of the vote and an unfair labour practice application on April 19, 2024.

[42] In March 2025, the Union and the Employer met for bargaining and the Employer tabled its first offer.

[43] There was an allegation in the Employer's application that Mr. Hajinoor improperly influenced the vote. The Board finds that there was no evidence before the Board to support this allegation.

Relevant Statutory Provisions:

[44] The Board's jurisdiction to decertify for loss of support is pursuant to s. 6-17 of *the SEA*:

> ***Application to cancel certification order – loss of support***
> ***6-17****(1) An employee within a bargaining unit may apply to the board to cancel a certification order if the employee:*
>
> > *(a) establishes that 45% or more of the employees in the bargaining unit have within the 90 days preceding the date of the application indicated support for removing the union as bargaining agent; and*
> >
> > *(b) files with the board evidence of each employee's support that meets the prescribed requirements.*
>
> *(2) On receipt of an application pursuant to subsection (1), the board shall direct that a vote be taken of the employees in the bargaining unit.*
>
> *(3) If a majority of the votes cast in a vote directed in accordance with subsection (2) favour removing the union as bargaining agent, the board shall cancel the certification order.*
>
> *(4) An application must not be made pursuant to this section:*
>
> > *(a) during the two years following the issuance of the first certification order; or*
> >
> > *(b) during the 12 months following a refusal pursuant to this section to cancel the certification order.*

[45] The duty to bargain in good faith is codified in s. 6-7 of *the SEA*:

> ***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.*

[46] The Union's alleges unfair labour practices pursuant to ss. 6-62 (a), (b), (d), and (r):

> ***Unfair labour practices – employers***
> ***6-62****(1) It is an unfair labour practice for an employer, or any person acting on behalf of the employer, to do any of the following:*
>
> > *(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Part;*
> >
> > *(b) subject to subsection (3), to discriminate respecting or interfere with the formation or administration of any labour organization or to contribute financial or other support to it;*
> >
> > *. . .*

> *(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;*
> *…*
> *(r) to contravene an obligation, a prohibition or other provision of this Part imposed on or applicable to an employer.*

[47] Parties have a duty to commence collective bargaining within 20 days of certification pursuant to s. 6-24 of *the SEA*:

> ***Commencing collective bargaining – first agreement***
> ***6-24*** *Authorized representatives of the union and the employer shall:*
>
> > *(a) meet within 20 days after the board issues a certification order or any other period that the parties agree on; and*
> >
> > *(b) commence collective bargaining with a view to concluding a collective agreement*

[48] Section 25 of *the SEA* confers a power on the Board to assist the parties in concluding terms of a first collective agreement:

> ***Assistance re first collective agreement***
> ***6-25****(1) The employer or the union may apply to the board for assistance in the conclusion of a first collective agreement, and the board may provide assistance pursuant to subsection (6), if:*
>
> > *(a) the board has issued a certification order or a collective bargaining order;*
> >
> > *(b) the union and the employer have engaged in collective bargaining and have failed to conclude a first collective agreement; and*
> >
> > *(c) one or more of the following circumstances exist:*
> >
> > > *(i) the union has taken a strike vote and the majority of those employees who voted have voted for a strike;*
> > >
> > > *(ii) the employer has declared a lockout;*
> > >
> > > *(iii) the board has made a determination pursuant to clause 6-62(1)(d) or 6-63(1)(c) and, in the opinion of the board, it is appropriate to assist the parties in the conclusion of a first collective agreement;*
> > >
> > > *(iv) 90 days or more have passed since the board made the certification order.*
>
> *(2) If an application is made pursuant to subsection (1):*
>
> > *(a) an employee shall not strike or continue to strike and the union shall not declare, authorize or counsel a strike; and*
> >
> > *(b) the employer shall not lock out or continue to lock out the employees.*

(3) An application pursuant to subsection (1) must include a list of the disputed issues and a statement of the position of the applicant on those issues, including the applicant's last offer on those issues.

(4) All materials filed with the board in support of an application pursuant to subsection (1) must be served on the other party within 24 hours after filing the application with the board.

(5) Within 14 days after receiving the information mentioned in subsection (4), the other party shall:

(a) file with the board a list of the disputed issues and a statement of the position of that party on those issues, including that party's last offer on those issues; and

(b) serve on the applicant a copy of the list and statement.

(6) On receipt of an application pursuant to subsection (1):

(a) the board may require the parties to request the minister to appoint a labour relations officer or special mediator to mediate the dispute or establish a conciliation board pursuant to section 6-29; and

(b) if a period of 120 days has elapsed since the appointment of the labour relations officer or special mediator or the establishment of a conciliation board pursuant to clause (a), the board may do any of the following:

(i) conclude, within 45 days after the date of the order, any term or terms of the first collective agreement between the parties;

(ii) order arbitration by a single arbitrator to conclude, within 45 days after the date of the order, any term or terms of the first collective agreement.

(7) Before concluding any term or terms of a first collective agreement, the board or a single arbitrator may hear:

(a) evidence adduced relating to the parties' positions on disputed issues; and

(b) argument by the parties or their counsel or agent

[49] The Board's power to dismiss an application for employer inference was previously in s. 9 of *The Trade Union Act*, R.S.S. 1978, c. T-17:

Dismissal of certain applications
9 *The board may reject or dismiss any application made to it by an employee or employees where it is satisfied that the application is made in whole or in part on the advice of, or as a result of influence of or interference or intimidation by, the employer or employer's agent.*

[50] The Board's power to dismiss from s. 9 of *The Trade Union Act* was carried over into s. 6-6-106 of *the SEA*:

> ***Power to dismiss certain applications*** *– influence, etc., of employers*
> ***6-106*** *The board may reject or dismiss any application made to it by an employee or employees if it is satisfied that the application is made in whole or in part on the advice of, or as a result of influence of or interference or intimidation by, the employer or employer's agent.*

Analysis and Decision:

Order of Proceeding

[51] Ms. Elmi challenged the order of proceeding in this matter arguing that the Union should have to lead its case first. The Board ordered the Applicant to proceed first, followed by the Union, with the Employer presenting last, with reasons to follow.

[52] Ms. Elmi is the moving party in this application; Ms. Elmi seeks to have the Board rescind a previous certification order of the Board. Ms. Elmi, like any party seeking relief, bears the initial burden of proof to establish that she is entitled to the relief sought. The standard of proof is a balance of probabilities: *F.H. v. McDougall,* 2008 SCC 53 (CanLII), [2008] 3 SCR 41.

[53] Ms. Elmi argues that decertification applications are often determined without hearing. No evidence was called on this but based on the Board's records of recent decertification applications, this comment would mainly apply to unopposed applications. An unopposed application only requires the Board to ensure compliance with the statute; this rarely requires an oral hearing.

[54] Ms. Elmi argues based on *Crowder v SEIU-WEST*, 2016 CanLII 156697 (SK LRB) that there is no initial burden on an applicant for decertification and that the Union bears the onus and therefore should have presented its case first. With respect, the Board disagrees. An applicant must establish that they are entitled to relief under s. 6-17, see: *Jureskin v UNIFOR*, 2025 SKLRB 8. This is a low burden, however, as the Union has denied all of Ms. Elmi's facts, Ms. Elmi is required to establish the fundamental facts necessary for to the application.

[55] The Union should present second in this case as it is a. raising allegations under s. 6-106 that it bears the burden of proving, and b. the Union has filed an unfair labour practice that it bears the onus of establishing prior to the Employer presenting a defense.

[56] The Employer is a responding party in both applications and should present its response to both applications at the same time in the interest of efficiency and to avoid case splitting.

[57] As it relates to the issue of Ms. Elmi's right to know the case to meet, in this case, will say statements were ordered in addition to documentary disclosure. Ms. Elmi was aware that the Union would allege the various facts stated in the will say statements, amended reply and objection to vote. If the Union expanded the case beyond what Ms. Elmi had notice of, she could have sought leave to call rebuttal evidence or an adjournment. Ms. Elmi did not seek leave to call rebuttal evidence. If a party does not have notice of a case to meet, the remedy is disclosure of documents or particulars or potentially an adjournment, it is not a reversing of the initial onus on an applicant.

Onus of Proof

[58] For clarity of the above, the Board is applying the following onuses in this case. The onus of proof in a decertification application lies on the applicant to establish that it is properly brought pursuant to s. 6-17.

[59] If a union is seeking to have a s. 6-17 application dismissed pursuant to s. 6-106, the union bears the onus of establishing on a balance of probabilities that it is entitled to the relief it is requesting.

[60] Similarly, the union bears the onus of establishing on a balance of probabilities that the employer committed the unfair labour practices alleged in this application.

[61] A party seeking to have a voter added or removed bears the onus of establishing that that relief should be granted.

Test for Decertification

[62] While the test for decertification and the test for dismissal under s. 6-106 are often intermingled, they should be discussed separately in this case due to the objections related to onus raised by Ms. Elmi. The reason for the intermingling is that the initial onus on an applicant under s. 6-17 is low and most of the analysis will focus on whether the Board should exercise discretion under s. 6-106 to dismiss an otherwise statutorily compliant application. However, there is an onus when seeking relief under s. 6-17 to demonstrate that they are legally entitled to that relief.

[63] An applicant bears the initial onus under s. 6-17 and must establish that the section is met in seeking relief pursuant to it. The prerequisites for relief under s. 6-17 are:

a. The applicant is an employee;
b. The required level of support for a vote has been met and is in the proper form;
c. The application has been brought within the time constraints of the act; and
d. The vote is successful.

[64] The question of support is a threshold question that is considered initially, *Purchase v Canadian Union of Public Employees*, 2024 CanLII 87159 (SK LRB), and after the initial determination is made to direct a vote, the adequacy of support will not be considered retrospectively by the Board, *Canadian Union of Public Employees v The Town of Preeceville*, 2024 CanLII 73795 (SK LRB).

[65] The Board has not yet directed the vote to be tabulated, which leaves the Board to determine whether Ms. Elmi is an employee and whether the application is timely.

[66] The Board finds that Ms. Elmi was an employee and was acting on her own behalf and not as an agent of the Employer. Whether Ms. Elmi's application was influenced or encouraged by the Employer is a separate question from whether she is an employee acting as an employee, the question of influence and advice is addressed below.

[67] In order for an application to be timely or fall within the decertification open period, it must be more than two years since the certification order was granted by the Board and it must be a year since an application has been dismissed under s. 6-17. The certification order was made in May 2021, which is more than two years prior to Ms. Elmi's application. As the Board has no record of a previously unsuccessful application under s. 6-17, the application for decertification is timely.

[68] Subject to the results of the vote, Ms. Elmi has met her initial burden under *the SEA*; the Board will now turn to whether the Union has met its burden for relief under s. 6-106.

Board's Discretion under s. 6-106:

[69] Under section 6-106, the Board has the discretion to dismiss any application where the application is brought by an employee as a result of employer influence. This section has primarily been applied in relation to decertification applications. That is, it has been used to dismiss decertification applications that otherwise comply with the statutory requirements of s. 6-17. Ms. Elmi argues that the Board's recent interpretations of s. 6-106 are wrong, disagreeing with the interpretations in *Kousar v UFCW, Local 1400*, 2025 SKLRB 6 (CanLII), *Mary-Anne Beardy v*

SEIU-West and Saskatoon Twin Charities Inc., 2023 CanLII 118987 (SK LRB), and *Scarla Gould v SEIU-West and Ventas Canada Retirement III*, 2024 CanLII 74885 (SK LRB). Ms. Elmi argues that these decisions depart from previous Board decisions, especially *Crowder v SEIU-WEST*, 2016 CanLII 156697 (SK LRB) and *Williams v United Food and Commercial Workers, Local 1400*, 2014 CanLII 63996 (SK LRB). Ms. Elmi argues that *Crowder* and *Williams* support a narrow interpretation of s. 6-106 that requires proof of direct influence, interference or advice to Ms. Elmi. With respect, this interpretation would require the Board to not only reject recent interpretations of the Board, but also the Courts' interpretation of the exact language of the predecessor provision.

[70] The Board is unaware of any Court decisions interpreting s. 6-106 of *the SEA*. However, the language of s. 6-106 is indistinguishable from its predecessor provision, s. 9 of *the Trade Union Act*. Section 9 of *The Trade Union Act* was consistently interpreted by the Courts as providing the Board with broad discretion to determine when employer influence has occurred.

[71] In *McNutt v. International Woodworkers of America and Moose Jaw Sash & Door Co*. (1963) Ltd., 1980 CanLII 2299 (SK CA), the Saskatchewan Court of Appeal stated the following in relation to the discretion under s. 9:

> *[9] In disposing of the application for rescission the Board, under the provisions of the Act, had unfettered discretion as to what evidence it would consider. Oil Chemical and Atomic Workers International Union and Nicol, supra. As was pointed out by Martland, J., in delivering the judgment of the Supreme Court of Canada in Noranda Mines Ltd. v. The Queen et al., [1969] S.C.R. 321, when, as here, the Board is not subject to any direction contained in the Act, it can consider any factor it deemed relevant. Its previous determination that the employer had engaged in an unfair labour practice was a matter of record and a matter within its knowledge. Thus, in my opinion, it could properly consider that finding in relation to the application to rescind. Too, it was within the Board's jurisdiction to conclude that such finding of an unfair labour practice justified the finding of employer interference as contemplated by Section 9.*

[72] Similarly, in *Saskatchewan Federation of Labour v. Saskatchewan Government and General Employee's Union*, 2010 SKQB 390 (CanLII), Justice Ball stated section 9 provides the Board with discretion fettered only by the standards of judicial review:

> *[63] There are many examples of the broad discretion conferred on the SLRB by The Trade Union Act. Section 9 of The Trade Union Act, which was enacted for the purpose of ensuring that an application by employees for decertification of the union as their bargaining representative is not been influenced by their employer, states:*
>
> > *9 The board may reject or dismiss any application made to it by an employee or employees where it is satisfied that the application is made in whole or in part on*

> *the advice of, or as a result of influence of or interference or intimidation by, the employer or employer's agent.*
>
> *The provision confers complete discretion on the Board to determine whether and when it will "reject or dismiss" such applications, fettered only by standards of judicial review.*

[73] Ms. Elmi puts heavy emphasis on the Board's analysis in *Crowder,* and in particular paras 20-27:

> *[20] All of the cases cited by the Union were decided by the Board prior to the amendments to The Trade Union Act in 2008 that provided for a secret ballot vote by employees to determine their true wishes with respect to the representational question. If an applicant is able to show 45% support from his or her co-workers, the Board is required by section 6-17(2) of the SEA to conduct a secret ballot vote of all employees in the bargaining unit to determine their wishes.*
>
> *[21] The impact of a secret ballot vote by employees is to minimize any potential influence or intimidation of employees in their choice to be represented or not to be represented by a trade union for collective bargaining. Employees may, in secret, and without fear of reprisal, make their choice.*
>
> *[22] That was not so under the legislation which existed prior to 2008. Under that legislation, an applicant for rescission would first have to show that there had been no intimidation or influence in the making of their application before a vote would be ordered by the Board. This process was manifestly unfair to applicants who bore an unnecessary burden to satisfy the Board that they had not been influenced or intimidated rather than the Union being required to show evidence of influence or intimidation. This patronizing attitude towards employees and their desire to be represented or not was displaced by the amendments to The Trade Union Act to allow employees to make their choice by secret ballot.*
>
> *[23] As was noted by the Board in Williams v. United Food and Commercial Workers, Local 1400[14], previous cases before the Board have generally fallen into two (2) categories:*
>
> > *[31] Generally speaking, the cases where this Board has invoked s. 9 of The Trade Union Act have generally fallen into one of two (2) categories:*
> >
> > *1. Circumstances where the Board had compelling reason to believe that the real motivating force behind the decision to bring a rescission application was the will of the employer rather than the wishes of the employees. Examples of such cases include Wilson v. RWDSU and Remai Investment Co., supra; Larry Rowe and Anthony Kowalski v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Canadian Linen and Uniform Services Co., [2001] Sask. L.R.B.R. 760, LRB File No. 104-01; Tyler Nadon v. United Steelworkers of America and X-Potential Products Inc., [2003] Sask. L.R.B.R. 383, 2003 CanLII 62864 (SK LRB), LRB File No. 076-03; and Paproski v. International Union of Painters and Jordan Asbestos Removal, supra.*
> >
> > *2. Circumstances where the Board lost confidence in the capacity of the employees to independently decide the representational question because the nature of an employer's improper conduct was such that it likely impaired them of their capacity to freely do so. Examples of such cases include, Schaeffer v. RWDSU and Loraas Disposal Services, supra; and Patricia Bateman v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Empire Investments*

> *Corporation (Northwood Inn & Suites), 2009 CanLII 18238 (SK LRB), LRB File No. 149-08.*
>
> *[24] Additionally, since many of the cases relied upon by the Union were decided, the constitutional right of association guaranteed by the Canadian Charter of Rights and Freedoms[15] and the SEA[16] has evolved and strengthened by our Courts so as to insure that employees fully enjoy the right to "form, join or assist unions and to engage in collective bargaining through a union* ***of their own choosing".***
>
> *[25] This right cannot and should not be interfered with lightly by the Board. The Board must not act on speculation or innuendo as to what might have occurred. Employees have the right to be represented by or through a union which they have freely chosen to be their representative.*
>
> *[26] It is more than a little self-serving for a union to claim, in the face of an application by employees to remove them as the bargaining agent, that the employees have been influenced, mislead, or intimidated by an employer. That action by the union may, in and of itself, be considered to be a form of intimidation by the union against its members who wish to remove the union as the bargaining agent.*
>
> *[27] It takes a great deal of courage for an employee, such as the Applicant, to stand up for herself and her co-workers against the power and authority of the Union and to withstand cross examination as to her motives and those of her co-workers who are merely seeking to avail themselves of their constitutional and statutory right to choose who, if anyone, represents them.*
>
> *[Emphasis in original]*

[74] The Board does not disagree with the fundamental principles of this analysis, that employees have a Charter right to select or remove representation and that this right of selection should not be lightly interfered with by the Board. However, the Board disagrees that a secret ballot is a full answer to the mischief s. 6-106 seeks to address. A secret ballot minimizes the influence and interference that can happen during the voting period, it does not address the potential for interference in the collection of the support evidence or motivating the bringing of the application for decertification itself.

[75] Further, there is nothing in the language of the balloting provisions that imposes limits on the Board's discretion under s. 6-106. If the intention of the legislature was to prevent the Board from considering pre-balloting conduct that would be reflected in the language of s. 6-106. However, s. 6-106 still refers to the Board considering why applications were brought and not just conduct during the course of an application.

[76] With respect to the Board's analysis in *Crowder* that the move to secret ballots for decertification narrowed the discretion the Board disagrees. While secret ballots decrease the opportunity for directly influencing votes, they do not narrow the Board's discretion to consider employer actions, especially those that constitute unfair labour practices as influencing the bringing of applications in part or in whole.

[77] The Board would reiterate that it is statutorily empowered to dismiss any application that is brought in part or in whole on employer advice, or "as a result of" employer influence interference, or intimidation. In the ordinary meaning, the Board has the discretion to dismiss applications brought on direct advice, but also as the consequence of employer influence, interference, or intimidation. The evidence and factors the Board can consider in determining whether to exercise s. 6-106 are open ended, but the factors as outlined in *Mitchell Wentworth v Teamsters Canada Rail Conference*, 2019 CanLII 83972 (SK LRB), at para 75, are applicable to this case:

> *[75] Section 6-106 provides the Board with discretionary power to dismiss a decertification application when the application has been made in whole or in part due to employer advice, influence, interference or intimidation. The Board must consider the whole of the circumstances. While each case must be assessed on its facts, the Board routinely examines the following factors in assessing a given case:*
>
> *a. The plausibility of the applicant's motives for bringing the application;*
>
> *b. The relationship between the applicant and management, or the provision of special treatment;*
>
> *c. The provision of information or resources to the applicant, on behalf of the employer;*
>
> *d. Words or conduct, on behalf of the employer, that suggest, whether indirectly or overtly, that decertifying will result in a benefit to the employees;*
>
> *e. Demonstrated conduct on behalf of the employer that has hindered bargaining and damaged the union's reputation.*

[78] As it relates to direct involvement, the Board finds that the application was in part brought as a result of Employer motives. Ms. Elmi argues that there was no direct evidence of Employer advice. The Board agrees, however, the circumstantial evidence supports the inference of employer advice based on the timing of the application and the relationship between the parties. The decertification Application was brought in February 2024, the Employer had told the Union it would provide a response proposal at the meeting in October 2023. The timing supports an inference that the Employer influenced a decertification application being brought instead of seeking to reach a first collective agreement. The Board also draws this inference as Ms. Elmi was very close with the Director and often spent time talking to the Director. Ms. Elmi could not identify the last name of the person who assisted her in the application. The Board infers from this inexplicable lack of specificity that Ms. Elmi was hiding the name of individual in order to conceal the Employer's influence and assistance in bringing the application.

[79] As it relates to the question of influence of Employer behaviour at bargaining, the Board finds the Employer's complete failure to bargain for years undermined the Union and influenced the bringing of the application. The stated reasons for loss of support in the application are due to the failure to reach a collective bargaining agreement. As is discussed below, the primary responsibility for the failure to reach a collective agreement is the Employer's. The Employer repeatedly and consistently refused to bargain in good faith or abide by its statutory duties to engage with the Union. This undermined the Union's standing with the employees, denied giving effect of the original employee choice to union influenced the bringing of the decertification application.

[80] Pursuant to s. 6-106, the Board dismisses the application for decertification in LRB File No. 064-24.

Unfair Labour Practices:

[81] Some of the conduct complained of is more than 90 days prior to the filing of the unfair labour practice. Pursuant to s. 6-111(3), the Board may decline to hear any alleged unfair labour practice filed more than 90 days after it arose. The Board discussed dismissals under s.6-111(3) in *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-184 v. Premier Horticulture Ltd.*, 2019 CanLII 10580 (SK LRB):

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

> • *The Board will adjudicate applications filed outside the 90 day limitation period provided the other party consents or otherwise waives the application of the limitation period (ss. 6-111(4)).*
>
> • *Where no such consent or waiver is given, the Board possesses discretion to adjudicate the application (ss. 6-111(3); SGEU, at para. 24).*
>
> • *When exercising this discretion, the Board should apply the non-exhaustive list of counter-vailing factors identified in Toppin (SGEU, at paras.26-27; Toppin, at para. 30)*
>
> • *Prejudice is presumed in all late filings; however, if actual prejudice could result from hearing the application it will be dismissed.[3]*
>
> *[23] The Toppin guidelines mentioned above, were established by the Alberta Labour Relations Board [4]:*
>
> > *1. The 90-day time limit is a legislative recognition of the need for expedition in labour relations matters.*
> >
> > *2. "Labour relations prejudice" is presumed to exist for all complaints filed later than the 90-day limit.*
> >
> > *3. Late complaints should be dismissed unless countervailing considerations exist.*
> >
> > *4. The longer the delay, the stronger must be the countervailing considerations before the complaint will be allowed to proceed. There is no separate category of "extreme" delay.*
> >
> > *5. Without closing the categories of countervailing considerations that are relevant, the Board will consider the following questions:*
> >
> > > *(a) Who is seeking relief against the time limit? A sophisticated or unsophisticated applicant?*
> > >
> > > *(b) Why did the delay occur? Are there extenuating circumstances? Aggravating circumstances?*
> > >
> > > *(c) Has the delay caused actual litigation prejudice or labour relations prejudice to another party?*
> > >
> > > *(d) And, in evenly balanced cases, what is the importance of the rights asserted? And what is the apparent strength of the complaint?*

[82] The Board declines to apply the time limitation in this case as it relates to bargaining in good faith and the duty to engage in bargaining. As will be discussed below, the Employer's breach was continuing. The Employer is alleged to have failed to bargain in good faith between the date of certification and the date of the filing the unfair labour practice. The alleged failure was continuous. The Union likely should have brought the application far sooner and sought first collective agreement assistance from the Board, however, these are not reasons to decline to hear the allegations.

[83] The Board dismisses the unfair labour practice as untimely as it relates to the requests for information. None of the requests were within the 90 days prior to filing and the Employer had been responsive to providing some information in the time immediately prior. The Union is a sophisticated entity and there is no explanation why this issue could not have been raised earlier. The prejudice is both sides is minimal, but the Union retains the ability to seek further information and seek to enforce those requests in a timely manner if denials of the requests give rise to unfair labour practices. There is no continuing breach if there has been information provided and the Board declines to evaluate the older requests and delays in the provision of information. If the provision of information was hindering bargaining, relief should have been sought in compliance with s. 6-111(3).

[84] The Board will address the allegations under ss. 6-7 and 6-62(1)(d) as they relate to bargaining in bad faith, and the allegations of influence and intimidation during the voting period.

6-7 and 6-62(1)(d)

[85] The Union has filed unfair labour practices related to an allegation the Employer failed to bargain and failed to bargain in good faith. The Board finds that the Employer has failed to bargain and has failed to bargain in good faith. The legislature has given a clear intention that first collective agreements are to be settled quickly, both parties have not achieved this goal, but the majority of the failure is attributable to the actions of the Employer.

[86] The legislature has indicated an intention that first collective agreements should be settled within a year, and this timeline is linked to the breathing room period for newly certified unions of two years. This intention is drawn from the collective timelines of ss. 6-17, 6-24, and 6-25. Pursuant to section 6-24, parties are required to meet and begin collective bargaining within 20 days of the Board issuing a certification order. Under s. 6-25, if an agreement has not been reached and more than 90 days have passed, or other preconditions are met, parties may seek the assistance of the Board. The first step in assistance of the Board is the seeking a ministerial appointment of a mediator. If 120 days pass after the appointment of a mediator, a party may seek further assistance of the Board, and the Board may in its discretion either hold a hearing to conclude the collective agreement or order the matter to arbitration. The Board order, or arbitration order, determining the collective agreement must be issued within 45 days. The combined timelines of these provisions is less than 300 days. Considering time for response to various applications, there is a clear intention for a first collective agreement to be settled within the first year.

[87] This intention is also evident from the two year limitation on decertification applications in s. 6-17. Unions are provided two years under a new certification for breathing room to establish themselves. The ability to settle a collective agreement within that time is essential to a union being able to establish itself. A union that fails to utilize this breathing room risks decertification.

[88] Fundamental to this timeline is parties fulfilling their duty to meet and to negotiate in good faith. A foundational element of good faith bargaining is committing time and resources to meeting the other side. As discussed by the Supreme Court of Canada in *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 (CanLII), [2007] 2 SCR 391:

> *100 A basic element of the duty to bargain in good faith is the obligation to actually meet and to commit time to the process (Carter et al., at p. 301). As explained by Adams:*
>
> *The failure to meet at all is, of course, a breach of the duty. A refusal to meet unless certain procedural preconditions are met is also a breach of the duty.*
> *...*
> *A failure to make the commitment of time and preparation required to attempt to conclude an agreement is a failure to make reasonable efforts. [pp.10-101 and 10-106]*
>
> *101 The parties have a duty to engage in meaningful dialogue and they must be willing to exchange and explain their positions. They must make a reasonable effort to arrive at an acceptable contract (Adams, at p. 10-107; Carrothers, Palmer and Rayner, at p. 453). As Cory J. said in Royal Oak Mines Inc. v. Canada (Labour Relations Board), 1996 CanLII 220 (SCC), [1996] 1 S.C.R. 369:*
>
> > *In the context of the duty to bargain in good faith a commitment is required from each side to honestly strive to find a middle ground between their opposing interests. Both parties must approach the bargaining table with good intentions. [para. 41]*
>
> *102 Nevertheless, the efforts that must be invested to attain an agreement are not boundless. "[T]he parties may reach a point in the bargaining process where further discussions are no longer fruitful. Once such a point is reached, a breaking off of negotiations or the adoption of a 'take it or leave it' position is not likely to be regarded as a failure to bargain in good faith" (Carter et al., at p. 302).*

[89] This Board found the failure to meet and engage is a breach of both section 6-7 and clause 6-62(1)(d) in *United Food and Commercial Workers Union, Local 1400 v AAA Security Group Ltd*., 2022 CanLII 100184 (SK LRB):

> *[12] Moreover, the Union's current complaint extends beyond a failure to immediately engage in collective bargaining. The Employer has failed entirely to respond to the Union's communications, to attempt to meet with the Union, or to otherwise engage with the process. It is well established that a failure to meet at all is a breach of the duty to bargain in good faith: Health Services and Support - Facilities Subsector Bargaining Assn. v British Columbia, 2007 SCC 27 (CanLII), [2007] 2 SCR 391 [Health Services] at para 100. This is perhaps the most basic of the procedural requirements of the duty to bargain in good faith.*

> *The Employer's complete lack of participation in the process is a contravention of sections 6-7 and 6-62(1)(d) of the Act.*

[90] In *SEIU-West v Canadian Blood Services*, 2022 CanLII 25872 (SK LRB), the Board found the failure to meet for more than 14 months after receiving the notice to bargain constituted an unfair labour practice:

> *[48] The Board has reached the conclusion that the Employer has committed unfair labour practices pursuant to clauses 6-62(1)(d) and (r) of the Act. This determination is based on the combination of the following conduct.*
>
> *[49] First, despite repeated requests by the Union, the Employer failed to provide any dates for bargaining for more than 10 months after receiving the notice to bargain from the Union. Then, when the Employer finally offered dates for bargaining, those dates were more than 4 months further into the future. Failing to make its representatives available to meet for more than 14 months after receipt of the notice to bargain does not comply with the Employer's obligation to "immediately" engage in collective bargaining.*

[91] The Board finds that the Employer breached ss. 6-7, and 6-61(1)(d) and (r). The Employer failed to meet with the Union, commit time or resources, and failed to make all reasonable efforts to reach an agreement.

[92] The Union was certified with the Employer on May 21, 2021 and the ULP Application was filed on April 19, 2024. In that time, the Employer attended one bargaining session, tabled zero proposals, and repeatedly delayed or was unresponsive to the Union's requests for dates. At the one bargaining session in October 2023, the Employer stated that they would be providing a reply proposal. That reply did not come prior to the filing of the unfair labour practice in April 2024. This failure to meaningfully engage for years represents a refusal to bargain and a breach of the Employer's duty to make all reasonable efforts to reach a collective agreement.

[93] The Employer argues that the Union bears some responsibility for the delay. The Board would agree the Union could have been more aggressive and sought the assistance of the Board under s. 6-25 or bringing an unfair labour practice for the failure to bargain earlier. However, the Union asked for dates to bargain consistently over a period of years. The Employer never initiated the scheduling of bargaining. The Employer bears the majority of responsibility for the issues with scheduling and bears complete responsibility for its failure to engage and commit any resources to bargaining.

[94] This finding of a failure to engage is supported by the evidence of Dr. Abushar, who testified that when he joined the Board of the Employer in 2023, there were no materials prepared

in relation to bargaining. This is clear evidence that the Employer did not take commit time or resources as is required by law and refused to engage in the process.

[95] The Employer points to issues it had in the community and issues related to the transition from an associate school to an independent school as reasons for delay. These may be reasons for acceptable delay that might be measured in months. It does not justify delay that is measured in years. The duty to bargain is a legal duty, having competing demands on one's time does not alleviate the legal requirement to comply with the duty to bargain.

[96] The Employer breached ss 6-7 and 6-62(1)(d) of *the SEA* by only attending one bargaining session in almost three years, tabling no proposals, and dedicating no meaningful resources to bargaining.

6-62(1)(a)

[97] The Union alleges the Employer meeting with employees and other Employer activity during the voting period contravened s. 6-62(1)(a) of *the SEA.* The test under s. 6-62(1)(a) is an objective test focusing on the impact of alleged communications on an employee of reasonable fortitude, as stated in *United Food and Commercial Workers, Local 1400 v Securitas Canada Limited,* 2015 CanLII 43778 (SK LRB):

> *[31] By way of background, the substantive test for determining whether or not impugned communications by an employer represents a violation of s. 6-62(1)(a) of The Saskatchewan Employment Act involves a contextualized analysis of the probable consequences of the employer's conduct on employees of reasonable intelligence and fortitude. In other words, if the Board is satisfied that the probable effect of the impugned communications of an employer would have been to interfere with, restrain, intimidate, threaten or coerce that employer's employees, the communications are unlawful and a violation can be sustained. This test is an objective one. The Board's approach is to determine the likely or probable effects of impugned employer communications upon a so-called "reasonable" employee; being someone of reasonable intelligence and possessed of reasonable fortitude and resilience.*

[98] The Board finds that the Union's allegation under s. 6-62(1)(a) has not been made out. There was a meeting during the voting period, however the subject of the meeting was the certification of the school, moving from an associate school to a certified independent school, and not the decertification of the Union. There were questions raised during that meeting about wages, and the evidence the Board heard was that the Board members responded in a manner that was not intimidating to an employee of reasonable intelligence and fortitude. Stating that matters must be negotiated with the Union is not offside s. 6-62(1)(a) without more.

[99] As it relates to the intimidation of employees at home referenced in the application itself, the Board does not find this allegation has been supported by the evidence.

Objections to the Conduct of the Vote

[100] As the Board has found that the decertification application in LRB File No. 064-24 should be dismissed, the objections to the vote are rendered moot and also dismissed. If the Board had directed a tabulation, the tabulation would have been of the voter's list as it currently stands. The allegations of voting irregularities were not proven and the employees who have grieved their terminations still have a community of interest. The part-time teacher should have been included in the voter's list as he was an employee at the time of the application and the time of the vote, but as his relationship has now been severed with the School and that is uncontested, he has no continuing community of interest to justify his inclusion through an additional ballot.

Conclusion:

[101] As a result, with these Reasons, an Order will issue that the Application for Decertification in LRB File No. 064-24 and the Objection to the Conduct of the Vote in 082-24 are dismissed and the application for an Unfair Labour Practice in LRB File No. 083-24 is granted. The Board orders that the ballots in LRB File No. 064-24 are to be destroyed within 60 days of this decision. The Board makes the following orders in relation to the unfair labour practices:

a) The Board declares that the Employer breached ss. 6-7, 6-62 (1)(d), and 6-62(1)(n);

b) That employer shall cease and refrain from contravening ss. 6-7 and. 6-62(1)(d); and

c) That the Employer shall post this decision and order for a period of 60 day in a place where it may be reviewed freely by employees.

[102] 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

Kyle McCreary
Chairperson