The Labour Relations Board
Saskatchewan

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 4617, Applicant v. HEINZE INSTITUTE OF APPLIED COMPUTER TECHNOLOGY INC., Respondent

LRB File Nos. 122-03, 123-03 &124-03; August 28, 2003
Vice-Chairperson, Wally Matkowski; Members: Bruce McDonald and Clare Gitzel

For the Applicant: Peter Barnacle
For the Respondent: Kurt Wintermute

Remedy – Interim order – Criteria – Balance of labour relations harm – Union in formative stage in workplace – Union members must be assured that involvement in union will not result in negative workplace consequences – Union has established arguable case to be made under *The Trade Union Act* - Board issues interim Order.

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

REASONS FOR DECISION

Background:

[1] Canadian Union of Public Employees, Local 4617 (the "Union") filed unfair labour practice, monetary loss and reinstatement applications with respect to the dismissal of Karalee Beaudry from her employment at Heinze Institute of Applied Computer Technology Inc. (the "Employer") on June 27, 2003. This interim application had originally been scheduled for hearing earlier in July, 2003. The parties agreed to adjourn the interim application until July 29, 2003, and the Employer agreed to continue Ms. Beaudry's salary and benefits until July 29, 2003.

[2] The Board heard the application for interim relief on July 29, 2003. Following the hearing, the Board ordered the reinstatement of Ms. Beaudry and advised the parties that it would issue a formal order with written reasons to follow. Board member Clare Gitzel dissented from the Board's decision. On July 30, 2003, the Board issued an Order reinstating Ms. Beaudry.

Test for Interim Relief:

[3] 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.*

Facts:

[4] The parties filed a number of affidavits for the Board to consider in this interim application. The evidence submitted indicated that Ms. Beaudry was the chief organizer for the Union's organizing drive and that the Union applied for a certification order on June 18, 2003. The evidence indicated that Ms. Beaudry was terminated from her employment on June 27, 2003.

[5] The Employer's affidavit evidence centered on the labour relations harm that would result if Ms. Beaudry were reinstated with the Employer. The materials attempted to establish that Ms. Beaudry was dismissed because she did not have the proper qualifications and because she was an inadequate instructor.

[6] The Union's affidavit evidence attempted to establish that Ms. Beaudry was an adequate instructor and that she did have the proper qualifications to instruct modules of the program.

[7] Vera Heinze, president and director of the Employer deposed in her affidavit that an instructor is not allowed to teach a particular class until the instructor has been certified for all course components, while Suzanne Stene, Ms. Beaudry's former supervisor, indicated in her

affidavit that it was common practice for instructors to upgrade their certifications on a per module basis, rather than on a per program basis.

Analysis:

[8] Based on the applicable test, the Union has established a *prima facie* breach of s. 11(1)(e) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*") - that is, the Union established that Ms. Beaudry was engaged in union activity at the time of her termination. The onus of establishing "good and sufficient reason" for the discharge shifts to the Employer under the reverse onus provision contained in s. 11(1)(e). As the Board has set out in numerous previous decisions, the Employer may well have a valid defence to the Union's application. However, at this stage, the Board does not evaluate the strength of each party's case or evidence. So long as the Union has established that there is an arguable case to be made under the *Act*, the first part of the test has been met.

[9] The second part of the test requires the Board to assess what labour relations harm will result if an interim order is not granted compared to the harm that will result if it is granted. Under normal conditions, the dismissal of an employee for alleged union activity has a chilling effect on a union's organizing drive or activities. The Board will often grant an interim order to ensure that this chilling effect is reversed. The Board has also recognized that if the chilling effect is not reversed, even after a certification order has been granted, such as in this case, employees may conclude that involvement with the Union is not worth it, as they could have their employment terminated as a result. Therefore, if this fear is not reversed, employee participation during the Union's crucial formative stage will be curtailed.

[10] The labour relations harm if an interim order is granted is difficult to assess based on conflicting affidavit evidence. On the surface, the Employer would be forced to continue to employ an employee whom it finds undesirable pending the determination of the final applications. (In this regard, the parties advised the Board that they both could be ready to proceed with the main applications by the middle of September.) However, based on the evidence, Ms. Beaudry would be instructing a class which she was qualified to teach and had taught before, at least until August 22, 2003. Thereafter the affidavit evidence was in conflict as to whether or not Ms. Beaudry would be allowed to upgrade her designation for a module of the class she was teaching.

[11] The Employer argued that Ms. Beaudry's reinstatement would add to its financial burden and would lead to fall lay-offs. The Employer argued that it should not have to assume the risk of Ms. Beaudry not passing the two required certifications for the class. The Board does not accept this second argument as valid, in that it is pure speculation. The Union argued that it could just as easily speculate that in the event Ms. Beaudry did not obtain the required qualifications, it would be because she had been improperly dismissed from her employment.

[12] In balancing the labour relations harm which would result if an interim order is not granted with the labour relations harm which would result if an interim order is granted, the Board finds that there will be greater harm if an interim order is not granted. As stated earlier, the Union, at this workplace, is in its formative stage. Union members must be assured that involvement in the Union will not result in negative workplace consequences for them.

[13] Board member, Clare Gitzel, dissents from these Reasons for Decision.

DATED at Saskatoon, Saskatchewan, this **28th** day of **August, 2003.**

LABOUR RELATIONS BOARD

Wally Matkowski,
Vice-Chairperson