Saskatchewan
Labour Relations Board

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant V SASCO DEVELOPMENTS LTD., Respondent

LRB File No. 099-23; January 21, 2026
Chairperson: Kyle McCreary; Board Members: Shawna Colpitts and Curtis Talbot
Citation: *UFCW v Sasco Developments Ltd.*, 2026 SKLRB 4

Counsel for the Applicant, United Food and Commercial Workers, Local 1400: Heath Smith

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Reconsideration – Whether Board can reconsider a decision on its own motion – Board finds it can.

Reconsideration – Whether issue was previously raised before the Board – Board finds issue was raised but application Board Policy was not argued – Board deviating from policy without acknowledging policy a basis for reconsideration.

Unfair labour practice – Bargaining in bad faith – Parties are not permitted to bargain scope to impasse – Employer bargained scope to impasse – Unfair labour practice found – Employer ordered to remove scope proposal from bargaining within 15 days.

REASONS FOR DECISION

Background:

[1] Kyle McCreary, Chairperson: This is a reconsideration of the Board's decision in LRB File No. 099-23, reported as *UFCW v Sasco Developments Ltd.*, 2025 SKLRB 21 (CanLII) ("the Original Decision"). The reconsideration was made on the Board's own motion. In addition to substantive issues of whether to reconsider the Original Decision on the specific issue raised by the Board, this decision also addresses whether the Board can reconsider on its own motion and the interaction between functus officio and reconsideration.

[2] LRB File No. 099-23 is an unfair labour practice brought on by United Food and Commercial Workers, Local 1400 ("UFCW") against Sasco Developments Ltd. ("the Employer") in relation to various issues related to bargaining a new collective agreement between the parties.

In the Original Decision, the majority of the Board dismissed UFCW's application. The Board's conclusion on whether the Employer bargained in good faith reads as follows:

> *[58] In summation, the Board does not find the Employer bargained in bad faith. The Employer tabled proposals, attending bargaining several times over the course of months and provided responses to the Union's proposals. Both parties engaged in hard bargaining and little progress was made. None of the proposals that the Employer took to impasse are of a nature to justify the Board evaluating the reasonableness of the Employer's position. The Employer showed a concerning lack of patience in proceeding through bargaining. While this panel of the Board does not find the Employer bargained in good faith, the Employer could, and probably should, have spent more time at the bargaining table before proceeding to impasse.*

[3] The Original Decision was released on April 30, 2025.

[4] On May 2, 2025, the Board Registrar advised the parties that the Board would reconsider the Original Decision, the notice to the parties reads in part:

> The Board has become aware of the decision *Wheat City Metals v. United Steelworkers of America, Local 5917*, 2005 SKQB 364 (CanLII) and has decided to reconsider its decision in LRB File No. 099-23 with regards to the analysis on the issue of bargaining scope to impasse.

[5] The parties filed submissions in response to the Board's notice. UFCW filed submissions on May 20, 2025, the Employer filed submission on May 30, 2025, and UFCW filed reply submissions. on June 3, 2025.

[6] Neither party applied for reconsideration outside of the Board's notice. The Board will confine its analysis in this decision to the issue raised by the Board.

[7] For the reasons that follow, the Board finds that it is permitted to reconsider matters on its own motion, that reconsideration is not barred by functus officio, and that the Original Decision should be varied. Pursuant to previous decisions of the Board and the Court, the Board's policy is not to permit scope to be bargained to impasse. The Employer violated this prohibition. The Board erred in not applying existing policy, even though it was not argued by the parties, and this is a basis for reconsideration.

Relevant Statutory Provisions:

[8] The duty to bargain in good faith is contained in s. 6-7, which reads:

> ***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.

[9] The Board's authority to reconsideration decisions is pursuant to s. 6-115, which reads:

> ***No appeals from board orders or decisions***
> ***6-115****(1) Every board order or decision made pursuant to this Part is final and there is no appeal from that board order or decision.*
>
> *(2) The board may determine any question of fact necessary to its jurisdiction.*
>
> *(3) Notwithstanding subsections (1) and (2), the board may:*
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> *(a) reconsider any matter that it has dealt with; and*
> *(b) rescind or amend any decision or order it has made.*
>
> *(4) The board's decisions and findings on all questions of fact and law are not open to question or review in any court, and any proceeding before the board must not be restrained by injunction, prohibition, mandamus, quo warranto, certiorari or other process or proceeding in any court or be removable by application for judicial review or otherwise into any court on any grounds.*

Analysis and Decision:

Reconsideration

Can the Board reconsider a matter on its own motion?

[10] The Employer has raised the issue of whether the Board has the authority to reconsider a matter without an application by a party or whether it is functus officio without a reconsideration application. The Board finds that it has broad discretion of reconsideration and is not limited to reconsideration on application. The Board also finds that the doctrine of functus officio does not apply to reconsideration.

[11] The Board's power to reconsider is pursuant to clause 6-115(3) of the Act. Subclause 6-115(3)(a) enables the Board to reconsider any matter. Subclause 6-115(3)(b) enables the Board to amend or rescind orders and decisions. Neither subclause limits its scope to matters brought by application.

[12] Applying s. 2-10 of *The Legislation Act*, SS 2019, c L-10.2, a broad and liberal interpretation of the ordinary and grammatical meaning of the words in context supports that the Board may, either on application or its own motion, reconsider any matter and amend or rescind any decision or order.

[13] The Board has passed regulations imposing conditions on when applications for reconsideration can be brought, but the Board has not passed any rule and there is no provision of the Act which limits when the Board may reconsider on its own motion.

[14] The Board must be procedurally fair in reconsidering matters. The Board gave notice within a week of the original decision, which should have prevented the parties from detrimentally relying on the Original Decision. Further, the Board has provided both parties with an opportunity to file fulsome written submissions.

Is Reconsideration Barred by Functus Officio?

[15] The Board must also consider whether reconsideration in this case is barred by the doctrine of *functus officio*, that is has the Board fully discharged its function such that it has no jurisdiction to reconsider the Original Decision. It is accepted that the doctrine applies to the administrative tribunals in general. The majority of the Supreme Court of Canada in *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), [1989] 2 SCR 848 stated the general application of the rule to administrative tribunals:

> *… As a general rule, once such a tribunal has reached a final decision in respect to the matter that is before it in accordance with its enabling statute, that decision cannot be revisited because the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances. It can only do so if authorized by statute or if there has been a slip or error within the exceptions enunciated in Paper Machinery Ltd. v. J. O. Ross Engineering Corp., supra.*

[16] However, the majority made clear that while this general rule applies to administrative tribunals, it applies with more flexibility than it does for Courts and especially where enabling legislation statute authorizes a decision to be reopened:

> *To this extent, the principle of functus officio applies. It is based, however, on the policy ground which favours finality of proceedings rather than the rule which was developed with respect to formal judgments of a court whose decision was subject to a full appeal. For this reason I am of the opinion that its application must be more flexible and less formalistic in respect to the decisions of administrative tribunals which are subject to appeal only on a point of law. Justice may require the reopening of administrative proceedings in order to provide relief which would otherwise be available on appeal.*
>
> *Accordingly, the principle should not be strictly applied where there are indications in the enabling statute that a decision can be reopened in order to enable the tribunal to discharge the function committed to it by enabling legislation. This was the situation in Grillas, supra.*

[17] The Ontario Court of Appeal found that despite a similar provision to s. 6-115(3), the doctrine applied to the Ontario Labour Relations Board authoring supplementary reasons in

Jacobs Catalytic Ltd. v. International Brotherhood of Electrical Workers, Local 353, 2009 ONCA 749 (CanLII). The Ontario Court of Appeal was clear that reconsideration by the Ontario Board was permitted but the issuing of supplementary reasons was not a form of reconsideration, as stated by the majority at para 64:

> *The text of s. 114(1) allows the Board to reconsider "any decision, order, direction, declaration or ruling". In my view, this means the Board has the power to reconsider the merits of its decision, upon receiving full submissions from the parties, in accordance with its Rules of Procedure. There is no provision in the LRA that gives the Board the power to do what it did in this instance, namely, issue supplementary reasons designed to repair deficiencies in an earlier set of reasons. If the Board was to have such jurisdiction, the statute would have made it clear. Therefore, the common law doctrine of functus applies.*

[18] The Financial and Consumer Affairs Authority found that the doctrine of *functus officio* did not prevent its substantial reconsideration of a case in *Sobotkiewicz (Re)*, 2022 CanLII 32022 (SK FCAA).

[19] The starting point of analysis is that *functus officio* applies to Board decisions, however, s. 6-115(3) is clear statutory intention to permit decisions to be re-opened contrary to the doctrine. The language of s. 6-115(3) expresses that the power of reconsideration is notwithstanding the finality provision in s. 6-115(1). The ordinary meaning of these provisions is that while the Board's decisions are final, they may still be reconsidered, varied or rescinded by the Board.

[20] The Board has provided the parties with an opportunity to make full written submissions. The Board has not accepted oral submissions as this is a matter of legal interpretation and does not require an oral hearing and the Board may determine any matter without an oral hearing pursuant to s. 6-111(1)(q).

[21] *Functus officio* does not apply as the Board in this circumstance as the Board is statutorily empowered to reconsider any matter and the parties have had an opportunity to address the issue of reconsideration as framed by the Board.

Should the Board Reconsider the Original Decision?

[22] The threshold issue on any reconsideration matter is whether the Board should engage in the analysis. The Board applies various factors in considering whether to reconsider a decision, *CUPE v PAMA*, 2025 SKLRB 29 (CanLII) at paras 12-13. One of those factors is whether the Board has made an error in the application of its general policy on an issue. As is discussed below, the Board erred in its application of the policy prohibition against bargaining the scope of a certification order to impasse.

Was the issue raised by the Board in issue in the original hearing?

[23] The Employer argues that the issue raised by the Board was not raised by either party prior to the Original Decision. The Board agrees that the specific policy argument was not raised by either party, but the issue of whether it was permissible to bargain to scope to impasse was a live issue before the Board.

[24] The majority of the Board addressed the scope proposals at para 49 of the Original Decision:

> *[49] The Union contends the Employer proposals would remove a dozen employees from the Bargaining Unit, the Employer put it to the Union's witness that the proposal only impacted two individuals. The Union's witness did not necessarily agree but testified to the Union's projections. Scope is a matter that is frequently bargained, and pursuant to various decisions of this Board, is an issue that the Employer must bargain. The Board does not find that the Union has proven a dozen positions would be affected and bargaining to exclude managers and supervisors from a bargaining unit is not illegal or support an inference of an intention to avoid reaching a collective agreement.*

[25] As is seen in this paragraph, the issue of bargaining scope to impasse was live in the Original Decision, and it is not a new issue on reconsideration. The Board in the Original Decision states that parties must bargain scope but does not address the reasoning of prior Board decisions on bargaining of scope and whether the conclusion that scope can be bargained to impasse is consistent with those decisions. The Board finds that the permissibility of bargaining scope to impasse was a live issue in the Original Decision and is proper to consider on reconsideration.

Can a Party Bargain Scope to Impasse?

[26] The Board finds based on its policy of how scope must be bargained that the Original Decision erred in finding that scope could be bargained to impasse.

[27] The Board's long standing policy that it impermissible to bargain scope to impasse was noted by the Court of Queen's Bench (as it then was) *in Wheat City Metals v. United Steelworkers of America, Local 5917*, 2005 SKQB 364 at para 27:

> *[27] In the Board's analysis such a position was analogous to other statutorily imposed limitations to collective bargaining. One example identified by the Board is the "appropriate unit" description determined by the Board in its Certification Order. In this example while the parties might be free to negotiate a different "scope clause" than the appropriate unit description contained in the Certification Order, it has now been established that such a position cannot be bargained to impasse. To do so invites industrial action such as a strike*

> *or lock-out in pursuit of an objective which would be statutorily unattainable or unenforceable by law as the case may be. Such a position would be contrary to public policy and the objectives of good faith collective bargaining imposed upon the parties by the Act. (See the Board's extensive analysis at paras. 65 to 76 and the authorities cited in para. 29].*

[28] The Original Decision also did not discuss the Board's current policy related to scope alterations, often called the Battlefords Principle. The Battlefords Principle was discussed by the Saskatchewan Court of Appeal in *Saskatchewan Mutual Insurance Company v United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 8933*, 2021 SKCA 137 (CanLII) at paras 52-57:

> *[52] The Battlefords principle applied in such circumstances is not as simple as saying that the failure to actively negotiate the specific exclusion of the new position resulted in an unfair labour practice. To explain why, it is necessary to review the genesis and application of the Battlefords principle and the effect of a bargained exclusion to an all-employee scope clause.*
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> *[53] In Battlefords, the Board affirmed the approach adopted in Wascana Rehab Centre, Service Employees International Union, Local 333 v St. Paul's Hospital, [1991] 2d Quarter Sask Labour Rep 78, LRB File No 004-91, and Donovel v Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, 2006 CanLII 62948 (Sask LRB) [Donovel]. Donovel set out the process to be followed when a new position was created.*
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> *[54] In the LRB Decision, the Board summarized the process in Donovel as follows:*
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> > *[60] In Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, Local 496 v Beeland Co-operative Association Limited, 2018 CanLII 91973 (SK LRB) ("Beeland"), the Board confirmed the process required to be followed. In Beeland, the Board cited Health Sciences Association of Saskatchewan v Unifor, Local 609, 2015 CanLII 43776 (SK LRB), at paragraph 22:*
> >
> > > *The required steps were clearly set out by the Board in its decision in Donovel (Re). At paragraph 28, the Board outlined those steps as follows:*
> > >
> > > *1. Notify the certified union of the proposed new position;*
> > >
> > > *2. If there is agreement on the assignment of the new position, then no further action is required unless the parties wish to update the certification order to include or exclude the positions in question;*
> > >
> > > *3. If agreement is not reached on the proper placement of the position, the employer must apply to the Board to have the matter determined…; and*
> > >
> > > *4. If the position must be filled on an urgent basis, the employer may seek an interim or provisional ruling from the Board or agreement from the union on the interim assignment of the position. [citation removed]*
>
> *[55] Battlefords has been understood to stand for the proposition that an employer cannot act unilaterally by determining that a new position lies outside the scope of an all-employee bargaining unit. It must negotiate with the union on the matter and, if it fails to acquire the union's agreement, then it must apply to the Board to determine the matter.*

> *[56] The Board in Battlefords elaborated on the duty incumbent on the parties:*
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> > *[85] The duty to bargain collectively requires that the parties meet and bargain in good faith, making a genuine attempt to find a resolve to their disagreement over the status of this position. However, the duty to bargain collectively does not, as a corollary, require that the parties reach an agreement. They must only try to achieve a resolve to their disagreement.*
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> *[57] Battlefords has been cited in 14 decisions of the Board (including the decision in this matter). See: Saskatchewan Mutual Insurance Company v United Steel, 2020 CanLII 76678 (Sask LRB); Saskatoon Co-operative Association Limited v United Food and Commercial Workers, 2020 CanLII 71339 (Sask LRB); Saskatoon Public Library Board (Saskatoon Public Library) v Canadian Union of Public Employees, 2019 CanLII 128791 (Sask LRB); SEIU-West v Saskatoon Twin Charities Inc. (City Centre Bingo), 2019 CanLII 98487 (Sask LRB); United Food and Commercial Workers, Local 1400 v Moose Jaw Co-operative Association, 2019 CanLII 43225 (Sask LRB); Regina (City) v Regina Civic Middle Management Association, 2018 CanLII 127659 (Sask LRB); Legal Aid Saskatchewan (Re) (2018), 25 CLRBR (3d) 1 (Sask LRB); Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, Local 496 v Beeland Co-operative Association Limited, 2018 CanLII 91973 (Sask LRB); Saskatchewan Polytechnic v Saskatchewan Government and General Employees' Union, 2018 CanLII 38248 (Sask LRB); Saskatchewan Polytechnic v Saskatchewan Government, 2018 CanLII 53153 (Sask LRB), Wheatland Regional Centre Inc. (Re) (2015), 270 CLRBR (2d) 234 (Sask LRB); Health Sciences Association of Saskatchewan v Unifor, Local 609, 2015 CanLII 43776 (Sask LRB); and Unifor Canada, Local 594 v Consumers' Co-Operative Refineries Limited, 2015 CanLII 43766 (Sask LRB).*

[29] The Board's analysis in the Original Decision does not address either the line of authority referenced in *Wheat City* or the Battlefords Principle. The Battlefords Principle is applicable to this issue as scope changes must be negotiated to some extent as discussed in *Donovel*. However, failing agreement, an employer must apply to the Board to alter scope. That is, an employer is not permitted to take scope to impasse as a method of altering the certification order by economic force. The Employer in this case did take scope amendments to impasse.

[30] Taking scope to impasse is impermissible, therefore the Employer has bargained in bad faith contrary to s. 6-7 and s. 6-62(1)(r) by taking an impermissible position to impasse. The appropriate remedy in this case is a declaration that the Employer breached its obligation. The Board declines to order further remedy as neither party filed an application to reconsideration the remedy portion of the Original Decision.

[31] As a result, with these Reasons, an Order will issue that the Board's order in LRB File No. 099-23 is varied. UFCW's Application for an Unfair Labour Pratice in LRB File No. 099-23 is granted in part. The Board declares that the Employer committed an unfair labour practice in bargaining scope provisions to impasses.

[32] 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 **21st** day of **January, 2026.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson