Labour Relations Board
Saskatchewan

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

LRB File Nos. 115-04, 116-04 & 117-04; May 27, 2004
Chairperson, James Seibel; Members: Gloria Cymbalisty and Marshall Hamilton

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

> **Remedy – Interim order – Criteria – Board confirms criteria for granting interim relief - Summary termination of ostensibly experienced, trusted and competent employee with no prior disciplinary record raises arguable case – Employer's actions will likely have chilling effect on perception of other employees of ability to exercise statutory rights without fear of prejudice or retribution – Potential harm from granting interim order outweighed by potential harm if order not granted – Board orders reinstatement of and monetary loss for employee.**
> ***The Trade Union Act*, ss. 5.3 and 11(1)(e).**

REASONS FOR DECISION

Background:

[1] Frank Gribbon was employed by StarTek Canada Services Ltd. (the "Employer") from May 12, 2003 until May 13, 2004, when his employment was terminated. Grain Services Union (ILWU – Canada) (the "Union") has conducted an organizing campaign of the employees of the Employer from November, 2003 until the present time. At the time of his dismissal, Mr. Gribbon was actively involved in the garnering of support for the Union. On May 17, 2004, the Union filed applications pursuant to ss. 5 (d), (e), (f) and (g) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*") alleging that the Employer had committed an unfair labour practice in violation of s. 11(1)(e) of the *Act*, requesting, *inter alia*, that Mr. Gribbon be reinstated and payment of monetary loss. At the same time, the Union filed an application pursuant to s. 5.3 of the *Act* for interim relief, seeking, *inter alia*, the reinstatement of Mr. Gribbon pending the hearing and disposition of the applications proper.

[2] The application for interim relief was heard by the Board on May 21, 2004.

Evidence:

[3] In support of the application for interim relief the Union filed the affidavit of Mr. Gribbon. In opposition to the interim application, the Employer filed the affidavits of Richard Snell, human resources manager; Greg Watch, customer care supervisor; and LeeAnn Norton, quality assurance supervisor. Following is a brief review of the affidavit material.

Affidavit of Frank Gribbon

[4] Mr. Gribbon, a 52-year old gentleman, was hired by the Employer on May 12, 2003 as a call centre employee. He was promoted to the position of one of nine quality assurance specialists ("QAS") in September, 2003, which he held until he was summarily terminated on May 13, 2004. His main duties as a QAS were to monitor and assess calls made by four teams of call centre employees. His hours of work were flexible, but he was expected to monitor a minimum number of calls per month.

[5] The Union commenced its organizing drive in November, 2003. Mr. Gribbon was actively involved in the organizing effort from the start. The Employer's managers were aware of his involvement. In February, 2004 the Union filed an unfair labour practice application against the Employer (LRB File No. 032-04) alleging, *inter alia*, interference with the employees during the organizing drive. An application for interim relief made in that application was dismissed by the Board in February, 2004. That application proper is presently scheduled to be heard in June, 2004.

[6] Although the organizing campaign waned to a certain degree, it was somewhat ramped up again in May, 2004. Mr. Gribbon was on sick leave from May 3 to May 7, 2004, returning to work on May 11, 2004. During his unpaid meal break that day, he distributed union literature in the cafeteria and obtained the signing of union membership cards by several employees while being observed by Ms. Norton and operations manager, Sara Weanus.

[7] On May 12, 2004 Ms. Norton advised Mr. Gribbon that she wished to discuss his monthly performance review that she had prepared. While each of the four team supervisors evaluated Mr. Gribbon as "significantly above goal," his overall performance

rating was 85%. Ms. Norton advised him that this was because he had failed to meet the monthly call monitoring quota. Mr. Gribbon and Ms. Norton disagreed as to when an increase in the quota was implemented, as a result of which Mr. Gribbon refused to sign the performance evaluation. At that point, Ms. Norton raised an issue with the time of day that Mr. Gribbon was working some of his shifts. Later that day, while on his unpaid meal break, Mr. Gribbon again distributed union literature in the cafeteria and solicited support through the signing of membership cards, while being observed by two of the operations managers.

[8] On May 13, 2004 shortly after Mr. Gribbon's arrival at work, Ms. Norton asked Mr. Gribbon to meet with her in one of the offices, but did not advise him of the subject of the meeting. When Mr. Gribbon entered the room, Mr. Watch was also present. Ms. Norton advised the querulous Mr. Gribbon that Mr. Watch was there as a "witness." Mr. Gribbon requested to have his own witness present as well. Ms. Norton told him he did not need a witness and that he should sit down. Mr. Gribbon responded that he would not meet unless he had his own witness present. Ms. Norton advised him that, if he left, he would be insubordinate. Mr. Gribbon left the meeting. According to Mr. Gribbon, the discussion was not heated.

[9] Later that day, Ms. Norton again asked to speak with Mr. Gribbon and advised that he could have a supervisor or someone from the human resources department present as his witness. Ms. Norton advised him that she was going to give him his "final notice for insubordination." Mr. Gribbon stated that he wanted some time to think about his choice of witness but Ms. Norton insisted that the meeting occur immediately. Mr. Gribbon reiterated that he needed some time to think and left and went back to work. A short while later Ms. Norton asked Mr. Gribbon to accompany her to her desk where Mr. Watch was waiting and indicated that she was giving him a "final written warning." Mr. Gribbon questioned the action, pointing out that he had no prior discipline of any kind, and again asked for a witness of his choosing to be present. Ms. Norton advised that the meeting was going to take place there and then, and when Mr. Gribbon balked, she terminated him summarily. He was escorted to his desk to remove his personal belongings and then off the premises.

<u>Affidavit of LeeAnn Norton</u>

[10] Ms. Norton started work with StarTek in Ontario in 2001. In early 2003 she transferred to the Employer's Regina operation and was promoted to the position of quality assurance supervisor at the end of March, 2004. Her responsibilities include the monthly performance evaluation of the QAS's including Mr. Gribbon. However, the evaluations were some six months behind.

[11] On May 12, 2004 Ms. Norton asked Mr. Gribbon to meet with her to review his performance evaluation for April. She and Mr. Gribbon disagreed as to the minimum monthly call monitors, but she agreed to investigate the matter and meet with him again the following morning. After reviewing her daily journal, she was convinced that Mr. Gribbon knew of the increase in quota, had been below quota for a few months and also that he had missed a substantial amount of time from work.

[12] On May 13, 2004 Ms. Norton asked Mr. Watch to sit in on her meeting with Mr. Gribbon. She deposed that she advised Mr. Gribbon that Mr. Watch was there as a witness and that he was not facing any discipline. When Mr. Gribbon insisted on having his own witness present, and Ms. Norton advised him that was not necessary, he refused to participate and left the room. Ms. Norton consulted with Mr. Snell who recommended that Mr. Gribbon be given a final written warning for insubordination.

[13] An hour or so later, Ms. Norton again asked Mr. Gribbon to meet, advising he could have any supervisor, operations manager or human resources employee present. Mr. Gribbon refused. Ms. Norton left and returned with Mr. Watch. Mr. Gribbon again refused to engage in a discussion regarding his performance review. Ms. Norton advised him he was terminated for insubordination and escorted him to remove his personal belongings and then off the premises.

[14] Ms. Norton deposed that Mr. Gribbon's involvement with the Union played no part in her decision to dismiss him.

<u>Affidavit of Greg Watch</u>

[15] Mr. Watch is employed by StarTek as a customer care supervisor. On May 13, 2004 Ms. Norton asked him to be present at a meeting with Mr. Gribbon to

discuss his shifts. Upon noting Mr. Watch's presence at the meeting, Mr. Gribbon insisted on having his own witness present and left the room.

[16] Later that morning, Ms. Norton again requested Mr. Watch's presence at a meeting with Mr. Gribbon. Mr. Watch deposed that Ms. Norton asked Mr. Gribbon whether he had had the chance to find a witness, to which Mr. Gribbon responded that he should get time to find someone. Ms. Norton advised Mr. Gribbon to carry through with the meeting as scheduled or be subject to discipline in the form of a final written warning. When Mr. Gribbon failed to agree, Ms. Norton advised he was terminated for insubordination.

<u>Affidavit of Richard Snell</u>

[17] Richard Snell is StarTek's human resources manager. He denied that Mr. Gribbon was "singled out" by the Employer for increased monitoring. His affidavit refers to an article in the Union's newsletter dated March 15, 2004, where Mr. Gribbon is quoted as saying there was nothing for employees to fear in supporting the Union and that he had not, to that date, been treated adversely by the Employer and did not expect to be so treated in the future.

Arguments:

[18] Ms. Nordal, counsel on behalf of the Union, asserted that the test with respect to applications for interim relief is as defined 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)*, [1999] Sask. L.R.B.R. 190, LRB File No. 131-99. Briefly, the test is that an order for interim relief is available in circumstances where (1) the application proper expresses an arguable case under the *Act*; and, (2) the labour relation harm of not granting interim relief exceeds the labour relations harm of granting such relief. In this regard, Ms. Nordal also referred to the decision of the Board in *Canadian Union of Public Employees, Local 4617 v. Heinze Institute of Applied Computer Technology Inc.*, [2003] Sask. L.R.B.R. 374, LRB File Nos. 122-03, 123-03 & 124-03.

[19] Counsel argued that it was no coincidence that Mr. Gribbon's termination followed closely upon a rekindling of the organizing drive and the high visibility of Mr. Gribbon in gathering evidence of employee support. It was pointed out, and not denied by the deponents on behalf of the Employer, that Mr. Gribbon had no prior record of discipline and had a more than satisfactory performance evaluation. Counsel argued that issues regarding his attendance or performance only became an issue after he was observed by Ms. Norton actively soliciting support for the Union.

[20] Counsel for the Union also asserted that there were material inconsistencies in the affidavits of Ms. Norton and Mr. Watch that should cast a pall on the credibility of Ms. Norton's statement of events. For example, Mr. Watch does not corroborate the assertion of excessively antagonistic or defiant behaviour on the part of Mr. Gribbon as is implied by Ms. Norton's account.

[21] With respect to the first part of the test regarding interim relief, referring to the decision of the Board in *International Union of Bricklayers and Allied Craftsmen, Local #1 v. Regal Flooring Ltd.*, [1996] Sask. L.R.B.R. 694, LRB File No. 175-96, counsel asserted that the Board does not evaluate and weigh the relative strength of the parties' cases, but simply determines whether the application proper raises an arguable case – a case that is not frivolous or vexatious. In the present case, counsel suggested that there is an arguable case that Mr. Gribbon's high profile union activity was at least a partial reason for his being dismissed.

[22] With respect to the second part of the test, counsel argued that, not only would Mr. Gribbon suffer personally if he was deprived of his employment and income pending hearing and disposition of the application proper, but the Union's organizing efforts would be subject to a "chilling effect" resulting from a perception that employees who support the Union could be subject to retaliation by the Employer, even to the point of termination, although they perform their work in a competent manner. On balance, counsel asserted any labour relations harm caused by granting interim relief would clearly outweigh that that might be caused by refusing interim relief.

[23] Mr. LeBlanc, counsel on behalf of the Employer, conceded that in several prior decisions the Board had deemed the dismissal of an employee actively involved in

a union organizing campaign to establish an "arguable case." However, counsel asserted that the Board should not rigidly apply such a standard in all such applications, but should consider a more rigorous standard of "a serious question" or "a strong *prima facie* case."

[24] Counsel also argued that, because the hearing of the application proper was scheduled for some ten days hence, there was no need for interim relief.

[25] With respect to the affidavit material filed, counsel asserted that the statements attributed to Mr. Gribbon in the Union newsletter exhibited to the affidavit of Mr. Snell demonstrated that the Employer had no anti-union animus. Rather, the Union was seeking by its application to shore up a flagging and failing organizing campaign.

[26] Counsel argued that Ms. Norton, who had been promoted to supervisor a short while before the events of May, 2004, was quite right to raise the issue of Mr. Gribbon's performance with him. Mr. Gribbon was wilfully subordinate and defiant to a degree that warranted dismissal.

[27] Counsel argued that, in the circumstances, the Union had not established that there was "a serious issue" raised. Furthermore, counsel argued that the Union was required to establish that there would be some "serious prejudice" if interim relief were not granted. In this regard, counsel referred to *Regal Flooring*, *supra*, and *Saskatchewan Joint Board, Retail Wholesale and Department Store Union v. Prairie Micro-Tech Inc.*, [1994] 4th Quarter Sask. Labour Rep. 197, LRB File No. 238-94.

[28] With respect to labour relations harm if the application for interim relief is granted, counsel asserted that it would send a message to employees that the Employer is unable to take any action if they engage in behaviour in the workplace that would otherwise attract discipline.

Statutory Provisions:

[29] Relevant provisions of the *Act* include the following:

5. The board may make orders:

(d) determining whether an unfair labour practice or a violation of this Act is being or has been engaged in;

(e) requiring any person to do any of the following:

(i) refrain from violations of this Act or from engaging in any unfair labour practice;

(ii) subject to section 5.1, to do any thing for the purpose of rectifying a violation of this Act, the regulations or a decision of the board;

(f) requiring an employer to reinstate any employee discharged under circumstances determined by the board to constitute an unfair labour practice, or otherwise in violation of this Act;

(g) fixing and determining the monetary loss suffered by any employee, an employer or a trade union as a result of a violation of this Act, the regulations or a decision of the board by one or more persons, and requiring those persons to pay to that employee, employer or trade union the amount of the monetary loss or any portion of the monetary loss that the board considers to be appropriate;

. . .

5.3 With respect to an application or complaint made pursuant to any provision of this Act or the regulations, the board may, after giving each party to the matter an opportunity to be heard, make an interim order pending the making of a final order or decision.

. . .

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:

(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;*

Analysis and Decision:

[30] We are of the opinion that the application for interim relief should be granted, and that Mr. Gribbon should be reinstated to his employment as it existed prior to his termination pending the hearing and final determination of the unfair labour practice application proper.

[31] The test for the granting of interim relief was enunciated by the Board in *Regina Inn*, *supra*, as follows, 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.*

[32] As explained above, the test is adapted from that set out by the Ontario Labour Relations Board in *Loeb Highland*, [1993] OLRB Rep. March 197. With respect to the two parts of the test – that is, whether the main application raises an arguable case – the Ontario Board stated as follows, at 202:

> *Turning first to the idea of a threshold test with respect to the merits of the main application, we have some concern about applying a high level of scrutiny to that application at the time of a request for an interim order. To the extent that such scrutiny may imply a form of prejudgment of the final disposition of the main matter, it is not particularly compatible with the scheme for interim relief set out in the Act and the Board's Rules of Procedure. More specifically, the procedure for interim relief contemplated by the Board's Rules reflects the inherent necessity for expedition in these matters. To that end, evidence is filed by way of certified declarations which are not subject to cross-examination. Indeed, s. 104(14) of the Act and Rules 92 and 93 indicate the Board may not hold an oral hearing at all, but may receive the parties' arguments in writing as well.*
>
> *This means that the Board is not in a position to make determinations based on disputed facts. In these circumstances, it would normally be unfair for an interim order to be predicated to any significant extent on a decision with respect to the strength or weakness of the main case. That should await the hearing of the main application when the Board hears oral evidence and can make decisions with respect to credibility based on the usual indicia, in a context where the parties have a full right of cross-examination. This is particularly important in cases such as the section 91 complaint to which this application relates, where decisions are often based on inferences and the various nuances of credibility play a key role. In other words, the granting of interim relief in this context should usually be based on criteria which minimize prejudging the merits of the main application.*
>
> (emphasis added.)

[33] With respect to the second part of the test – consideration of the respective labour relations harm – as the Board explained 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, at 444, it is an adaptation of the civil irreparable harm criterion to the industrial relations arena. Both the Ontario Board in *Loeb Highland*, *supra*, and *United Steelworkers of America v. Tate Andale Canada Inc.,* [1993] OLRB Rep Oct. 1019 at 1027-28, and the

British Columbia Industrial Relations Council in *British Columbia Transit and Transit Management Association*, [1988] BCIRCD C317 (December 30, 1988), specifically observed that while common law principles surrounding interim relief can offer useful guidelines, they do not take into account labour relations concerns such as loss of membership support. As stated by the Ontario Board in *Loeb Highland*, at 201:

> *…it is incumbent upon the Board to develop a sound and indigenous jurisprudence in regard to interim orders which reflects the complex and unique realities of labour relations. …if we were to import in a wholesale or unreflective manner the kinds of tests applied by the courts in considering interim and interlocutory relief, we would be failing in our responsibility as an expert tribunal to develop a jurisprudence attuned to the distinctive features of labour relations in this province.*
>
> (emphasis added.)

[34] The Canada Industrial Relations Board expressed similar sentiments in *Amalgamated Transit Union, Local 1624 v. Trentway-Wagar Inc.*, [2000] C.I.R.B.D. No. 10 (February 21, 2000), as follows:

> *22. …The power* [to grant interim relief] *should be interpreted and applied not as a common law power according to common law tests but rather should be applied in a manner that reflects the intention and objectives of the statute. …*
>
> *23. The notion that such power should be viewed as based upon the statute and not as a common law power is that generally taken by labour boards.*

[35] As noted by the Board in *Chelton Suites Hotel*, *supra*, the fact that the legislature did not abrogate or restrict the power of the Board to develop criteria for applications for interim relief pursuant to s. 5.3 of the *Act* is supportive of the approach advocated in *Loeb Highland* and *Trentway-Wagar*.

[36] In the present case counsel for the Employer argued that the Board ought to use a stricter or more onerous standard on the first arm of the test than that of an "arguable case". The same argument has been made to the Board in the past. In *Chelton Suites Hotel*, *supra*, the Board addressed the argument as follows, at 445-46:

Some parties before the Board have argued that the interim order power should be considered an extraordinary remedy to be granted in limited circumstances. In Loeb Highland, supra, the Ontario Board rejected the argument that the interim order power should be exercised rarely and in exceptional circumstances, determining, instead, that so long as the test is efficacious and fair, those applicants that meet the test are entitled to the relief. At 201, the Ontario Board stated:

> *…we turn to the company's argument that the Board's interim relief power should be used only in rare and exceptional circumstances. We do not find this a particularly useful approach. Section 92.1 [of the Ontario Labour Relations Act] contains no hint that it should be reserved to extraordinary cases; indeed unlike some corollary provisions which contain threshold tests, the Ontario provision is available in every proceeding before the Board. This is not to say that the prospect of a flood of interim relief applications does not cause us some concern. However, we think it more appropriate to start from the position of attempting to elucidate a fair and intelligent labour relations test for section 92.1(1). Those cases that meet that test should then attract interim relief, regardless of how many or how few they may be.*

Similarly, in its recent decision in Vancouver City Savings Credit Union v. British Columbia Government and service Employees' Union, [1999] BCLRBD No. 228 (June 14, 1999), the British Columbia Board reiterated the criteria it applies when determining whether to grant an interim order and stated that it does not require any demonstration of "rare and exceptional circumstances" over and above the stated criteria.

We find the approach by the Ontario Board to interim applications as set out in Loeb Highland, supra, to be compelling. It is a fair and reasoned approach tailored to the unique setting of labour relations. The test used by the Board is designed to admit of the procedural safeguards developed by the courts while accommodating the exigencies of the industrial relations setting. It has not resulted in a flood of applications for interim relief and neither has it resulted in the wholesale granting of such applications.

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). Nor should an application for interim relief be dependent upon the determination of a pure question of law. In such cases, the Board will generally not act on the basis of affidavit evidence alone. This is in keeping with the notion that the interim order power is intended as preservative rather than remedial.*
>
> (emphasis added.)

[37] On an application for interim relief we are not charged with determining whether the allegations have been proven, but rather with whether the status quo should be maintained pending the final determination of the main application: an interim order is intended to be preservative rather than remedial. As the Board observed in *Chelton Suites Hotel*, *supra*, an interim order must be consonant with the preservation and fulfillment of the objectives of the *Act* as a whole and of the specific provisions alleged to have been violated. The Board stated at 443:

> *Any interim order must first and foremost be directed to ensuring the fulfillment of the objectives of the Act pending the final hearing and determination of the issues in dispute. This includes not only the broad objectives of the Act but also the objectives of those specific provisions alleged to have been violated.*

[38] Accordingly, and as iterated in *Chelton Suites Hotel*, *supra*, at 446, each application for interim relief is determined according to its specific facts. Certain types of applications have particular factors that the Board takes into account in assessing the application according to the test. The factors considered are driven by the specific objectives of the particular statutory provisions alleged to have been violated. In applications such as the present one, where it is alleged that an employee was terminated for activity in support of a union, or in attempted intimidation of union supporters, the Board has considered the potential for a negative effect on the status of the union and the potential for loss of support and confidence, as well as the impact on the individual employee who was terminated. The fragility of the union's status and strength of support, and the vulnerability of its supporters to pressure exerted by the employer prior to certification, is generally accepted and not seriously disputed.

[39] In *Trentway-Hagar, supra*, a case similar to the present one in which the union's key organizers were dismissed at the height of the organizing campaign, the Canada Board approved of an approach to considering applications for interim relief that specifically entailed consideration of the objectives of the statutory provisions in issue. With respect to the discharge of a union organizer, it approved of the following statement by the Ontario Board in *Tate Andale Canada Inc.*, [1993] OLRB Rep. Oct. 1019:

> *52. In the instant case, there is not much doubt that the applicant meets the threshold. Where the union's two key organizers are unexpectedly discharged at the height of the organizing campaign, there is a prima facie case of a breach of the Act, and there is reasonable cause for employees to believe that an unfair labour practice has occurred; moreover, in cases of this kind, where the employer bears the legal onus of establishing that it has not contravened the Act, it is hardly surprising that the union requests that the pre-discharge status quo be maintained until the employer meets the statutory onus cast upon it. If the employer is obliged to establish that its removal of employees from the workplace was not unlawful, there is nothing counter-intuitive about keeping them there until it does so. …*
>
> *53. In other words, whether or not the employer is ultimately successful on the main application, <u>the sequence of events under review is likely to inhibit the free exercise of employee rights, unless there is some positive and tangible assurance that those statutory rights will be protected</u>. <u>If an outsider regards these discharges as at least suspicious, an employee in the workplace would reasonably fear the consequences of his/her involvement with the union.</u> … whatever the motive for these discharges may actually have been, there is likely to be an adverse impact in the workplace until the aggrieved employees' rights are resolved through adjudication.*

[40] In the present case, the Union has established that the termination of Mr. Gribbon raises an arguable case that is not frivolous or vexatious. An ostensibly experienced, trusted and competent employee with no prior disciplinary record, he was summarily terminated. There was no progressive discipline. His termination is at least suspicious. While the Employer may ultimately be able to discharge the reverse onus imposed upon it under s. 11(1)(e) of the *Act* to establish that his termination was not motivated in whole or in part by his high profile and open activities as the key Union organizer, in the period pending the hearing and determination of the application proper,

the compelling likelihood is that the actions of the Employer in terminating Mr. Gribbon, will have a chilling effect upon the perception of the employees of the ability to exercise their statutory rights pursuant to s. 3 of the *Act* free of the fear of prejudice or retribution.

[41] Balanced against the alleged harm to the Employer if an order is granted for the interim reinstatement of Mr. Gribbon, the likelihood that employees will be led to fear the negative consequences of involvement with the Union, far outweighs any alleged potential harm to the Employer that it would send a message to the other employees that they may run roughshod through the workplace.

[42] For these reasons, we have determined that an Order will issue for the immediate reinstatement of Mr. Gribbon to his employment as it was before his termination and for compensation for monetary loss for the shifts he has been off work, pending the hearing and determination of the main application. The Board shall remain seized of the matter in the event that the parties are unable to determine the amount of the monetary loss.

[43] Furthermore, as it is imperative that the employees understand that this ruling does not mean that they have a license to fail to perform their jobs, but, however, that they may exercise their rights under s. 3 of the Act, to organize and participate in the activities of the Union without fear of prejudice or retribution, the Employer shall post these Reasons and the Order that will issue herein for a period of 14 days in a place where notices to employees are normally posted by the Employer.

DATED at Regina, Saskatchewan this **27th** day of **May, 2004.**

LABOUR RELATIONS BOARD

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James Seibel, Chairperson