Saskatchewan
Labour Relations Board

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 5428, Applicant v THE TOWN OF ESTERHAZY, Respondent

LRB File No. 042-25, September 9, 2025
Chairperson, Kyle McCreary; Board Members: Al Parenteau and Shelley Boutin-Gervais
Citation: *CUPE v Esterhazy*, 2025 SKLRB 43

Counsel for the Applicant, CUPE Local 5428:	Dawid M. Werminski
Counsel for the Respondent, The Town of Esterhazy:	John Gormley, K.C.

Deferral to Arbitration – Essential Nature of the Dispute relates to interpretation and alleged violation of collective bargaining agreement – Unfair Labour Practice deferred to Arbitration

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** The Canadian Union of Public Employees, Local 5428 ("CUPE") has filed an unfair labour practice against the Town of Esterhazy ("the Employer"). The unfair labour practice application ("the ULP") was filed on March 3, 2025, and relates to allegations that the Employer improperly abolished a position and denied bumping rights of the incumbent and consequently intimidated the membership and executive of the Union during bargaining in violation of ss 6-7, 6-62(1)(a), 6-62(1)(b), 6-62(1)(g), and 6-62(1)(n) of *The Saskatchewan Employment Act,* SS 2013, c S-15.1 ("the Act"). CUPE seeks reinstatement of the affected individual, backpay and declarations. Grievance 2024-12-01 was filed by CUPE on February 7, 2025, under the Collective Bargaining Agreement in force between the parties ("the CBA") in relation to the position abolishment ("the Grievance"). The Employer asks this Board to defer the ULP in favour of the Grievance, CUPE opposes this request.

[2] CUPE and the Employer are parties to a Certification Order in LRB File No. 050-19. The parties' first collective agreement, the CBA, expired on December 31, 2023.

[3] Ms. Tracy Swereda began her employment with the Employer in July 2020. Ms. Swereda was employed in the position of Finance Officer at that time. In 2022, Ms. Swereda became involved in the executive of CUPE. In 2024, Ms. Swereda was elected to be a part of CUPE's bargaining committee.

[4] In 2023, the Employer employed a new Town Administrator. The Employer, from August 2023 onwards, issued coaching and reprimands in relation to Ms. Swereda's work performance.

[5] The Employer issued disciplinary action against Ms. Swereda in a written warning in June 2024 and a two (2) day suspension in July 2024. That discipline is currently the subject of grievances by CUPE.

[6] The first days of collective bargaining towards a new agreement were on November 26 - 29, 2024.

[7] On December 13, 2024, the Employer advised of its intention to abolish the position of Finance Officer, Ms. Swereda's position.

[8] CUPE requested the Employer to see if Ms. Swereda could bump into another position under Article 7 of the CBA. The Employer denied this request.

[9] On February 7, 2025, CUPE filed the Grievance. The Grievance claims the Employer violated Articles 2 and 7, the Purpose Article, and other relevant provisions of the CBA and Legislation in abolishing the Finance Officer position. Article 2 of the CBA is titled No Discrimination or Harassment. Article 7 is titled Layoff and Recall. The CBA contains a management rights clause in Article 4. Grievance procedure is set out in Article 10 of the CBA.

[10] CUPE filed the ULP on March 3, 2025.

[11] The Grievance was referred to arbitration on April 7, 2025.

[12] CUPE seeks the following relief in the ULP:

> *Reinstatement of Ms. Swereda into her previous role of Financial Officer, or in the alternative, reinstatement into a role with the Employer within her former department.*
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> *A declaration that the employer committed an Unfair Labour Practice, or multiple Unfair Labour Practices in violation of The Saskatchewan Employment Act by acting in a manner that did intimidate or could have been seen to intimidate Ms. Swereda in her capacity as a member of the Local executive, the Local executive more broadly, and/or its membership. A declaration that the Employer, through the actions that it took at the time when it took them, failed to bargain in good faith, and in fact, did bargain in bad faith.*

[13] CUPE seeks the following relief in the Grievance:

Full redress, including, but not limited to, lost wages, lost benefits, lost pension contributions, lost vacation accrual, loss of seniority and service, immediate reversal of the layoff and full reinstatement, the member receiving a written letter of apology, and otherwise be made whole, including any other redress deemed appropriate by an arbitrator.

Relevant Statutory Provisions:

[14] Disputes as to the interpretation and alleged contravention of the CBA fall within the jurisdiction of an arbitrator pursuant to s. 6-45 of the Act:

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

[15] A determination of an arbitrator or arbitration Board is final and binding pursuant to s. 6-49 of the Act:

> ***Rules of arbitration***
> *6-49(1) Subsections (2) to (4) apply to all arbitrations required to be conducted in accordance with sections 6-45 to 6-48.*
>
> *(2) The finding of an arbitrator or arbitration board:*
> *(a) is final and conclusive;*
> *(b) is binding on the parties with respect to all matters within the legislative jurisdiction of Saskatchewan; and*
> *(c) is enforceable in the same manner as a board order made pursuant to this Part.*
>
> *(3) An arbitrator or an arbitration board may:*
> *(a) exercise the powers that are vested in the Court of King's Bench for the trial of civil actions:*
> *(i) to summon and enforce the attendance of witnesses;*
> *(ii) to compel witnesses to give evidence on oath or otherwise; and*
> *(iii) to compel witnesses to produce documents or things;*
> *(b) administer oaths and affirmations;*
> *(c) receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the arbitrator or arbitration board considers appropriate, whether admissible in a court of law or not;*

> *(d) enter any premises where work is being done or has been done by the employees or in which the employer carries on business, or where anything is taking place or has taken place concerning any disputes submitted to the arbitrator or arbitration board and:*
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> *(i) inspect and view any work, material, machinery, appliance or article in that place; and*
>
> *(ii) question any person respecting any thing or any matter;*
>
> *(e) authorize any person to do anything that the arbitrator or arbitration board may do pursuant to clause (d) and report to the arbitrator or arbitration board on anything done;*
>
> *(f) relieve, on terms that in the arbitrator's or arbitration board's opinion are just and reasonable, against breaches of time limits set out in the collective agreement with respect to a grievance procedure or an arbitration procedure;*
>
> *(g) dismiss or reject an application or grievance or refuse to settle a dispute if, in the opinion of the arbitrator or arbitration board:*
>
> *(i) there has been unreasonable delay by the person bringing the application or grievance or requesting the settlement; and*
>
> *(ii) the delay has operated to the prejudice or detriment of the other party; and*
>
> *(h) encourage settlement of the dispute and, with the agreement of the parties, may use mediation or other procedures to encourage settlement at any time during the arbitration.*
>
> *(4) An arbitrator or arbitration board may substitute any other penalty for the termination or discipline of an employee that the arbitrator or arbitration board considers just and reasonable in the circumstances if:*
>
> *(a) the arbitrator or arbitration board determines that an employee has been terminated or otherwise disciplined by an employer; and*
>
> *(b) the collective agreement governing in whole or in part the employment of the employee by the employer does not contain a specific penalty for the infraction that is the subject-matter of the arbitration.*

[16] The Board's authority to defer to an alternative method of resolution is set out in s. 6-111(1)(l):

> ***6-111****(1) With respect to any matter before it, the board has the power:*
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> *…*
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> *(l) to defer deciding any matter if the board considers that the matter could be resolved by mediation, conciliation or an alternative method of resolution;*

Analysis and Decision:

[17] The Board's approach to deferral is traced back to the Saskatchewan Court of Appeal's decision in *U.F.C.W., Local 1400 v. Saskatchewan (Labour Relations Board)*, 1992 CanLII 8286 (SK CA). In that decision, the Court set out three preconditions that must coexist before the Board can defer to arbitration:

> *[16] Morris Rod Weeder speaks of "an alternative remedy of the same grievance" and makes clear the principle that where a trade union elects both the grievance-arbitration procedure provided for in the collective agreement between the parties and an application to the Board for an unfair labour practice order to resolve the same dispute, the Board may consider the trade union's election to use the grievance-arbitration procedure as a relevant*

> *factor in determining whether to dismiss the application. The case is authority for the proposition that for such an election to constitute a relevant (as opposed to an "extraneous" or "irrelevant") consideration three preconditions must coexist: (i) the dispute put before the Board in the application for an unfair labour practice order and the dispute intended to be resolved by the grievance-arbitration procedure provided for in the collective agreement must be the same, dispute; (ii) the collective agreement must make possible (i.e. empower) the resolution of the dispute by means of the grievance-arbitration procedure, and (iii) the remedy under the collective agreement must be a suitable alternative to the remedy sought in the application to the Board. There appeared to be no question between the parties in that case that these three preconditions coexisted to constitute the necessary foundation for the court's holding that the trade union's election was a relevant consideration.*

[18] The Board has recently addressed deferrals in *SGEU v Valley Hill Youth Treatment Centre*, 2025 SKLRB 11 (CanLII); *Northern Livestock Sales v The Grain and General Services Union (ILWU Canada)*, 2024 CanLII 135216 (SK LRB), and *UFCW, Local 1400 v Affinity Credit Union*, 2025 SKLRB 3 (CanLII). In *UFCW, Local 1400 v Affinity Credit Union*, the Board stated the following approach to deferrals:

> *[62] Where an unfair labour practice application has been filed, and that application raises an issue related to the meaning, application or alleged contravention of a collective agreement, the Board shares concurrent jurisdiction with an arbitrator. The law with respect to this issue is set out by the Board in International Association of Heat & Frost Insulators and Asbestos Workers, Local 119 v AlumaSafway, 2019 CanLII 120651 (SK LRB) ["AlumaSafway"]:*
>
> > *[62] The Board has on many occasions acknowledged that, where an unfair labour practice application has been filed, and that application raises an issue related to the meaning, application or alleged contravention of a collective agreement, the Board shares concurrent jurisdiction with an arbitrator. On those applications, the Board's jurisdiction arises from the unfair labour practice provisions in the Act. Many of the related cases were decided pursuant to The Trade Union Act, RSS 1978, c T-17 ["The Trade Union Act"]. In The Trade Union Act, there is neither a provision similar to section 6-41, nor a provision that creates an unfair labour practice arising from the breach of a collective agreement.*
> >
> > *[63] Still, deferral to an arbitrator is not automatic or even unconditional. It needs to be appropriate under the circumstances. As explained by the Board in Canadian Union of Public Employees, Local 3736 v North Saskatchewan Laundry and Support Services Ltd., [1996] Sask LRBR 54 at 60:*
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> > > *It is our view that the jurisdiction of this Board and of an arbitrator under a collective agreement must, in many cases, be viewed as concurrent. Consequently, it will continue to be necessary for this Board, depending on the circumstances of each case, to confront the question of when we should exercise our discretion to defer a question to an arbitrator.*
> >
> > *[64] In deciding whether to defer, the Board takes into account its proper role, as well as the important policy objective of promoting the capacity and willingness of the parties to engage in collective bargaining on their own accord. The Board must be careful not to encourage parties to come to the Board as a forum of first resort for resolving disputes as to the meaning, application or alleged contravention of a collective agreement. The Board should give full consideration to the value of ensuring that the parties are equipped to resolve their differences through*

> *collective bargaining, and after collective bargaining, through the very processes that they have established and set out in the collective bargaining agreement.*
>
> *[65] Generally speaking, the Board will defer to the grievance-arbitration process contained in a collective agreement where the dispute relates to the meaning, application or alleged contravention of a collective agreement and complete relief can be achieved through that process.*
>
> *[63] In AlumaSafway, in determining whether to defer an unfair labour practice application to the grievance arbitration process, the Board relied on the test established by the Court of Appeal for Saskatchewan in UFCW, Local 1400 v. Saskatchewan (Labour Relations Board) 1992 CanLII 8286:*
>
> > *(i) the dispute put before the Board in an application for an unfair labour practice order and the dispute intended to be resolved by the grievance-arbitration procedure provided for in the collective agreement must be the same dispute;*
> >
> > *(ii) the collective agreement must make possible (i.e. empower) the resolution of the dispute by means of the grievance arbitration procedure; and*
> >
> > *(iii) the remedy under the collective agreement must be a suitable alternative to the remedy sought in the application to the Board*

[19] Justice Ball in *United Food and Commercial Workers, Local 1400 v. Westfair Foods Ltd.,* 2002 SKQB 154 (CanLII), commented on the importance of deferral in ensuring that labour disputes are adjudicated only once:

> *[88] Having concluded that Mr. Brown's choice of labour arbitration was appropriate to his complaint, I note the Supreme Court of Canada's direction in Weber v. Ontario Hydro, New Brunswick v. O'Leary and Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners, supra, that wherever possible employment issues should be comprehensively dealt with in one forum only. Once an employment dispute has been adjudicated, substantially the same complaint should not be heard again in another forum. This may require deferral by a forum to the complaint's forum of choice.*
>
> *[89] Adjudicators seeking practical workplace solutions can and do defer to a more appropriate forum in any particular case. That approach was uniformly adopted a number of years ago by labour relations boards in Canada where a complaint might be the subject of an arbitrable grievance as well as an alleged unfair labour practise within the board's jurisdiction.*
>
> *[90] Labour relations boards defer to a labour arbitrator if the essential nature of the complaint arises out of the collective agreement and if an arbitrator can provide complete relief in response to the complaint. The board will hear the complaint if arbitration is unavailable or unsuitable for any reason such as a remedial limitation. The boards deferral does not prejudice the applicant's right to bring the matter back to the board if the arbitrator declines jurisdiction. By taking that approach the board ensures that it does not abdicate its statutory responsibility while recognizing and promoting arbitration as the statutorily mandated scheme for the resolution of employer/employee disputes. See, for example, U.F.C.W., Local 1400 v. Western Grocers, [1993] 1st Quarter Sask. Labour Rep. 195; Saskatoon (City) v. C.U.P.E., Local 59 (1990) 8 C.L.R.B.R. (2d) 310; Canadian Linen Supply Co. and R.W.D.S.U. (1990) 8 C.L.R.B.R. (2d) 228; Saskatchewan Government Insurance, Regina, Saskatchewan v. Saskatchewan Insurance Office and Professional Employees Union, Local 397 (1987), 15 C.L.R.B.R. (NS) 313; United Steelworkers of*

America, Local 4728 v. Willock Industries Ltd. (1980) 31 Sask. Labour Rep., No. 5, 72 and see also Valdi Inc., [1980] O.L.R.B. Rep. 1254.

[20] While the Board raised concerns in *SGEU v Valley Hill Youth Treatment Centre* and *610539 Saskatchewan Limited (Operating as Heritage Inn Saskatoon) v The United Food and Commercial Workers Union*, 2024 CanLII 15859 (SK LRB) about the continuing application of three part test for deferral in light of subsequent jurisprudence from the Supreme Court of Canda including *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 (CanLII), [2021] 3 SCR 107, the Board has continued to apply the three part test but with particular emphasis on the essential character of the dispute.

[21] The first question is whether the same dispute is raised in the ULP and the Grievance. The Employer argues it is the same dispute, CUPE asserts that the ULP is broader than the Grievance. The Board resolves this question by considering the essential nature of the dispute. In determining the essential character, "[t]he relevant inquiry is into the facts alleged, not the legal characterization of the matter": *Northern Regional Health Authority v. Horrocks*, at para 40. The facts alleged in this case arise from the interpretation and alleged contravention of the CBA.

[22] The essential nature of this dispute relates to whether the Employer improperly exercised its management rights abolishing a position for an improper purpose and whether the Employer is correct that the CBA does not have bumping rights or CUPE is correct that the CBA already includes bumping rights. An allegation that the bad faith motive was related to bargaining does not remove that in the essential nature the question is whether the Employer exercised management rights within their inherent and bargained constraints. The dispute arises directly from the Employer's purported exercise of articles of the CBA. The allegation of unfair labour practices in the ULP does not alter the essential nature of the dispute and the ULP and the Grievance are the same dispute. This is a matter of concurrent jurisdiction, but the dispute relates to the meaning, application and alleged contravention of the terms of the CBA.

[23] On the second criteria, the CBA does empower the resolution by grievance of the position abolishment and the dispute on bumping rights. Further, the evidence filed along with the deferral requests demonstrates that CUPE has filed a grievance.

[24] On the third criteria, the CBA provides a suitable remedy to the issue of the alleged improper abolishment and denial of bumping rights. If CUPE is successful, Ms. Swereda can be made whole. The arbitrator may not have jurisdiction to declare unfair labour practices but does

have broad remedial jurisdiction to rectify the breach as it relates to the essential nature of the dispute.

[25] Considering the above and the that the essential nature of the dispute arises directly and inferentially from the interpretation and application of the terms of the collective agreement, the Board views this as an appropriate case to defer to an alternative method of resolution. While a grievance arbitration does not have jurisdiction to determine unfair labour practices, the goal of deferral is for the most appropriate forum to determine disputes. An arbitration is the most appropriate forum as the Board's jurisdiction on the questions raised is limited to the Employer's conduct as it relates to unfair labour practices. An arbitrator has the authority to determine compliance with the CBA generally including whether management rights are being exercised in compliance with the CBA. The essential nature of the dispute relates to the alleged improper exercise of management rights; this can fully be addressed by an arbitrator and there is a risk it could only be partially adjudicated by the Board. The Board generally defers when the three pre-conditions are met, and the essential nature relates to the interpretation, application, and alleged contravention of the CBA. The Board sees no reason to depart from this practice in this case.

[26] The Grievance has been filed and the parties are advancing through the grievance process with the matter already referred to arbitration. That process should complete prior to the Board taking any further steps in the ULP.

[27] As a result, with these Reasons, an Order will issue that the Application for an Unfair Labour Practice in LRB File No. 042-25 is deferred pending the outcome of the Grievance.

[28] 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 **9th** day of **September, 2025.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson