SASKATCHEWAN POWER CORPORATION, Applicant v INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 2067, Respondent

LRB File No. 243-25 & 008-26; January 20, 2025
Chairperson: Kyle McCreary; Board Members: Curtis Talbot and Hugh Wagner
Citation: *SaskPower v IBEW*, 2026 SKLRB 2

Counsel for Saskatchewan Power Corporation: Michael Phillips

Counsel for IBEW, Local 2067: Dan LeBlanc

Interim Relief – Union Trial allegedly related to member's testimony in an Arbitration – Relief postponing the Trial granted – Arguable cased of s. 6-6 violation established – Harm of discouraging participation in arbitrations and Board proceedings outweighs harm of delaying Union's internal process

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** The Saskatchewan Power Corporation ("the Employer") has applied for the following interim relief against the International Brotherhood of Electrical Workers, Local 2067 ("the Union"):

a. An order compelling the Union to postpone the Trial of charges laid against Colin Popoff which is scheduled to proceed before a Trial hearing board convened by the Union on January 21, 2026 ("the Trial");

b. An order that the hearing and final determination of LRB File No. 243-25, an Unfair Labour Practice Application made by the Employer against the Union ("the ULP Application"), take place prior to the Trial; and

c. Such further and other relief as may be requested on behalf of SaskPower and that the Board deems just.

[2] The ULP Application was filed on December 24, 2025, and relates to allegations that the Union is engaging in activity contrary to ss. 6-6 and 6-63(1)(h) of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 ("the Act"). In particular, the Employer alleges that the Trial against Mr. Popoff under the Union Constitution is threatening, intimidating and coercive, and related to Mr.

Popoff's participation in an arbitration conducted under the collective bargaining agreement between the parties.

[3] In support of the application for interim relief, the Employer has filed affidavits from Mr. Popoff and a Mr. David Johnston.

[4] Mr. Johnston is a Manager, Employee Relations for the Employer. Mr. Johnston's affidavit sets out background information related to the arbitration and Mr. Popoff's participation in it. Mr. Johnston sets out the Employer's concerns related to the Trial and its impact on other proceedings. In particular, there are 45 active grievances between the Employer and the Union, including four scheduled to proceed to arbitration and nine that are either awaiting the appointment of an arbitrator or scheduling.

[5] Mr. Popoff is currently a Manager, Meter Reading South with the Employer. Mr. Popoff is a member of the Union having previously been employed in scope. In May 2024, Mr. Popoff was promoted to his current temporary out of scope role. The Affidavit sets out information related to his job duties and previous involvement in the Union. Mr. Popoff provides information related to how he came to testify at the arbitration at issue in the Trial. Mr. Popoff sets out his understanding of the Trial, and some of his concerns and fears arising from it. In particular, the following is stated at paragraphs 18-19, and 21 of the affidavit:

> *18. As I understand them, the Charges allege that:*
>
> *a. on or about October 10, 2025, I willingly testified, without being under subpoena, against IBEW 2067 on behalf of an employer, in breach of Article XXV, section (1)(f) of IBEW 2067's constitution, which prohibits working for, or on behalf of, any employer, employer-supported organization, or other union, or the representatives of any of the foregoing, whose position is adverse or detrimental to the position of IBEW 2067; and*
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> *b. on or about October 10, 2025,I gave testimony that allegedly supported SaskPower's successful attempt to deprive IBEW 2067 members of wages with respect to a 30-minute unpaid period during overtime days, thus causing them economic harm, in breach of Article XXV, section (l)(g) of IBEW 2067's constitution, which prohibits wronging a member of IBEW 2067 by any act or acts (other than the expression of view or opinions) causing them physical or economic harm.*
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> *19. I feel intimidated by the Letter. I feel that the Charges and the Trial are retaliatory for my doing my job and giving honest testimony, as I was requested to do. I fear going through with the Trial as well as the repercussions of the Trial. I would have to book off a day of my regular duties, which may cost me money. I am concerned that the Letter and the upcoming Trial will result in a penalty being imposed against me that may be monetary, or worse, impact my membership in IBEW 2067.*
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> *…*

> *21. I am fearful to even commit my words to this Affidavit. I am concerned about further repercussions from IBEW 2067 for doing so, based on its response to my testimony. I am fearful that, as a result of this Affidavit and its contents, IBEW 2067, or its leaders, will cause further charges to be filed against me, and IBEW 2067 will convene additional trials to hear those charges.*

[6] The Union filed a brief in reply to this interim application on January 19, 2026. The Union also filed an affidavit of Trent McClement. Mr. McClement is the President of the Union. Mr. McClement leads the Union's Executive Committee and as such will chair the hearing of the Trial. The affidavit sets the basis for the Trial under the Union's Constitution and Mr. McClement's intention to ensure that the trial is fair. Mr. McClement also discusses the harm to the Union in the Trial is delay and at paragraphs 16 and 18 of his affidavit states:

> *16. These foundational documents are democratically made, at the International and Local level respectively. A majority of members have voted to establish these rules for all members to follow. All members are held to them, including me.*
> *…*
>
> *18. From my perspective as President of IBEW 2067, it is important to IBEW's integrity that these Constitutional rules are applied to all members equally and are adjudicated in the democratically determined way. It is important to me that IBEW 2067 has control of its own process, subject to the requirement to provide procedural fairness to all members. In my view, continuing with the trial scheduled for January 21, 2026 achieves these important goals.*

[7] This interim relief application was filed on January 13, 2026, and heard on January 20, 2026. This decision was issued the afternoon of January 20, 2026.

Relevant Statutory Provisions:

[8] The Employer's unfair labour practice relates to s. 6-6, which reads:

> ***Certain actions against employees prohibited***
> ***6-6****(1) No person shall do any of the things mentioned in subsection (2) against another person:*
> *(a) because of a belief that the other person may testify in a proceeding pursuant to this Part;*
> *(b) because the person has made or is about to make a disclosure that may be required of the person in a proceeding pursuant to this Part;*
> *(c) because the person has made an application, filed a complaint or otherwise exercised a right conferred pursuant to this Part; or*
> *(d) because the person has participated or is about to participate in a proceeding pursuant to this Part.*
> *(2) In the circumstances mentioned in subsection (1), no person shall do any of the following:*
> *(a) refuse to employ or refuse to continue to employ a person;*
> *(b) threaten termination of employment or otherwise threaten a person;*
> *(c) discriminate against or threaten to discriminate against a person with respect to employment or a term or condition of employment or membership in a union;*

(d) intimidate or coerce or impose a pecuniary or other penalty on a person.

[9] A breach of s. 6-6 constitutes an unfair labour practice pursuant to s. 6-63(1)(h), which reads:

> ***6-63****(1) It is an unfair labour practice for an employee, union or any other person to do any of the following:*
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> *…*
>
> *(h) to contravene an obligation, a prohibition or other provision of this Part imposed on or applicable to a union or an employee.*

[10] The Board's authority to grant interim relief is pursuant to clause 6-103(2)(d):

> ***General powers and duties of board***
> ***6-103****(1) Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed on it by this Act or that are incidental to the attainment of the purposes of this Act.*
> *(2) Without limiting the generality of subsection (1), the board may do all or any of the following:*
> *…*
>
> *(d) make an interim order or decision pending the making of a final order or decision.*

[11] The Board's authority to accept affidavit evidence on this matter is pursuant to s. 6-111(1)(e):

> ***6-111****(1) With respect to any matter before it, the board has the power:*
> ***. . .***
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> *(e) to receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the board considers appropriate, whether admissible in a court of law or not;*

Analysis and Decision:

Test for Interim Relief

[12] When considering a request for interim relief, the Board applies a two part test of whether there is an arguable case and whether the balance of convenience favours granting relief, *Carlton Trail College v Saskatchewan Government and General Employees' Union Local 4309*, 2024 CanLII 64162 (SK LRB); *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union v NSC Minerals Ltd*., 2024 CanLII 14549 (SK LRB)("*NSC Minerals*"), and *Saskatchewan Government and General Employees' Union v. Saskatchewan (Government)*, 2010 CanLII 81339 (SK LRB)("SGEU").

[13] An arguable case is a low bar and requires an applicant only to demonstrate that a violation of the act is a more than remote or tenuous possibility, *SGEU* at para 31. The focus of the analysis is not on the relative strength of the case, just on whether it meets the threshold question of an arguable case.

[14] Once an arguable case is established, the Board turns to a consideration of a balancing of labour relations harms, *SGEU* at para 32. The Board must consider is what harm is potentially caused by granting the relief sought, or not granting the relief sought. Once those harms are considered, the Board must balance between the competing harms and consider the objectives of the Act along with any relevant policy considerations. The core of the analysis in a request for interim relief is on the balancing of labour relations harms, and particularly on the balancing of irreparable harms.

Arguable Case

[15] The Board finds that the Employer has demonstrated an arguable case. In order to demonstrate an arguable case under s. 6-6, the Employer must establish that the Union arguably took a prohibited action under s. 6-6(2) because a person engaged in a protected activity as defined in s. 6-6(1). That is the Employer must establish that it is arguable Mr. Popoff engaged in a protected activity, that the Union took a prohibited action, and that the Union took the prohibited action because Mr. Popoff engaged in the protected activity.

[16] The protected activity alleged is participation in a proceeding under Part VI. Mr. Popoff was a witness in an arbitration between the Employer and the Union. It is arguable that an arbitration under s. 6-45 constitutes a proceeding under Part VI, and it is also arguable that testifying in that proceeding constitutes participation.

[17] The second question is, has the Union taken a prohibited action. The Union has argued in its reply to the unfair labour practice that it has taken no action at this time as the Trial has been scheduled but no action has been taken. In response to the interim application, the Union raised the issue of prematurity. The question of prematurity and whether it is arguable an action has occurred is determined by the Board's decision in *Fraser v Saskatchewan Public Safety Agency*, 2022 CanLII 121639 (SK LRB)("*Fraser*"). In *Fraser,* the Board found that not just the employer's discipline was intimidation, but also the employer asking questions related to testimony constituted intimidation. Whether intimidation, threatening, or coercion can be established on the facts is a matter for the merits, it is sufficient at this time to determine that it is not tenuous to

argue that a notice of trial and the potential consequences of that trial could be found to be intimidating in a manner similar to an employer questioning an employee about a Board hearing.

[18] The Board also finds it is arguable that the prohibited action was taken because Mr. Popoff engaged in a protected activity. The document with the charges that are the subject of the Trial specifically references Mr. Popoff's testimony in an arbitration. The charging document reads:

> *The Arbitration was related to members' entitlement to be paid straight through their overtime workdays. Mr. Popoff's testimony – and the Employer's case – was to the effect that members must take a 30-minute unpaid period during their overtime days. Mr. Popoff's testimony thus supported the Employer's attempt to deprive members of wages – causing "economic harm" to them, as described in (g), above. The Employer and Mr. Popoff were successful in their attempts to deprive members of wages.*
>
> *I write to request that the Local Union convene a Trial Board to hear and try this charge against Mr. Popoff.*
> *…*

[19] The Union also argues that the Employer's application raises no arguable case because the Union is following its Constitution. The interaction between the Union's Constitution and the Act is a matter for the merits. It is at least arguable that the Union's Constitution does not override the statutory protections in section 6-6. Generally, parties cannot contract out of public interest legislation, *Saskatchewan (Occupational Health and Safety) v. Prince Albert District Health Board*, 1999 CanLII 12260 (SK CA), and *Brunswick Mining & Smelting Corp. v. Savoie*, 1991 CanLII 8239 (NB CA). The Employer's application meets the low bar of being a non-tenuous possibility that a notice of charges can offend s. 6-6 even if done in compliance with the Union's Constitution.

[20] The Board does not find the allegation that the Trial is a potential violation of s. 6-6 to be too tenuous or remote. The affidavit evidence establishes an arguable connection to protected activity and that the Union's conduct could be found to be impermissible under the Act.

Balance of Convenience

[21] The second portion of the test for interim relief is a balancing of labour relations harm between granting the relief sought and denying interim relief. In conducting this balancing, the Board considers the urgency of granting the relief, the burden imposed in granting the relief, whether the interim order effectively determines the matter, and whether there is a clear labour relations purpose to the interim order, *NSC Minerals* at para 48.

[22] The potential labour relations harm claimed by the Employer is a chilling effect on participation in grievance arbitrations and Board proceedings and related testimony. In addition

to the ULP Application, the Employer has filed evidence of multiple scheduled and to be scheduled grievance arbitrations. The chilling effect of alleged reprisal for testimony extends beyond the immediate proceedings as it potentially impacts the integrity of any proceedings between these parties where a member of the Union may be called to testify or asked to swear an affidavit. Mr. Popoff specifically states that he is concerned that swearing an affidavit in this matter may lead to further action by the Union.

[23] The Board has discussed chilling effect on interim matters, primarily related to union organizing activities, for example *in International Brotherhood of Electrical Workers, Local 2038 v Active Electric Ltd*., 2018 CanLII 38245 (SK LRB), the Board stated at para 87:

> *[87] Sixth, the labour relations harm at issue here relates to suppressing the level of employee support for pursuing an application for certification pursuant to section 6-9 of the SEA. The initial stages of such a drive are delicate, and a precipitous event such as the termination of known union members or supporters during that time could wholly derail the union's efforts. The Board's concern about the "chilling effect" such an event may have on other employees is not triggered only when the union has filed a formal certification Order. It pertains to the entire organizing process.*

[24] While the chilling effect to participation in Board matter is most acute at the certification stage, it can still be a factor in other proceedings under Part VI. The purpose of anti-retaliation provisions in s. 6-6 is to prevent protected activity from being discouraged. The Board accepts that based on the affidavit of Mr. Popoff, there is evidence of potential irreparable harm in terms of chilling of participation in hearings under Part VI.

[25] The Union has argued that Board and arbitrators subpoena power cures any potential irreparable harm caused by a chilling effect. The Board disagrees. Subpoenas address issues of attendance and production of documents; it does not address issues such as self censorship or declining to pursue statutory or constitutional rights on the fear of reprisal. A subpoena addresses the irreparable harm of non-attendance; it does not address the harm of potentially alternating testimony or individuals no longer wishing to assert rights under the Act.

[26] Further, the chilling effect can extend beyond a single workplace, just as an employer can chill employees other than its own through retaliation, *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94 (CanLII), [2001] 3 SCR 1016 at para 149, so to can the knowledge of consequences of testifying potentially chill other proceedings with unrelated parties.

[27] The Union argues that it will suffer irreparable harm in the interference in its internal affairs and union democracy. The Union relies on *Berry v. Pulley*, 2002 SCC 40 (CanLII), [2002] 2 SCR

493, where the Supreme Court of Canada recognized the contractual nature of a union constitution:

> *48 In light of the above, the time has come to recognize formally that when a member joins a union, a relationship in the nature of a contract arises between the member and the trade union as a legal entity. By the act of membership, both the union and the member agree to be bound by the terms of the union constitution, and an action may be brought by a member against the union for its breach; however, since the union itself is the contracting party, the liability of the union is limited to the assets of the union and cannot extend to its members personally. I say that this relationship is in the nature of a contract because it is unlike a typical commercial contract. Although the relationship includes at least some of the indicia of a common law contract (for example offer and acceptance), the terms of the contractual relationship between the union and the member will be greatly determined by the statutory regime affecting unions generally as well as the labour law principles that courts have fashioned over the years. With this in mind, for ease of reference I will refer to the membership agreement between the individual member and the union as a contract.*
>
> *…*
>
> *50 In my view, the above characterization not only fulfills the practical purpose of providing a basis from which the terms of the union constitution may be enforced, but it also serves as an accurate and realistic description of the nature of union membership. The individual applies for membership with the union. It is the union, represented by its agents, that accepts the individual as a member, and this individual agrees to follow the rules of the union. Aside from the fact that the relationship between the union and its members fits naturally into the contractual model, in today's labour relations context, the public has come to view unions as associations with the responsibility to discharge their obligations to members; it would be inconsistent with this view to deny unions the right to enter into legally enforceable contracts with these members.*
>
> *…*
>
> *63 However, this is not to say that union members do not have some obligations inter se. By joining a union, the member agrees to follow the rules of the union, and, through the common bond of membership, union members have legal obligations to one another to comply with these rules. If there is a breach of a member's constitutional rights, this is a breach by the union, and the union may be liable to the individual. Similarly, the disciplinary measures in the constitution can be imposed by the union on a member who contravenes the union's rules. A failure by the union to follow these disciplinary procedures may cause it to breach its contractual obligations to the other members, giving rise to corresponding contractual remedies.*

[28] The Union also relies on *Norman Blunt v International Association of Heat and Frost Insulators and Allied Workers*, 2022 CanLII 70227 (SK LRB), where the Board placed weight on maintaining the integrity of union disciplinary process in its irreparable harm analysis.

[29] The Union also references various cases where Courts or Labour Boards express concern with interfering with internal union matters prior to final determinations. This concern from the caselaw is supported by the affidavit evidence filed by the Union. The Board finds and accepts that interference with the Union's discipline process creates a risk of irreparable harm through

interfering in union democracy even if the result is potentially only the delay of the disciplinary hearing.

[30] In the end, the Board has two irreparable harms to balance. The irreparable harm of a chilling effect on testimony and participation in arbitration and Board proceedings must be weighed against the irreparable harm of interfering in union democracy. In practical terms, it is the question of weighing the chilling effect of allowing the Trial to proceed versus the interference of delaying the Trial until the Board can determine the matter on the merits.

[31] Considering the factors for deciding interim relief, there is real urgency in the request to delay the Trial, the delay does not finally determine the matter, the relief requested would serve a labour relations purpose by promoting the purpose of s. 6-6, but as stated, there is a risk of irreparable harm to the Union. Considering the relative harms and the purpose of s. 6-6, the Board finds the harm of proceeding outweighs the harm of delay.

[32] As the Board views both parties to have raised serious issues that should not be delayed in this matter, the Board scheduled this matter to be heard on an expedited basis at the end of February prior to determining whether to grant the interim relief requested.

[33] As a result, with these Reasons, an Order will issue that the Application for Interim Relief in LRB File No. 008-26 is granted, and the Board orders as follows:

a. the Union shall postpone the Trial until the completion or withdrawal of LRB File No. 243-25; and

b. The ULP Application shall be heard on an expedited basis.

[34] 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.

[35] Board Member Talbot concurs with this decision.

[36] Board Member Wagner dissents from the granting of interim relief.

DATED at Regina, Saskatchewan, this **21st** day of **January, 2026.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson