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DISMISSAL NO. 2354
Case No. 147/19/LRA

IN THE MATTER OF: *THE LABOUR RELATIONS ACT*

- and -

IN THE MATTER OF: An Application by

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("United Steelworkers"), Local 8223-00 and Local 8223-13,

Applicant/Unions,

- and -

THE SCHOOL DISTRICT OF MYSTERY LAKE and D.M.,

Respondents.

BEFORE: K. Pelletier, Vice-Chairperson

This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.

SUBSTANTIVE ORDER

Introduction

1. On August 2, 2019, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("United Steel Workers"), Local 8223-00 and 8223-13 (the "Unions") filed an application (the "Application") alleging a violation of sections 5(1), 5(3), 6(1), 26 and 63 of *The Labour Relations Act* (the "*Act*"). Specifically, the Unions claim that, in failing to provide any bargaining proposals for the purposes of collective bargaining, and in insisting on the Unions providing their proposals in advance, the Respondents have failed to collectively bargain in good faith and to make every reasonable effort to conclude a renewal or revision of the collective agreement.

2. As a result of these alleged violations, the Unions request remedial relief for the interference of the rights of each member of the Unions, along with a declaration that the Respondents have failed to bargain in good faith. The Unions also seek an order for the Respondents to resume bargaining in good faith, and that the Manitoba Labour Board (the "Board") order that the Respondents simultaneously exchange its bargaining proposals with the Unions.

3. On September 4, 2019, following an extension of time, the Respondents, through counsel, filed their Reply. The Respondents contend that the Unions' Application is premature and that it fails to disclose a *prima facie* violation of the *Act.* Additionally, the Respondents deny that they refused to provide the Unions with their bargaining proposals, claiming that they remain prepared to collectively bargain in good faith. The Respondents argue that it is the Unions who have failed to bargain in good faith by imposing a pre-condition on the commencement of collective bargaining. They submit that, to grant the Unions the relief they seek, the Board would need to rely on speculative and unknown future events. The Respondents requested that the Application be dismissed without the necessity of a hearing.

4. On October 1, 2019, following consideration of the material filed, the Board directed that the parties provide written submissions on the Respondents' motion that the matter be dismissed without a hearing.

5. October 15 and 22, 2019, respectively, the Respondents and Unions filed their written submissions. On October 25, 2019, the Respondents filed a response to the written submissions of the Unions.

6. For the reasons that follow, the Board has concluded that the Application should be dismissed for failing to establish a *prima facie* breach of the *Act*.

Background

7. The collective agreement submitted with the Application covers the period from May 1, 2012 to April 30, 2017. The agreement is between United Steelworkers, Local 8223-13 and the School District of Mystery Lake (the "Employer").

8. The Unions provided Notice to Bargain to the Employer on March 3, 2017.

9. In November 2018, Mike Pulak ("Pulak") assumed responsibility as representative for collective bargaining for the Unions. On November 9, 2018, Pulak contacted N.R. requesting that dates be scheduled for bargaining and for an exchange of proposals. On November 10, 2018, N.R. advised that he would provide dates for bargaining, but indicated that he was not prepared to provide the Unions with the Employer's proposals in advance of collective bargaining, noting instead: "I would therefore

request that you send me a copy of your proposal so that we can start working on our response for the first meeting".

10. Pulak responded on November 14, 2018, that providing the Union's proposals in advance was a "very unusual request". He suggested instead a simultaneous exchange of non-monetary proposals on the same day.

11. On January 15, 2019, N.R. informed Pulak that his colleague, D.M. had taken over conduct of negotiations on behalf of the Employer. On January 16, 2019, D.M. advised Pulak that the Employer's committee would be available to meet in person on February 12, 2019. In this email, she also requested receipt of the Unions' proposals.

12. On January 24, 2019, D.M. and Pulak discussed the format for collective bargaining and specifically the order of disclosure of proposals, via telephone. In this discussion, Pulak expressed his displeasure with the current process, but did not advise D.M. that he would refuse to follow the existing process or to bargain collectively.

13. On February 6, 2019, D.M. responded: "I know historically [N.R.] would receive electronic documents before bargaining, and I know your preference is to share the proposals when we meet. I would like to continue to agree to exchange electronic copies of proposals and responses or counter proposals after presenting as has been done in the past. We will incorporate your proposals into our document for ease of reference and share the document with you." She requested confirmation that the Unions would be prepared to present their bargaining proposals at 10 a.m. on February 12, 2019. She added: "Some of our committee members work during the day, so if we receive the proposals later, I'd like to give them some notice if you need a bit more time."

14. On February 11, 2019, Pulak responded: "We will be ready for 10am. I agree to the sharing of any documents electronically once they (*sic*) presented."

15. In its Application, the Unions claim that, on the basis of this exchange, it was Pulak's expectation that the Unions would initially present their proposals at the meeting, together with their written proposals and rationale. His expectation was that the Employer would ask some clarifying questions and immediately proceed and respond with its own proposals. Following this exchange, the parties would then share electronic copies of their respective proposals. In support, the Unions have provided redacted copies of their non-monetary proposals in anticipation of the February 12, 2019, bargaining meeting.

16. The Respondents counter that the practice of these parties over the course of the past thirty-seven years and thirteen consecutive rounds of bargaining has been that

the Unions have provided their proposals prior to the commencement of bargaining, followed by the presentation of the Employer's proposals and response on the first day of bargaining.

17. The parties met on February 12, 2019. Present, on behalf of the Employer, were D.M., along with five other bargaining committee members. The Unions' bargaining committee consisted of Pulak and six other members, representing both Unions.

18. The meeting lasted only approximately fifteen minutes. It commenced with introductions and a review of the bargaining process that would ensue, and specifically the disclosure of bargaining proposals. When Pulak requested confirmation that the Employer would be prepared to present its non-monetary proposals immediately following the Unions' presentation, D.M. responded that the Employer may or may not be in a position to respond on the same day. She confirmed that the Employer's proposals had been prepared but that the Employer wanted the opportunity to review the Unions' proposals first "and possibly add to its proposals". Pulak responded that the Unions were not prepared to proceed in a manner that it deemed unfair and which was not a consecutive exchange of proposals. Accordingly, Pulak advised the Employer that he would not be providing the Respondents with the Unions' proposals and the meeting accordingly concluded.

19. D.M. wrote to Pulak on February 15, 2019, advising that she remained open to receiving the Unions' proposals.

20. On February 26, 2019, Pulak advised D.M., in writing, that the Unions were not prepared to commence bargaining until such time as the Employer agreed to a simultaneous exchange of proposals. He further advised that the Employer's failure to comply may result in the filing of an unfair labour practice complaint with the Board.

21. On March 7, 2019, D.M. responded to Pulak, denying that the Employer had "refused to provide proposals", adding that it would be prepared to share these proposals "at the appropriate time during the bargaining process." She advised that she remained open to receiving the Unions' proposals and to arranging for further dates for bargaining, adding: "given that we've already wasted time, we would appreciate receiving them [the Unions' bargaining proposals] in advance."

22. The Unions proceeded to file the present Application. The Unions claim that, in failing to engage in a simultaneous exchange of non-monetary proposals, either in advance or at the bargaining meeting, the Respondents have failed to participate in a fair process of collective bargaining. Instead, the Unions argue that the process suggested by the Respondents would allow it to have a "sneak peek" at the Unions' positions in advance and would enable them the opportunity to amend their own proposals accordingly.

23. The Unions contend that the Respondents have committed an unfair labour practice in violation of sections 5(1), 5(3), 6(1), 26 and 63 of the *Act* by refusing to provide any proposals to the Unions for the purposes of collective bargaining and by refusing to bargain with the Unions until they provide their proposals in advance for review by the Respondents.

24. In response, the Respondents deny that they refused to provide the Unions with their proposals or that they have bargained in bad faith, suggesting instead that the Unions are seeking to impose a pre-condition on bargaining that neither accords with its past practice, nor is reasonable in the circumstances. The Respondents argue that there was no basis on which Pulak would have expected or anticipated that the Respondents would "immediately" share their proposals following the Unions' presentation. The Respondents submit that they remain open and prepared to bargain in good faith.

25. As noted earlier in this Order, following receipt of the Application, Response and Reply, the Board directed the parties to provide written submissions on the Respondents' motion that the matter be dismissed without a hearing. Outlined below is a summary of those submissions.

Respondents' Submission

26. The Respondents submit that, pursuant to section 30(3) of the *Act*, the Board should dismiss this matter without a hearing for failing to disclose a *prima facie* violation of the *Act*. The Unions' allegations, as they are outlined in the Application, do not support a finding of wrongdoing on behalf of the Employer, as there is no *prima facie* breach of the duty to bargain in good faith.

27. On the issue of good faith bargaining, the Respondents referenced the decision from this Board in *CAW-Canada, Local 224* v. *Buhler Versatile Inc.*, 2001 CarswellMan 701, referring to a decision from the Alberta Labour Relations Board, in which that board outlined at p. 12 of its decision:

> The duty to bargain in good faith has many aspects; breach of one aspect does not imply a breach of all aspects. However, a breach of even one aspect may result in the Board finding a breach of s. 58. Decisions of this Board reveal the variety of obligations inherent in the duty to bargain in good faith. A summary of those obligations include the obligation on:
>
> - the employer to recognize the trade union as the bargaining agent;
> - the parties to meet,

- the parties to bargain;
- the parties to act with the intent of concluding, revising or renewing a collective agreement;
- The parties to make every reasonable effort to enter into a collective agreement;
- the parties to engage in full rational, informed discussion about the issues;
- the employer to disclose decisions that have been made affecting the bargaining unit;
- a party, upon request, to provide the other party with information relevant to the issues involved in bargaining;
- the parties to avoid deception in their representations to each other;
- the parties to avoid surface bargaining.

28. In reviewing these criteria, the Respondents claim that there are no factual underpinnings contained in the Application that, even if true, would support a *prima facie* violation of the duty to bargain in good faith.

29. The Respondents further submit that the Application is predicated on what the Unions believe or assume the Employer may have done once the Unions presented their proposals. The Respondents contend that, while the Board is entitled to assume that the facts contained in the Application are true, it is not intended to rely on speculation or assumptions in assessing a *prima facie* case.

30. The Respondents referenced the Alberta Labour Relations Board's decision in *UFCW, Local 401 and Elbow Grease Management Ltd., Re*, 2019 CarswellAlta 546, in which the board was asked to consider whether a complaint that the Employer had provided a "minimal proposal…including objectionable and inflammatory language on, in particular, union security" was sufficient to establish a breach of the duty to bargain in good faith. The board ultimately concluded that the complaint was premature, as the Employer had expressed an interest in revising the union security issue. At para. 42, it added: "If the Employer refuses to agree to the inclusion of a union security clause which complies with section 27(5), the Union may have grounds for bad faith bargaining. At this point, the Union's application is premature and would serve no labour relations purpose."

31. The Respondents also referred to the decision in *North Vancouver School District No. 44* v. *North Vancouver Teachers' Assn.*, 1992 CarswellBC 2883. In that case, during preliminary discussions, the parties were unable to reach agreement as it

relates to the protocol for bargaining. As a result of the Employer's refusal to sign, the union refused to table its proposals. The board concluded that the union had breached its duty to bargain in good faith and was directed by the board to resume bargaining with the Employer. At paras. 15 and 16 of that decision, the board noted:

> In this case, the Union has not tabled any of its proposals for the amendment of the collective agreement. The only matter on the table to this point is a proposed protocol agreement. It is undisputed that there has been a failure to agree on the protocol agreement. As a result, the Union has said it will not table any proposals for the amendment of the collective agreement. More to the point, the Union has put it bluntly that it can take its members out on strike over the protocol issue. On that basis it has withdrawn from negotiations. […]
>
> The Employer, at its May 12 meeting with the Union, stated for the record that it was quite prepared to exchange proposals and, in the absence of a protocol agreement, to bargain *ad hoc* with a view to renewing the collective agreement. That is the proper posture to take. I therefore have no hesitation in concluding that the refusal by the Union to table and negotiate its demands for a renewal of the collective agreement constitutes bargaining in bad faith.

32. On the information presented, the Respondents submit that the Unions' Application should be dismissed for failing to disclose a breach of the *Act*, as there is no refusal to bargain on the part of the Employer. The parties should be directed by this Board to bargain collectively, in accordance with the *Act*.

Applicant's Submission

33. The Unions submit that they have established a *prima facie* violation of the *Act* in failing to negotiate in good faith and in accordance with section 63(1) of the *Act*.

34. The Unions submit that the facts, as they are outlined in the Application, support a finding that they have established at *prima facie* violation of the *Act*. Specifically, the Unions contend that it was the expectation of Pulak, based on his interactions with representatives for the Employer, that the Unions would first present their proposals at the February 12, 2019, meeting, followed by a presentation of the Employer's proposals. When the Unions were advised by D.M. that the Employer may not be in a position to present its proposals at the meeting, the Unions did not believe that it was fair or practical to bargain in the manner suggested by the Employer. In its subsequent correspondence to the Unions, the Respondents insisted on first being provided the Unions' bargaining proposals as a condition precedent to bargaining.

The Unions submit that, assuming these facts are true, it has demonstrated that there is a *prima facie* violation of the *Act*.

35. The Unions further contend that the obligation to bargain is a continuous one, and the Respondents' subsequent communications on February 15 and March 2 reflect their continued refusal to bargain in good faith. In these communications, the Respondents insist on receiving the Unions' proposals in writing in advance of any meeting. The Unions refute the Respondents' claim that the complaint is predicated on assumptions, given the explicit and tangible evidence as it is contained in D.M.'s subsequent communication to Pulak on February 15, 2019, and March 7, 2019, respectively.

36. The Unions rely on a decision from the New Brunswick Labour Relations Board, in which a similar situation was considered. In *N.B.N.U.* v. *New Brunswick Association of Nursing Homes Inc.* 2005 CarswellNB 225, [2005] N.B.L.E.B.D. No. 7, that board considered whether an employer's refusal to bargain until they had been provided prior access to the union's bargaining proposals was in violation of the *Act*.

37. In *N.B.N.U.*, the parties had met and negotiated some non-monetary issues. However, prior to presenting its monetary package, the employer insisted that the union provide its proposal, consistent with the parties' previous past negotiating practice. The union refused and proceeded to file an application claiming a failure to bargain in good faith. The board determined that the employer had breached the legislation in coming to the bargaining table without having developed its monetary package. The Unions rely on the following passage from the decision, in which the board writes at para. 26:

> As a subsidiary issue, the Union submits that on January 14, 2005, the Association violated section 34(1) of the Act when the chief negotiator for the Association requested that they receive and review the proposal of the Union. The evidence before the Board confirms that this was the historical practice of the parties in previous rounds of negotiation. However, in this instance, the Union took issue with this approach. It is the view of the Board that if the Association took the position that it simply would not supply their monetary package without prior access to that of the Union, then such action may be in violation of section 34(1) of the Act.

38. The Unions also rely on this decision in support of the proposition that the Respondents are not entitled to rely on a supposed historical practice in previous rounds of bargaining to impose or dictate the course of collective bargaining. At para. 27 of the decision, the New Brunswick board wrote:

> As an overall comment, it would appear to the Board that for whatever reason, both parties made a decision to enter into this round of negotiations differently than in the past without any consultation. Both parties have a history of mature and successful bargaining and should remember that neither party can unilaterally dictate the course of collective bargaining. The process of collective bargaining can be compared to a chess game where each move is well thought out and designed for a certain purpose. Because of the complexity of the situation and the severity of the stakes, parties cannot be blamed for their desire to revert to past experience in order to avoid or limit potential mistakes. However, just as one party cannot unilaterally dictate a change in strategy, similarly a party cannot dictate the maintenance of the status quo. The Board would encourage the parties to nurture and expand their historically good bargaining relationship and in doing so, not be fearful of change.

39. The Unions also rely on the decision in *United Nurses of Alberta* v. *Provincial Health Authorities of Alberta,* [2004] Alta. L.R.B.R. 428, in which the board considered whether the union's objection to the Employer's use of a professional stenographer and court reporter to take notes during bargaining constituted an impasse to bargaining. Noting that it would be dangerous for a party to take a "procedural" demand "to the point of impasse", the board wrote at para. 12:

> […] it must also be acknowledged that it is a dangerous practice for a party to take one of these "procedural" demands to the point of impasse. Rarely is a procedural aspect of bargaining so important to a party that taking it to impasse will look like a rational response. Generally, this Board will be more inclined to find that bargaining to impasse on a procedural demand is a failure to make reasonable efforts, or indeed is just a mask for a desire not to arrive at a collective agreement at all.

40. Accordingly, the Unions argue that the Respondents cannot insist, to the point of impasse, on the Unions providing their proposals in advance as a condition precedent. To do so, the Unions submit, would be a violation of the Employer's obligation to "make every reasonable effort to conclude a collective agreement" and to bargain in "good faith" as required by section 63(1) of the *Act.*

41. In its submission, the Unions conclude:

> This case is not minor or inconsequential as seemingly suggested by the Respondents. It involves one of the largest employers in the province insisting that there is only one process for collective bargaining and until the Union's (*sic*) capitulate and give into its demands then the Respondents will refuse to bargain. It is further remarkable that the process insisted upon by

the Respondents is also one which is so obviously unfair to the Unions given the Respondents are insisting that the Unions "show their cards" before the Respondents will consider tabling any proposals or even setting dates to bargain.

42. As a result, the Unions maintain that they have established a *prima facie* violation of the *Act* and request that a full hearing on the matters in question be scheduled.

The Respondent's Reply Submission

43. The Respondents deny that they imposed procedural requirements to the point of impasse. Rather, the Respondents allege that the Unions declared an impasse when they insisted on a process which was not agreed to by the Respondents, and which was inconsistent with a well established past practice. The Respondents maintain that: "the only party which placed a pre-existing condition on the negotiations was the Unions, when it demanded that the employer agree to a pre-determined process prior to presenting its initial proposal."

44. Further, the Respondents submit that they did not refuse to meet, as alleged. The Unions did not respond to the invitation by D.M. to continue to meet, and the Board should not be interpreting the Respondents' correspondence to include any procedural requirement that could be viewed as a declaration of impasse. Throughout, the Respondents submit, the Employer has been willing to proceed with collective bargaining.

Application Legislative Provisions

45. The following legislatives provisions have been referred to and considered in this matter:

Union membership rights
5(1) Every employee has the right

(a) to be a member of a union

(b) to participate in the activities of a union; and

(c) to participate in the organization of a union.

Interference with rights
5(3) Every person who interferes with the right of an employee under subsection (1) or the right of an employer under subsection (2) commits an unfair labour practice.

Employer's interference with union
6(1) Subject to subsection 32(1), every employer or employers' organization, and every person acting on behalf of an employer or an employers' organization, who participates in, or interferes with, the formation, selection, or administration of a union, or the representation of employees by a union that is the bargaining agent for the employees, or contributes financial or other support to a union, commits an unfair labour practice.

Not bargaining in good faith
26 Every party to collective bargaining which fails to comply with any requirement of, as the case may be, section 62 or 63 in the circumstances described therein commits an unfair labour practice.

Disposition of complaint
30(3) Where the board accepts a complaint filed under subsection (1), the board may

(a) refer the complaint to a representative of the board for purposes of subsection (4); or

(b) proceed directly to hold a hearing into the alleged unfair labour practice; or

(c) at any time decline to take further action on the complaint.

Effect of notice under section 61
63(1) Where a party to a collective agreement has given notice under section 61 or subsection 83(3) to the other party to the collective agreement the parties shall, without delay, but in any case within 10 clear days after the notice was given or such further time as the parties may agree on, meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith and make every reasonable effort to conclude a renewal or revision of the collective agreement or a new collective agreement.

Analysis

46. The Respondents have raised a preliminary issue relating to whether the Application, as pleaded, discloses a *prima facie* case. In order to establish a *prima facie* case, the Unions must satisfy the Board that there are facts contained in the Application that, if proven and not rebutted or contradicted, are capable of demonstrating a violation of the *Act*, thereby requiring a full answer from the Respondents. If the Unions satisfy the Board there is a *prima facie* case, the Board shall direct that the

matter proceed to a full hearing. If the Unions are unable to satisfy the Board that there exists a *prima facie* case, the Application shall be dismissed.

47. The critical issue that the Board is asked to consider is whether the Application, as pleaded, discloses a *prima facie* case that the Respondents' conduct amounts to a contravention of the *Act* and, in particular, the requirement to bargain in good faith.

48. In his text, *Canadian Labour Law*, 2nd ed., George Adams defines the duty to bargain in good faith as follows at p. 10-92 (as quoted in *CAW-Canada, supra*) [now at 10.1680 of that text]:

> The purpose of collective bargaining legislation is to bring the parties to the bargaining table where they will present their proposals, articulate supporting arguments and search for common ground which can serve as the basis for a collective agreement. The duty to bargain, no matter how phrased, has been elaborated over time by labour boards to prohibit certain specific conduct*, i.e.,* misrepresentations, and at times to censure a party's entire bargaining stance where "having regard to all the circumstances", a labour board concludes that the real object of that party is to avoid a collective agreement.

49. At 10-106 (as quoted in *CAW-Canada*), G. Adams also outlines the parties' requirement to engage in full and rational discussions:

> In *DeVilbiss (Canada) Ltd*., it was held that "rational discussion is likely to minimize the number of problems the parties are unable to resolve without the use of economic weapons thereby focusing the parties' attention in the eleventh hour on the 'true' differences between them". With this policy in mind, labour boards have required the following: that certain bargaining data be disclosed; that misrepresentations not be employed; that the true decision makers participate in negotiations; that certain key decisions affecting a significant number of bargaining unit employees be disclosed; and that parties be prepared to justify particular stances which they may take.

50. Adams adds at the end of 10-1710 that: "the existence of the duty to bargain in good faith is not to result in 'the parties abandoning the bargaining table for the Board simply because the bargaining process is not working in their favour.' "

51. In reviewing the authorities cited by the parties, in conjunction with the provisions of the *Act*, it is clear that section 63 imposes two concurrent bargaining duties on negotiating parties: first, a subjective duty to "bargain collectively in good faith"; and second, an objective duty to "make every reasonable effort to conclude…a collective agreement". The first requirement requires a subjective assessment, to determine

whether the parties' intended or were motivated to bargain in good faith. The second criteria mandates an objective review, including an assessment of the parties' endeavours, and their commitment of time, effort and energy in the pursuit of this objective.

52. The question before this Board is the following: does the Application, as pleaded, disclose a *prima facie* case that the Employer has failed in its duty to bargain collectively in good faith and to make every reasonable effort to conclude a collective agreement? In conducting a *prima facie* case review, the Board assumes all of the allegations in the application are true and provable and does not have regard to the response.

53. In reading the documents appended to the submissions, it is clear that both parties wish to bargain towards a collective agreement, but disagree on the process to meaningfully bargain. The parties hold widely divergent positions on whether proposals need to be disclosed consecutively. While the Unions take the position that the Respondents should be disclosing their proposals immediately following their own disclosure, the Respondents contend that they should have some time to review and consider the Unions' proposals. From the Respondents' perspective, disclosure may be on the same day, but may also follow shortly in the days following the Unions' disclosure. The Respondents contend that this is consistent with past practice, and makes practical sense in the circumstances. The Unions do not agree, suggesting that the Respondents' proposed process places them at a disadvantage. This failure to arrive at a consensus on the process has resulted in there not having been any disclosure of proposals or any discussion of mandate. Practically, the parties are at a standstill, with the Unions insisting that the Respondents agree to a simultaneous exchange of proposals. In light of the position taken in the meeting on February 12, 2019, the Respondents now insist on prior disclosure of bargaining proposals as a precondition to bargaining.

54. As the caselaw reveals, labour boards are generally reluctant to interfere in the free collective bargaining process of the parties, unless there is evidence of unlawful bargaining terms or conduct which causes impediments to collective bargaining or evidence of conduct that lacks supporting justification or supports the inference that a party does not intend to achieve a collective agreement. In that regard, there are presumably instances where bargaining format and protocol would give rise to a breach of the duty to bargain in good faith, but this is not the case here.

55. As in *North Vancouver, supra*, the Unions have not tabled any of their proposals for amendment of the collective agreement. Nor have the Respondents, who have advised the Unions that they will be in a position to respond shortly after the tabling of the Unions' proposals. The Respondents have maintained that they are prepared and ready to negotiate, as long as the Unions first table their proposals.

56. The Unions have relied on the decision in *NBNU, supra*, case, involving parties who had previously met and successfully resolved a number of non-monetary issues. In that case, the association took the position that it need not disclose its monetary package until it had received from the union the entirety of their monetary package, consistent with past practice. On this issue, the board remarked at para. 26:

> As a subsidiary issue, the Union submits that on January 14, 2005, the Association violated section 34(1) of the Act when the chief negotiator for the Association requested that they receive and review the proposal of the Union. The evidence before the Board confirms that this was the historical practice of the parties in previous rounds of negotiation. However, in this instance, the Union took issue with this approach. It is the view of the Board that if the Association took the position that it simply would not supply their monetary package without prior access to that of the Union, then such action may be in violation of section 34(1) of the Act. However, in the facts of this situation, it is the view of the Board that the position of the Association at the bargaining table was not as dogmatic as the one alleged by the Union, but rather, reflected a desire to, as in the past, receive and review the Union's package.

57. As in *NBNU*, the Board does not believe that there is anything sinister in the Respondents' motives or its desire to receive the Unions' proposals in advance. The fact that the board suggested in *NBNU* that a refusal to provide a monetary package without prior access may constitute a violation of the [New Brunswick] *Act* does not convince this Board, on these facts, to conclude that the Unions have established a *prima facie* case. The Board accepts the Respondents' position that to conclude otherwise would require the Board to speculate regarding the Respondents' future intentions. In any event, the *NBNU* matter is distinguishable. In this case, the parties have not yet made sufficient effort to attempt to reach agreement, having not exchanged any proposals other than their respective positions with respect to the manner in which bargaining proposals are to be exchanged. Further, the correspondence between the parties demonstrates that the Unions were prepared to disclose their proposals first. The timeline for the Respondents' reply to these proposals is the sole issue that remains outstanding. In the Board's estimation, and for the reasons outline herein, this issue is best left to the parties to determine.

58. As noted by *Adams*, *supra*, good faith bargaining includes rational discussion, consultation and reasonable efforts. Considering the objective component of good faith bargaining requires the Board to assess how the parties engaged in the rational discussion, consultation and reasonable efforts. The information provided demonstrates that the parties were willing to meet and discuss. There was no specific process agreed to in advance of the initial bargaining date, other than an agreement that the Unions' would disclose their bargaining proposals first, followed by presentations from the Respondents. There was no agreement that the Respondents

would immediately respond. From the correspondence reviewed and considered, in the Board's opinion, the Unions left the bargaining table too soon, without any meaningful exchange or discussion. In reviewing the objective and subjective components, the Board is not prepared to conclude, on these facts, that the Respondents have breached the duty to bargain in good faith.

59. Labour boards across the country have repeatedly expressed their reluctance to intervene in negotiations between parties. The legislative mandate to bargain in good faith is predicated on the assumption that the parties are best able to define the terms of their relationship and the rules that will govern the workplace. For the Board to intervene at this early juncture would not be consistent with the legislative mandate that the parties are best able to define the terms of their relationship and the rules that will govern the workplace. These are sophisticated parties, who have demonstrated a willingness to meet and consider each others' position. The parties should now be in a position to come to an agreement with respect to protocol and format through good faith negotiations.

60. It is true, as the Respondents submit, that there is no true bargaining impasse here and that there is room for further discussions. The Unions have indicated that they are prepared to engage in further collective bargaining, but only on their terms. Similarly, the Respondents are prepared to engage further, but only with prior disclosure of the Unions' bargaining proposals, which they say is consistent with past practice. The Board is not prepared to conclude that the Unions' failure to table its proposals amounts to bargaining in bad faith, but the Unions have a responsibility to table their proposed amendments to the collective agreement, as they have agreed to do. The Respondents will then have a correlating responsibility to respond in a timely manner, and in a manner that is consistent with the principles of good faith bargaining.

61. The Board encourages the use of mediation and problem-solving approaches to these types of labour relations issues, without resorting to lengthy and costly hearings before this Board. For these reasons, the parties should use whatever approach they deem appropriate in the circumstances, and develop a format by which collective bargaining will occur.

62. Under these circumstances, the Board is unable to conclude that the Respondents' have established a *prima facie* violation of the *Act*.

63. The Application is accordingly dismissed pursuant to Secions 30(3)(c) and 140(8) of the *Act*.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("United Steelworkers"), Local 8223-00 and Local 8223-13, on August 2, 2019.

DATED at **WINNIPEG**, **Manitoba** this 23rd day of January, 2020, and signed on behalf of the Manitoba Labour Board by

"Original signed by"

K. Pelletier, Vice-Chairperson

KP/rm/sms/lo-s