

KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 133**

Date: **2026 07 27**
Docket: KBG-SA-00376-2025
Judicial Centre: Saskatoon

BETWEEN:

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 1400

APPLICANT

- and -

FIRE & FLOWER INC.; and SASKATCHEWAN
LABOUR RELATIONS BOARD

RESPONDENTS

Counsel:

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and Alexa Wisner student-at-law
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for the applicant
for the respondent Fire & Flower Inc.

JUDGMENT
July 27, 2026

SCHATZ J.

Overview

[1] This is a judicial review application brought by the United Food and Commercial Workers Union, Local 1400 [Union] against Fire & Flower Inc. [Fire &

Flower] and the Saskatchewan Labour Relations Board [Board], alleging the Board erred in its March 26, 2025 decision, 2025 SKLRB 14 [*Decision*]. The *Decision* in question relates to an application by the Union to the Board against Fire & Flower pursuant to section 6-104 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [Act], alleging unfair labour practices against Fire & Flower pursuant to sections 6-5, 6-6(2)(d), and 6-62(1)(a), (b), and (i) of the Act [Application].

[2] In its Application to the Board the Union alleged that Fire & Flower breached a settlement agreement between it and the Union and committed unfair labour practices as a result of communications made to its employees during the course of a certification campaign. In its *Decision*, the Board dismissed the Application and held, among other things, that Fire & Flower did not breach the settlement agreement between the parties and that Fire & Flower's communications to its employees were permissible, and were not outside of the sphere of permissible employer communications and did not threaten the integrity of the Union.

[3] In arriving at its *Decision* the Board was dealing with issues of labour law that fell within its jurisdiction and expertise. In its judicial review application the Union held that the Board exceeded its jurisdiction and made an unreasonable decision, that it failed to properly consider and apply relevant jurisprudence and legislation or failed to provide adequate reasons regarding its analysis, that it erred in making findings of fact contrary to the evidence or provide adequate reasons regarding its analysis, and that it failed to discharge its obligation to consider all of the relevant information and evidence necessary to make its determination. Fire & Flower denied the Union's claims.

[4] On October 18, 2022 the Union filed an Application for Bargaining Rights to be recognized as the certified bargaining agent for certain employees of Fire & Flower, the application being indexed as LRB File No. 167-22 [Union's Certification Application]. On November 8, 2022 the Union filed an Unfair Labour Practice

Application against Fire & Flower related to the Union's Certification Application. On November 16, 2022 Fire & Flower filed an Unfair Labour Practice Application against the Union related to the Union's Certification Application. The parties engaged in negotiations and settled the initial Applications and entered into Minutes of Settlement [Minutes] regarding the terms of the settlement.

[5] Between May 10, 2024 and May 29, 2024 Fire & Flower issued seven communications regarding the Union's Certification Application and hosted two voluntary offsite meetings regarding the certification process. On May 17, 2024 the Union wrote to Fire & Flower with respect to its communications. On the same day Fire & Flower responded to the Union's communication. On May 23, 2024 Fire & Flower hosted two voluntary off-site meetings regarding the Union's Certification Application. On May 27, 2024 and May 31, 2024 the Union hosted its voluntary meetings regarding the Union's Certification Application. On May 29, 2024 the parties corresponded and confirmed there were no outstanding action items under the Minutes. On June 6, 2024 the Union filed the Application which is the subject matter of the Board's *Decision* which is the subject matter of this judicial review.

[6] In arriving at its *Decision*, the Board considered the applicable labour relations principles and law, the parties' oral and written submissions and authorities and the documents presented by both parties. The Board came to a unanimous decision dismissing the Application in its entirety, finding that Fire & Flower's conduct did not breach the Minutes or any sections of the *Act*. With respect to the alleged breach of section 6-62(1)(a) of the *Act* the Board identified the analysis it was required to undertake, specifically the act of reviewing the employer communication in the context of the workplace and determining whether their probable effect, on employees of reasonable intelligence and fortitude, would have been to influence them in a permissible manner, or whether they went a step further and interfered with, restrained,

intimidated, threatened or coerced them in their consideration of whether to support the organizing drive. The Board examined the five areas to be examined and then reviewed each of these against the evidence. The Board was ultimately not satisfied that the probable effect of the impugned communications on employees of reasonable intelligence and resilience would have interfered with, restrained, intimidated, threatened or coerced them. The Board concluded that employees of reasonable intelligence and fortitude would be capable of receiving this information without necessarily being threatened, intimidated or coerced.

[7] With respect to the first of the five areas, the Board found no evidence that the subject employees were particularly vulnerable or susceptible to Fire & Flower's views and opinions. The Board started from the presumption that the employees were capable of receiving and weighing a broad range of information in making a decision about whether or not to support the Union. With respect to the second area, the Board recognized an inherent insecurity in a prospective collective bargaining relationship but concluded that the fact the communications occurred during an organizing campaign was not, in and of itself, an unfair labour practice, and that the communications must still be found to be coercive or intimidating. With respect to the third area, the Board concluded that the evidence did not support the Union's characterization that Fire & Flower communicated with its employees "in an intimidating and coercive manner, and with the intention of impacting the ability of employees to freely decide the representational question without the interference of their employer through fostering an environment filled with fear and confusion." With respect to the fourth area, the Board found that the communications from Fire & Flower were relevant and useful to the employees. Lastly, with respect to the fifth area to be examined the Board found that there was insufficient evidence on which it could make a determination that the communications went "beyond influence and in the realm of interference".

[8] For the reasons outlined below I find that the Union has not proven the Board's *Decision* to be unreasonable, and therefore its application for judicial review is denied.

Issues

[9] There are two issues to be decided:

1. What is the applicable standard of review?
2. Is the *Decision* reasonable?

Analysis

1. What is the applicable standard of review?

[10] The standard for review when a Court is reviewing an administrative decision other than a review based on a breach of natural justice and/or the duty of procedural fairness, the presumption is the standard of review is reasonableness unless legislative intent otherwise exists. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], explained that a Court's review on a reasonableness standard is concerned with the decision-making process and its outcomes. Courts must turn to the administrative decision-maker's reasons, if available, and confirm that the outcomes are based on sound reasoning. Some degree of conflict in an administrative body's decisions does not threaten the rule of law, although there is a general need for consistency in administrative decision-making. An administrative body needs only to maintain general consistency, treating like cases alike in a general sense. At paragraph 85 of the *Vavilov* decision the Supreme Court states as follows:

85 Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a whole is reasonable. As we will explain in greater detail below, a reasonable decision is one that is based on an internally coherent and rational chain of analysis

and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision.

[11] In making its decision the Court must consider the reasons of the administrative decision-maker on the record and the Court should have sensitivity to the administrative nature of the decision. At paragraph 94 of the *Vavilov* decision the Supreme Court of Canada states as follows:

94 The reviewing court must also read the decision maker's reasons in light of the history and context of the proceedings in which they were rendered. For example, the reviewing court might consider the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision maker's work, and past decisions of the relevant administrative body. This may explain an aspect of the decision maker's reasoning process that is not apparent from the reasons themselves, or may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency. ...

2. Is the *Decision* reasonable?

Alleged Unfair Labour Practices

[12] The Union's allegations against Fire & Flower pertain to sections 6-5, 6-62(1)(a),(b), and (i) of the *Act*. These sections provide as follows:

Coercion and intimidation prohibited

6-5 No person shall use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue to be or to cease to be a member of a union.

...

Unfair labour practices – employers

6-62(1) It is an unfair labour practice for an employer, or any person acting on behalf of the employer, to do any of the following:

(a) subject to subsection (2), to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Part;

(b) subject to subsection (3), to discriminate respecting or interfere with the formation or administration of any labour organization or to contribute financial or other support to it;

...

(i) to interfere in the selection of a union;

...

The Legal Tests

[13] The legal tests used by the Board to determine whether section 6-5 and 6-62(1)(i) of the *Act* have been contravened is the same test used by the Board to evaluate whether section 6-62(1)(a) of the *Act* has been contravened. In *Amalgamated Transit Union, Local 615 v Battlefords Transit System*, 2022 CanLII 99434 at paras 76-77 (SK LRB), the Board states as follows:

[76] The Union argues that the Employer contravened section 6-5 and clauses 6-62(1)(a), (g) and (i) of the *Act*, by interfering with, restraining, intimidating, threatening or coercing its employees in the exercise of their right to support the Union. The test to establish the contravention is an objective test: that the likely effect of the Employer's actions, on employees in this workplace of reasonable intelligence, resilience and fortitude, would have been to interfere with, restrain, intimidate, threaten and/or coerce them in the exercise of their rights under Part VI of the *Act*. This requires a contextual analysis.

[77] The onus is on the Union to satisfy the Board that the Employer's actions were motivated, even in part, by anti-union animus. In *Clean Harbors* [2014 CanLII 76047 (SK LRB)], the Board stated:

[92] However, even if the Board is satisfied that there were valid reasons for the actions that the employer took, the Board may nonetheless still find a violation has occurred if the Board is satisfied that the employer's actions were motivated, even in part, by an anti-union animus. See: *The*

Newspaper Guild v. The Leader-Post, a Division of Armadale Co. Ltd., [1994] 1st Quarter Sask. Labour Rep. 242, LRB File Nos. 251-93, 252-93 & 253-93. Such is the case because there are few signals more intimidating for an employee or can send a more powerful message through the workplace than an indication that your employment relationship may be in jeopardy because of your support for a trade union. Therefore, even if an employer demonstrates a credible explanation for the actions it took, it is nonetheless a violation of the Act if we find that a component of the employer's decision-making process involved a desire to punish an employee because of his/her support for a trade union or to signal to other employees that unionization was undesirable. . . .

Section 6-62(1)(a) of the Act

[14] The legal test with respect to section 6-62(1)(a) of the Act is summarized by the Board in the decision *Saskatchewan Government and General Employees' Union v Saskatoon Downtown Youth Centre Inc.*, 2021 CanLII 19681 at paras 23-26 (SK LRB) [*Downtown Youth*], as follows:

[23] The starting point in the analysis of this application is that the onus is on SGEU to satisfy the Board that EGADZ has contravened clause 6-62(1)(a). The evidence must be sufficiently clear, convincing and cogent. The test to establish the contravention is an objective test: that the probable effect of the memo, on employees of reasonable intelligence and fortitude, would have been to interfere with, restrain, intimidate, threaten and/or coerce them in the exercise of their rights under Part VI of the Act. This requires a contextual analysis.

[24] *United Food and Commercial Workers, Local 1400 v Securitas Canada Limited*, [2015 CanLII 43778 (SK LRB)] [*"Securitas"*] contains a useful description of the analysis to be undertaken by the Board:

[31] *By way of background, the substantive test for determining whether or not impugned communications by an employer represents a violation of s. 6-62(1)(a) of The Saskatchewan Employment Act involves a contextualized analysis of the probable consequences of the employer's conduct on employees of reasonable intelligence and*

fortitude. In other words, if the Board is satisfied that the probable effect of the impugned communications of an employer would have been to interfere with, restrain, intimidate, threaten or coerce that employer's employees, the communications are unlawful and a violation can be sustained. This test is an objective one. The Board's approach is to determine the likely or probable effects of impugned employer communications upon a so-called "reasonable" employee; being someone of reasonable intelligence and possessed of reasonable fortitude and resilience.

[32] While employers continue to be prohibited from interfering with, intimidating, threatening and coercing their employees, the Board is much less paternalistic in our presumptions as to vulnerability and/or susceptibility of employees to the views and opinions of their employers. In our opinion, the inclusion of the words "Clause (1)(a) does not prohibit an employer from communicating facts and its opinions to its employees" in *The Saskatchewan Employment Act* signals a greater tolerance by the Legislature for the capacity of employees to receive information and views from their employer without being threatened, intimidated or coerced. As noted by this Board in *Service Employees International Union (West) v. Saskatchewan Association of Health Organizations*, *supra*, to fall outside the sphere of permissible communications, an employer must do more than merely influence its employees. Improper communications requires conduct that is capable of infringing upon, compromising or expropriating an employee's free will. For example, the mere fact that an employer has communicated facts and its opinions to its employees and those employees may have been influenced by those views and opinions, should not now automatically lead to a finding of interference, let alone employer coercion or intimidation. Simply put, the prohibited effect targets a higher threshold than merely "influencing" employees in the exercise of their rights.

[33] While employers now enjoy a greater capacity to communicate facts and their opinions to employees, there continues to be a number of important limitations on an employer's so-called "free speech". As noted by the Saskatchewan Court of Appeal in *Saskatchewan Federation of Labour v. Saskatchewan*, *et. al.*, 2012 SKQB 62 (CanLII),

the inclusion of the right to communicate “facts” and “opinions”, does not give employers an unrestricted right to do so. The Saskatchewan Employment Act (as did its predecessor The Trade Union Act [RSS 1978, c T-17 since rep]) seeks to balance a number of laudable, yet clearly competing, interests in dealing with communications by an employer, including; the interests of employers (the right to freely communicate with its employees regarding matters directly affecting its business interests, its current activities, and its plans for the future); the interests of employees (the right to exercise their associational rights free from coercion, intimidation or interference); and the interests of trade unions (the right to be the exclusive bargaining agent for organized employees). See: Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, supra. While employers may communicate with their employees, they may not do so in a manner that infringes upon the ability of those employees to engage and exercise their collective bargaining rights.

[34] To fall outside the sphere of permissible employer communications, the Board must be satisfied that the probable effect of an impugned communication would be to compromise or expropriate the free will of a reasonable employee. Obviously, the challenge for the Board is differentiating between those communications by an employer that are permissible (because they contain useful and helpful information for employees; information that is merely “influential”) and prohibited communications that stray into the prohibited grounds of threats, intimidation and coercion. To guide in this evaluation, the Board will generally examine:

- 1. Evidence, if any, of a particular vulnerability of the subject employees to the views and opinions of their employers. As indicated, absent evidence of a particular susceptibility of employees, we start from the presumption that employees are capable of receiving and weighing a broad range of information about matters affecting their workplace and of making rational decisions in response to that information. See: Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, supra [2014 CanLII17405 (SK LRB)].*

2. *The maturity of the bargaining relationship between the parties. Generally speaking, in a mature bargaining relationship, employees are less vulnerable to the views and options of their employer.*
3. *The context within which the impugned communication occurred. Almost as much as the words themselves, context is important in understanding the meaning and significance of an impugned employer communication. The events occurring in the workplace; the timing of the communication(s) relative to those events; the audience; and status of the bargaining relationship; are all factors to be considered by the Board. For example, context can help the Board determine if otherwise ambiguous statements may convey a subtle message or have a different meaning for the affected employees. Similar, context can also help the Board determine if a seemingly threatening communication may, in fact, contain useful and helpful information for employees. Finally, the context in which impugned communication(s) occur guides the Board in the restraint applied to its intervention. Historically, the Board has been the most interventionist when the representational question is before employees. On the other hand, the Board has adopted a more laissez faire approach to communications by the parties when they are engaged in collective bargaining; particularly so with respect to communications that occur at the table. See: *Service Employees International Union (West) v. Saskatchewan Association of Health Organizations*, *supra*.*
4. *The evidentiary basis for and value of the impugned communication. To fall within the protection of s. 6-62(2) of the Act, there must be an evidentiary basis for the facts and opinions expressed by an employer and, generally speaking, the genesis of the information must be within the business knowledge of the employer and/or the personal experience of the communicator. Furthermore, the facts and opinions communicated by or on behalf of the employer must be relevant and useful to the subject employees. The*

greater the utility of the information being conveyed to employees, the more likely such information will fall within the sphere of permissible communications. See: International Brotherhood of Electrical Workers Local 2038 v. Clean Harbours Industrial Services Canada & BCT Structures Inc., 2014 CanLII 76047 (SK LRB), LRB File Nos. 063-14, 071-14, 096-14, 105-14 & 106-14.

5. *The balance or neutrality demonstrated by an employer in communicating impugned information. While a certain degree of “spin” and/or self-promotion may be anticipated in employer communications (particularly with respect to collective bargaining proposals), if an impugned communication contains misinformation or unnecessary amplification or spin, the more likely it will be to stray outside the sphere of permissible communication. See: Service Employees International Union (West) v. Saskatchewan Association of Health Organizations, supra. Furthermore, there are certain subjects, such as the representational questions, with respect to which the Board expects the most balance and patent neutrality from employers.*

...

[39] ... In our opinion, a communication does not fall outside of sphere of s. 6-62-(2) because the factual basis for an employer’s views or opinions ultimately turns out to be erroneous; provided the employer’s original belief in the state of facts at the time of its communication was reasonable under the circumstances.

[25] That description of the analysis to be undertaken by the Board is consistent with the task outlined for the Board in SAHO:

[100] Furthermore, the historic presumption that all employer communications are inherently and inevitably intimidating or coercing for employees can not stand in face of the 2008 amendment to s. 11(1)(a). It may well be that a power imbalance exists in a particular workplace or that a particular group of employees are vulnerable for one reason or another to the wishes or influences of their employer.

However, it is no longer appropriate for this Board to begin its analysis of the impugned employer conduct by presuming that employees are inherently or inevitably susceptible to the expropriation of their free will by an employer. In our opinion, absent evidence of an unusual power imbalance in the workplace, we start from the presumption that employees are capable of receiving a variety of information from their employer; of evaluating that information, even being aided or influenced by that information; without necessarily being improperly influenced, threatened, intimidated or coerced by that information. Absent evidence of a particular vulnerability of employees, we start from the presumption that employees are capable of weighing any information they receive, including information from their employer, and will make rational decisions in response to that information. In blunt words, in evaluating the probable affect of impugned communication by an employer, we do not assume that affected employees are timorous minions cowering in fear of their masters.

[101] The context in which an impugned communication occurs continues to be fundamental to evaluating the probable effect of that communication in two (2) ways. Firstly, contextualizing an impugned communication helps evaluate the probable effect of that communication on employees of reasonable fortitude. Considering the context within which an impugned communication occurs help the Board determine if an otherwise ambiguous statement may convey a subtle message or have a different meaning in that particular context. Secondly, the circumstances in which an impugned communication occurs also guides the Board in determining the approach it will take to intervention. An analysis of the Board's jurisdiction reveals that communications occurring during an organizing campaign or during a rescission application have generally been subject to a more rigorous review by the Board. During an organizing campaign or at any time when the representational question is before employees, the Board has generally been highly alert to subtle signs of employer interference, intimidation, coercion or threats. For example, communications from an employer about the relative benefits of unionization have been found to convey a subtle message of intimidating or coercive effect when made during an organizing campaign. See: *Super Valu, a Division of Westfair Foods v. United Food and Commercial Workers*,

Local 401, [1981] 3 Can. LR.B.R. 412, LRB File No. 121-81.

[26] The analysis for the Board to undertake is to review the memo, in the context of this workplace, to determine whether its probable effect, on employees of reasonable intelligence and fortitude, would have been to influence them in a permissible manner, or whether it went a step further and interfered with, restrained, intimidated, threatened or coerced them in their consideration of whether to support the organizing drive. The Board is to apply these principles in the context of this workplace. The Board has examined the memo in light of the five criteria described in *Securitas* and *Saskatoon Co-operative*.

Section 6-62(1)(b) of the Act

[15] The legal test with respect to section 6-62(1)(b) of the *Act* is outlined by the Board in the paragraphs 40, 105-106, 110-111, and 126 of the *United Food and Commercial Workers, Local 1400 v Saskatoon Co-operative Association Limited*, 2020 CanLII 10516 (SK LRB) as follows:

[40] On the present Application, the onus of proof rests with the Applicant, the Union. The Union bears the onus to prove, on a balance of probabilities, that the Employer breached clauses 6-62(1)(a) and 6-62(1)(b) of the *Act*. The evidence before the Board must be sufficiently clear, convincing, and cogent.

...

[105] The Board notes that it has had few opportunities to consider and apply clause 6-62(1)(b) of the *Act*. For this reason, the Board relies on previous jurisprudence with respect to the application of section 11(1)(b) of *The Trade Union Act*, the predecessor provision to clause 6-62(1)(b). The Board in *Service Employees International Union (West) v Saskatchewan Association of Health Organizations*, 2014 CanLII 17405 (SK LRB) [SAHO LRB] considered its previous case law with respect to the application of section 11(1)(b) of *The Trade Union Act*, as follows:

[118] *Section 11(1)(b) of The Trade Union Act has been considered by this Board on relatively few occasions. In Saskatchewan United Food and Commercial Workers, Local 1400 v. Federated Co-operatives Ltd, [1985] May Sask.*

Labour Rep. 30, LRB File No. 213-83, the Board described the legislative purpose of this provision as follows:

Section 11(1)(b) of The Trade Union Act prohibits an employer from interfering with the formation or administration of any labour organization. The Canada Labour Relations Board considered the phrase “interference with the formation or administration of a trade union” as it appears in Section 184(1)(a) of The Canada Labour Code in National Association of Broadcasting Employees and Technicians v. A.T.V. New Brunswick Limited (C.K.C.W.-T.V.) 1979 3 CLRB 342 and stated at p. 346-7:

The administration of the union. This is directed at the protection of the legal entity, and involves such matters as elections of officers, collection of money, expenditure of this money, general meetings of the members, etc. In a word, all internal matters of a trade union considered as a business. This is to assure that the employer will not control the union with which it will negotiate and thus assure that the negotiations will be conducted at arm’s length.

A union’s right to discipline its own members is as much an administrative function of the union as the election of its officers. Section 11(1)(b) prohibits an employer from interfering with that function. Interference could occur in a number of ways. Some of the most obvious include, for example, attempting to bribe, intimidate or improperly influence witnesses or union officials involved in discipline proceedings.

[119] *This definition was quoted with approval by this Board in Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Westfair Foods Ltd. and United Food and Commercial Workers Union, Local 1400, [1995] 3rd Quarter Sask. Labour Rep. 140, LRB File Nos. 246-94 and 291-94. The Board further commented on the legislative purpose of s. 11(1)(b) as follows:*

In our view, this passage suggests the appropriate focus for this section. We see it as intended to protect the integrity of the trade union as an organization, not to

speak to all of the types of conflict which may arise between a trade union and an employer in the course of their dealings. Insofar as meetings between an employer and employees are permissible – and we have outlined the perils which they face on other grounds – it is to be expected that they will be planned by the employer so that the persuasive impact of the information conveyed will be maximized. This in itself, however annoying, does not constitute “interference with the administration” of a trade union within the meaning of Section 11(1)(b).

[120] *In Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Canada Safeway Limited, et. al., [1995] 3rd Quarter Sask. Labour Rep. 170, LRB File No. 093-95, this Board adopted the above descriptions of the legislative purpose of s. 11(1)(b) and came to the following conclusions with respect to the application of this provision:*

We have stated above our view that not every instance of employer conduct which has an effect which is not expected, welcomed or approved of by a trade union constitutes “interference” of a kind which is prohibited under Section 11(1)(b). This comment seems equally applicable to an allegation of an infraction of Section 11(1)(b). In the relationship between a trade union and an employer, there will be many occasions when the strategy pursued by the union does not have the anticipated result, or the union must make concessions in the face of the superior bargaining power of the employer. This is the nature of collective bargaining. It cannot be the case that every action of an employer which does not serve the best interests of the trade union can be viewed as an infraction of Section 11(1)(b). As we indicated in the cases cited above, this provision must, in our view, be taken to govern conduct which threatens the integrity of the trade union as an organization, or creates obstacles which make it difficult or impossible for the trade union to carry on as an organizational entity devoted to representing employees. [emphasis added]

[106] On review, in *SEIU-West v Saskatchewan Association of Health Organizations*, 2015 SKQB 222 (CanLII) [SAHO QB], the Court found, at paragraph 57:

The board decided that s. 11(1)(b) related only to the protection of unions as an independent legal entity, and went on to say at para. 123 that “the fact that the views and opinions being expressed by SAHO and the respondent employers made the jobs of the applicant trade unions more difficult” could not amount to a violation of s. 11(1)(b). That it concluded the independence of the union was not adversely affected by the respondents’ conduct is not unreasonable, but it does leave open the question of whether an employer making the union’s life difficult can ever be the subject of an unfair labour practice as the board has stated such submission does not belong in either s. 11(1)(a) or s. 11(1)(b).

...

[110] Clause 6-62(1)(b) is not substantially different from clause 11(1)(b) of *The Trade Union Act*.

[111] A union’s right to discipline its own members is as much an administrative function of the union as is the election of its officers. As such, clause 6-62(1)(b) prohibits an employer from interfering with that function.

...

[126] Further, in relation to clause 6-62(1)(b), the focus is on whether the Employer interfered with the administration of the Union. This provision governs conduct that threatens the integrity of the Union as an organization - with an emphasis on the impugned conduct and its significance for the Union’s organizational integrity. This interpretation is supported by the phrase “interfere with...administration of any labour organization”, as opposed to the phrase used in clause 6-62(1)(a), “interfere with... an employee in the exercise of any right”, which if transposed into clause 6-62(1)(b), might read, “interfere with... a labour organization in the exercise of its administration”. It is also supported by the case law. Indeed, even *attempts* to bribe, intimidate or improperly influence witnesses can constitute interference in the administration of a union. Therefore, the fact that the March Update may have been less determinative of the employees’ choices, than the entire suite of communications, does not mean that the Employer has not contravened clause 6-62(1)(b). Likewise, the fact that the Union did not fine its members at the close of the strike does not

remove the potential for a contravention, because only the Union (with its members) can make that decision.

Section 6-62(1)(i) of the Act

[16] The legal test with respect to section 6-62(1)(i) of the *Act* is outlined by the Board in *Saskatchewan Government and General Employees Union v Lac La Ronge Indian and Child Services Agency Inc.*, 2015 CanLII 80539 (SK LRB), as follows:

[45] SGEU also alleges that ICFS breached this provision of the *SEA* that prohibits interference by an employer in the choice by its employees of a trade union. Again, the onus falls upon SGEU in this case, and they have failed to provide evidence to support any finding with respect to this provision.

[46] The Union correctly points out in its arguments that the test is an objective one which requires that there be evidence that conduct or actions of the employer would affect a reasonable employee in respect to his or her choice of a union. There is no such evidence.

[47] We do have evidence of a meeting in February 2015 wherein the employer provided its views regarding joining a union vs. not joining a union. While we have evidence of this meeting having been held and some of the elements discussed, there is no causative link between the matters discussed at the meeting and a choice by an employee regarding a trade union. At the time that this meeting was held, SGEU had pretty much abandoned its organizing efforts.

[17] The applicable standard of review to be applied is reasonableness. The decision was within the Board's jurisdiction and consistent with the *Act* and the applicable case law. The *Vavilov* decision requires that the decision be based on sound reasoning and conditions considering the evidence, the law, and policy considerations. The Court must also be sensitive to whether the decision fulfilled the governing statutory scheme. In conducting its analysis, judicial deference is warranted. The decision must be assessed considering it as a whole. Where a decision is based on an internally coherent and rational chain of analysis and the outcome is within a range of

reasonable outcomes, the reasonableness standard requires a reviewing court to defer to the decision pursuant to the *Vavilov* decision. I find the *Decision* to be internally coherent based on the chain of analysis provided and find that the outcome is within a range of reasonable outcomes.

[18] In bringing its Application to the Board, the onus lay on the Union to provide evidence to prove the allegations made. It did not do so. At paragraph 116 of the *Decision*, the Board found that the subject matter communications did not “fall outside the sphere of permissible employer communications”. This is a reasonable conclusion, and the Board used sound logic to reach this conclusion. The Board was within its jurisdiction in making the decision and it did not act contrary to the *Act*.

[19] The Union argues that the Board failed to consider, interpret, and/or apply relevant jurisprudence, policy, and legislation. Alternatively, the Union asserts that the Board failed to provide adequate reasons for disregarding the jurisprudence, policy and legislation. It is my finding that the Board properly considered, interpreted, and applied the relevant jurisprudence, policy, and legislation in making the *Decision*.

[20] The Union asserts that the Board’s characterization of the evidence was unreasonable because it spent “considerable time” summarizing the evidence of Fire & Flower’s witness and “very little time” on the evidence of the Union’s witness. They also allege that the Board referred to evidence from Fire & Flower’s witness in the *Decision* which was objected to in the hearing. The only basis for the allegation that the summarizing of evidence was unreasonable presented by the Union is that the Board spent more time summarizing the evidence of Fire & Flower’s witness. This does not make the *Decision* unreasonable. Fire & Flower’s witness provided more evidence than the Union’s witness.

[21] The Board also noted that the Union failed to provide evidence that Fire & Flower employees were vulnerable or susceptible to Fire & Flower's views and opinion. The Board also found that the Union failed to provide evidence suggesting the context within which the communications occurred conveyed a subtle message or meaning different than the written words. The Board also found that there was no evidence with respect to the LabourWatch website, or that any employee even accessed the LabourWatch website. The Board also found that there was no evidence presented by the Union that Fire & Flower's townhall meetings were "captive audience meetings" or that any of the information provided by Fire & Flower was false. The Board also found that the Union did not provide evidence of the alleged benefits of unionization or that evidence that the integrity of the Union as an organization was threatened. These findings are all reasonable given the evidence presented by the Union at the hearing. It is not reasonable for the Court to take judicial notice of the alleged benefits of unionization as the issue of the benefits of unionization closely approaches the dispositive issue and is therefore inappropriate for either the Board or the Court to take judicial notice of this allegation: *R v Spence*, 2005 SCC 71 at paras 61-62.

[22] With respect to the Union's allegation that the Union objected to a direct examination question of Mr. Mail, and the Board included the responsive evidence as part of the *Decision*, this is not reflected in the actual objection made. The Union objected to one question regarding how, if at all, Mr. Mail's parents became union members and how they worked in a union environment. Mr. Mail gave a limited response but went on to give further evidence during both direct and cross-examination regarding how his parents' involvement with the union formed his own personal background knowledge of unions generally. The Union did not object to this evidence. That evidence was therefore properly before the Board when it rendered its decision and pieces of that evidence were properly included in the *Decision*. The Board's inclusion of this evidence in the *Decision* is therefore not unreasonable. Mr. Mail's

evidence was a necessary consideration of the Board under area four of the section 6-62(1)(a) analysis which is the evidentiary basis for and value of the impugned communication.

The Board's Analysis - Section 6-62(1)(a)

[23] The Board correctly identified that it is the “probable” or “likely” effect of the communications at issue that is to be considered by the Board. The Union asserts that the Board incorrectly applied the applicable test to the case in holding the Union to “a standard of proof of interference” instead of “proof of a likelihood of interference”. In paragraph 115 of the *Decision* the Board states that “The Union needed to provide the Board with evidence that proved that, in the context of this workplace, it would have had that effect on employees of reasonable intelligence and fortitude.” “Would have had” the effect is synonymous with “probable to have had the effect” or “likely to have had the effect”. The Board does go on to say in paragraph 116 of its *Decision* that it is not satisfied that the probable effect of the impugned communications would be to compromise the free will of a reasonable employee. The Board also identifies the threshold of “probable” effect in paragraphs 58 and 59 of the *Decision*. The Board at no point states that the Union needed to provide evidence of interference. After properly identifying the applicable test and analyzing the five areas of inquiry set out in *Downtown Youth*, the Board properly concluded that the Union did not provide clear, convincing and cogent evidence to meet its burden of proof. This was a reasonable conclusion given the evidence presented.

[24] The Union challenges the Board's analysis of the five areas of inquiry set out in the *Downtown Youth* decision. With respect to area one, the Board finds that the Union did not adduce any evidence that Fire & Flower employees were susceptible to Fire & Flower's views and opinion. With respect to area two, the Union asserts that the Board spent very little time considering the effect of the immaturity of the bargaining

relationship between the parties, despite the communications occurring during an organizing drive. The Union asserts as well that the Board disregarded the organizing drive context and provided inadequate reasons for doing so. The Board does not state at any point that this consideration lacks importance. Rather, it expressly addresses the importance of this area and states that there is an inherent insecurity in a prospective collective bargaining relationship. The Board explicitly states that communications during an organizing campaign establish a higher level of scrutiny. The Board was fully alive to the insecurity in a prospective collective bargaining relationship during an organizing drive and considered that factor in arriving at its conclusion. Its *Decision* was reasonable in this respect.

[25] The Union challenges the Board's analysis of area three of the analysis which is the context within which the impugned communications occurred, specifically during an organizing drive. The Board discusses this point at paragraph 65 of its *Decision*. The Board goes on in paragraphs 66, 67 and 68 of the *Decision* to state that there is no evidence to suggest that the context within which the communications occurred conveyed a subtle message or meaning different than the written words. They state that the organizing campaign began in 2021 and both parties filed unfair labour practices against the other in 2022. They find that the employer addressed some of the concerns in the recent communications and that although some employee turnover had occurred since 2022, the employees had exposure to communications from the parties prior to the 2024 communications. The Board's finding with respect to area three of the analysis is therefore reasonable.

[26] The Union challenges the Board's findings with respect to LabourWatch. In paragraph 73 of the *Decision* the Board directly acknowledges the 2023 New Brunswick decision which the Union argues constitutes a finding that LabourWatch is not neutral. In its *Decision* at paras 71 to 74 the Board reviews the evidence pertaining

to LabourWatch as well as the decision *United Food and Commercial Workers, Local 1400 v 610539 Saskatchewan Limited (operating as Heritage Inn Saskatoon)*, 2024 CanLII 14520 (SK LRB), and finds that there was “insufficient evidence to establish the Employer’s reference to LabourWatch in its communications interfered with employees in the workplace of reasonable intelligence, resilience and fortitude in the exercise of their Part VI rights.” The Board’s finding with respect to LabourWatch is reasonable given the evidence presented at the hearing.

[27] The Union challenges the Board’s analysis of area four being the evidentiary basis for and value of the impugned communication. They take issue with the Board’s heavy reliance on the testimony of Mr. Mail. The Board addresses this at paragraphs 78-91 of its *Decision* by outlining the evidential and factual basis informing Mr. Mail’s personal experiences, which informed the communications issued. The Union challenges the veracity of the information informing Mr. Mail’s experience and the evidentiary basis for the information provided by Fire & Flower. In paragraph 81 of its *Decision*, the Board finds that Mr. Mail’s evidence had a sufficient evidentiary basis, satisfying this area. The Union did not provide any evidence showing that the information provided by Fire & Flower was false. Nor did the Union provide any evidence of the alleged benefits of unionization. The Board’s findings with respect to area four of the analysis are therefore reasonable.

[28] The Union challenges the Board’s analysis of area five, “the balance or neutrality demonstrated by an employer in communicating impugned information”. The Union asserts that the Board misconstrued the Union’s argument and that it was only required to provide evidence of unbalanced and coercive communications. The Board held in its *Decision* in paragraph 93 that “balance or neutrality” does not require the employer to advocate for the union or state the potential benefits of unionization in its communications. The Board went on to hold in paragraphs 95 to 103 of its *Decision*

that through a review of the impugned communications Fire & Flower “maintained balance in its communications”. The Board’s findings with respect to area five were therefore reasonable and the Board adequately considered the context in which these communications were made in completing its analysis under section 6-62(1)(a) of the *Act*.

The Board’s Analysis - Section 6-62(1)(b)

[29] The Union argues that the Board’s findings with respect to section 6-62(1)(b) are unreasonable. It attempts to reargue matters before the Board arguing that the communications shed a negative light on the Union leading to a conclusion that the Union would have difficulty representing employees. In its judicial review application, it attempts to reargue matters which were determined by the Board without providing further justification for why the Board’s finding was unreasonable. It is my finding that the Board’s determination with respect to section 6-62(1)(b) was reasonable and its analysis complete.

The Board’s Analysis - Section 6-62(1)(i)

[30] The Union argues that the Board’s comments surrounding section 6-62(1)(i) which state that the cases referred to by the Union are not supportive to their position as they reference terminations is unreasonable. The Union argues that the cases referred to stand for the proposition that if an Employer’s actions are motivated, even in part, by anti-union animus, a violation of section 6-62(1)(i) will be found. However, in this case there has been no finding that Fire & Flower’s actions demonstrated anti-union animus, nor do the cases referenced pertain to facts such as those presented to the Board. As such, it is my finding that the Board’s determination with respect to section 6-62(1)(i) was reasonable and its analysis was complete.

Conclusion

[31] Having reviewed the materials presented and heard counsel on this matter, and having carefully weighed the entirety of the evidence presented, the Union's application for judicial review is denied.

Costs

[32] I have considered the issue of costs. Rule 11-1(1) of *The King's Bench Rules* provides that the Court has discretion respecting the costs of and incidental to a proceeding or a step in a proceeding, and may make any direction or order respecting costs that it considers appropriate. Some measure of costs is appropriate given Fire & Flower has been successful in defending the judicial review application.

[33] Schedule I Column 2 costs shall be awarded to Fire & Flower. Costs shall be payable by the Union forthwith.

[34] In the event that any difficulties arise in the implementation of this judgment, the parties shall have leave to request that the Local Registrar convene a conference call with me.

J.
L.A. SCHATZ