Labour Relations Board
Saskatchewan

GRAIN SERVICES UNION (ILWU CANADA), Applicant v. STARTEK CANADA SERVICES LTD., Respondent

LRB File No. 032-04; March 12, 2004
Chairperson, James Seibel; Members: Pat Gallagher and Mike Carr

For the Applicant: Ronni Nordal
For the Respondent: Larry LeBlanc, Q.C. and Michael Phillips

Remedy – Interim order – Practice and procedure – Board requires that affidavit evidence filed in support of interim application be based upon personal knowledge – Board dismisses interim application where union's affidavit evidence not based upon personal knowledge and employer's evidence does not contain admissions meeting requirements for obtaining interim relief.

***The Trade Union Act*, s. 5.3.**

REASONS FOR DECISION

Background:

[1] Grain Services Union (ILWU Canada) (the "Union") filed an application with the Board on February 27, 2004, alleging that StarTek Canada Services Ltd. (the "Employer" or "StarTek") had committed several unfair labour practices in violation of ss. 11(1)(a), (b), (e), (g), (i) and (l)(ii) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*"), which provide as follows:

> *11(1) It shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer:*
>
> > *(a) to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of any right conferred by this Act, but nothing in this Act precludes an employer from communicating with his employees;*
> >
> > *(b) to discriminate or interfere with the formation or administration of any labour organization or contribute financial or other support to it; but an*

employer shall not be prohibited from permitting the bargaining committee or officers of a trade union representing his employees in any unit to confer with him for the purpose of bargaining collectively or attending to the business of a trade union without deductions from wages or loss of time so occupied or from agreeing with any trade union for the use of notice boards and of the employer's premises for the purposes of such trade union;

. . .

(e) to discriminate in regard to hiring or tenure of employment or any term or condition of employment or to use coercion or intimidation of any kind, including discharge or suspension or threat of discharge or suspension of an employee, with a view to encouraging or discouraging membership in or activity in or for or selection of a labour organization or participation of any kind in a proceeding under this Act, and if an employer or an employer's agent discharges or suspends an employee from his employment and it is shown to the satisfaction of the board that employees of the employer or any of them had exercised or were exercising or attempting to exercise a right under this Act, there shall be a presumption in favour of the employee that he was discharged or suspended contrary to this Act, and the burden of proof that the employee was discharged or suspended for good and sufficient reason shall be upon the employer; but nothing in this Act precludes an employer from making an agreement with a trade union to require as a condition of employment membership in or maintenance of membership in the trade union or the selection of employees by or with the advice of a trade union or any other condition in regard to employment, if the trade union has been designated or selected by a majority of employees in any such unit as their representative for the purpose of bargaining collectively;

. . .

(g) to interfere in the selection of a trade union as a representative employees for the purpose of bargaining collectively;

> *. . .*
>
> *(i) to threaten to shut down or to threaten to move a plant, business or enterprises or any part of a plant, business or enterprise in the course of a labour-management dispute;*
>
> *. . .*
>
> *(l) to deny or threaten to deny to any employee:*
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> *. . .*
>
> *(ii) by reason of the employee exercising any right conferred by this Act;*
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> *any pension rights or benefits, health rights or benefits or medical rights or benefits that the employee enjoyed prior to such cessation of work or to his exercising any such right;*

[2] The allegations in the application are made in the context of the Union's organizing drive of StarTek's employees and concern, *inter alia*, certain written and oral communications by the Employer with employees, certain written materials present in the workplace and access to a particular website at the workplace. The Union concurrently filed an application for interim relief, pursuant to s. 5.3 of the *Act*, pending hearing and determination of the application proper and supported by the affidavit of Deb Minion, a Union organizer. The Employer filed its reply to the application proper on March 3, 2004. In reply to the interim application the Employer filed the affidavits of Richard Snell, the Employer's human resources manager and Peter Wilkie, the Employer's call centre director. The Board heard the interim application on March 5, 2004.

Preliminary Objection:

[3] Mr. LeBlanc, counsel for the Employer, raised a preliminary objection to the admissibility of the affidavit of Deb Minion as evidence to support the application for interim relief. The Board heard argument on the objection and, reserving decision thereon, proceeded to hear the argument on the merits of the interim application.

Arguments on the Preliminary Objection:

[4] Mr. LeBlanc asserted that the affidavit of Deb Minion is composed of, in large part, statements of which the deponent did not or could not possibly have personal knowledge. Referring to the Board's decision in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Loraas Disposal Services Ltd.*, [1997] Sask. L.R.B.R. 517, LRB File No. 208-97, counsel argued that the Board's practice with respect to applications for interim relief was to accept only affidavit evidence of which the deponent has personal knowledge. Arguing that much of Deb Minion's affidavit violates the Board's practice and policy, Mr. LeBlanc took the position that the entire deposition ought to be rejected. If the affidavit is declared inadmissible the interim application must necessarily fail, as the application document itself contained a similar degree of hearsay.

[5] Ms. Nordal, counsel for the Union, argued that whether the affidavit of Deb Minion contains hearsay goes only to the weight and not the admissibility of the matters deposed to therein and that the Board could selectively strike any portions it found to be strictly inadmissible. Counsel asserted that, notwithstanding any deficiency in the Union's own material, the impugned documents attached as exhibits to the application document spoke for themselves, as did the e-mail items attached as exhibits to the affidavit of Peter Wilkie. Counsel pointed out that the union's application for interim relief in *Loraas Disposal*, *supra*, did not fail due to the inadmissibility of the union's affidavit evidence because the Board accepted that the affidavit evidence filed on behalf of the employer on that application confirmed the matters necessary to establish that an interim order was warranted.

Analysis and Decision:

[6] We are of the view that the preliminary objection is well founded and that the application for interim relief shall be dismissed because of the insufficiency of supporting evidence.

[7] In *Loraas Disposal*, *supra*, at 523, the Board described its policy and practice respecting the form of admissible affidavit evidence as follows:

> *A procedural issue was raised by counsel for the Employer with respect to the sufficiency of the affidavits filed by the Union. It has been the practice of this Board to require that affidavits filed in an application for interim relief be based on personal knowledge. The Board does not permit cross-examination of witnesses on their affidavits as there is not sufficient time on an interim application to hear viva voce evidence. If viva voce evidence is necessary, the applicant or respondent should request an expedited hearing, which the Board can generally accommodate.*
>
> (emphasis added)

[8] In the present case, the affidavit of Deb Minion contains a number of statements that are not, and necessarily cannot be, of or in her personal knowledge. As well, a number of such statements do not identify the source of the information nor does she depose that she believes the information to be true. We do not intend in these reasons to identify all of the statements that offend the practice, but some examples include the following:

> *5. ... In or around the same time, it became apparent that individual employees who were considered to be supporters of the organizing drive by GSU were receiving different treatment from the employer than they did prior to the organizing drive.*
>
> *...*
>
> *8. On or about January 20, 2004, Mr. Gribbon, one of the main union supporters, was chastised by the employer for his pro-union involvement.*
>
> *9. … employees who wished to voice their pro-union thoughts, or just talk about unionization were told that they were not allowed to talk about their opinion, or unions on company time and in fact were told they were not allowed to discuss anything that revolves around union support anywhere on company premises including in the cafeteria on meal and rest breaks. [Name of employee] was specifically told by her supervisor, during a team meeting, that she was not allowed to speak about the union anywhere on the StarTek premises including the cafeteria, even on her breaks.*
>
> *...*
>
> *17. … I am aware of a call a union supporter initiated where she was told, in response to her question why the individual did not wish*

> *to sign a union card, that his reason was "the place sucks, I am not going to sign a union card, because I'll get fired."*

[9] Several of the statements in the affidavit commence with the phrases "It is my belief" or "I believe," without describing the basis for the statement.

[10] Similar problems plague the declarative statements in the application document. In our opinion, the impugned portions of the affidavit and application document are too extensive to selectively excise and yet support the interim application.

[11] In *Loraas Disposal*, *supra*, despite the fact that the affidavit filed in support of the interim application by the union did not conform to the accepted practice, the applicant was able to rely upon the admissions made in the affidavit material filed by the respondent employer to establish the requirements for an order for interim relief. At 523, the Board found as follows:

> *In this instance, the Board finds that the essential evidentiary claims made by the Union were confirmed by the affidavit filed on behalf of the Employer. As such, it is not necessary for the Board to review the sufficiency of the Union's affidavit or to make any rulings with respect to the credibility of the deponents.*

[12] That case involved the closure of a division of the employer's enterprise and a lay-off of employees. The admissions made by the employer as to the truth of the allegations in the application as far as closure of part of the business without notice and the lay-offs were sufficient to establish the existence of a serious issue to be tried regarding breaches of the technological change provisions and s. 11(1)(e) of the *Act*.

[13] In the present case, however, upon reviewing the affidavits filed on behalf of the Employer in response to the application for interim relief, we cannot conclude that admissions are made of a nature similar to those in *Loraas Disposal*, *supra*, such that the requirements for obtaining interim relief are met.

[14] Accordingly, we find that the application for interim relief must be dismissed. However, it should be understood that the interim application is not being dismissed on its merits and the evidentiary difficulties referred to above might be

capable of being remedied. Nothing prevents the Union from reapplying for interim relief with sufficient and appropriate supporting material.

DATED at Regina, Saskatchewan this **12th** day of **March, 2004.**

LABOUR RELATIONS BOARD

James Seibel,
Chairperson