

**Labour Relations Board
Saskatchewan**

**UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400 Applicant v. SOBEYS
CAPITAL INC. operating as VARSITY COMMON GARDEN MARKET, Respondent**

LRB File Nos. 255-04, 256-04 & 257-04; January 17, 2005

Chairperson, James Seibel; Members: Joan White and Bruce McDonald

For the Applicant: Drew Plaxton

For the Respondent: Kevin Wilson

Remedy – Interim order – Practice and procedure – Where interim application filed some time after main application filed and main application scheduled to be heard very shortly after hearing of interim application, Board determines that little practical purpose served by making interim order – Matter will be disposed of on final basis after hearing of main application – Board dismisses interim application.

The Trade Union Act, s. 5.3.

REASONS FOR DECISION

[1] United Food and Commercial Workers, Local 1400 (the “Union”) was certified as the bargaining agent for a unit of employees of Sobeys Capital Inc. operating as Varsity Common Garden Market (the “Employer”) on November 7, 2003. On October 25, 2004, the Union filed an application alleging that the Employer committed unfair labour practices in violation of ss. 11(1)(a), (e) and (g) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the “Act”), in terminating the employment of John Sullivan, and seeking, *inter alia*, Mr. Sullivan’s reinstatement and compensation for monetary loss. That application is scheduled for hearing by the Board for three days commencing January 31, 2005. An application alleging various unfair labour practices by the Employer (including in relation to bargaining) and an application for first contract assistance are also pending. On December 9, 2004, the Union filed an application for interim relief pursuant to s. 5.3 of the *Act* seeking, *inter alia*, Mr. Sullivan’s reinstatement until the hearing and determination of the main application.

[2] An affidavit and an amended affidavit of Mr. Sullivan were filed in support of the interim application and an affidavit of Len Marquis was filed in response. We have reviewed them in detail. Counsel for the parties were afforded the opportunity to make oral arguments. We have reviewed the cases filed on behalf of both parties.

[3] The Employer operates a retail grocery store in Saskatoon. Mr. Sullivan was hired by the Employer on or about June 17, 2004 (there was a minor and immaterial discrepancy between the parties as to the exact date of hiring) and commenced work in the deli department. At all material times he was a member of the bargaining unit. He was terminated on September 14, 2004.

[4] On October 13, 2004, the Union filed a grievance of Mr. Sullivan's termination as it was entitled to do pursuant to s. 26.2 of the *Act*. The Employer denied the grievance. The Union filed the present application on October 25, 2004, but did not file the application for interim relief until December, 2004.

[5] At the hearing of the application for interim relief by the Board on January 10, 2004, the Union proffered no explanation for its failure to pursue an application for interim relief in a more timely manner. The main application is set for hearing very shortly. While we do not wish any dilatoriness of the Union in seeking interim relief to result in undue prejudice to Mr. Sullivan, to determine the interim application at this point could result in the provision of nearly all of the relief claimed in the main application. It is preferable, under the circumstances, that the determination be made with the assistance of all of the evidence that will be provided at the upcoming hearing.

[6] In *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Regina Exhibition Association Limited*, [1997] Sask. L.R.B.R. 667, LRB File No. 266-97, the Board declined to determine an application for interim relief where the parties, at the end of the hearing, agreed to an expedited hearing of the main application.

[7] In the present circumstances, it will serve little practical purpose to make an interim order at this time. The Board will dispose of the matter on a final basis after

hearing full evidence and argument at the hearing of the main application. The application for interim relief is therefore dismissed.

DATED at Regina, Saskatchewan this 17th day of January, 2005.

LABOUR RELATIONS BOARD

James Seibel
Chairperson