

**Labour Relations Board  
Saskatchewan**

**UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1400, Applicant v. D & G TAXI LTD. operating as CAPITAL CAB 2000, Respondent**

LRB File Nos. 244-04, 245-04 & 246-04; November 29, 2004

Vice-Chairperson, Angela Zborosky; Members: Leo Lancaster and Patricia Gallagher

For the Applicant: Rod Gillies

For the Respondent: Glen Sali and Debbie Sali

**Remedy – Interim order – Criteria – Serious issue to be tried – Union raised arguable case that employee was involved in union activity protected by *The Trade Union Act* - Timing of termination in relation to involvement in union activity sufficient coincidence to raise serious issue to be tried.**

**Remedy – Interim order – Criteria – Balance of labour relations harm – Union organizer terminated during organizing drive – No compelling or reliable evidence to establish that reinstatement would cause damage to employer – Strong likelihood that employees’ fear of retribution for union involvement outweighs potential harm to employer – Balance of labour relations harm favours union and employee.**

***The Trade Union Act*, ss. 5(f), 5(g), 5.3 and 11(1)(e).**

**REASONS FOR DECISION: INTERIM APPLICATION**

**Background:**

[1] D & G Taxi Ltd., operating as Capital Cab 2000 (the “Respondent”), operates a taxi company in Regina, Saskatchewan. In the last week of August, 2004 United Food and Commercial Workers Union, Local 1400 (the “Union”) commenced organizing the cab drivers of Arch Transco Ltd., operating as Regina Cabs (“Regina Cabs”), through the efforts of Jonn Ireland, a taxi driver driving with the Respondent, Capital Cab 2000. Mr. Ireland also began discussing union issues with drivers of the Respondent in an attempt to gather support for the Union.

[2] On approximately September 13, 2004, Mr. Ireland was terminated following an incident that involved a customer contacting dispatch for Mr. Ireland

allegedly to buy illegal drugs from him. The incidents giving rise to the termination and the reasons for the termination are in dispute.

**[3]** On October 14, 2004, the Union filed applications pursuant to ss. 5 (d), (e), (f) and (g) and 5.3 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “*Act*”) alleging that the Respondent, in communicating with the employees about the Union and terminating the employment of Mr. Ireland, thereby committed unfair labour practices in violation of ss. 11(1)(a), (e), (f), (g) and (m) of the *Act*, and requesting that Mr. Ireland be reinstated and paid for monetary loss, along with other remedies to address the alleged improper communications.

**[4]** The Union’s application states that, on September 8, 2004, Mr. Ireland was contacted by a dispatcher of the Respondent, Debbie, and advised that a fare had contacted dispatch asking for Mr. Ireland and stating, “that they were looking to score.” As a result, Mr. Ireland was immediately suspended and has not been contacted by the Respondent to drive again. The application also alleges that, on approximately September 1 or 2, 2004, after the Respondent became aware of the organizing drive involving Regina Cabs, the Respondent had conversations with its drivers that certain contracts with the bus and airport would be lost should the drivers sign union cards. Also on September 1 or 2, 2004 the dispatcher known as Debbie contacted Mr. Ireland at home to ask if he was involved in the Union to which Mr. Ireland answered in the affirmative. The Union also alleged that the Respondent had discussions with the employees that had the effect of discouraging their support for the Union, including a statement over the radio dispatch system that “it is a bad thing for anyone to sign a union card.” The Union sought remedies including the reinstatement of Mr. Ireland and payment of his monetary loss, an order to provide names, addresses and phone numbers of all employees, a prohibition against opposing any efforts of employees to engage in union activity, a prohibition against communication with employees regarding same and, lastly, an order directing the Respondent to post the Board’s order in the workplace.

**[5]** On October 29, 2004, the Union filed an application pursuant to s. 5.3 of the *Act* for interim relief, seeking, *inter alia*, the reinstatement of Mr. Ireland at his former

rate of pay, hours of work and terms and conditions of employment, pending the hearing and disposition of the applications proper and such further orders as may be just.

**[6]** The Respondent filed three separate replies to the Union's unfair labour practice application, application for reinstatement and application for monetary loss. In summary, the replies to the applications proper allege, *inter alia*, that Mr. Ireland was terminated for just cause for selling drugs while on duty, that he had admitted to selling drugs in the past and that he was not terminated for union activity. Mr. Ireland was a probationary employee who was advised that any problems would result in his termination. The Respondent denies that it interrogated employees with respect to who had or had not signed a union card and says that dispatch did not state over the radio that it was a bad thing to sign a union card. The Respondent denied that it told employees that contracts would be lost if they joined the Union but admitted that it discussed with owner/operators and drivers a conversation that had taken place with Ernest Gibson (a taxi driver and union organizer with Regina Cabs) who had indicated that, if the Union was successful, the contracts (with the airport) would be opened up and everyone "would share a piece of the pie." The Respondent further denied that there was any coercive effort on the part of Glen Sali to thwart the union drive nor were any owner/operators or drivers threatened with discipline or reprisal if they opted to join the Union.

**[7]** Attached to the Respondent's second reply, which appears to have been filed in relation to LRB File No. 245-04 (the Union's application for reinstatement), the deponent, Glen Sali, attaches an addendum that has Debra Sali's typewritten name at the foot of it, but is not sworn by her. The addendum states that, prior to Mr. Ireland being hired as a probationary employee, Ms. Sali told him that he would be on probation and his performance monitored as other taxi companies had suspended Mr. Ireland for various infractions. The addendum further states that Mr. Ireland's termination had nothing to do with union organizing and that two incidents necessitated the termination of Mr. Ireland:

- (i) that, approximately one month into Mr. Ireland's probationary period, he was suspended and an investigation took place when a customer phoned and requested that Mr. Ireland be sent back to

their location because 'they had the money to pay for the drugs now'; and

- (ii) at the same time, an owner/operator advised Ms. Sali "that he had a fare that asked if Jonn Ireland was working as he was 'looking to score'."

**[8]** The Respondent's third reply which appears to be in relation to LRB File No. 246-04 (the Union's application for monetary loss), states that Mr. Ireland was working on a causal basis at his request, working a total of 14 shifts in the 29 day period from August 11 to September 8, 2004. Mr. Ireland worked approximately ten shifts for two other owner/operators and four shifts renting a vehicle from D & G Taxi, for which he paid \$40.00 per shift.

**[9]** The Board heard the application for interim relief on November 8, 2004. The applications proper have been scheduled to be heard on February 7, 2005.

**Evidence:**

**[10]** In support of the application for interim relief, the Union filed an affidavit of Mr. Ireland, sworn October 14, 2004. At the hearing, the Union also indicated that it wished to rely on the evidence contained in its application and was advised by the Board that it could only rely on those portions that were within the personal knowledge of the deponent. Prior to the hearing, the Respondent filed the affidavits of Robert Lamb and two affidavits of Jim Jones, all sworn November 4, 2004. On the day of the hearing the Respondent also filed the affidavits of Glen Sali and Debra Sali, both sworn November 6, 2004. The following is a review of the affidavit material filed.

Affidavit of Jonn Ireland

**[11]** Jonn Ireland deposed that he was employed as a driver with the Respondent until September 9, 2004 and that, once the Respondent became aware that he was involved in an organizing drive with the Union, the Respondent terminated his employment. Mr. Ireland deposed that he "was successful in having other employees sign union support cards and the Employer was well aware of this fact" and that he has "never been given any reason for the termination from the employer." Prior to

September 9, 2004, he had not received any formal discipline or any complaints about his work.

#### Affidavits of Jim Jones

**[12]** By the content of his affidavits it appears that Jim Jones is a driver with Capital Cab 2000 although this information is not specifically provided in his affidavit. In one affidavit Mr. Jones deposed that on September 4, 2004 a passenger he was driving asked if "car 50 Jonn" was working and when Mr. Jones asked why, the passenger said "they could buy 'things' from him cheap." When Mr. Jones asked what "things" were, the passenger said "pills." Mr. Jones said he did not tell Debbie this right away.

**[13]** In his other affidavit, sworn the same day, Mr. Jones deposed that at 5:30 a.m. on September 6, 2004 two males approached his taxi and requested a ride to the Plains Hotel. The passengers asked whether "car 50 Jonn" was driving and when Mr. Jones said no and asked why, the passengers told him "they wanted to buy 'T & R's' from him. Mr. Jones deposed that he told Debbie about this incident after dropping the passengers off at their destination.

#### Affidavit of Robert Lamb

**[14]** Robert Lamb is the evening dispatcher with Capital Cab 2000 working a 3:00 p.m. to 11:00 p.m. shift. Mr. Lamb deposed that in early September he was performing dispatch duties while his boss, Debbie, was answering telephones. While Debbie was on the phone she asked him what car had just cleared on 22 block Smith Street and he replied that it was car 50 driven by Mr. Ireland. Mr. Lamb deposed that he then heard Debbie, who sounded distraught, raise her voice to the caller saying that she was not sending Jonn back to that address to make drug deals. Following this telephone call Debbie asked him to watch Mr. Ireland's car "closely and report unusual activities or prolonged absences." Mr. Lamb deposed that two days after this incident he noticed Mr. Ireland was missing and he had not worked with him since that day.

Affidavit of Glen Sali

**[15]** Based on the replies filed by the Respondent, Glen Sali appears to be a principal of Capital Cab 2000. Mr. Sali deposed that the Respondent hired Mr. Ireland as a probationary employee on August 11, 2004. He deposed that Mr. Ireland was hired as a probationary employee because Capital Cab 2000, as a taxi brokerage, must clear its drivers through an interview. Drivers must also be cleared by the City of Regina, Saskatchewan Government Insurance and by way of a background check by the city police. The operators who lease through the Respondent or use the Respondent's office and dispatch facilities may only hire drivers approved in this manner. Mr. Sali deposed that it is his information that, at the time of Mr. Ireland's hire, rules of conduct were explained to Mr. Ireland including the zero tolerance policy regarding alcohol and drugs.

**[16]** Mr. Sali deposed that Ernest Gibson had contacted him regarding union organizing activities but at no time was he advised by Mr. Gibson or any one else that Mr. Ireland was connected, affiliated or assisting with union organization.

**[17]** Mr. Sali deposed that Debra Sali informed him of drug related incidents involving Mr. Ireland and it was decided that action against Mr. Ireland was warranted "due to the type of incident, safety of the public, the safety of the other drivers and operators, and the fact that these activities were against the law, also the fact that Jonn was a probationary employee with less that [sic] 5 weeks of service."

**[18]** Mr. Sali also deposed that on September 13, 2004 Mr. Ireland was terminated from the employ of Capital Cabs 2000 and that it was his information that "[A]t the termination meeting Jonn Ireland admitted to Debra Sali that he had sold drugs while working a taxi in the past but did deny that he was currently involved in this activity." Mr. Sali denies knowledge of Mr. Ireland's union activity or that it played a role in the decision to terminate Mr. Ireland.

Affidavit of Debra Sali

**[19]** Based on the replies filed by the Respondent, Debra Sali appears to be a principal of the Respondent. Based on the evidence filed, she also appears to be

“Debbie” referred to in other affidavits. Ms. Sali deposed that, on August 9, 2004, Mr. Ireland phoned her to ask whether he could drive for the Respondent. At that time Mr. Ireland disclosed that he had recently been fired from Co-op Taxi, where he had worked for approximately three years, for not paying his lease. Ms. Sali deposed that she told Mr. Ireland she would check with Larry Fernandez, an owner/operator with the Respondent, to determine if he needed a part-time driver because the Respondent had no cars available for Mr. Ireland to drive. After delivery of his drivers abstract, Ms. Sali interviewed Mr. Ireland, at which time she advised him that if he came to work for the Respondent, he must make arrangements to pay the Co-op Taxi operator the unpaid lease payments. At the interview, Ms. Sali deposed that Mr. Ireland “begged for a chance to work at Capital Cabs” and disclosed that he had not worked for three weeks as he was unauthorized to work at Co-op Taxi and Regina Cabs. Ms. Sali informed Mr. Ireland that he would be on probation, explained the rules of conduct, and, because there were no cars available for him to drive, told him he could approach owner/operator Larry Fernandez for a job. At Mr. Ireland’s request, he would work part-time and fill in shifts as needed.

**[20]** Ms. Sali deposed that, following the interview, she contacted Jonn Hanna of Co-op Taxi to inquire about Mr. Ireland and was told that they received customer complaints on a continuous basis that Mr. Ireland was late for trips.

**[21]** Ms. Sali further deposed that Mr. Fernandez contacted her on August 12, 2004 to ask whether Mr. Ireland had been cleared to drive. She advised him that Mr. Ireland was cleared and explained the problems he had with Co-op Taxi including the failure to pay cab rental, late trip arrivals and “Jonn being ‘lost’ for periods of time.” Ms. Sali deposed that, on August 23, 2004, Mr. Fernandez advised her that Mr. Ireland could no longer drive for him because he wanted to work limited and unusual hours.

**[22]** Ms. Sali deposed that she believed that Mr. Ireland had contacted other operators for a job driving without success and when he requested a car with the Respondent she advised that they had a 4-day shift available due to a vacation leave. Mr. Ireland drove for the Respondent August 25 to 28, 2004 and, due to being late to pick up the day driver and pick up the relief driver as well as being off the air for 3–4

hours, Mr. Ireland was not to be given another opportunity to drive for the Respondent. Ms. Sali deemed this to be a form of discipline.

**[23]** Ms. Sali deposed that she received a call from owner/operator Lav Uppal asking about Mr. Ireland. Ms. Sali advised him that Mr. Ireland was on probation and she described the problems the Respondent had with him being late and off the air as well as the problems with Co-op Taxi. On September 6, 2004, Ms. Sali was answering phones for dispatcher, Rob Lamb while Mr. Ireland was driving for Mr. Uppal. Ms. Sali deposed that she received a call from a female who said she was looking for the cab that had just dropped her off on 22 block Smith Street saying "she had the money to score the drugs from him now." Ms. Sali determined from Mr. Lamb that the cab was number 50 driven by Mr. Ireland. Ms. Sali deposed that she told the female caller that Capital Cabs is not in the business of selling drugs and her business was not wanted. Following this call Ms. Sali deposed that she indicated to Mr. Lamb that she wanted Mr. Ireland's car watched closely as he may be trying to sell drugs while working. She decided she would talk to Mr. Uppal the next day to see if he had any further information.

**[24]** Ms. Sali deposed that, on September 7, 2004, an owner/operator, Jim Jones, contacted her to alert her to two incidents involving customers looking to buy drugs from Mr. Ireland. Ms. Sali asked Mr. Jones to make a statement. When Mr. Jones did so, Ms. Sali contacted Mr. Uppal and advised him that Mr. Ireland could not drive for the Respondent until she could meet with him.

**[25]** Ms. Sali deposed that Mr. Ireland met with her on September 10, 2004 at which time she asked him whether he had sold drugs while working on the cab. Mr. Ireland admitted that he had done so about three years ago but not since then. In response to her question whether he used drugs, he indicated that he took "prescription painkillers for his teeth and anti-depressants to combat flashbacks from heavy drug use in his past" and that he had given "some pain killers to Cynthia on car 51." Ms. Sali told Mr. Ireland that he was suspended until she discussed the matter with Mr. Sali and until an investigation was completed.

**[26]** Ms. Sali deposed that she discussed the matter with Mr. Sali and that they decided to terminate Mr. Ireland on the basis of the statement of Mr. Jones and the



call Ms. Sali had received on September 6, 2004. Ms. Sali stated that she met with Mr. Ireland on September 13, 2004 and advised him that he was terminated for selling drugs while working on the cab. She stated that she told him that there was a zero tolerance policy when it came to drugs and alcohol given that it is against the city bylaw and regulations under which they operate and because a significant amount of the Respondent's business involves children as passengers.

**[27]** Ms. Sali deposed that she had no idea that Mr. Ireland was affiliated with or involved in any union activity and that Mr. Ireland never mentioned that he was involved with the Union in any way.

**Arguments:**

**[28]** Mr. Gillies, on behalf of the Union, maintained that the evidence established an arguable case that the Union was involved in an organizing drive at Regina Cabs commencing the last week of August, 2004, that Mr. Ireland, an employee of the Respondent, was a lead organizer in that drive (along with Mr. Gibson of Regina Cabs) that Mr. Ireland had engaged in conversations with drivers of the Respondent and that Respondent was aware of these facts. The Union maintained that the principals of the Respondent had conversations with the Respondent's drivers about the Union, with Mr. Gibson of Regina Cabs about the organizing drive and with Mr. Ireland, specifically asking him whether he was involved with the Union. Mr. Ireland was terminated by the Respondent at a meeting held on September 13, 2004 even though he denied selling drugs while working. The Respondent is therefore in violation of ss. 11(1)(a), (e), (f), (g) and (m) of the *Act*. In support of its argument the Union referred the Board to the following cases: *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; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Partner Technologies Incorporated*, [2000] Sask. L.R.B.R. 737, LRB File Nos. 290-00 to 292-00; *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 to 124-03; and *Canadian Union of Public Employees v. Del Enterprises*, [2004] Sask. L.R.B.R. ---, LRB File Nos. 087-04 to 092-04 (not yet reported).

**[29]** In its interim application, the Union asserted that there was a serious issue to be tried in relation to the question whether the Respondent could establish that Mr. Ireland was terminated for good and sufficient reason, unrelated to his activity in the Union, and not for the purposes of coercing or intimidating drivers in order to discourage activity in the Union. The Union maintained that irreparable harm would be suffered by Mr. Ireland as a result of his loss of employment and income and by the Union, even though the organizing drive was primarily in relation to Regina Cabs, by the prospect of an erosion of confidence in the Union's ability to protect and represent drivers in the cab industry and in particular those working with the Respondent. The Union argued that, if the order is not granted reinstating Mr. Ireland until such time as the application proper could be heard and determined, it could create a "rippling effect" through the cab industry and prevent the Union from commencing an organizing drive of the employees of the Respondent.

**[30]** Debra Sali and Glen Sali responded on behalf of the Respondent. The Respondent maintains that Mr. Ireland was suspended/terminated from Capital Cab 2000 for selling drugs based on the incidents described in the evidence filed. Although there is no mention of this ground in the replies and no evidence supporting this position (and in fact the principals of the Respondent referred to the Respondent's relationship with Mr. Ireland as one of employment), the Respondent commented in oral argument that Mr. Ireland was not an employee of the Respondent. In its replies the Respondent also took the position that it was unaware that Mr. Ireland was involved with an union drive or other activity and that it did not play a part in the decision to terminate him.

**Statutory Provisions:**

**[31]** 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:*

(a) *in any manner, including by communication, to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of any right conferred by this Act;*

...

(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;*

...

*(m) where no collective bargaining agreement is in force, to unilaterally change rates of pay, hours of work or other conditions of employment of employees in an appropriate unit without bargaining collectively respecting the change with the trade union representing the majority of employees in the appropriate unit;*

#### **Analysis and Decision:**

**[32]** We are of the opinion that the application for interim relief should be granted and that Mr. Ireland should be reinstated to his employment as it existed prior to his termination on September 13, 2004, pending the hearing and final determination of the applications proper. The Board finds that, on the evidence filed, the Union has established that there is a serious issue to be tried in relation to the question of whether Mr. Ireland was terminated in whole or in part for his union activity. The Board also finds that the balance of labour relations harm weighs in favour of the Union and Mr. Ireland and granting an order for interim reinstatement pending the hearing of the applications proper.

**[33]** There have been numerous decisions over recent years involving applications for interim relief in circumstances where an employee has been terminated while exercising rights under the *Act*. In *Canadian Union of Public Employees v. Del Enterprises*, [2004] Sask. L.R.B.R. ---, LRB File Nos. 087-04 to 092-04 (not yet reported), the Board summarized the principles applicable to such a determination as follows, at paragraphs 20 to 23:

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

[21] **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 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, **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.*

[22] 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 employees were terminated for activity in support of the 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 employees 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.**

[23] In *Amalgamated Transit Union, Local 1624 v. Trentway-Wagar Inc.*, [2000] C.I.R.B.D. No. 10 (February 21, 2000), a case similar to the present one in that 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, **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. 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.** ... 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.

[emphasis added]

[34] Also in *Regina Inn, supra*, the Board commented on the "chilling effect" as a factor in considering the nature of possible labour relations harm:

*As suggested in the Courtyard Inn case, the imposition of discipline or dismissal on an employee during the organization of a trade union is an effective method of chilling employee support for the Union. The harm that may result to the Union is not easily remedied by the Board; in fact, it may not be possible for the Union to regain employee support or interest once the Employer has made its views known to employees through its conduct. Employees lose confidence in the Union's ability to protect their jobs once discipline or suspensions are imposed on employees during an organizing drive. They also lose confidence in the statutory scheme that is established under the Act to ensure their right to organize into trade unions.*

[35] In the present case, the Union has met the first aspect of the test by establishing that there is a serious issue to be tried regarding the question of whether Mr. Ireland was terminated by the Respondent for union activity.

[36] In *Partner Technologies supra*, an employee was terminated during the course of a union organizing drive following his agreement to attend a union meeting. In support of the termination the employer referred to several performance problems over the employee's three years of employment. The Board stated at p. 742:

*In International Union of Bricklayers and Allied Craftsmen, Local #1 Sask. V. Regal Flooring Ltd., [1996] Sask. L.R.B.R. 694, LRB File No. 175-96, the Board commented on its function in*

*assessing evidence at the time of an application for interim relief in the following terms at 701:*

*Counsel for both parties allude in their arguments to the strengths and weaknesses of the evidence put forward in the affidavits filed with the Board. In our view, much of this discussion invited the Board to assess this evidence to a more searching degree than is required at this stage. Though there was considerable disagreement between the parties concerning the significance of many of the factual statements made in the affidavits, there was no disagreement concerning the two facts which seem to us to be of importance in this context. There is no question that there was trade union activity taking place, in the form both of organizing activity and the monitoring of the C.C.T.A., and there is equally no question that the employment of Mr. Got was brought to an end. The coincidence of these two things seems to us to constitute sufficient basis for the claim made on behalf of the Union that they have raised an issue which lies within our jurisdiction, and the application is not a frivolous or vexatious one.*

*In the present case, counsel for the Employer argued that the evidence filed in the affidavit material did not establish that, at the time Mr. Hahn was fired from his employment, the Employer was aware of the Union's organizing efforts. Nevertheless, there is the coincidence of timing between the organizing drive and the termination of employment to raise a substantial issue under s. 11(1)(a) and (e) of the Act that is not frivolous or vexatious. The employer may have a valid defence to the application but at this stage of the proceedings the Board is not required to assess the strength of each party's evidence or case. It is sufficient if the Union establishes that there is an arguable case to be made under the Act, which it has established in this instance.*

**[37]** On an application for interim relief, it is not for the Board to weigh evidence to make factual determinations. It is sufficient at this stage that the Board find that the Union raised an arguable case that Mr. Ireland was terminated by the Respondent in whole or in part for union activity. This primarily involves the consideration of whether there is trade union activity taking place and whether Mr. Ireland's employment was brought to an end.

**[38]** There is some evidence that Mr. Ireland was engaged in union activity primarily through his involvement in an organizing drive led by Mr. Gibson at Regina



Cabs commencing at the end of August 2004. In the Union's application sworn by a union representative it is stated that Mr. Ireland was "discussing union issues with employees of the employer" although this is not specifically reflected in the affidavit of Mr. Ireland. In Mr. Ireland's affidavit he deposed that he was successful in having employees sign union support cards although it is unclear on the evidence filed whether the employees referred to are those of Regina Cabs or the Respondent. In oral argument it appeared that the Union relied on Mr. Ireland's involvement in the organizing activities of Regina Cabs to support its position that Mr. Ireland was involved in Union activity protected by the *Act*. Although there is some confusion on the evidence and the position taken by the Union in this regard, for the purposes of this application the Board accepts that the Union raised an arguable issue that Mr. Ireland was involved in union activity protected by the *Act*, whether that activity involved Regina Cabs and/or the Respondent. Whether or not any specific activity that is proved at the hearing of the applications proper is determined to be union activity protected by the *Act* is a matter left to that panel of the Board to decide, as is the role that activity played in the decision to terminate Mr. Ireland.

**[39]** The Board is also of the opinion that it matters not whether the Respondent had specific information that Mr. Ireland was involved with the Union or engaged in union activities. Although Ms. Sali made a general denial of having any such knowledge, she did not specifically address the allegation in the Union's application that she phoned Mr. Ireland and asked whether he was involved in the Union, to which he responded in the affirmative. There is evidence that the Respondent received information that Mr. Gibson was involved in an organizing drive at Regina Cabs that would, in Mr. Gibson's view, result in opening up contracts for everyone to "share a piece of the pie." The Respondent admitted that this information was discussed with its owner/operators. The timing of Mr. Ireland's termination in relation to his involvement in union activity is a sufficient coincidence to raise a serious issue to be tried under ss. 11(1)(a) and (e) of the *Act*, whether or not the Respondent had knowledge of Mr. Ireland's role in the union activity.

**[40]** In terminating Mr. Ireland's employment, the Respondent relied on information from Ms. Sali and that gathered by her from other drivers. That evidence appears to primarily relate to allegations that Mr. Ireland was selling drugs. While there

are inconsistencies in the evidence filed by the Respondent as to the reasons for the termination, if we consider the addendum Ms. Sali attached to a reply sworn by Mr. Sali, there are further inconsistencies. Some of the evidence is vague and its reliability is questionable, particularly where there is no ability to cross-examine a deponent on the affidavit evidence. It is not necessary for us to determine which version of events is true. It may be that the Respondent has a valid defence to present at the hearing of the applications proper but it is the Board's opinion that the evidence presented raises a serious issue to be tried that is not frivolous or vexatious with respect to whether Mr. Ireland was terminated in whole or in part for union activity. A determination of the reasons for Mr. Ireland's dismissal should only be made at the hearing of the applications proper.

**[41]** It may also be noted that the Respondent raised the issue in argument that Mr. Ireland was not an employee although at several points in its evidence the Respondent refers to Mr. Ireland as its employee or says that Mr. Ireland's employment was terminated. In any event, this is also an issue that will be left for determination by the Board on the hearing of the applications proper.

**[42]** While it is possible that the Employer might establish at the hearing of the applications proper that Mr. Ireland was not an employee and/or that his termination was not motivated in whole or in part by his activity in the Union, in the period pending the determination of the applications proper, the labour relations harm of not granting interim relief outweighs that of granting such relief. The actions of the Respondent in terminating Mr. Ireland will have a chilling effect on the employees' perception of their ability to exercise their rights under the *Act* without fear of retribution by the Respondent, as well as the ability of the Union to protect them for engaging in such actions.

**[43]** In *Partner Technologies, supra*, the Board commented on this second aspect of the test for interim applications involving an assessment of the relative labour relations harm at p. 743:

*On many occasions the Board has pointed out the chilling effect that the termination of an employee can have on an organizing campaign: see Regal Flooring Ltd., supra and cases cited therein. Employees view the coincidence of termination and union organizing as a message from the employer, whether intended or*

*not, that the exercise of the statutory right to join a union will not be tolerated. In the general scheme of labour relations, the rights that employees are guaranteed under the Act to freely explore the options of joining a trade union are supreme and the Board is vigilant in protecting those rights.”*

In concluding that the labour relations harm weighed in favour of reinstating the employee in that case, at p. 743 the Board assessed the potential chilling effect relative to the potential labour relations harm suffered by the employer:

*On the other hand, the Employer has a legitimate desire, if its reasons for termination are unrelated to the organizing efforts, not to be saddled with an employee who is not performing up to par. On its affidavit material, the Employer claims that Mr. Hahn has been an underachieving employee for some three years. In this case the harm of continuing an unsatisfactory employee who has been allowed to continue in his poor performance for some considerable period of time (if that case is made out in the final analysis) is not as significant in a labour relations sense as the harm caused by the dampening of employee enthusiasm for the Union’s organizing drive. If the Employer is correct in its assessment of Mr. Hahn, its desire to terminate his employment is merely postponed for a short period of time. If the Union is correct in its assessment of the facts, the ability of the employees to form a union may be permanently obstructed.*

**[44]** The Respondent suggests that it will suffer harm if Mr. Ireland is reinstated because the safety of its customers, including many children, will be severely compromised. The Board finds that there is no compelling or reliable evidence to establish that the reinstatement of Mr. Ireland poses such a threat. While the Respondent suggested in argument that Mr. Ireland should not be using pain-killing medication while working, there is no evidence to suggest that he was using that medication inappropriately or against medical advice. There is a serious issue to be tried with respect to whether or not Mr. Ireland was selling drugs to customers. There was also no evidence led that the alleged behavior of Mr. Ireland, who primarily worked nights, was connected to the transport of children or that he had children as passengers. While the allegations, if proven at the hearing, amount to illegal activity and are sufficiently serious to raise concerns about passengers’ safety generally, as well as potential damage to the Respondent’s reputation, the Respondent must also prove that Mr. Ireland’s union activity played no role in its decision to terminate him. At this stage

that potential harm to the Respondent is outweighed by the potential chilling effect the termination has on the union's organizing drive.

**[45]** The Respondent also suggests that it will suffer harm because Mr. Ireland is overall an unsatisfactory employee who has not passed his probationary period. The Respondent's evidence discloses that, despite several shortcomings, it hired Mr. Ireland on a probationary basis. Even after determining that Mr. Ireland was not a "model employee" given his late pick-ups, his being absent for lengthy periods of time and his failure to pay rental monies owed to an owner/operator with Co-op Taxi, the Respondent kept Mr. Ireland in its employ. Having this information in hand, the Respondent then allowed Mr. Ireland to drive one of the vehicles it owns. These facts lead the Board to conclude that the timing of Mr. Ireland's termination following receipt of information by Ms. Sali concerning passengers' requests to purchase drugs from Mr. Ireland is suspicious and the Board questions whether Mr. Ireland would have been terminated had he not been involved in a union organizing drive. It is curious that Mr. Jones did not immediately report the information about the first incident involving alleged drug sales to either Mr. or Ms. Sali. Should the allegations against Mr. Ireland be proved and it is determined that his union activity played no role in his termination, the Respondent's desire to terminate him has merely been postponed.

**[46]** Overall, the timing of Mr. Ireland's termination is sufficiently suspicious in relation to the timing of his involvement in lawful union activity. The Board therefore finds that, in weighing the potential harm to the Respondent if an order is granted for Mr. Ireland's interim reinstatement, there is a strong likelihood that employees' fear of retribution for involvement with the Union outweighs any potential harm to the Respondent, particularly in light of the fact that the Respondent bears the onus of proving that union activity played no part in its decision to terminate. Although the Union did not lead specific evidence of the details of a chilling effect resulting from Mr. Ireland's termination, the facts of this case are sufficiently similar to other cases where a union organizer was terminated at the height of an organizing campaign and the termination was unexpected or suspicious.<sup>1</sup> There is a serious issue to be tried concerning the reasons for Mr. Ireland's termination and what knowledge the Sali's had as well as the

extent of their communication with Mr. Ireland and other drivers. In order to fulfill the objectives of the *Act* in this context, it is necessary to preserve the status quo by ordering Mr. Ireland's reinstatement. Such an order will prevent any loss of confidence in and support for the Union.

**[47]** For these reasons, we have determined that an order will issue for the immediate reinstatement of Mr. Ireland to his employment as it was prior to his termination on September 13, 2004 pending the hearing and determination of the applications proper. More specifically, for the period of time that Mr. Ireland otherwise qualifies as a driver under the city bylaw, including maintaining appropriate insurance and not having his certificate of good character from the chief of police revoked, the Board orders the Respondent to allow Mr. Ireland to rent its vehicles, as they become available, on the same terms and conditions as Mr. Ireland enjoyed prior to September 13, 2004. The Board also orders the Respondent to use the same efforts it used prior to September 13, 2004 to encourage owner/operators to utilize Mr. Ireland as a driver in the same manner and on the same conditions as those he enjoyed prior to September 13, 2004. There shall be no Order for monetary loss as there was insufficient evidence filed in respect of this matter and it is one that can be fully addressed at the final hearing of this matter. There will, however, be an Order that the Respondent immediately post a copy of these Reasons and the Board's Order at its place of business in a location where it may be read by as many drivers and owner/operators as possible for a period of 14 days. The Board shall remain seized of the matter in the event that the parties are unable to determine the appropriate number of hours of work Mr. Ireland should be

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<sup>1</sup> We note that this case was heard at the same time as an application by the same union involving a driver for Regina Cabs (not yet reported). For the benefit of the Respondent, who was not represented by legal counsel at the hearing, the primary reason for the different result in that case is the Board's conclusion on the balance of labour relations harm.

scheduled to drive and any other issue arising out of the implementation of the Order. The Board's Order shall remain in effect until such time as the Board disposes of the applications proper.

**DATED** at Regina, Saskatchewan this **29th** day of **November, 2004**.

**LABOUR RELATIONS BOARD**

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Angela Zborosky, Vice-Chairperson