



LRB File No. 001-20

FORM 18
[Section 20]

REPLY

RE APPLICATION BY Saskatchewan Polytechnic Faculty Association ("SPFA")
(state here name of applicant)

DATED THE 7th DAY OF January, 20 20 TO THE LABOUR RELATIONS BOARD

FOR AN ORDER declaring that SGEU is in breach of section 6-63(1)(g) of The Saskatchewan Employment Act
(here state briefly as to order applied for e.g. "for certification")

1. This reply is made by Saskatchewan Government and General Employees' Union ("SGEU")
(name; if partnership, give names and addresses of all partners)

of #201, 1114-22nd Street W Saskatoon, SK S7M 0S5 (306) 653-9375 (306) 664-7134
no. street city/town province postal code telephone fax

Email Address: kmahussier@sgeu.org

2. With respect to the application, the following statements are specifically admitted:

- (a) Paragraphs 1, 2, 3, 4(a)
 - (b) _____
 - (c) _____
- etc.

3. The following statements are specifically denied:

- (a) Paragraphs 4(b) to (j) and 5
 - (b) _____
 - (c) _____
- etc.

4. The following statements are specifically commented on:

(a) See paragraph 5 below.

Comment:

(b) _____

Comment:

(c) _____

Comment:

5. The following is a concise statement of the material facts which are intended to be relied upon in support of this reply:

(a) See attached Schedule "A".

(b) _____

(c) _____

etc.

I, the undersigned, solemnly declare that the submissions set forth above, are, in so far as they are matters of fact, true to the best of my information, knowledge and belief, and, in so far as they are matters of opinion, are reasonably and honestly believed by me.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED before me at Saskatoon

Saskatchewan this 22

day of January, 2020

[Signature]

Notary Public, Justice of the Peace or Commissioner for Oaths for Saskatchewan

My Commission Expires October 31, 2024

[Signature]
(signature)

CONTACT INFORMATION AND ADDRESS FOR SERVICE

If the reply is made by a union, labour organization or employer, please indicate the name, address and contact information of the individual swearing the document.

Name: Kathy Mahussier

Position Held: Labour Relations Officer, SGEU

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If the applicant is represented by legal counsel, please also indicate the name and address for service of your lawyer.

Lawyer: Jana N. Stettner

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SCHEDULE "A"

1. SGEU has not committed any breach of section 6-63(1)(g) of *The Saskatchewan Employment Act* ("SEA"), as alleged by the Saskatchewan Polytechnic Faculty Association ("SPFA").
2. Prior to 2012, SGEU represented two individually certified bargaining units at Saskatchewan Polytechnic (formerly Saskatchewan Institute of Applied Science and Technology): one unit consisting of academic employees and the other unit, consisting of professional services employees.
3. On October 31, 2012, the Saskatchewan Polytechnic Faculty Association ("SPFA") received a certification order to represent the academic employees at Saskatchewan Polytechnic formerly represented by SGEU. SGEU continued to represent members of the professional services bargaining unit (hereinafter "PSBU").
4. When SGEU was replaced by the SPFA as bargaining agent for the unit of academic employees in October 2012, SGEU acted with due care and diligence and facilitated the orderly transfer of responsibility for all relevant benefit plans, programs and trusts to the SPFA. At the time of SPFA's certification, SGEU, the SPFA, and Saskatchewan Polytechnic reached a tri-partite transfer agreement to transfer SGEU's rights and obligations with respect to the academic unit to the SPFA.
5. SGEU even agreed with the SPFA to delay the issuance of the SPFA's certification order from the vote count on September 18, 2012 to October 31, 2012 to allow, among other transition concerns, the SPFA to arrange long-term disability coverage for its academic members, which it had neglected to do prior to that time. In the meantime, until SPFA's certification order was issued, SGEU continued to cover the academic members under SGEU's own long-term disability plan.

Great West Life Extended Health Plan ("Extended Health Plan")

6. All employees at Saskatchewan Polytechnic are covered by the Extended Health Plan at issue in the SPFA's application, including members of SGEU's PSBU and members of the SPFA's academic bargaining unit. The Extended Health Plan is a trust, which pools together all monies of the employees covered thereunder.
7. After the SPFA's certification order was issued on October 31, 2012, the SPFA became a party to the Extended Health Plan on behalf of members of the academic unit and took over responsibility for negotiating with respect to the interests of its academic members in the Extended Health Plan. Accordingly, Saskatchewan Polytechnic, SGEU and the SPFA are all parties to the Extended Health Plan.

8. The Extended Health Plan is an administrative services only or ASO Plan, and as indicated by SPFA, is set up in the form of a trust. SGEU does not administer or control the Extended Health Plan. Rather, Saskatchewan Polytechnic administers the trust on behalf of all employees. Neither SGEU nor SPFA has access to the trust funds, as they are held in trust by Saskatchewan Polytechnic for the benefit of all in-scope employee members who contribute to the trust.
9. Because SGEU, SPFA and Saskatchewan Polytechnic are all parties to the Extended Health Plan, the agreement of each of these parties is required for any changes to be made to the Extended Health Plan. Further, any such agreement must be consistent with the requirements of the trust. Even prior to SPFA's certification, the Extended Health Plan was established by a tripartite agreement between Saskatchewan Polytechnic, the PSBU (as represented by SGEU), and the academic unit (as represented by SGEU). SGEU employed separate bargaining teams to negotiate and represent the two distinct bargaining units.
10. Accordingly, the SPFA's submission that SGEU has a power to veto any of SPFA's proposed changes to the Extended Health Plan is misleading. All parties must agree to changes to the Extended Health Plan. In the same way that SGEU and Saskatchewan Polytechnic must agree to any changes proposed by the SPFA, the SPFA and Saskatchewan Polytechnic must also agree with any changes proposed by SGEU to the Extended Health Plan.
11. Further, SGEU remains a party to the Extended Health Plan — not because of its former role in representing members of the academic unit — but because it continues to represent members of the PSBU.

Section 6-63(1)(g) of the *SEA* does not apply in this case

12. SPFA's application is beyond the scope of section 6-63(1)(g) of the *SEA* because, as indicated above, the SPFA did in fact take over responsibility for the academic employees' involvement in the Extended Health Plan when it was certified in October 2012 to represent the members of the academic unit. Accordingly, contrary to the SPFA's submissions, responsibility for the Extended Health Plan — as it applies to the academic unit — was already transferred to the SPFA.
13. Section 6-63(1)(g) of the *SEA* was not intended to apply more than seven years after the replacement of a union as a bargaining agent, particularly in circumstances where all relevant responsibilities have already been transferred to the new bargaining agent.
14. Furthermore, section 6-63(1)(g) of the *SEA* was not even in force at the time the SPFA was certified to replace SGEU as bargaining agent for the academic unit, and so also does not apply on that basis.

15. The fact is that the Extended Health Plan is administered as a trust on behalf of all employees and, as indicated above, neither SGEU nor the SPFA have access to those trust funds. SPFA is required to negotiate with both SGEU and Saskatchewan Polytechnic regarding the terms of the Extended Health Plan, which, as set out below, SPFA — rather than SGEU — has refused to do. Further, the surplus funds are held in trust for all employees, and any agreement regarding that surplus must be consistent with the terms of the trust.
16. Contrary to the SPFA's assertions, its application is not really about transferring the relevant portion of responsibility for the Extended Health Plan — as it relates to academic employees — to the SPFA. As indicated above, that already happened when SPFA became the bargaining agent for the academic unit years ago now.
17. Rather, SPFA is bringing this application because — years after it became certified bargaining agent for the academic unit — it no longer wishes to be a party to the Extended Health Plan and is now insisting that it is entitled to all of the surplus funds held in trust for all employee members of the Extended Health Plan. It inappropriately cites SGEU's failure to agree to the transfer of the entire surplus to SPFA as evidence that SGEU has failed to bargain on this issue.
18. Not surprisingly, and as indicated in the October 18, 2019 letter from SGEU to SPFA, SGEU does not agree that SPFA is entitled to all of the surplus, and will not agree to transfer all of the surplus to SPFA. It is SPFA — not SGEU — who has been unwilling to bargain or move from its position that it is entitled to substantially all of the surplus.
19. Significantly, the SPFA never made a request to withdraw from the Extended Health Plan or remove surplus from the Extended Health Plan at the time it took over as bargaining agent. Rather, it elected to remain in the Extended Health Plan and in fact became a party to the Extended Health Plan.
20. Indeed, the June 2014 Collective Agreement between the SPFA and Saskatchewan Polytechnic confirms the SPFA's agreement that its members would continue to be included in the Extended Health Plan. Paragraph 18.4.1 of the 2014 CBA between SPFA and Saskatchewan Polytechnic confirmed that: "*For the term of this Collective agreement the employer shall maintain the Extended Health Plan at the present rate of benefits.*"¹
21. Significantly, it was not until five years after the SPFA was certified as bargaining agent for the academic unit that SGEU first became that the SPFA no longer wished to be a party to the Extended Health Plan and instead desired to have its own extended health

¹ Note that SGEU's collective agreement with Saskatchewan Polytechnic also includes language regarding the Extended Health Plan.

plan. SGEU first learned of this when the SPFA's President, Warren White, was giving evidence in a separate labour board proceeding in November 2017.

22. Accordingly, for all of the reasons indicated, section 6-63(1)(g) of the *SEA* does not properly apply and SPFA's application must be dismissed.
23. Further, the SPFA's application ought also be dismissed by virtue of section 6-111(3) of the *SEA*, having been brought more than 7 years after SPFA was certified to replace SGEU as the bargaining agent for the academic unit, and well beyond the 90-day time period contemplated in the *SEA* for the filing of unfair labour practices.

In any event, SGEU has participated and negotiated in good faith as a party to the Extended Health Plan

24. If anything, it is the SPFA — not SGEU — who has refused to participate in discussions regarding the Extended Health Plan. SGEU has been willing to engage in discussions with the SPFA regarding the Extended Health Plan. Indeed, SGEU has attempted to get the SPFA to engage in discussions regarding enhancements to the Extended Health Plan, without success.
25. As indicated, the SPFA has taken the position that it is entitled to remove all of the surplus funds held in the trust for the Extended Health Plan. SGEU strongly disagrees with the SPFA's position and is of the view that those trust funds are the property of all employees who contributed to the Extended Health Plan.
26. This is a matter to be resolved between the parties as a matter of private law according to the terms of the trust and the agreement of the parties. It is not properly the subject of an unfair labour practice pursuant to section 6-63(1)(g) of the *SEA*. SPFA is attempting to circumvent the terms of the trust and its duty to negotiate with SGEU and Saskatchewan Polytechnic regarding the surplus.
27. The SPFA has completely failed to acknowledge that SGEU is also a party to the Extended Health Plan, and that the funds held in trust for the Extended Health Plan belong to all employees of Saskatchewan Polytechnic.
28. Even though SGEU is responsible for representing the interests of the members of the PSBU with respect to the Extended Health Plan, the SPFA has attempted, unsuccessfully, to exclude SGEU from discussions regarding the surplus. As the SPFA indicates at paragraph 4(j) of its application, it wrote to Saskatchewan Polytechnic requesting the transfer of the surplus in the Extended Health Plan to the SPFA, without even bothering to copy SGEU on that communication.
29. For all of the above reasons, the SPFA's application ought to be dismissed. This dispute is a matter of trust and contract principles that is outside the jurisdiction of the

Saskatchewan Labour Relations Board. The SPFA is not entitled to any of the relief sought by it.

