

**The Labour Relations Board  
Saskatchewan**

**SASKATCHEWAN JOINT BOARD, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, Applicant v. SASKATCHEWAN INDIAN GAMING AUTHORITY INC. carrying on business as the PAINTED HAND CASINO, Respondent**

LRB File Nos. 067-03, 068-03 & 069-03; August 29, 2003

**CANADIAN UNION OF PUBLIC EMPLOYEES, Applicant v. SASKATCHEWAN INDIAN GAMING AUTHORITY INC. carrying on business as the PAINTED HAND CASINO, Respondent**

LRB File Nos. 083-03, 084-03, 085-03

Vice-Chairperson, Wally Matkowski; Members: Gerry Caudle and Brenda Cuthbert

For the Applicants: Larry Kowalchuk

For the Respondent: M. Jean Torrens

**Remedy – Interim order – Criteria – Urgency – Necessity for interim relief must be urgent – Board’s goal in granting interim relief to restore status quo as much as possible pending determination of final application – Interim applications filed subsequent to final applications and some time after dismissals occurred – Applicants’ actions disclose no urgency – Board dismisses interim applications.**

***The Trade Union Act, ss. 5.3 and 11(1)(e).***

**REASONS FOR DECISION**

**Background:**

[1] Saskatchewan Joint Board, Retail, Wholesale and Department Store Union (“RWDSU”) filed unfair labour practice, monetary loss and reinstatement applications with the Board on January 24, 2003 (the “RWDSU applications”) with respect to the dismissal of Cory Delorme from his employment at Saskatchewan Indian Gaming Authority Inc. carrying on business as the Painted Hand Casino (the “Employer”). The Board heard an application for interim relief relating to the RWDSU applications on July 18, 2003.

[2] Canadian Union of Public Employees (“CUPE”) filed unfair labour practice, monetary loss and reinstatement applications with the Board on May 2, 2003 (the “CUPE applications”) with respect to the lay-off/ dismissal of Trevor Lyons from his employment with the

Employer. The Board heard an application for interim relief relating to the CUPE applications on July 18, 2003.

[3] Following the hearing of the interim applications, the Board advised the parties to continue to attempt to set timely dates for the hearing of the final applications, as the Board was struggling to find the urgency normally required for the granting of an interim order.

[4] Following further deliberations, the Board determined that the urgency required for the granting of an interim order was lacking in the two interim applications at hand. Orders were issued on August 1, 2003 dismissing the interim applications with written reasons to follow.

**Facts:**

[5] RWDSU brought its applications against the Employer, alleging violations of ss. 3, 11(1)(a), 11(1)(e) and 12 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "Act") arising as a result of the termination of Mr. Delorme from his employment at Painted Hand Casino in Yorkton, Saskatchewan on January 24, 2003. (Note: The dismissal letter issued to Mr. Delorme is dated January 24, 2003. For the purposes of this hearing only, the Board will accept Mr. Delorme's dismissal date as being January 24, 2003.) The RWDSU applications are dated April 25, 2003.

[6] In 2002, Public Service Alliance of Canada ("PSAC") was engaged in a union organizing drive at Painted Hand Casino. Mr. Delorme was actively involved in the organizing drive on behalf of PSAC. On approximately November 29, 2002, PSAC applied for a certification order. PSAC did not file majority support and, as a result, the Board ordered a secret ballot vote on January 10, 2003.

[7] A majority of the employees did not vote in favour of PSAC and PSAC'S certification application was dismissed.

[8] Mr. Delorme received a number of warnings and suspensions at the workplace in 2002 and, in January, 2003, following a breach of security incident, Mr. Delorme's employment at Painted Hand Casino was terminated. PSAC brought no applications before the Board in regard to any of the discipline imposed upon Mr. Delorme.

**[9]** Following the dismissal of PSAC's certification application, Gord Schmidt, an organizer with RWDSU, received a number of telephone calls from employees at Painted Hand Casino asking for his assistance in commencing another organizing drive. Mr. Schmidt had attempted an organizing drive for RWDSU in approximately 2001, visiting Painted Hand Casino on a number of occasions. Mr. Schmidt encountered difficulties at Painted Hand Casino, and was temporarily banned from attending at the Casino. The ban was subsequently overturned. However, RWDSU decided to postpone its organizing drive in 2001.

**[10]** During a meeting with employees of Painted Hand Casino in February, 2003 to discuss the possibility of an RWDSU organizing drive, several employees expressed to Mr. Schmidt their reluctance to become involved with RWDSU's organizing drive because of their perception that Mr. Delorme had been dismissed from his employment at Painted Hand Casino because of his role in the PSAC organizing drive. RWDSU filed its applications before the Board in April, 2003 and continued to explore the possibility of a full organizing drive at Painted Hand Casino.

**[11]** The Employer asked for particulars of the RWDSU applications on May 6, 2003 and received same on June 27, 2003. The Employer subsequently filed its reply on July 7, 2003, with the RWDSU filing its interim application on July 8, 2003.

**[12]** At some point in time (no dates are provided in the RWDSU materials), RWDSU came to the conclusion that it would not be able to achieve majority support at Painted Hand Casino because of employee fears that if they became involved in the RWDSU organizing drive, they could suffer negative employment consequences such as Mr. Delorme suffered.

**[13]** On April 1, 2003, CUPE opened an office in Yorkton with the specific purpose of commencing an organizing drive at Painted Hand Casino. Linda Pelletier, a CUPE organizer, was in charge of the organizing drive and talked to employees who held the belief that Mr. Delorme was dismissed because of his activities in the PSAC organizing drive. Employees nonetheless were signing support cards and were being reassured by Ms. Pelletier that they would not be fired for supporting CUPE.

**[14]** Trevor Lyons signed a CUPE support card on April 29, 2003. According to the affidavit evidence of Ms. Pelletier, Mr. Lyons had been a PSAC supporter. On May 2, 2003, Mr.

Lyons was laid off/dismissed by the Employer, depending on which affidavit is read. CUPE then filed its applications relating to Mr. Lyons on May 12, 2003 alleging violations of ss. 11(1)(a) and 11(1)(e) of the *Act*. The Employer filed its reply on July 7, 2003 with CUPE filing its interim application on July 8, 2003.

[15] Ms. Pelletier deposed that that the CUPE drive stalled following the lay-off of Mr. Lyons, and was only rekindled by intense efforts of CUPE. CUPE then became aware that RWDSU had commenced an organizing drive and agreed to support the RWDSU drive. Ms. Pelletier was of the belief that the RWDSU drive would likely be unsuccessful unless both Mr. Delorme and Mr. Lyons were reinstated.

[16] The Employer filed a number of lengthy affidavits which outlined how and why Mr. Delorme had his employment terminated and how and why Mr. Lyons was laid off.

**Test for Interim Relief:**

[17] The test for determining if an interim order should issue was set out by the Board in *Hotel Employees and Restaurant Employees Union, Local 206 v. Canadian Hotels Income Properties Real Estate Investment Trust #19 Operations Ltd. o/a Regina Inn Hotel and Convention Centre*, [1999] Sask. L.R.B.R. 190, LRB File No. 131-99 at 194:

*The Board is empowered under ss. 5.3 and 42 of the Act to issue interim orders. The general rules relating to the granting of interim relief have been set down in the cases cited above. Generally, we are concerned with determining (1) whether the main application reflects an arguable case under the Act, and (2) what labour relations harm will result if the interim order is not granted compared to the harm that will result if it is granted. (see Tropical Inn, supra, at 229). This test restates the test set out by the Courts in decisions such as Potash Corporation of Saskatchewan v. Todd et al., [1987] 2 W.W.R. 481 (Sask. C.A.) and by the Board in its subsequent decisions. In our view, the modified test, which we are adopting from the Ontario Labour Relations Board's decision in Loeb Highland, supra, focuses the Board's attention on the labour relations impact of granting or not granting an interim order. The Board's power to grant interim relief is discretionary and interim relief can be refused for other practical considerations.*

[18] In *Hotel Employees and Restaurant Employees Union, Local 206 v. Chelton Suites Hotel (1998) Ltd.*, [2000] Sask. L.R.B.R. 434, LRB File Nos. 091-00, 110-00, 125-00, 139-

00, 144-00 & 145-00, the Board set out restrictions on when interim relief should be granted at 446:

*The Board has enunciated certain policies which help serve to curtail the numbers of applications for interim relief. For example, the necessity for interim relief must be urgent, and, generally, the relief that may be granted will not have the practical effect of granting what the applicant might hope to obtain on the main application: see, Retail, Wholesale and Department Store Union, Local 455 v. Tai Wan Pork, Inc., LRB File No. 076-00 (April 3, 2000, not yet reported).*

...

*This is in keeping with the notion that the interim order power is intended as preservative rather than remedial.*

**[19]** Generally speaking, a union proceeds expeditiously when seeking interim relief for an employee who has been either discharged or laid off. For example, in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Northern Steel Industries Ltd.*, [2002] Sask. L.R.B.R. 304, LRB File No. 114-02, the employee affected was dismissed on June 27, 2002 and the Board heard the interim application on July 10, 2002.

**[20]** In *Grain Services Union, Local 1450 v. Bear Hills Pork Producers Ltd. Partnership*, [2000] Sask. L.R.B.R. 223, LRB File No. 079-00, the Board refused to grant the interim relief requested by the applicant, holding at 229 that “there is no apparent urgency in the Union’s conduct of its own case.”

**Analysis:**

**[21]** The Board has set out restrictions as to when interim relief should be granted. The Board has held that the necessity for interim relief must be urgent and that the interim relief power should be used in a preservative manner. When interim relief is granted, the Board’s goal is to restore the status quo as much as possible pending the determination of the final application(s). As stated earlier, based on the facts of this case, there is no urgency requiring that relief be granted on an interim basis. The applicants, as evidenced by their actions, did not see the necessity for interim relief until over two months had passed following Mr. Lyons’ dismissal/lay-off and until approximately five months had passed since Mr. Schmidt became involved in the RWDSU organizing drive.

[22] The interim applications were therefore dismissed.

**DATED** at Saskatoon, Saskatchewan, this **29th** day of **August, 2003**.

**LABOUR RELATIONS BOARD**

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Wally Matkowski,  
Vice-Chairperson