IN THE MATTER OF:

a Policy Grievance dated August 30, 2022; and

an Arbitration of the said Grievance;

BETWEEN:

International Association of Fire Fighters, Local 3270,

UNION,

- and -

Dutchak Holdings Ltd., Operating as Rosthern and District Ambulance Care, WPD Ambulance Care and WPD Ambulance - Lloydminster,

EMPLOYER.

APPEARANCES:

For the Union: Gary L. Bainbridge, KC
For the Employer: Gordon Hamilton

BEFORE:

T. F. (Ted) Koskie, B.Sc., J.D., Sole Arbitrator

ORDER DATE:

October 22, 2023

REASONS

I. BACKGROUND

[1] In its Grievance dated October 22, 2023 (the "Grievance"), International Association of Fire Fighters, Local 3270, (the "Union") alleges the Employer refused to advise it of employee ("Employee") discipline when the Employee waived Union representation.

[2] The Grievance asks that the:

a) Employer:

i) "properly" notify the Union of all disciplinary matters that are taking place;

ii) give the Union all signed representation waivers ("Waivers") and discipline documents related thereto; and

iii) pay the Union $20,000.00 in damages;

b) the time-lines for any possible grievances related to such actions be waived so that the Union has an appropriate time to attend to any possible grievable matters.

[3] The parties were unable to resolve the Grievance and referred same to arbitration. The parties agreed I would serve as sole Arbitrator to hear the Grievance. By consent, the hearing of this matter has been set for November 1 and 2, 2023.

[4] The Union asked the Employer to show, before the hearing, the names of the employees that it has disciplined, but waived their right to Union representation, for the 24-month period before the date of the Grievance. The employer refused. The Union applied for an Order compelling the Employer to do so.

[5] By agreement of the parties, I heard this application by telephone conference on October 20 and 22, 2023.

[6] On October 22, 2023, I granted the Union's application for production and ordered the Employer to disclose to the Union on or before 5:00 p.m. Wednesday, October 25, 2023, the names of those employees whom it has disciplined, but waived their right to Union representation, for the 24-month period before the date of the Grievance (August 30, 2022). At this time, I advised my written reasons for same would follow.

II. REASONS

A. CBA

[7] In deciding this matter, I have had regard for the entire collective bargaining agreement

between the Union and Employer (the "CBA"). However, in particular, I considered the following provisions:

> ARTICLE 3 - ASSOCIATION RECOGNITION
>
> 3.01 Recognition
>
> The Employer recognizes the Association as the sole collective bargaining agent for non-supervisory employees covered by this agreement. . . . .
>
> . . .
>
> ARTICLE 6 - MANAGEMENT RIGHTS
>
> 6.01 The Association recognizes that the Employer retains the sole and exclusive right to manage its business as it sees fit in all respects and; Subject to the terms of this Agreement it is the right of the Employer to:
>
> . . .
>
> (d) Maintain order, discipline and efficiency and establish and enforce reasonable rules, policies, procedures and regulations governing the Employees;
>
> (e) Promote, demote, discipline, suspend or discharge any Employee, provided however that any such action may be subject to the grievance procedure.
>
> . . .
>
> ARTICLE 7 - DISCIPLINE
>
> 7.01 Progressive Discipline
>
> The parties to this agreement recognize and endorse the principles of progressive discipline, however, it is understood that certain misconduct or infraction may warrant immediate suspension or dismissal at a first offence as determined by the Employer. Such decisions are subject to the grievance procedure.
>
> 7.02 Association Representation
>
> In cases where the Employer considers the Employee's conduct warrants a written reprimand or more serious disciplinary action, the Employee may elect to have an Association representative or designate in attendance at the disciplinary meeting. The Employer will have the Employee sign a letter indicating their refusal to have an Association representative if that choice was made.
>
> An Association representative or designate will be available for disciplinary meetings in a timely manner, when given reasonable notice. Attendance may be in person, via telephone or other electronic means.
>
> ARTICLE 8- GRIEVANCE PROCEDURE
>
> 8.01 Definition

A grievance shall be defined as any difference or dispute between the Employer and any Employee(s), or the Association regarding the interpretation, meaning, operation, application or alleged violation of this Agreement. Neither party to this Agreement shall cause a suspension of work because of a grievance.

8.02 Pre-Grievance Discussion

Either party shall initiate a written request for a meeting for the purpose of resolving a difference prior to filing a formal grievance. Before filing a formal grievance, the Employee and Manager shall meet to discuss and attempt to resolve the complaint. The complaint must be presented within twenty-one (21) calendar days after the event or circumstances giving rise to the complaint came to the attention or should have come to the attention of the Employee or Employees raising the complaint. Following the meeting a written response will be provided within seven (7) calendar days if the complaint is not resolved.

8.03 Grievance Filing Time Limits

No formal grievance shall be considered which is not presented within fourteen (14) calendar days after the response is received in accordance with 8.02.

8.04 Grievance Particulars

Any grievance submitted shall specify the Article and Section of the Agreement alleged to have been violated, the circumstances and occurrence leading to the alleged violation and the redress or adjustment requested. It shall not be sufficient to allege violation of the Agreement as a whole.

8.05 Grievance Process

Where a formal grievance is filed, the parties to this Agreement shall make an earnest effort to resolve such differences through the following procedure.

STEP 1:

Either the aggrieved Employee with the Association Representative on behalf of the aggrieved employee shall present a written grievance to the Manager. If an adjustment satisfactory to the Employee concerned is not made within fourteen (14) calendar days of the time it is brought to the attention of that person, the grievance shall be processed as follows or considered settled.

8.06 Referral to Arbitration

If satisfactory settlement is not reached in Step 1, either party may request arbitration as provided in Article 9, providing the request is made in writing within, but not after twenty one (21) calendar days of the decision in Step 1.

8.07 Grievance Meetings

An Association Representative who is assigned to discuss a grievance with the Employer shall not lose regular wages as a result of time spent during that Employee's regular working hours in discussing the grievance in meetings with the Employer.

8.08 Grievance Information

The Employer will provide information relevant to the grievance to the Association. In the event that the consent of the Employee or Employees concerned is required, such consent shall be obtained by

the Association and provided to the Employer.

8.09 Time Limits

a) Should the Employer fail to reply within the required time limits, the Association shall have the right to proceed to the next step.

b) Should the Association fail to proceed to the next step within the required time limits, the grievance shall be considered settled in accordance with the Employer's answer at the last step, and the grievance shall be deemed to be abandoned.

The time limits specified in Article 8 are mandatory and not merely directory.

8.10 Extension of Time Limits

The time limits specified in Article 8 may be extended by written agreement of the Employer and the Association.

. . .

B. LEGISLATION

[8] The relevant provisions of *The Saskatchewan Employment Act*[1] (the "*SEA*") are:

DIVISION 3
Acquisition and Termination of Bargaining Rights

. . .

Certification order
6-13(1) If, after a vote is taken in accordance with section 6-12, the board is satisfied that a majority of votes that are cast favour certification of the union as the bargaining agent for a unit of employees, the board shall issue an order:

(a) certifying the union as the bargaining agent for that unit; and

. . .

(2) If a union is certified as the bargaining agent for a bargaining unit:

(a) the union has exclusive authority to engage in collective bargaining for the employees in the bargaining unit and to bind it by a collective agreement until the order certifying the union is cancelled; and

. . .

Subdivision 3

[1] S.S. 2013, c. S-15.1

Resolution of Collective Agreement Disputes

Arbitration to settle disputes
6-45(1) Subject to subsections (2) and (3), all disputes between the parties to a collective agreement or persons bound by the collective agreement or on whose behalf the collective agreement was entered into respecting its meaning, application or alleged contravention, including a question as to whether a matter is arbitrable, are to be settled by arbitration after exhausting any grievance procedure established by the collective agreement.

. . .

Rules of arbitration
6-49(1) Subsections (2) to (4) apply to all arbitrations required to be conducted in accordance with sections 6-45 to 6-48.

. . .

(3) An arbitrator or an arbitration board may:

(a) exercise the powers that are vested in the Court of Queen's Bench for the trial of civil actions:

(i) to summon and enforce the attendance of witnesses;

(ii) to compel witnesses to give evidence on oath or otherwise; and

(iii) to compel witnesses to produce documents or things;

. . .

(c) receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the arbitrator or arbitration board considers appropriate, whether admissible in a court of law or not;

. . .

(f) relieve, on terms that in the arbitrator's or arbitration board's opinion are just and reasonable, against breaches of time limits set out in the collective agreement with respect to a grievance procedure or an arbitration procedure;

. . .

DIVISION 11
Unions and Union Members

. . .

Fair representation
6-59(1) An employee who is or a former employee who was a member of the union has a right to be fairly represented by the union that is or was the employee's or former employee's bargaining agent with respect to the employee's or former employee's rights pursuant to a collective agreement or this Part.

(2) Without restricting the generality of subsection (1), a union shall not act in a manner that is arbitrary, discriminatory or in bad faith in considering whether to represent or in representing an

employee or former employee.

. . .

C. ANALYSIS

[9] The Union's position is:

a) Article 7.02 of the CBA guarantees employees ("Employees") the right to have a Union representative present at disciplinary meetings with the Employer;

b) the same Article also provides that if an Employee chooses to refuse to have a Union representative present, the Employer will have the Employee sign a letter (the "Waiver") confirming same;

c) the Employer does not–and refuses to–provide the Union with copies of the Waivers;

d) the Union is the sole collective bargaining agent for the Employees and, as such, has a duty to monitor the operation of the CBA and, *inter alia*, ensure the Employer treats Employees in a way that complies with the CBA and its representational rights are not being undermined;

e) there is no way in such circumstances for the Union to decide if both Employees' and its rights are being respected; and

f) the names of affected Employees (the "Requested Information") are highly relevant and necessary information in potentially proving the Union's case.

[10] In opposing the Union's application, the Employer's position is the Union is on a "fishing expedition" and:

a) the Requested Information is:

i) not relevant to whether it is required to give the Union information on Employee Waivers; and

ii) confidential and "specifically obtained in order to respect the employee's right to keep the discipline from being disclosed to the Union";

b) the Union can communicate with its members to provide and get information on discipline and representation during same; and

c) there is no practical need to have the Requested Information produced for this Grievance.

[11] It is important to note that I am not in this decision addressing the merits of the Grievance. I am simply considering the request for disclosure. In doing so, the Employer referred me to a recent decision of the Saskatchewan Labour Relations Board in *Ha* v *Saskatchewan Polytechnic Faculty Association and Saskatchewan Polytechnic*[2] and argued I should be governed by the following principles when considering whether to exercise my discretion to compel production:

a) requests for production are not automatic and must be assessed in each case;

b) the information requested must be arguably relevant to the issue to be decided;

c) the request must be sufficiently particularized so that one can readily determine the nature of the request, the documents sought, the relevant time-frame and the content;

d) the production must not be in the nature of a fishing expedition; that is, the production must assist a complainant in uncovering something to support its existing case;

e) the applicant must demonstrate a probative nexus between its positions in the dispute and the material being requested; and

[2] 2023 CarswellSask 505 (LRB)

f) the prejudicial aspect of introducing the evidence must not outweigh the probative value of the evidence itself, regardless of any possible "confidential" aspect of the document.[3]

We commonly call these principles the "Air Canada Principles." I am satisfied they are the appropriate principles to guide me.

[12] Apart from the above principles, the Union has referred me to the following authorities:

a) *Brown & Beatty*,[4] which summarized that a production order is a matter of arbitral discretion that involves:

   i) a relevance determination characterized as "arguably relevant" or "potentially relevant"; and

   ii) balancing the interests of the party opposing production–which may lead to questions of privilege, confidentiality and undue prejudice–against the interests of a fair hearing and need for the opposing party to have production to present its case adequately;

b) *University of Saskatchewan* v *USFA*,[5] which held that documents that are "relevant"–which the arbitrator characterized as "broadly relevant"–to the determination of the proceedings must be produced;

c) *Toronto District School Board* v *CUPE, Local 4400*,[6] which held a liberal view should be taken with respect to the production of documents and, *inter alia*, the following factors should be considered:

---

[3]Ibid., para. 20

[4]Para 3:11

[5]1995 CarswellSask 942 (SK Arb, Shapiro); see also *Re University of Saskatchewan*, 2002 CarswellSask 843 (SK Arb, Pelton)

[6]2002 CarswellOnt 4762 (ON Arb, Shime)

i) anything that can help in the preparation and presentation of a party's case should be encouraged;

ii) all documents that are arguably or seemingly relevant or have a semblance of relevance must be produced–"a board of arbitration, at the pre-hearing stage, is simply not in a position, and ought not to lay down precise rules as to what may be relevant during the course of the hearing";

iii) the primary onus to produce documents rests with the party who has or has had possession, control or power of the documents;

iv) the burden lies on the party who resists disclosure to justify the refusal to disclose;

v) should any problem arise with production, such as claims of privilege, a party should ask an arbitrator to decide with respect to same before the hearing; and

vi) it is only those documents that are clearly irrelevant which need not be produced;

d) *BC Rapid Transit Co* v *CUPE, Local 7000*,[7] which held:

i) information sought must at a minimum be relevant or potentially relevant to the adjudication of a particular claim; and

ii) it may be necessary, especially for a policy grievance to canvass a much broader range of material than would be required in an individual grievance.

I am satisfied these authorities do not conflict with the Air Canada Principles. They help me with the

[7]2008 CarswellBC 3081 (Arb, Hickling); see also *Greater Essex County District School Board and CUPE, Local 27, Re*, 2014 CarswellOnt 11089 (Arb, Kuttner)

application of same.

1. Requests for production are not automatic and must be assessed in each case.

[13] The Union's request for production is clearly being assessed in the context of this case. Neither the Union, nor the Employer has argued to the contrary. This step of the Air Canada Principles has been satisfied.

2. The information requested must be arguably relevant to the issue to be decided.

[14] The Union urges me to use "the broader and less stringent test for relevance" at this pre-hearing stage. The Employer concedes I should use a "broad" test. Base on the authorities cited, I see the test as being whether the Requested Information is arguably, potentially or seemingly relevant or having a semblance of relevance.

[15] The Employer argues the Grievance is simply an application to decide whether the Union is entitled to the waivers and to be notified of discipline. The Union disagrees. It says the Grievance complains the Employer has refused to give the Union:

a) a copy of any blank waiver or template it uses;

b) a copy of any waiver that Employees may have signed;

c) any information what Employees have been told regarding their right to Union representation and the significance of a Waiver; and

d) any confirmation when an Employee is disciplined;

and asks that the Employer:

e) give the Union copies of all representation waivers signed and any related discipline;

f) on a go-forward basis, notify the Union of all discipline and provide copies of any written Waivers;

g) waive the timelines under the grievance procedure to allow the Union to attend to any possible grievable matters; and

h) pay the Union $20,000.00 in damages.

[16] The Employer argues the Grievance "does not relate in any way" to whether the Employer properly advised Employees "of their entitlements" or how a Waiver was obtained. They say that is not relevant and, therefore, the names of the associated Employees is also not relevant. The Employer falls back on saying this is only an interpretation grievance.

[17] The Union disagrees. It argues:

a) the "gist" of the Grievance is the Union's representational rights and duties;

b) it has not only a right, but a responsibility to monitor the operation of the CBA and that includes, *inter alia*, ensuring:

   i) Employees are treated in a way that complies with the CBA; and

   ii) its representational rights are not being undermined;

c) given the Employer's refusal to disclose information regarding disciplinary matters, "there is no way for the Union to determine if its members' rights–or indeed the Union's rights–are being respected in a meaningful way, or at all";

d) the Requested Information is therefore "highly relevant, and necessary information in potentially proving the Union's case."

[18] In addition to arguing the Union could obtain the Requested Information by simply approaching its members, the Employer argues that if the Union is successful with the Grievance, I would have jurisdiction to order production of not only the Waivers, but discipline records. The Employer says it follows that "[a]t that time, the names would be discovered and the Union could have its discussions with those employees who did not want the Union's representation." Using that logic, the Employer argues the Union's production request "is getting the cart before the horse."

[19] I do not accept the Employer's argument that the Grievance is as simple as it suggests. The complaint and relief sought is much broader and could potentially involve interpretation of the CBA in the context of the parties' duties and responsibilities not only flowing therefrom, but also the *SEA*. To only initially focus upon waivers, as suggested by the Employer, would in my view amount to a bifurcation of the proceedings that would hinder my proper and thorough consideration of the matter.

[20] I prefer and accept the Union's arguments. I am satisfied the Requested Information is relevant.

3. The request must be sufficiently particularized so that one can readily determine the nature of the request, the documents sought, the relevant time-frame and the content.

[21] The Union argued disclosure is not inherently tied to documents. Information, such as names, can also be ordered to be disclosed. The Employer has not taken issue with this position. I agree it is sound.

[22] The Employer did not challenge the Union's request on the basis of particularization.

[23] I am satisfied the Union's request is sufficiently particularized so that the Employer can readily determine the nature of the request, the names sought, the relevant time-frame and the content.

4. The production must not be in the nature of a fishing expedition; that is, the production must assist a complainant in uncovering something to support its existing case.

[24] The Employer argues the Union is on a fishing expedition and is simply attempting to "find evidence to support their grievance and potentially bring new, unrelated grievances." In support, it particularly argues the Grievance does not allege a complaint beyond the failure to provide signed Waivers and discipline.

[25] My problem with the Employer's argument is that it fails to consider the Grievance as a whole, which includes the relief sought. I leave it for the parties to argue at the arbitration hearing whether my focus should or can only be upon whether the Employer is required to provide notice to the Union when Employees choose to waive their right to representation during disciplinary meetings. I do not believe that is what needs to be established before the Union has any right to the Requested Information.

[26] The Union denies that it is on a fishing expedition. It relies on its arguments concerning relevance.

[27] I am satisfied the requested production:

a) is not in the nature of a fishing expedition; and

b) will help the Union in uncovering something to support its existing case.

5. The applicant must demonstrate a probative nexus between its positions in the dispute and the material being requested.

[28] In arguing there is no probative nexus between its positions in the dispute and the Requested Information, the Employer argues:

a) the Grievance is about whether the Union has the right to obtain copies of any Waivers signed by Employees and copies of all discipline assessed against those Employees;

b) the Grievance fails to identify any Employer conduct of concern, apart from the refusal to

share the signed waivers and provide copies of written discipline;

c) this is an issue of interpretation of the CBA, not about Employer conduct or the wording of the Waivers;

d) the Union does not say "how having the names will enable it to prove its case and not having them will interfere with it proving its case," it just says it "thinks it is important."

[29] The Union maintains there is a nexus. Again, it relies on its arguments concerning relevance.

[30] I am satisfied the Union has demonstrated a probative nexus between its positions in the dispute and the Requested Information.

6. The prejudicial aspect of introducing the evidence must not outweigh the probative value of the evidence itself, regardless of any possible "confidential" aspect of the document.

[31] The Employer argues:

a) the Union can communicate with Employees, provide information on representation during discipline, and ask they want to discuss any previous discipline where they waived representation to decide if a grievance is suitable–if they do not come forward, they "clearly" do not want to advise the Union;

b) Employees know that they can seek the Union's support during disciplinary meetings or at anytime after–in some circumstances, for a variety of reasons, some have chosen not to;

c) Employees who signed a Waiver "clearly" do not want the Union involved–it is not up to the Employer to decide whether an Employee wants to involve or notify the Union, that remains an Employee's right;

d) it "must presume" such Employees want their names to be kept confidential;

e) it is respecting the individual Employee's right to waive any Union representation and an order requiring the production of their names would disrespect those rights; and

d) there is no practical need to have the Requested Information produced for this Grievance.

[32] The Union argues:

a) the onus is on the Employer to justify its refusal to disclose the Requested Information;

b) privacy and confidentiality concerns have no application here as:

i) the Requested Information is not medically related per HIPA;

ii) the Employer is not a public employer subject to privacy legislation; and

iii) disclosure of the Requested Information will be pursuant to an order of a quasi-judicial tribunal, and therefore "required by law";

c) the Requested Information would "directly or indirectly enable the Union to advance its own case";

d) not having the Requested Information "would potentially make it impossible for the Union to be able to prove its case at all";

e) even accepting that a party is not required to help bolster the opposing party's case, the Requested Information is sufficiently important to proving the Union's case that it should be disclosed; and

f) disclosure of the Requested Information would ensure that the adjudicative process is fair.

[33] The Employer has not persuaded me it will suffer any prejudice with production of the

Requested Information. Furthermore, I find there is no confidential aspect to the Requested Information, particularly as between a Union and its members, that would cause me to decline to order it production.

[34] I find this an appropriate case to order the requested production. Accordingly, I order the Employer to disclose to the Union on or before 5:00 p.m. on Wednesday, October 25, 2023, the names of those employees who have been disciplined, but waived their right to Union representation, for the 24-month period prior to the date of the Grievance (August 30, 2022).

Dated on October 22, 2023.

T. F. (Ted) Koskie, B.Sc., LL.B.,
Sole Arbitrator