

**650139 SASKATCHEWAN LTD., Applicant v UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Respondent, SHAHEENA KOUSAR, Respondent, and LESTER VILLAHERMOSA, Respondent**

LRB File No. 169-23; February 21, 2025

Chairperson and Executive Officer, Kyle McCreary (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act*)

Citation: *UFCW v Kousar*, 2025 SKLRB 5

Counsel for the Applicant, 610539 Saskatchewan Ltd.

Steven Seiferling

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Local 1400

Heath Smith

For the Respondent, Lester John Villahermosa

Self – represented

For the Respondent, Shaheena Kousar

Self - represented

**Late Reply – Request for an extension of time denied**

**REASONS FOR DECISION**

**Background:**

**[1] Kyle McCreary, Chairperson and Executive Officer:** UFCW, Local 1400 (“The Union”) sought to an extension of time to file a reply to the 640139 Saskatchewan Ltd.’s (“the Employer”) objection to vote in LRB File No. 169-23. This request was denied with reasons to follow. These are the reasons for the denial.

**[2]** Ms. Kousar and Mr. Villahermosa filed decertification applications in LRB Files No. 160-23 and 161-23 on November 11, 2023.

**[3]** On November 21, 2023, the Union sent an email in respect of LRB Files No.160-23 and 161-23.

**[4]** The Union filed a reply in 160-23 on November 29, 2023.

**[5]** The Union also filed a reply in 161-23 on November 29, 2023.

**[6]** On November 30, 2023, the Employer filed replies in LRB Files No. 160-23 and 161-23 and an Objection to the Conduct of the Vote, subsequently assigned LRB File No. 169-23.

**[7]** Also On November 30, 2023, the Board Officer emailed the parties, the pertinent part of the email reads:

*Attached is an Objection to Conduct of Vote or Counting of Ballots Application regarding LRB File Nos. 160-23 & 161-23 filed with the Saskatchewan Labour Relations Board, referenced as LRB File No. 169-23.*

*United Food and Commercial Workers Union, Local 1400, Lester Villahermosa and Shaheena Kousar are provided with ten (10) business days to file a Reply – Form 21 (attached) should they wish to comment or object to the application.*

**[8]** The Union did not file a reply in response to this message, nor request an extension within the timeline provided.

**[9]** The three applications were set to be heard on March 25, 26, and 28, 2024.

**[10]** Case Management was held on the three applications on March 19, 2024.

**[11]** Subsequent to Case Management on March 19, 2024, the Board Clerk sent the directions of the Board following case management:

*Further to the case management conference this morning, the Board is providing following direction:*

*...*

*4. The issue raised by the Employer in its Objection to Conduct of Vote is uncontested. Given the narrow nature of the issue raised by the Employer and the absence of a Reply, the Board will not need to hear evidence as to whether the listed employees quit on the days they are said to have quit.*

**[12]** In response to the Board's direction, on March 19, 2024, the Union sought to raise objections from the November 21, 2023 email.

**[13]** On March 20, 2024, UFCW, Local 1400 filed the current application seeking leave to file a late reply.

**[14]** The originally set hearing dates were adjourned on March 22, 2024.

**[15]** The reply in this matter was due on December 14, 2023. March 20, 2024, is over 3 months after the deadline provided to the Union.

## Analysis and Decision:

### The Late Reply

[16] Both parties rely on *CWS Logistics Limited v United Food and Commercial Workers, Local 1400*, 2018 CanLII 68439 (SK LRB) for the applicable test:

*[13] In Application to Extend the time for filing of an Objection to the Conduct of a Vote, LRB File No. 112-11, August 26, 2011 (unreported) the Executive Officer stated that the criteria outlined by the Court of Appeal in Dutchak v. Dutchak, [2009] SKCA 89 (CanLII), para 12 should be adopted as the standard by which the Executive Officer considers the exercise of the discretion to extend time limits pursuant to section 34 of the Regulations: According to these decisions, in determining whether leave should be granted the applicant must persuade the Court that: (i) there is a reasonable explanation for the delay; (ii) he or she possessed a bona fide intention to appeal within the time limited for appeal; (iii) there is an arguable case to be made to a panel of the Court; and (iv) there will be no prejudice to the respondent, if leave is granted beyond what would be incurred in the usual appeal process. In any given case, one or more factors may be more important than another.*

[17] The length of delay is significant and weighs in favour of disallowing the reply. The parties did not submit any cases where the Board had permitted a reply to be filed after this length of delay on the eve of a hearing.

[18] The explanation for the delay is less than compelling. The Union states the issues it seeks to raise were raised in the November email. The Union was advised by the Board of the deadline for filing a reply to the objection to vote, similar to the situation in *Janet Clarke v AgraCity Crop & Nutrition Ltd.*, 2021 CanLII 23402 (SK LRB) (“*Janet Clarke*”), this email from the Board provided clarity to the parties as to the Board’s expectation of when any reply was to be filed. The email relied upon by the Union predates the Board’s request for the filing of a reply. The Board expects its requests for parties to take formal positions in replies to be followed.

[19] Turning to the strength of the case, it is difficult to determine the strength of the arguable case. The issue in 169-23 is the date of resignation of specific employees. The Union does not disagree that employees who resigned prior to voting should not be able to vote but wants to test the Employer’s evidence of the resignations. This is not a strong case, but putting a party to strict proof of their allegations is potentially an arguable case.

[20] The issue of prejudice also distinguishes this case from cases where a late reply was permitted. The matter has been scheduled for hearing, there has been case management on the file. The reply was only filed after a direction on the scope of the case was made at case management. There is prejudice to the efficiency of the proceeding and to the Board’s process

to permit replies to be filed on the eve of the hearing and after the Board has issued directions on scope.

**[21]** The remaining question is whether it is just and equitable. The Union is still able to raise all matters put into issue in its replies in 160-23 and 161-23. It is only limited from contesting the issue of the resignation of specific employees not being eligible to vote. It is just and equitable to maintain the scope of the hearing that was defined for the originally scheduled date and directed at case management.

**[22]** Weighing all of these factors, the Board declines to permit an extension of time to file a reply.

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

**DATED** at Regina, Saskatchewan, this **21st** day of **February, 2025**.

**LABOUR RELATIONS BOARD**

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Kyle McCreary  
Chairperson