Saskatchewan
Labour Relations Board

THE ELIZABETH FRY SOCIETY OF SASKATCHEWAN INC., Applicant v SASKATCHEWAN GOVERNMENT AND GENERAL WORKERS' UNION (SGEU), Respondent

LRB File No. 258-24; January 26, 2026
Vice-Chairperson, Linda Zarzeczny, K.C.; Board Members: Grant Douziech and Shelley Boutin-Gervais
Citation: *Elizabeth Fry Society v SGEU,* 2025 SKLRB 7

Counsel for the Applicant, Elizabeth Fry Society of Saskatchewan Inc.: Jessie C. Buydens

Counsel for the Respondent, Saskatchewan Government and General Workers' Union: Andrea Johnson

Abandonment - Union not inactive within the meaning of s. 6-16 - Dismissed

REASONS FOR DECISION

Introduction:

[1] **Linda Zarzeczny, K.C., Vice-Chairperson**: This is the Board's decision with respect to an application by the Elizabeth Fry Society ["the Employer"] pursuant to section 6-16 of *The Saskatchewan Employment Act,* SS 2013, c S-15.1 ["the Act"] against the Saskatchewan Government and General Workers' Union ["the Union"]. The Employer alleges that the Union has been inactive in promoting and enforcing its bargaining rights for a period of three years or more. On that basis, it says that the Board should cancel the May 22, 2001 certification order naming SGEU as the certified bargaining agent for the in-scope employees of the Elizabeth Fry Society [Certification Order].

[2] For the reasons that follow, the Board is not satisfied that the Union has been inactive for the three-year period specified in subsection 6-16. The employer's application [the "Application"] must accordingly be dismissed.

Procedural Order:

[3] Section 6-111(1)(q) of the Act provides that the Board may determine any matter without an oral hearing. The Board may proceed in that way where it concludes that it has sufficient information to fairly determine the matter and that it is procedurally fair to do so: *Stephen-McIntosh v SEIU-West*, 2025 SKLRB 2 (CanLII).

[4] In this case, the Board found that an oral hearing was not required. That decision was based on the Board's consideration of the Application, the Union's Reply, the written submissions and the evidence filed by the parties in relation to the need for an oral hearing, and on the merits.

Section 6-16 of The Saskatchewan Employment Act:

[5] The Employer has applied pursuant to s. 6-16 of the Act, which is as follows:

> ***6-16****(1) An application may be made to the board to cancel a certification order by an employee within the bargaining unit or the employer named in the certification order if the union has been inactive in promoting and enforcing its bargaining rights for a period of three years or more.*
>
> *(2) The board shall cancel the certification order if the board is satisfied that the union has been inactive in promoting and enforcing its bargaining rights in the period mentioned in subsection (1).*

[6] This section requires that the Board cancel a certification order if it is satisfied that the union has been inactive in promoting and enforcing its bargaining rights for a period of three years or more.

Background:

[7] The Employer asserts in the Application that "it has been at least 10 years, and likely longer, since the Union was active in promoting itself within our staff". It claims that the period of inactivity was from "sometime in 2012" to the date of the application, being December 18, 2022. The Union denies this allegation, claiming that it was active in promoting its bargaining rights until at least February 14, 2022, when it last attempted to contact the Employer. The Application accordingly turns on events that occurred from and after March 2012.

[8] The term of the last collective agreement entered into by the Employer and the Union was from April 1, 2002, to March 31, 2012, to continue from year to year thereafter unless written notice of a request to negotiate a revision was given by either party not less than 30 days prior to the expiration date. The collective agreement is appended to the affidavit of Nicole Alberts, the labour relations officer with the Union who was responsible for the Employer's bargaining unit from October 2008 to August 31, 2012. Ms. Alberts deposes that in March 2012, she contacted the Employer to request a meeting with in-scope staff members to canvass their views before commencing the negotiation of a new collective agreement. That meeting occurred.

[9] On March 28, 2012, Ms. Alberts was present at a second meeting, which was attended by all the Employer's employees and its board of directors. The Employer there announced that it would temporarily close its doors on April 30, 2012, and lay off all staff. The Employer also gave written notice to the Union that its operations would cease. The Union agreed, at the request of the Employer's board of directors, to delay bargaining until the Employer hired a new Executive Director.

[10] All in-scope employees of the Employer were given written notices of termination on March 28, 2012. All employees other than Regina Kreke, who was employed as a part-time bookkeeper, were notified that they would be laid off effective either on March 30 or April 30, 2012. Ms. Kreke was to be laid off on May 31, 2012. Ms. Alberts deposed that after March 28, 2012, no one in management or on the board of directors advised her that any in-scope employees has been recalled or hired. The Employer does not claim that it advised the Union that it had any in-scope employees at any time after the 2012 layoffs. Further, and with one exception, neither party led evidence that there *were* any in-scope employees after May 31, 2012.

[11] The one exception was Ms. Kreke. As it happened, she was not laid off and deposes that she has been continuously employed by the Employer since December 2011. The Union accepts that allegation. As to her status as a member of the Employer's bargaining unit, she deposes that she took the following steps in 2012 to "de-unionize":

> *5. When I was the only employee I decided that I did not want to be unionized. I recall completing and submitting the forms required to de-unionize. I know that this was done sometime in 2012 while I was the only employee. To date, I have not been able to find any copies of the documents that I completed and submitted. I do not recall if I kept copies of the documents.*
>
> *6. Since I submitted the paperwork in 2012 I have not been contacted by the union. I have not paid union dues related to my employment with the applicant. It is my understanding that we have not been unionized since I submitted the paperwork to remove the union from the work place in 2012.*

[12] Ms. Kreke does not claim that she received notice from anyone that the Union had been decertified, but only that she had submitted these forms. Further, there is no documentary evidence that Ms. Kreke applied to the Board to decertify the Union in 2012 or at any time thereafter. Neither the Employer nor the Union have a record of having received notice of such an application or order. The Union also produced a record that listed union dues that were paid to the Union by the Employer for Ms. Kreke until March 2014.

[13] The only other evidence relating to this alleged decertification was in the affidavit of Sue Delaney, who was employed as the Employer's Executive Director from October 2012 to April 2019. She deposed as follows:

> *4. My recollection is that Ms. Kreke corresponded with the respondent SGEU to advise them that she did not want to be a union member as the sole employee of the applicant. Thereafter, we were disenfranchised and our understanding was that the applicant was no longer a unionized employee.*
>
> *5. I do not recall receiving any further correspondence or communication from the SGEU during my time as the Executive Director.*

[14] There was very little contact between the Union and the Employer from 2012 to 2022. Greg Eyre, the Labour Relations Officer with the Union who was responsible for the Employer's bargaining unit from 2013 to 2025, deposes that he reviewed his records, which contain copies of four letters that he sent to Ms. Delaney [the "Letters"]. The Letters were to the following effect:

1. *May 23. 2013: Mr. Eyre advised that it had come to his attention that the Employer had a number of employees who were not union members and who wrongly believed that they were out-of-scope. He asked Ms. Delaney to contact him to arrange a meeting to resolve the issue.*

2. *February 12, 2014: Mr. Eyre gave notice to the Employer that the Collective Agreement had expired and that the letter was notice pursuant to s. 33 of the Act that the Union intended to bargain a new collective agreement. He indicated that the union expected that the Collective Agreement would remain in effect pending the completion of a new agreement. He also asked that the Employer provide, among other things, "a complete summary of all employees and their salaries", and "the amount of total compensation of in-scope employees". Finally, the letter stated that the Union would contact Ms. Delaney to discuss "a suitable timeframe to meet".*

3. *January 7, 2015: This letter was identical to the February 12, 2014 letter.*

4. *May 10, 2016: Mr. Eyre advised that the Union "is the official bargaining agent holding the Certification Order for your organization". The letter also stated that "If you have any employees or will have any employees we would like to enter into discussions to once again service these employees". It provided Mr. Eyre's email address and phone number should Ms. Delaney "have any questions and to reply to this letter".*

[15] There is no evidence that the Employer responded to any of these letters. Ms. Delaney deposes that she did not recall receiving them. Nicole Obrigavitch, who became the Executor Director on February 13, 2023, attests to the fact that she was unable to find any of the correspondence attached to Mr. Eyre's affidavit or any record that it had been received. She also says that she has been unable to find any information in the Employer's office relating to any involvement with the Union since 2012.

[16] Mr. Eyre's records also document telephone calls to Ms. Delaney. He deposes that he called her on October 7, 2013, and that he tried to call her both before and after that date. There is a record that Ms. Delaney advised him on an unspecified date that staff who did not hold permanent positions were not members of the bargaining unit. Mr. Eyre says that he would have told her in response that the Union disagreed. He deposes that he does not know if the Employer's practice of hiring employees on term contracts continued after 2013, "as Elizabeth Fry's management has refused to provide any information or engage in any substantive discussions with me about the representation of their in-scope employees".

[17] Ms. Delaney also attested to having received "a few phone calls from union representatives throughout [her] years as the Executive Director". She says that on each of those occasions, she "would advise them that we had deunionized in 2012, at a time when we only had one staff member", and that "[n]o one from the union ever contradicted this".

[18] There is no evidence of further contact between the Union and the Employer until 2022, when Mr. Eyre says that on reviewing the Employer's website, he "found information which confirmed that there were employees holding bargaining unit positions at that time". As a result, on February 14, 2022, he sent an email to the address for the executive director listed on the Employer's website, which had been used to communicate with the Executive Director in the past. That email requested a meeting "to discuss our mutual legal obligations to begin bargaining an Updated Collective Agreement", together with either permission to meet with staff at the end of business day or, failing that, contact information for all employees.

[19] Once again, Mr. Eyre did not receive a reply to the February 14, 2022, email from the Union. As with the letters, Ms. Obrigavitch says that there is no record of it at the Employer's offices. There is no evidence of any other contact between the Employer and the Union, or between the Union and any employees, after the February 2022 email, prior to the filing of this application.

Analysis and Decision:

[20] To begin, the Board will deal briefly with the evidence that Ms. Kreke sought to have the certification Order rescinded in 2012. Ms. Kreke deposes only that she "completed and submitted the forms required to de-unionize" and that as a result, the Employer was no longer unionized.

Ms. Delaney says only that she understood that Ms. Kreke had corresponded with the Union and that, as a result, the Employer was no longer unionized.

[21] *The Trade Union Act,* which was the predecessor to the Act, remained in force. It provided, in s. 5(k), that the Board could make an order rescinding a certification order. The Board is not satisfied by the evidence of Ms. Kreke and Ms. Delaney that Ms. Kreke, whatever she may have done, perfected an application to the Board pursuant to that provision. There is no documentary evidence that Ms. Kreke made such an application. The Union, which, unlike the Employer, has records relating to the Employer's bargaining unit, has no record of having received notice of an application in any way and the Board concludes that none was given.

[22] Further, there is insufficient evidence to prove that the Board ordered that the Certification Order be rescinded even if Ms. Kreke had applied. Neither Ms. Kreke nor Ms. Delaney explained how they came to believe that Ms. Kreke's efforts resulted in de-certification. The Certification Order accordingly remains in effect.

[23] In any event, the Employer does not claim that the Certification Order was rescinded in 2012. It has applied for an order cancelling that Order, on the basis that the Union has been inactive in promoting and enforcing its bargaining rights for a period of more than three years. In order to succeed, the Employer must prove that the Union was inactive for a single time period of at least three years, and that there were employees who were within the scope of the bargaining unit throughout the period in question: *United Food and Commercial Workers Union, Local 1400 v Corps of the Commissionaires*, 2021 SKLRB 15152 (CanLII) at paras 123-132. *Commissionaires* was applied by the Board in *The United Food and Commercial Workers Union, Local 1400 v Atco Structures & Logistics Ltd.*, 2024 CanLII 8989 (SK LRB). As Chairperson Morris (as he then was) wrote in that case, "…there can be no inactivity within the meaning of s. 6-16 when there are no employees for whose benefit a union can promote and enforce its bargaining rights" (at para 25).

[24] The Employer submits that the s. 6-16 criteria have been satisfied, based solely on the fact that Ms. Kreke has been continuously employed since 2011. It has never admitted or provided evidence, either in response to the Union's inquiries, or for the purpose of this application, that there were other in-scope employees at any time after the 2012 layoffs. The

question, accordingly, is whether the Union was inactive in promoting and enforcing its bargaining rights for the benefit of Ms. Kreke during this period.

[25] There is evidence that the Union sought to enforce its bargaining rights from 2012 to May 2016, by sending correspondence and making phone calls to the Executive Directors for the Employer. However, and regardless of whether those efforts were sufficient to meet the Union's obligation to promote and enforce its bargaining rights, there is no evidence that the Union did anything at all from May 2016 to February 2022. That is a period far longer than the three years specified in s. 6-16.

[26] However, the reason for that period of inactivity is readily apparent. The Union had been advised by the Employer that Ms. Kreke would be laid off. Although the Union was paid dues on her behalf until 2014, the Employer does not contend that this should have alerted the Union to the fact that Ms. Kreke had not been laid off. Despite repeated inquiries by the Union, the Employer failed to identify either Ms. Kreke or any other in-scope employee.

[27] These facts call for consideration of the following reasoning in *International Brotherhood of Electrical Workers, Local 529 v. Saunders Electric Ltd.*, 2009 CanLII 63147 (SK LRB):

> *1. The onus of proof in abandonment cases is upon the party who asserts the rights have been abandoned;*
>
> *2. The focus of the inquiry by the Board should be upon the use or lack thereof of the collective bargaining rights granted to the Union under the Act. The activities of the employer, may, in some instances, give rise to an unfair labour practice, but the underlying basis of the principle of abandonment is that a union has failed to exercise the rights granted to it to bargain collectively; and*
>
> *3. If a failure to utilize collective bargaining rights has been established, then the inquiry must turn to a determination of whether there [are] any other factor or factors which would excuse the inactivity or lack of use of the rights by the Union.*

[28] Although *Saunders* was an abandonment case, rather than an application under s. 6-16, these principles – including the need to consider whether there may be factors that excuse the Union's "inactivity" - "remain relevant on such an Application: *Corps of Commissionaires, North Saskatchewan Division v United Food and Commercial Workers, Local 1400*, 2022 CanLII 10937 (SK LRB) at para 45. The third of these principles reflects the fact that the adequacy of the steps taken by a union to promote and enforce its bargaining rights must be assessed in light of the circumstances. In *Commissionaires*, the Board expressed this principle as follows:

> ***[119]*** *…[T]the Board's focus is on the Union's use or lack thereof of its collective bargaining rights: Saunders at para 50. Each case is context dependent and must be determined on its facts: Saunders at para 53. The underlying issue is whether the Union has failed to exercise its collective bargaining rights during the time period set out in the Act.*

[29] Here, it is the Board's view that the Union's failure to exercise its bargaining rights is excused by the fact that it did not know, as a result of the Employer's failure to advise the Union that Ms. Kreke had not been laid off, that Ms. Kreke was still an employee. That failure continued until this Application was filed, despite the Union's inquiries. In these circumstances, the Employer cannot rely on the Union's inactivity in promoting and enforcing its bargaining rights on Ms. Kreke's behalf, as that inactivity is attributable to the fact that it had been misled by the Employer. Put differently, the Union was not inactive within the meaning of s. 6-16.

Conclusion:

[30] For these reasons, the Application is dismissed and an appropriate Order will be issued with these Reasons.

[31] This is a unanimous decision on behalf of the Board.

DATED at Regina, Saskatchewan this **26th** day of **January, 2026.**

LABOUR RELATIONS BOARD

Linda Zarzeczny, K.C.
Vice-Chairperson