

KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 100**

Date: **2026 05 21**
Docket: KBG-SA-00245-2025
Judicial Centre: Saskatoon

BETWEEN:

610539 SASKATCHEWAN LTD.

Applicant

- and -

UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL 1400, LESTER VILLAHERMOSA,
SHAHEENA KOUSAR, and SASKATCHEWAN
LABOUR RELATIONS BOARD

Respondents

Counsel:

Steven J. Seiferling and Gillian D. Fortlage
Heath P. Smith and Jason Luong

for the applicant
for the respondent, UFCW, Local 1400

FIAT
May 21, 2026

CURRIE J.

[1] This is an application for judicial review of a February 21, 2025 decision of the Saskatchewan Labour Relations Board (*Kousar v UFCW, Local 1400*, 2025 SKLRB 6). The employer, 610539 Saskatchewan Ltd., operating as Heritage Inn Saskatoon, asks the court to quash that decision.

[2] In its decision, the Board dismissed employee applications to decertify United Food and Commercial Workers, Local 1400 (“the union”). It dismissed the applications on the basis that they were made in part as a result of employer influence.

Context of the decertification applications

[3] By virtue of a 2002 certification order of the Board, the union represents the employees of the Heritage Inn, a hotel in Saskatoon.

[4] The most recent collective bargaining agreement expired in 2019. Bargaining for a new agreement had begun in 2019, but was interrupted by the COVID-19 pandemic. Bargaining recommenced in early 2023.

[5] On September 5, 2023:

- (a) the employer gave the union notice of a lockout that would commence on September 7, 2023;
- (b) the employer offered, to all of its employees, continued employment after the commencement of the lockout, under different terms and conditions, until a new collective bargaining agreement was signed;
- (c) Lucy Figueiredo, the president of the union, attended the workplace for the purpose of meeting with employees, but when she arrived the employer asked her to leave, threatening to call the police if she did not;
- (d) Ms. Figueiredo left the premises in compliance with the request of the employer;
- (e) the union then gave notice to the employer that a union representative would attend at the workplace the next day; and

- (f) the employer refused to allow a union representative to attend pursuant to that notice.

[6] On September 7, 2023 the employer locked out the union, and the union commenced operation of a picket line.

The decertification applications

[7] On November 15, 2023 Lester John Villahermosa and Shaheena Kousar, employees of the employer, filed with the Board their concurrent applications to cancel the certification order (“the decertification applications”). Their stated reason for making the applications was “A majority of the employees no longer support being unionized.”

[8] In response to the applications, pursuant to the provisions of *The Saskatchewan Employment Act*, SS 2013, c S-15.1, the Board directed that a vote by secret ballot be conducted among the employees of the employer in late 2023, “to determine whether or not the said employees wish to continue to be represented by the Union, for the purpose of bargaining collectively with their employer”.

[9] The vote was conducted and the unopened ballots were received and kept in the possession of the Board.

[10] The Board conducted its hearing of the decertification applications in the period July to October 2024. In the course of that hearing the union asked the Board to dismiss the decertification applications under s. 6-106 of the *Act*:

6-106 The board may reject or dismiss any application made to it by an employee or employees if it is satisfied that the application is made in whole or in part on the advice of, or as a result of influence of or interference or intimidation by, the employer or employer’s agent.

[11] In its February 21, 2025 decision, the Board concluded that the decertification applications of Mr. Villahermosa and Ms. Kousar were made in part as a result of influence by the employer. For this reason, under s. 6-106 the Board dismissed the decertification applications.

Issues

[12] The following issues must be addressed:

1. The applicable standard of review.
2. Whether the employer has standing to bring this judicial review application.
3. Whether the Board failed to rule on evidentiary issues.
4. The effect of the Board's consideration of its decision in a prior proceeding.
5. Review of the Board's finding of employer influence.

Standard of review

[13] The parties are agreed, and I conclude, that the standard of review here is reasonableness, except where there is a question of natural justice. For a question of natural justice the standard of review is correctness.

[14] Justice Barrington-Foote explained the nature of a reasonable decision in *Service Employees International Union - West v Saskatchewan Health Authority*, 2020 SKCA 113 at paras 102-105 (an explanation that was confirmed by the Court of Appeal in *Andritz Hydro Canada Ltd. v The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 179*, 2023 SKCA 69 at para 41):

[102] I agree with my colleagues that the Chambers judge was correct in selecting the reasonableness standard when reviewing the *Award*, and that the issue is whether he correctly applied that standard. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, 441 DLR (4th) 1 [*Vavilov*], the majority confirmed the reasonableness standard requires the reviewing court to answer two questions; that is, “whether the decision bears the hallmarks of reasonableness -- justification, transparency and intelligibility -- and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Dunsmuir*, at paras. 47 and 74; *Catalyst*, at para. 13” (at para 99). For analytical purposes, the Court described two kinds of fundamental flaws as a convenient way to discuss the issues that may show a decision to be unreasonable (at para 101). First, is there “a failure of rationality internal to the reasoning process”? Second, is the decision “in some respect untenable in light of the relevant factual and legal constraints that bear on it”? (at para 101). The Court emphasized that in order to justify setting aside a decision, the flaws must be “sufficiently central or significant”, not superficial or peripheral (at para 100).

[103] The first category of flaws reflects the principle that a reasonable decision must be based on internally coherent reasoning; that is, reasoning that is both rational and logical. As the majority put the matter, “the reviewing court must be able to trace the decision maker’s reasoning without encountering any fatal flaws in its overarching logic” (*Vavilov* at para 102). A decision will be unreasonable if it fails to reveal a rational chain of analysis or exhibits an irrational chain of analysis. While administrative decision makers must not be held “to the formalistic constraints and standards of academic logicians”, a decision may be unreasonable if it exhibits “clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise” (*Vavilov* at para 104).

[104] As to the second category, “a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision ... Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers” (*Vavilov* at para 105). The relevant constraints depend on the facts. In *Vavilov*, the majority discussed what they characterized as “a number of elements that will generally be relevant in evaluating whether a given decision is reasonable, namely the governing statutory scheme; other relevant statutory or common law; the

principles of statutory interpretation; the evidence before the decision maker and facts of which the decision maker may take notice; the submissions of the parties; the past practices and decisions of the administrative body; and the potential impact of the decision on the individual to whom it applies” (at para 106). The Court cautioned that these elements are not a checklist and vary in significance depending on the context.

[105] I would finally note that reasonableness is a deferential standard and must be sensitive and respectful of the role of the delegated decision maker. It is not a “line-by-line treasure hunt for error” (*Vavilov* at para 102). The court's function is to “ensure the legality, the reasonableness and the fairness of the administrative process” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 28, [2008] 1 SCR 190). However, reasonableness review must also be robust. Arbitrators, like other administrative decision makers, do not have free rein in interpreting a collective agreement. To paraphrase *Vavilov* (at para 68), precise or narrow contractual language may limit the number of reasonable interpretations open to the arbitrator, and may limit it to one.

Standing of the employer on this application

[15] The union asserts that the employer does not have standing to make this application for judicial review. The reason, says the union, is that the Board’s decision was made in the decertification application, and a decertification application is a matter between employees and union, not between union and employer.

[16] In so saying, the union relies on the remarks of Justice Wright in *McCall v Nova Scotia Labour Relations Board*, 2002 NSSC 33 at paras 13-15:

[13] I have nonetheless formed the conclusion that notwithstanding having been named as a respondent in the Originating Notice filed by the applicant employees, the employer should not be accorded standing on the hearing of this application. Not only did it not file a Notice of Intervention when the matter was before the Panel, its participation in the judicial review application would, in my view, offend the principle of employer neutrality in decertification applications that has often been enunciated by the Board. I appreciate that the employer is simply joining in the applicants’ request that the Panel’s

decision be quashed and the matter remitted to it as a timely application for decertification, a process which the employer acknowledges would then concern only the Panel, the employees and the union. However, it would seemingly detract from the principle of employer neutrality on this issue if the employer's arguments on judicial review could lead or contribute to the result of leaving the union open to a decertification vote. The rationale behind the principle of neutrality at play here is the prevention of the employer from showing a preference as to whether the employees should seek decertification. The requirement of neutrality thus imposed on the employer should remain an obligation even in the forum of judicial review.

[14] Nor am I satisfied that the employer has a recognizable legal interest separate and independent from the employee applicants in seeking to quash the decision of the Panel and remitting the matter to it as a timely application leading towards a decertification vote. I appreciate that the employer is interested in the outcome of the matter, and may be affected by that outcome, insofar as maintaining good labour relations with and among its employees is concerned as well as, by extension, its commercial and financial interests. However, this is in essence a legal dispute directly between the union and the applicant employees from which the employer must distance itself. It is to be contrasted with certification applications in which the employer does have a recognizable legal interest.

[15] The employer in its submissions relies on Civil Procedure Rule 5.04 in asserting that it has been properly named as a respondent where its legal, financial and business interests are affected by the Panel's decision. That Rule cannot override, however, the express provisions of s. 53(1) of the *Trade Union Act* above referred to which embodies the principle of employer neutrality in matters concerning the representation of employees by a trade union. It is to be remembered that decertification is the right of employees to exercise and not that of an employer. If an employer can neither seek nor oppose the decertification of a union as a bargaining agent for its employees, it does not seem logical that the employer should then be accorded standing in a judicial review application to argue how the decertification provisions in the Trade Union Act should be interpreted.

[Emphasis added]

[17] The circumstances of this matter are pivotal on this issue.

[18] Here the employer was named as a respondent in both applications for decertification. Furthermore, and most significantly, the Board permitted the employer to participate fully at the hearing of the decertification applications. The employer was represented by counsel at the hearing. The employer's counsel questioned witnesses, adduced documents in evidence, and presented closing argument. The employer also had the opportunity to call witnesses at the hearing, but elected not to do so. In closing argument the issues addressed by the employer's counsel included the issue of whether there had been employer influence or interference.

[19] In other contexts, the Board has referred to its expectation of employer neutrality when it comes to "representational questions" (e.g. in *United Food and Commercial Workers, Local 1400 v Securitas Canada Limited*, 2015 CanLII 43778, 261 CLRBR (2d) 166 (SKLRB) at para 34). Here, though, the degree of participation that the Board granted to the employer at the hearing permitted the employer to go beyond neutrality to participate fully and to make submissions on the issues. In this circumstance, it would not be logical or fair to the employer to deny it the opportunity to seek judicial review of the decision that the Board made at the conclusion of that hearing.

[20] The employer has standing to make this application for judicial review.

Evidentiary rulings

[21] The employer argues that the Board breached the principles of natural justice by failing to rule on evidentiary matters that arose in the hearing. The employer asserts that there were two kinds of circumstances:

- (a) During the hearing the Board overruled the employer's objections to some evidence being adduced by the union. The Board admitted the evidence, saying that it would deal with the objections in writing

in its final decision, but such objections are not addressed in the Board's decision.

- (b) During the hearing the Board heard some evidence that was adduced by the union, saying that it would determine later in writing whether the evidence was appropriate. Such a determination is not addressed in the Board's decision.

[22] Having made these general assertions, the employer has not identified specifics. The material that is before me includes a transcript of the Board hearing (totalling roughly a thousand pages), but the employer has not directed me to any particular parts of that transcript. Nor has the employer identified any particular evidence or ruling in this regard. Consequently, I do not know what items of evidence are the subject of the employer's concern. I do not know the nature of the employer's objection to the evidence in each instance. I do not know the significance of each such item of evidence to the decision of the Board.

[23] In this circumstance, I have no basis on which to determine that the Board breached the principles of natural justice in connection with the evidentiary rulings.

Board consideration of its prior decision

[24] On February 28, 2024 the Board issued a decision on a different issue between the union and the employer (*United Food and Commercial Workers, Local 1400 v 610539 Saskatchewan Limited (operating as Heritage Inn Saskatoon)*, 2024 CanLII 14520, 139 CLRBR (3d) 27 (SKLRB)). In that decision ("the 2024 decision") the Board ruled that the employer had committed an unfair labour practice in connection with bargaining. As of February 21, 2025 (the date of the Board's decision in this matter), the employer was pursuing judicial review of that decision.

[25] In its decision in this matter the Board said at paras. 31 and 68 that if the

2024 decision had been final, then the *2024 decision* would have led to dismissal of the decertification applications here. The Board observed also, however, that the *2024 decision* was not final because it was the subject of an application for judicial review. At para. 31 the Board said, regarding the *2024 decision*:

[31] ... As this finding is under challenge, and therefore not final, the Board declines to rely upon it as a basis for dismissing under s. 6-106.

[26] The employer argues that the Board rendered an unreasonable decision here in applying the *2024 decision* to this proceeding. The employer argues, as well, that in considering evidence that was adduced in that other proceeding the Board breached the principles of natural justice, which require each case to be decided on its own merits and on its own evidence.

[27] The employer presents two arguments in this regard. First, it says that the Board erred in concluding that its finding of the employer's unfair labour practice in a different proceeding would have been final and decisive of the application here. The key to that argument is "would have been". As I have noted, the Board did not apply the *2024 decision* to this proceeding. It declined to do so because the *2024 decision* was not final.

[28] Since the Board did not apply the *2024 decision* here, there is no need to consider whether doing so would have been unreasonable or in breach of natural justice. There is no need to consider the reasonableness or correctness of a ruling that the Board did not make.

[29] The employer's second argument is that the Board erred in considering evidence that was adduced in the proceeding that led to the *2024 decision*, but that was not adduced in evidence in this proceeding. In its decision here the Board reviewed, in some detail, some such evidence.

[30] In the end, though, in its decision here the Board did not rule against the employer on the basis of any of the evidence that was adduced in that other proceeding. Some of that evidence from the other proceeding related to bargaining. At para. 54 of its decision here the Board said that there was:

[54] ... limited relevance to the bargaining as the Union's evidence established that only the bargaining committee and the Union's negotiators were aware of the Employer's positions and tactics at bargaining. As such, the Employer's conduct at bargaining could not have overridden the will of the employees as they were unaware of it. The Board accepts that the factual findings of bargaining are consistent with the evidence called but finds that it cannot rely on the finding of bad faith due to the way this file has been litigated.

[Emphasis added]

[31] Thus, while the Board considered the evidence from the other proceeding regarding bargaining, ultimately the Board did not apply that evidence against the employer. The Board's consideration of that evidence had no adverse effect on the employer. Consequently, there is no need to rule on the propriety of the Board's consideration of the evidence. Even if I were to conclude that the Board ought not to have considered the evidence, that conclusion would not affect the disposition of this matter.

[32] Such a circumstance was addressed by Justice Sopinka in *Borowski v Canada (Attorney General)*, 1989 CanLII 123, [1989] 1 SCR 342 at p 353 (SCC) ("... If the decision of the court will have no practical effect on such rights, the court will decline to decide the case...") and of Justice Tholl in *Cimmer v Niessner*, 2022 SKCA 60 at para 45 ("... A matter, or an issue, is moot if its determination does not resolve a current dispute or affect the actual rights of the parties..."). The question of the propriety of the Board's consideration of the evidence of bargaining, in the other proceeding, is moot.

[33] In its decision here, the Board also considered evidence from the other proceeding with respect to communications by the employer with members of the union. The Board said, at para. 56, that it was following its determination in the *2024 decision* as to those communications. Having said that, though, the Board went on to conclude that those communications did not have the effect of intimidation or interference. Therefore, as with the Board's consideration of evidence regarding bargaining, the Board's consideration of the evidence of communication in the other proceeding did not lead to any ruling here against the employer, so that the propriety of the Board's consideration of that evidence also is moot.

[34] No finding of unreasonableness or breach of natural justice arises from the Board's consideration of the *2024 decision* or of evidence that was adduced in that other proceeding.

Finding of employer influence

[35] In considering whether s. 6-106 of the *Act* applied in this case, at para. 22 of its decision the Board reiterated its approach as described in *Williams v United Food and Commercial Workers, Local 1400*, 2014 CanLII 63996, 243 CLRBR (2d) 152 (SKLRB) at para 31:

[31] Generally speaking, the cases where this Board has invoked s. 9 of *The Trade Union Act* [RSS 1978, c T-17] have generally fallen into one of two (2) categories:

1. Circumstances where the Board had compelling reason to believe that the real motivating force behind the decision to bring a rescission application was the will of the employer rather than the wishes of the employees...
2. Circumstances where the Board lost confidence in the capacity of the employees to independently decide the representational question because the nature of an employer's improper conduct was such that it likely impaired them of their capacity to freely do so...

[36] At para. 23 the Board cited factors that are to be considered with respect to s. 6-106, quoting *Wentworth v Teamsters Canada Rail Conference*, 2019 CanLII 83972, 37 CLRBR (3d) 202 (SKLRB) at para 75:

[75] Section 6-106 provides the Board with discretionary power to dismiss a decertification application when the application has been made in whole or in part due to employer advice, influence, interference or intimidation. The Board must consider the whole of the circumstances. While each case must be assessed on its facts, the Board routinely examines the following factors in assessing a given case:

- a. The plausibility of the applicant's motives for bringing the application;
- b. The relationship between the applicant and management, or the provision of special treatment;
- c. The provision of information or resources to the applicant, on behalf of the employer;
- d. Words or conduct, on behalf of the employer, that suggest, whether indirectly or overtly, that decertifying will result in a benefit to the employees;
- e. Demonstrated conduct on behalf of the employer that has hindered bargaining and damaged the union's reputation.

[37] At para. 24 the Board repeated its remarks in *Legary v United Food and Commercial Workers Union*, 2020 CanLII 95887, 64 CLRBR (3d) 144 (SKLRB) at paras 81-82:

[81] By virtue of the nature of and circumstances in which decertification applications are made, it is a rare case in which there is overt or direct evidence of interference or other impugned conduct on the part of the employer. It is for this reason that the Board must be alert to the existence of unusual circumstances, inconsistencies, or other hallmarks of suspicious conduct, and the Board is permitted, and in some cases must, infer from the circumstances the nature and extent of the employer's conduct.

[82] This does not mean that every “statement made or action taken by an employer will necessarily lead to the conclusion that a rescission application has been made as the result of improper influence, interference, assistance or intimidation by the employer”. In deciding whether to exercise its discretion, the question that the Board will consider is whether the employer’s conduct is of a nature and significance that the probable impact of that conduct would be to compromise the ability of employees, of reasonable fortitude and intelligence, to freely exercise their rights under the Act. The Board gives due consideration to the circumstances occurring in the workplace at the relevant time, including the maturity and status of collective bargaining. This is an objective test.

[38] The Board’s consideration of the application of s. 6-106 in this matter addressed the five factors that were set out in *Wentworth*.

[39] As to “the plausibility of the applicant’s motives for bringing the application”, the Board reviewed the testimony of Mr. Villahermosa and of Ms. Kousar, and the Board concluded at para. 36:

[36] The Board accepts the sincerity of the motives of the Applicants in bringing the application. However, the Board has concerns about what caused Mr. Villahermosa’s dissatisfaction and whether it was influenced by the Employer’s actions. Those concerns will be addressed under the conduct of the employer.

[40] As to “the relationship between the applicant and management, or the provision of special treatment”, the union asserted that both Mr. Villahermosa and Ms. Kousar are managers. After reviewing the circumstances, though, the Board concluded at para. 42:

[42] The Board does not find that either of the Applicants were acting as management or on behalf of management in making this application.

[41] As to “the provision of information or resources to the applicant, on behalf of the employer”, the Board concluded that the instances pointed to by the union

were not “of such assistance to override the employees reasonable fortitude” (para. 43).

[42] As to “words or conduct, on behalf of the employer, that suggest, whether indirectly or overtly, that decertifying will result in a benefit to the employees”, the Board wrote at para. 44:

[44] There were no communications of the Employer put into evidence during the period after the filing of the recission application and prior to the closing of the vote. The Board finds that the communications that occurred related to bargaining and are better addressed under the next factor.

[43] The Board concluded, therefore, that none of the first four *Wentworth* factors supported a finding of employer conduct that would justify dismissal of the decertification application under s. 6-106.

[44] As to the fifth factor, “demonstrated conduct on behalf of the employer that has hindered bargaining and damaged the union’s reputation”, the Board summarized its conclusion at para. 45:

[45] It is the consideration of this factor that is determinative of the application. The Board finds that the cumulative effects of the Employer's conduct leading up to and after the lockout influenced, in part, the application. Even without the previous finding of the Board on *Heritage Inn #1* [the 2024 decision], the Board would have found the events of September 5th, the failure to provide the CBA to new employees prior to the lockout, and the issues with the provision of Union cards or up to date contact information for new union members to the Union, influenced the recission application in part.

[45] Thus the Board’s conclusion, that the employer’s conduct influenced the making of the decertification applications, was based on three instances of the employer’s conduct. First was the offer of continued employment in connection with the lockout, as related by the Board at para. 57 of its decision:

[57] It was established in evidence that on September 5, 2023, the Employer made an offer to all of its employees to continue working under different terms and conditions during the course of the lockout. The agreement offered would expire upon the signing of a new collective bargaining agreement.

[46] The Board expressed its view of this conduct at para. 61:

[61] Pursuant to various provisions of the Act, including ss 6-4 and 6-13, a certified union is the exclusive bargaining agent of its members while a collective bargaining agreement is in effect. The Employer's position is effectively that once lockout notice was given, the Employer was entitled to negotiate directly with employees about their employment during the lockout. Whether this is permitted by the Act and the CBA will be determined in other hearings, but for this hearing, the Board finds that the negotiation of individual employment contracts prior to the lockout undermined the Union and influenced the application in part.

[Emphasis added]

[47] The employer argues that, under both the *Act* and the bargaining agreement, it was entitled legally to make the offer to the employees. On the basis of that legality, the employer says that the Board ought not to have considered the circumstance of the offer in the Board's evaluation of whether the employer's conduct influenced the making of the decertification applications.

[48] The question of influence under s. 6-106, however, is not determined by legality or compliance with a collective agreement. It is determined by how the employer's conduct, whether lawful or not, affected the employee's making of the application. Therefore it was reasonable and appropriate for the Board to consider the offer as one element of the employer's conduct that may have affected Mr. Villahermosa or Ms. Kousar in making his or her application.

[49] The second instance of the employer's conduct, relied on by the Board in reaching its conclusion, was the employer's refusal to permit a union representative to

speak with employees on the premises, as related by the Board at paras. 58-59 of its decision:

[58] In addition, the Board must consider the actions in relation to Union representation on that day. Ms. Figueiredo sought to attend the Employer's property on September 5th. The Employer denied the Union President the opportunity to meet with staff prior to discussing the offer with the Employer. The Employer relied on a provision of the CBA requiring notice of Union attendance. The Employer demanded that she leave or the Employer would call the police. The Union called evidence that various members of the Union witnessed portions of Ms. Figueiredo's discussions with management and being required to leave the premises.

[59] After Ms. Figueiredo left, Mr. Loehndorf then gave notice for the Union to attend the following day. The Employer refused to allow the Union to attend even with notice.

[50] The Board's view of this conduct appears at para. 62 of the decision:

[62] On the same day that the Employer gave notice of lockout and offers to the employees, the Union President sought to attend the premises. The Employer asked the Union President to leave and advised that it would call the cops if she did not leave voluntarily. This was witnessed in part by union members who testified. The Union sought to exercise its rights under the CBA to schedule a time to meet with its members. The Employer denied this request. Within the context of a lockout notice, contract offers, and the interactions with the Union President, this denial undermined the Union at a particularly important juncture.

[Emphasis added]

[51] Again, the employer asserts that it was entitled legally to prevent the union representative from meeting with employees at the workplace, emphasizing that the union was free to have a meeting elsewhere. Again, though, the question of influence is not determined by legality or a collective agreement. It was reasonable and appropriate for the Board to consider these circumstances as one element of the

employer's conduct that may have affected Mr. Villahermosa or Ms. Kousar in making his or her application.

[52] The third factor included the employer's failure to provide to a new employee a copy of the collective bargaining agreement, and the employer not advising the union of the hiring of the new employee, as related by the Board at paras. 65-67:

[65] While the Board does not think the connection between Mr. Villahermosa and the Employer was proven to be inappropriate, the Board does have concerns about how Mr. Villahermosa was hired. Mr. Villahermosa's hiring raised several concerns as to the failure to provide CBAs to new employees and the failure to forward Union cards in an expeditious manner.

[66] Mr. Villahermosa did not believe the Union provided him with any benefits or that union membership was worth his Union fees. The Board infers that this conclusion was in part influenced by the lack of contact with the Union or initial access to a CBA. The lack of contact is at least in part the result of the Union not having Mr. Villahermosa's contact information or knowledge of his employment.

[67] The Board does not find it was in full caused by the Employer's actions. The Union also contributed to the lack of contact as the Union did not have a shop steward in the workplace at the time of Mr. Villahermosa's hiring and the evidence supports that the Union's representatives who did attend the Employer's business never talked to Mr. Villahermosa.

[Emphasis added]

[53] The Board explained, at para. 68, the significance of the employer's conduct:

[68] When the issues of the Employer contributing to lack of Union contact are taken together with the events of September 5th, the Board finds that the application was made in part as a result of Employer influence or interference. The Employer's actions undermined the Union and contributed in

part to the application for rescission.

[54] This element of the employer's conduct relates to an employee having access to information regarding the union (and so being able to make an informed decision as to whether to make an application). As with the other two elements of the employer's conduct that were considered by the Board, consideration of this instance of the employer's conduct was reasonable and appropriate in the context of s. 6-106.

[55] The employer emphasizes, however, the decision of the Board in *Crowder v SEIU-West*, 2016 CanLII 156697, 283 CLRBR (2d) 92 (SKLRB). In that case the Board declined to apply s. 6-106 to dismiss an application. The Board, though, since has clarified that its decision in *Crowder* was fact-specific – as indeed are all applications under s. 6-106. In *Parenteau v Saskatchewan Government and General Employees' Union*, 2019 CanLII 57379, 36 CLRBR (3d) 176 (SKLRB), the Board said at paras. 90-91:

[90] The Employer suggests that *Crowder* signals a new direction for the Board, and is supported by recent *Charter* cases interpreting the protection for freedom of association. While understandable, this argument cannot be upheld. First, *Crowder* did not outline a principled framework for considering cases pursuant to section 6-106 of the Act. Second, the Board's comments in *Crowder* are colored by the circumstances of that case... Third, the facts in *Crowder* are distinguishable from the case at bar.

[91] Section 6-106 provides the Board with discretionary power to dismiss decertification applications when there is evidence of impugned conduct. Each case must be assessed on its facts...

[Emphasis added]

[56] In *Parenteau* the Board rightly recognized that the application of s. 6-106 to a particular case depends on the particular circumstances of that case. The Board here concluded that s. 6-106 applies to the particular circumstances of this case.

[57] This brings me to the elements of reasonableness as discussed by Justice Barrington-Foote in *Service Employees International Union – West v Saskatchewan Health Authority*. In short, to be reasonable a decision:

- (a) must bear the hallmarks of reasonableness, being justification, transparency and intelligibility;
- (b) must be justified in relation to the relevant factual and legal constraints;
- (c) must not include “a failure of rationality internal to the reasoning process”; and
- (d) must not in some respect be “untenable in light of the relevant factual and legal constraints that bear on it”.

[58] I find that the Board’s decision meets the criteria of reasonableness. The Board clearly has set out the evidence that it considered, and has set out the principles that it was applying. The Board applied those principles, and it set out the reasoning that led to its decision. The decision itself is internally consistent and is consistent with the relevant factual and legal constraints.

[59] In summary, the Board noted that Mr. Villahermosa and Ms. Kousar testified that they did not believe that they received value from the union, and that Mr. Villahermosa “did not believe the Union provided him with any benefits or that Union membership was worth his Union fees.” The Board noted that Mr. Villahermosa, who had become an employee of the employer only in the summer of 2023, had had no contact with the union. Furthermore, the Board related that it appeared that, on hiring Mr. Villahermosa, the employer neither had provided to him a copy of the collective agreement nor had provided his contact information to the union.

[60] The Board concluded that the employer had prevented Mr. Villahermosa from being informed appropriately as to what the union does and as to whether employees receive value from it. This conclusion appears, most clearly, at para 66 of the decision:

[66] Mr. Villahermosa did not believe the Union provided him with any benefits or that union membership was worth his Union fees. The Board infers that this conclusion was in part influenced by the lack of contact with the Union or initial access to a CBA. The lack of contact is at least in part the result of the Union not having Mr. Villahermosa's contact information or knowledge of his employment.

[61] The Board also concluded that all of the cited instances of the employer's conduct, taken together, undermined the union and in that way influenced the making of the decertification applications.

[62] In arguing that the Board's decision is unreasonable, the employer emphasizes other Board decisions that recognize that employees are not "timorous minions" but rather can be presumed to have "reasonable fortitude". The employer argues that the Board's decision here contradicts that approach and is unreasonable.

[63] In fact, the Board's decision here does not conflict with that approach. This is not a case, however, in which employees are said to have been subjected to excessive persuasion, so that they made the applications as a result of direct influence from the employer. Rather, this is a case in which the Board concluded that the employer's conduct deprived employees of relevant information, and that the employer's conduct undermined the union in the eyes of the employees. It was that form of influence, rather than direct influence, that the Board found to have existed.

[64] The Board's decision meets the criteria of reasonableness.

Conclusion

[65] The employer's application for an order quashing the February 21, 2025 decision is dismissed. The decision has not been shown to be unreasonable, or to have been rendered in breach of natural justice, or in any other way to be deserving of being interfered with. The decision stands.

[66] As the successful party to this application, the union will have the costs of this application against the employer under Column 2 (as this matter is among neither the simplest nor the more complex matters).

"G.M. Currie" J.
G.M. CURRIE