

**Labour Relations Board
Saskatchewan**

**UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant v. IMPACT
SECURITY GROUP INC. and INVICTA GROUP INC., Respondents**

LRB File No. 081-06; November 30, 2006

Chairperson, James Seibel; Members: Bruce McDonald and Brenda Cuthbert

For the Applicant: Rod Gillies

For the Respondent: John Burns and Michael Johnston

Duty to bargain in good faith - Disclosure - Employer failed to provide information to union relevant to understanding existing terms and conditions of employment, engaging in rational informed discussion and understanding any response or proposal by employer - Board finds that employer failed to bargain in good faith and committed unfair labour practice within meaning of s. 11(1Xc) of *The Trade Union Act*.

Duty to bargain in good faith - Refusal to bargain - Employer's representative made statements about closing business, firing employees and contracting out work and testified that he had absolutely no intention of bargaining with union at one meeting he attended - Employer sent representative to other meetings who had no authority to bind employer - Board finds that employer failed to bargain in good faith and committed unfair labour practice within meaning of s. 11(1)(c) of *The Trade Union Act*

Unfair labour practice - Union security - Dues check-off - While large majority of employers provide union's application for membership to new employees and return completed card to union, employer not obligated to do so - If employer opts not to do so, employer must provide union with names and contact information for new employees - Where employer failed to comply with s. 36(1) of *The Trade Union Act* and made no attempt to explain its conduct on basis of legitimate interests, Board finds unfair labour practice in violation of ss. 11(1)(a), 11(1)(b) and 36 of *The Trade Union Act*

The Trade Union Act, ss. 11(1)(a), 11(1)(b), 11(1)(c) and 36.

REASONS FOR DECISION

Background:

[1] By two Orders of the Board each dated March 13, 2006, United Food and Commercial Workers, Local 1400 (the "Union"), was certified as *the* bargaining agent for

a unit of employees of Impact Security Group Inc. and Invicta Group Inc. (the "Employer") at each of their Regina and Saskatoon operations (LRB File Nos. 017-06 and 022-06). The Union filed an application with the Board dated June 7, 2006 alleging that the Employer had committed unfair labour practices in violation of ss. 11(1)(a), (b), (c) and (m) and 36(1) of *The Trade Union Act*, R.S.S. 1978, c. T-17, as amended (the "Act"). The essence of the Union's allegations is that the Employer: (1) has failed or refused to provide information to the Union for the purposes of collective bargaining that it is obligated to provide; (2) has failed or refused to bargain in good faith with the Union; and (3) has failed or refused to comply with the union security provisions of the *Act*.

[2] The Board heard the application on October 13, 2006.

Evidence:

[3] Following are the essential facts which are not in dispute between the parties.

[4] John Burns is the Employer's regional vice-president and Calgary office manager. Michael Johnston is the Employer's Saskatchewan manager and Saskatoon operations manager; he reports to Mr. Burns. Kirk Rogers is the Employer's Regina operations manager; he reports to Mr. Johnston.

[5] Don Logan has been employed by the Union for over 25 years and has been a collective bargaining representative for the past 17 years; his responsibility includes leading the collective bargaining for a first collective agreement with the Employer.

[6] By letters dated March 15, 2006 to each of Mr. Rogers and Mr. Johnston, the Union requested the Employer to carry out its union security obligations in accordance with s. 36 of the *Act*. The letters enclosed the Union's maintenance of membership forms and requested the Employer to have each employee hired after the date of certification complete a card and then to return the completed card to the Union.

[7] By further letters dated March 15, 2006 to each of Mr. Rogers and Mr. Johnston, the Union requested that the Employer provide information "in order for [the

Union] to be properly prepared for collective bargaining", including: (1) each employee's name, address and telephone number; (2) each employee's job site, occupational classification, wage rate and date of hire; (3) a copy of any benefit plans currently in place and information regarding eligibility or qualification; (4) information as to any wage progressions currently in place; (5) any human resources or personnel policies that impact on terms and conditions of employment; *and* (6) any other information relevant to wages and compensation.

[8] By further letters dated March 15, 2006, the Union suggested to the Employer that the parties meet to commence bargaining on March 27 and 28, 2006.

[9] On March 21, 2006, Mr. Johnston left a telephone message for Mr. Logan confirming the Employer's availability for bargaining on the suggested dates.

[10] By letter dated March 22, 2006, the Union advised Mr. Johnston of the identity of the members of its negotiating committees for each of Regina and Saskatoon.

[11] By telephone call on March 22, 2006, Mr. Johnston advised Mr. Logan that he was unable to allow two of the three Saskatoon members of the Union's negotiating committee off work on the agreed upon dates for bargaining. Mr. Logan asked Mr. Johnston whether the Regina committee members would be allowed off work, and Mr. Johnston advised Mr. Logan that he would get back to Mr. Logan on that issue.

[12] Not hearing back from Mr. Johnston, Mr. Logan sent him a letter dated March 24, 2006 reminding Mr. Johnston of the statutory duty to commence bargaining within 20 days of certification, but advising that Mr. Logan would be prepared to extend the start of bargaining to April 12, 2006.

[13] By letter dated March 31, 2006 to Mr. Johnston, Mr. Logan repeated the request for information as per his previous letter of March 15, 2006.

[14] By faxed letter dated April 10, 2006 to Mr. Johnston, Mr. Logan asked Mr. Johnston to confirm that the Union's Regina negotiating committee members would have the requisite time off to attend bargaining in Saskatoon on April 12, 2006.

[15] By letter dated April 10, 2006 to Mr. Logan, Mr. Johnston confirmed that "every effort [would] be taken to ensure that [the Union's Regina negotiating committee members] are given sufficient time off." He also provided Mr. Logan with a list of the Employer's Saskatoon employees' names, addresses and telephone numbers. However, Mr. Johnston stated that he could not provide any of the other information requested until he had confirmed his permission to do so from the Employer's clients and legal counsel.

[16] By letter dated April 11, 2006 to Mr. Johnston, Mr. Logan asked Mr. Johnston to provide the employee information for the Employer's Regina employees, and again requested the other information. Mr. Logan confirmed the time for the start of bargaining the next day.

[17] By faxed letter dated April 11, 2006 to Mr. Logan, Mr. Johnston provided the name and address information for *the* Regina employees.

[18] The parties met on the morning of April 12, 2006. Mr. Logan and the Union's three Saskatoon negotiating committee members were in attendance on behalf of the Union. Mr. Johnston attended on behalf of the Employer. The Union provided the Employer with its initial proposal and reviewed the same with Mr. Johnston. Mr. Johnston did not provide the Union with any information. Mr. Logan proposed that the parties meet again to bargain on any or all of May 15, 16 and 31 and June 1 and 2, 2006. Mr. Johnston advised Mr. Logan that Mr. Johnston would have to consult with Mr. Burns regarding those dates and a response to the Union's proposals.

[19] By letter dated April 19, 2006 to Mr. Logan, Mr. Burns accused Mr. Logan of writing letters to Mr. Johnston that were "unprofessional and distasteful." Mr. Burns advised that the Employer would not provide further information to the Union without discussing it with legal counsel. Mr. Burns confirmed that the Employer was available for bargaining on May 16 and 17, 2006.

[20] The parties met on May 16, 2006. Mr. Burns, Mr. Johnston and Mr. Rogers were all in attendance on behalf of the Employer. The Employer provided no

response to the Union's proposals of April 12, 2006. Mr. Burns indicated that he was angry about the fact that the Union was engaged in organizing the Employer's Calgary operation. Mr. Burns told Mr. Logan to deal with Mr. Rogers, stated that nothing in the Union's proposals was acceptable and described them as a "bunch of crap." Mr. Logan asked Mr. Rogers for a response, but Mr. Rogers told Mr. Logan to call him and make an appointment. The Employer's representatives all left the meeting, which lasted less than one-half hour.

[21] In cross-examination by Mr. Gillies, Mr. Burns admitted that at the meeting he made a statement to the effect that, "if the Union continued to harass the company, it would be better to fire all the employees and contract the work out," and that he had absolutely no intention of bargaining with the Union on that day. At the hearing of this application by the Board, Mr. Burns stated that he would make the same comment again and that the Employer was considering whether to shut down its Saskatoon and Regina operations. Mr. Burns also described himself as "a very aggressive person in business," and said that he would be happy to work with any representative of the Union other than Mr. Logan.

[22] By letter dated May 16, 2006 to Doug Forseth, director of the Labour Relations and Mediation Division of Saskatchewan Labour, Mr. Logan asked that a conciliation officer be appointed to assist with negotiations. Mr. Rogers agreed to meet with the conciliation officer, George Wall, on June 1, 2006.

[23] At the meeting on that date, Mr. Rogers advised that he had no detailed response to the Union's proposals and that he did not have *the* authority to make an agreement, indicating that he would have to consult with both Mr. Johnston and Mr. Burns to finalize any agreement. The Union again requested wage and benefit information. Mr. Rogers provided a current benefits handbook, but no other information.

[24] The parties again met with the assistance of Mr. Wall on June 27, 2006 and July 13, 2006 and made some headway in bargaining. Mr. Burns did not attend any of these sessions.

[25] The next bargaining meeting was set for August 30, 2006, but the Employer failed to attend. The Employer advised the Union that it was not prepared to bargain further until after the present unfair labour practice application was heard by the Board.

[26] On September 18, 2006 the Union filed an application seeking the Board's assistance in concluding a first collective agreement.

[27] The Employer has not provided the Union with any of the other information requested by the Union in its letter of March 15, 2006 including updated employee lists, which Mr. Burns conceded were now obsolete because of employee turnover. Mr. Burns testified that the Employer could not provide the Union with information regarding the employees' job sites, because that would disclose the identities of the Employer's clients. He contended that the Union already had a copy of the Employer's policy and procedure manual from the certification proceedings.

[28] Mr. Burns conceded that the Employer had not complied with the Union's union security demand because "it was up to the Union to do that." To this point the Union has not required dues to be checked off and remitted. Mr. Johnston testified that, in the Employer's Saskatoon office, the Union's maintenance of membership cards are available to employees at the front desk and that, "as far as the employees [he] personally hires," he advises them that they must join the Union within 30 days of being hired, but some have refused to sign the union card. Mr. Johnston did not know what the situation was in the Regina office.

Statutory Provisions:

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

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;

(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;

(c) to fail or refuse to bargain collectively with representatives elected or appointed, not necessarily being the employees of the employer, by a trade union representing the majority of the employees in an appropriate unit;

(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;

36(1) Upon the request of a trade union representing a majority of employees in any appropriate unit, the following clause shall be included in any collective bargaining agreement entered into between that trade union and the employer concerned, and, whether or not any collective bargaining agreement is for the time being in force, the said clause shall be effective and its terms shall be carried out by that employer with respect to such employees on and after the date of the trade union's request until such time as the employer is no longer required by or pursuant to this Act to bargain collectively with that trade union:

Every employee who is now or hereafter becomes a member of the union shall maintain his membership in the union as a condition of his employment, and every new employee whose employment commences hereafter shall, within 30 days after the commencement in his employment, apply for and maintain membership in the union, and maintain membership in the union as a condition of his employment, provided that any employee in the appropriate bargaining unit who is not required to maintain his membership or apply for and maintain his

membership in the union shall, as a condition of his employment, tender to the union the periodic dues uniformly required to be paid by the members of the union;

and the expression "the union" in the clause shall mean the trade union making such request.

(2) *Failure on the part of any employer to carry out the provisions of subsection (1) shall be an unfair labour practice.*

Arguments:

[30] Mr. Gillies, counsel on behalf of *the* Union, argued that the Employer clearly had failed to bargain collectively in violation of s. 11(1)(c) of the *Act* and had refused to comply with its union security obligations pursuant to the Union's demand in accordance with s. 36 of the *Act*.

[31] Counsel referred to the description of the duty to bargain collectively enunciated by the Board in *United Food and Commercial Workers, Local 1400 v. Madison Development Group Inc.*, [1996] Sask. **L.R.B.R.** 75, **LRB** File No. 131-95, and to the description of the duty to provide information relevant to bargaining. In that case, the employer, which was found to have violated the duty to bargain in good faith, had failed to provide information to the union as to job classifications and rates of pay.

[32] Counsel also referred to the decision of *the* Board in *United Food and Commercial Workers, Local 1400 v. Vision Security and Investigations Inc.*, [2002] Sask. **L.R.B.R.** 73, **LRB** File No. 219-01, where the employer was found to be in violation of the duty to bargain in good faith when it, *inter alia*, cancelled several bargaining sessions at the last minute, failed to show up at all for others and its representative at bargaining did not have the authority to bind the employer.

[33] Mr. Gillies requested that the Board order the Employer to provide the information requested and continue to do so as it changes, to attend bargaining forthwith and to comply with the union security provisions in s. 36(1) of the *Act*.

[34] Mr. Burns, on behalf of the Employer, stated that the Employer was prepared to continue negotiations with the Union. He submitted that the Employer could

not provide details of its service agreements because they contained confidential client information in relation to security needs and provisions.

Analysis and Decision:

[35] In *Madison Development Group, supra*, the Board gave a brief historical overview of the importance attached to the duty to bargain collectively in all Canadian jurisdictions and the role of the Board in assessing same. At 100 and 101, the Board observed as follows:

.. As the Board has observed on many occasions, it is difficult to define the boundaries of the duty to bargain with precision or certainty. Nonetheless, its centrality to our overall mandate of protecting and supervising collective bargaining cannot be doubted. In Saskatchewan Government Employees' Union v. Government of Saskatchewan (1993) 1st Quarter Sask. Labour Rep. 261, the Board emphasized at p. 267 the importance of the duty to bargain:

The duty to bargain collectively lies at the legal heart of the relationship between an employer and a trade union which comes into being upon the certification of the union as the bargaining agent for a group of employees. It is this duty which gives collective bargaining legislation much of its bite, which endures through any hiatus between collective agreements, and which provides the parties with some direction as to their responsibility in the range of situations they may encounter.

Though the obligation to bargain has been in existence in more or less this form in many North American jurisdictions for nearly sixty years, its significance and implications continue to be questions of great complexity for the tribunals charged with interpreting these issues. In general, labour relations boards have interpreted their role as one of assessing whether true bargaining is taking place, and whether either party is engaging in conduct which will impair the health of such bargaining, rather than to influence the substantive content or outcome of the bargaining process. The responsibility of labour relations boards is to do what they can to ensure that the parties do bargain collectively; it is the responsibility of the parties to

determine what they bargain about and what comes of the bargaining.

In a decision in Canadian Union of Public Employees v. Saskatchewan Health-Care Association (1993), 9th Quarter Sask. Labour Rep. 74 at p. 83, the Board commented on the inherent dilemma presented by an assessment of an allegation that the duty has been breached:

... when an allegation of an infraction under Section 11(1)(c) is brought before us, the Board is faced with the somewhat delicate task of evaluating the bargaining process to determine whether there is any employer conduct which endangers or threatens to subvert that process, while at the same time not intervening so heavy-handedly that the process ceases to reflect the strength, aspirations and historical relationship of the parties themselves. The distinction between process and substance has a will-o'-the-wisp quality at the best of times, but this is particularly the case where a tribunal is trying to discern whether conduct goes beyond the generous limits of the tolerable in collective bargaining, or whether it merely reflects a permissible exploitation of strength or skill by one party to gain advantage over the other.

[36] In *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Westfair Foods Ltd.*, [1993] 3rd Quarter Sask. Labour Rep. 162, LRB File No. 157-93, the Board summarized the breadth of considerations in determining whether there has been a breach of s. 11(1)(c) as follows at 174 and 175:

In considering an allegation that an employer has failed or refused to engage in collective bargaining as required by the statute, the Board must, of course, take into account a wide range of factual components which are part of the bargaining environment at the time the application is filed, and part of the relationship between the parties, but the essential question which must be asked is whether the picture composed of these factual elements shows that the employer is not trying to conclude a collective agreement.

If positions are changed, or proposals withdrawn, or uncompromising resistance adopted, there is not necessarily any infraction of The Trade Union Act. It is only if these clues suggest to the Board an attempt by an employer to avoid reaching an agreement or an actual refusal to recognize the trade union as a

bargaining agent that the Board may draw the conclusion that an employer is guilty of failing or refusing to bargain collectively.

[37] In *Madison Development Group, supra*, the Board described the duty to bargain collectively and the objective of the analysis by the Board, as follows, at 103 and 104 :

What is required by the duty to bargain is that, however vigorous or bruising the process, the parties are making a genuine effort to conclude an agreement. An employer is not entitled to use the bargaining process as a disguise for what is really an attempt to undermine or defeat a trade union, or for a sustained refusal to accept the legal position of the trade union as the representative of a group of employees.

Though bargaining is not a process for which a code of rules can be articulated, labour relations tribunals have looked for certain minimal procedural features as evidence that the parties are engaged in real bargaining. Some of these criteria were suggested by this Board in a decision in Construction and General Workers v. Midway Sales (1979) Ltd. (1987), 88 C.L.L.C. 16,003 at p. 14,009, 'Although the duty to negotiate in good faith does not impose a duty to reach agreement, both parties do have an obligation to meet with the other side, to genuinely intend to resolve issues in dispute and to make every reasonable effort to do so.'

In Canadian Union of Public Employees v. Cheshire Homes of Regina Society (1988), Fall Sask. Labour Rep. 91 at pp. 93-94, the Board elaborated on this theme:

In this case, the employer says that it is under no duty to agree with the union on matters of procedure or substance; that its conduct is an example of hard bargaining; and that if the union doesn't like it then the union's recourse is to use whatever power it has to stop it. That argument, however, ignores the employer's obligation to make every reasonable effort to engage in full and rational discussion. In the Board's opinion, for there to be full and rational discussion, particularly in negotiations for a first collective agreement, each party must have the ability to frame and present its position in words of its own choosing and to have that position fairly considered and discussed. The employer wrongly treated its right to refuse to agree to the union's proposals as if it were a right to refuse to even discuss the union's proposals. Its conduct in that

regard was incompatible with its duty to make all reasonable efforts to reach an agreement by engaging in full and frank discussion of the issues.

What the Board must try to determine, without intervening unduly in the dynamics of the bargaining process, is whether a sincere effort is being made to conclude a collective agreement with the trade union, or whether the actions of an employer are more indicative of disrespect for the union or a wish to undermine its credibility and effectiveness.

[38] With respect to the duty to provide information relevant to bargaining, the Board stated in the same case, as follows, at 104:

Counsel did suggest that the failure of the Employer to supply the Union with information which it had requested was, by itself, a breach of the duty to bargain in good faith. The Board has, on a number of occasions, stated that an aspect of the duty imposed on an employer to bargain collectively is an obligation to convey to the trade union the information which makes genuine bargaining possible. In Saskatchewan Government Employees' Union v. Government of Saskatchewan (1989), Winter Sask. Labour Rep. 52 at pp. 58-59, the Board summarized this aspect of the duty as follows:

That duty is imposed by Section 11(1)(c) of The Trade Union Act and its legislative counterpart in every other jurisdiction. It requires the union and the employer to make every reasonable effort to conclude a collective bargaining agreement, and to that end to engage in rational, informed discussion, to answer honestly, and to avoid misrepresentation. More specifically, it is generally accepted that when asked an employer is obligated:

- (a) to disclose information with respect to existing terms and conditions of employment, particularly during negotiations for a first collective bargaining agreement;*
- (b) to disclose pertinent information needed by a union to adequately comprehend a proposal or employer response at the bargaining table;*
- (c) to inform the union during negotiations of decisions already made which will be implemented during the term of a proposed agreement and which may have a significant impact on the bargaining unit; and*

(d) to answer honestly whether it will probably implement changes during the term of a proposed agreement that may significantly impact on the bargaining unit. This obligation is limited to plans likely to be implemented so that the employer maintains a degree of confidentiality in planning, and because premature disclosure of plans that may not materialize could have an adverse effect on the employer, the union and the employees.

[39] The Board found that the failure or refusal of the employer in that case to provide information to the union with respect to the specifics of job classifications and rates of pay in and of itself constituted an unfair labour practice within the meaning of s. 11(1)(c) of the Act. The Board also characterized the employer's response to the request for the information that the union could obtain it from the employees themselves to be "unreasonable," and said that it was not the employer's prerogative to determine when it was necessary for the union to have the information for the purposes of bargaining. The Board stated as follows at 105 and 106:

In our view, the conduct of the Employer in responding to the requests by the Union for information was unreasonable, and did constitute an unfair labour practice within the meaning of Section 11(1)(c). There can be no serious argument that the Union is entitled to this information, and that they are entitled to receive this information from the Employer. Though individual employees may be in possession of partial information, it is unlikely that they would know, for example, whether they are regarded as part-time or casual in terms of the definitions proposed at the bargaining table by the Employer, or that they would all be certain of their precise job title or classification.

The defense offered by the Employer - that the provision of this information was not a high priority because the issues were not at a particular stage of discussion at the bargaining table - cannot be accepted. The information sought by the Union with respect both to wage rates and to the categorization of employees was of a basic kind, and it is difficult to see how the Union could expect to formulate an overall bargaining position without it. Whether or not the Employer thought the time was ripe for discussion of these issues as such, the Union was entitled to have the information promptly when it was requested in order to proceed with devising bargaining priorities and a bargaining strategy. We do not accept that there was any complexity or sensitivity about the information which would justify the delay in providing the information, or the failure to provide all of the information which was sought by the Union.

[40] Applying the foregoing principles the Board concluded in *Madison Development Group, supra*, that the employer was in breach of s. 11(1)(c) of the *Act*, stating as follows at 106:

With respect to the more general issue of whether the overall pattern of conduct of the Employer constituted a breach of the duty to bargain, we have concluded that this conduct was a violation of the Act and an unfair labour practice. It is true that it is not an unfair labour practice, in isolation, to cut short a bargaining session, or to agree to meet at infrequent intervals, or to refuse to contemplate conciliation. All of these things may be part of ordinary bargaining.

If one looks at the overall tone and content of the interactions between the parties, however, what emerges is a disturbing picture of an Employer who does not place a high priority on the relationship with the Union, who raises a variety of issues which must be regarded as distractions from genuine bargaining issues, who denies the reasonable requests of the Union for information, and who repeatedly accuses the Union of trying to fabricate unfair labour practices.

[41] In *the* present case, in addition to the failure of the Employer to provide information to the Union that in our opinion is relevant to understanding existing terms and conditions of employment, for the purposes of engaging in rational, informed discussion, and for understanding any response or proposal by the Employer, Mr. Burns testified that he had absolutely no intention of bargaining with the Union at the one meeting he attended on May 16, 2006. Moreover, after that the Employer consistently sent Mr. Rogers to the bargaining table by himself when he had no authority to bind the Employer. And, in August 2006, the Employer expressly advised the Union that it refused to bargain further until the Board heard the present application.

[42] The statements by Mr. Burns to the effect of the possibility of closing the business, firing the employees and contracting out the work, serve further to illustrate the lack of intention and sincerity on the Employer's part to engage in good faith bargaining, not to mention an intense disrespect for the Union as bargaining agent for the employees.

[43] In the circumstances of the present case and having due regard to the findings of the Board in *Madison Development Group, supra*, in the situation encountered in that case, we find that the Employer has failed to bargain in good faith and has

committed and continues to commit an unfair labour practice within the meaning of s. 11(1)(c) of the **Act**

[44] We also wish to make two further observations. The first has to do with Mr. Burns's accusations against Mr. Logan in his letter of April 19, 2006 that Mr. Logan's correspondence with Mr. Johnston was "unprofessional and distasteful." We have reviewed that correspondence in detail and find nothing whatsoever to support such a conclusion. To the contrary, Mr. Logan's actions and attitude as expressed in the correspondence are crisp and to the point and entirely businesslike and respectful. The second concerns Mr. Burns' position that **he** would be happy to bargain with any representative of the Union other than Mr. Logan. It is not the Employer's prerogative to choose with whom it bargains. Quite aside from the fact that it is within the exclusive purview of the Union as bargaining agent to assist **the** employees in choosing the members of their negotiating committee and for the Union to designate an experienced representative to assist them in bargaining, we find nothing whatsoever in the evidence of any behaviour of Mr. Logan at the bargaining table or otherwise that could lead to a conclusion that he ought not to be allowed to continue. To the contrary, the evidence supports the contention that Mr. Burns was argumentative, distracting and obstructive during his single attendance at a meeting with the Union.

[45] With respect to the allegation that the Employer failed and continues to fail to comply with the request by the Union to apply the union security provisions in s. 36(1) of the **Act**, while Mr. Johnston testified that he has attempted to comply with respect to those new employees that he has personally hired in the Employer's Saskatoon office, it was clear from the testimony of Mr. Burns that the Employer itself has not complied and does not believe that it is required to comply. Mr. Burns stated that "it was the Union's job" to ensure that new employees joined the Union. There was no evidence that the Employer had complied at all with respect to new hires at its Regina operation. The evidence disclosed that **the** Employer also failed and continues to fail to provide current information to the Union regarding new hires on an ongoing basis.

[46] Section 36(1) of the **Act** ensures that as many employees as possible apply for and maintain membership in the union as a condition of employment. It ensures that existing members remain members and that new employees become

members. In *Canadian Union of Public Employees, Local 4195 v. Saskatchewan Rivers School Division No. 119*, [2000] Sask. L.R.B.R. 104, LRB File No. 202-98, the Board comprehensively reviewed its jurisprudence with respect to the respective obligations of employer and union under s. 36(1) of the *Act*. The Board observed as follows at 111 through 113:

[16] In International Union of Bricklayers and Allied Craftmen, Local 13 v. United Masonry Construction Ltd., [1980] May Sask. Labour Rep. 66, LRB File No. 285-79, the Board considered the obligations imposed by s. 36(1) and determined that they included at least the duty to advise new employees that it is a condition of employment that they join the union within 30 days and, where the employer does not wish to sign the employees for the union, to provide the union with the names of new employees. The Board stated as follows, at 67:

The second branch of the application, whether or not the employer committed an unfair labour practice by retaining non-union personnel for more than thirty days, required a consideration of the respective obligations of the employer and union when the statutory union security clause is in effect. There is certainly an obligation upon the employer, when he hires a new employee, to advise him that it is a condition of his employment that he join the union within thirty days after the date of commencement of employment. However, in the view of the Board there is no obligation upon the employer to actually require the employee to sign the documents necessary to gain admission to the union, although in many cases employer and union do agree to such an arrangement. There is an obligation of course upon the employee to obtain membership in the union if he wishes to keep his job for more than thirty days. There is an obligation, however, on the part of the employer, in situations where an employer does not wish to sign employees for the union, to give to the union the names of all new employees within thirty days of the commencement of their employment so that the union can arrange to sign them.

[17] The Board approved of and followed United Masonry, supra, in United Steel Workers of America v. Rite Way Mfg. Co. Ltd., [1980] May Sask. Labour Rep. 78, LRB File No. 006-78. However, in neither United Masonry nor Rite Way Mfg. was the

Board asked specifically to consider whether the employer had a duty to distribute applications for union membership to new employees and obtain dues deduction authorizations if requested to do so by the union, or whether there is an obligation, under any circumstances, to provide the union with more information about new employees than just their names.

[18] The extent of the obligations of employers under s. 36(1) was considered again some time later in United Food and Commercial Workers, Local 1400 v. F.W. Woolworth Co Limited, at at. [1994j 1st Quarter Sask. Labour Rep. 169, LRB File Nos. 148-93, 151-93,192-93,193-93 & 194-93. In that case, the employer admitted that it had a duty to inform new employees of their obligation to join the union and to provide the union with the names of new employees. The employer claimed to have been informing new employees of their obligation, but argued that it was the union's responsibility to actually secure compliance and pursue employees who failed or refused to comply with s. 36. The union became aware that new employees were not applying for membership in the union and wrote to the employer requesting the names, addresses and telephone numbers of all employees hired since the date of certification. The employer refused to provide addresses and telephone numbers on the bases, inter alia, that the law did not require it and the information was private.

[19] In E. W. Woolworth, the union did not frame its application as a violation of s. 36(1) or s. 32(1) of the Act, but rather, alleged that the employer's refusal to furnish the telephone numbers and home addresses of new employees, and its later refusal to supply even their names, constituted unlawful interference with the employees' right to be represented by the union and with the administration of the union, contrary to ss. 11(1)(a) and (b) of the Ad. Applying, Rite Way Mfg., supra, the Board held that the employer had violated those provisions as well as s. 36(1). It found that the almost total failure of new employees to apply for union membership belied the employer's assertion that it had informed new employees of the obligation to do so, particularly given the employer's failure to call anyone to testify about the assertion. The Board stated, at 181:

On the authority of Rite W- y Mfg. Co. Ltd. this part of the application under Section 11(1)(a) and (b) is granted. Second, we have reached a similar conclusion with respect to the Employer's refusal to provide the Union with the names of newly-hired employees, as it did between January and May of 1993. This is a violation not only of Section 36(1), which was not alleged, but also of Section 11(1)(a), as it would clearly interfere with the employees' right to be represented by the Union. It is also a

violation of Section 11(1)(b) as it would interfere with the Union's right to collect dues, which are essential for the Union's administration and its obligation to carry out its statutory responsibilities of representation.

[19] Furthermore, the Board opined, at 182, that the obligation on the employer to advise the union of the identity of new hires is based in general policy considerations:

The Employer's obligation to provide the union with the names of newly-hired employees was expressly imposed on employers for the purpose of permitting the union to secure compliance from new employees with the statutory obligations imposed on them by Section 36. The requirement to provide the Union with the names of new employees appeared to be quite logical and reasonable given the Board's decision in Rite Way Mfg. Co. Ltd. not to interpret Section 36 in a manner that placed an obligation upon the employer to actually ensure that new employees complied with Section 36. It is difficult to pinpoint the actual wording in Section 36, which the requirement to provide the names of new employees was based upon, but it is not difficult to pinpoint the general policy considerations. That policy was expressed in Watergroup Canada Ltd., 1993 3rd Quarter, Sask. Labour Report, p. 131, when the Board stated that the employees' right to join a union and bargain collectively and the union's right to represent these employees are not rights that either the employees or the union should have to fight the employer for. The corollary is that the employer has no inherent right to resist or obstruct the exercise of these rights. The adversarial contest of interests which is contemplated by The Trade Union Act is to be confined to the content of the collective bargaining agreement or other legitimate collective bargaining issues. In other words, the Act presumes and expects a certain level of acceptance and cooperation from the employer, and it is in that vein that the courts and boards have required a measure of cooperation from the employer when that is necessary to breathe life into a provision in The Trade Union Act, provided that doing so does not infringe any legitimate interest of the employer. Hence, for example, we have seen the emergence of the employer's obligation to cooperate during

*bargaining by providing the union with information. In that context, the employer has been obliged to provide, upon request and even to volunteer, various kinds of information required by the union (see: Government of Saskatchewan, 1989 Winter, Sask. Labour Report, p. 52). We can also see the Ontario Court of Appeal in T. Eaton Co., *infra*, requiring employers to cooperate with unions by providing them with access to the employees on the employer's premises for the purpose of conducting lawful union business. In Time Air Inc., 77 di 55, an employer was required to let the union use the company bulletin boards and pigeon holes. It was in this same vein that the Board in Rite Way Mfg. Co. Ltd. stated that Section 36 required employers to provide unions with the names of new employees. It was an attempt to breathe as much life as possible into Section 36 without prejudicing any legitimate employer interest.*

[47] While in actual practice the large majority of employers provide the union's application for membership to new employees and return the completed card to the union, an employer is not obligated to do so. However, if the employer opts not to do so, there is an obligation to provide the union with the names and contact information for new employees so that the union may attempt to have the employee join the union, failing which the union can keep track of the thirty-day time limit.

[48] As per s. 36(2) of the *Act*, it is an unfair labour practice to fail to comply with s. 36(1). However, in *F. W. Woolworth, supra*, the Board held that the refusal to provide the Union with new employees' names, addresses and telephone numbers may also constitute unfair labour practices within the meaning of ss. 11(1)(a) and (b) of the *Act*. At 183, the Board stated as follows:

The Employer argued that disclosure of this information infringes upon the privacy of the employees, but this does not bear scrutiny. As the employees' exclusive bargaining agent, the union has access to their wage rates and often to their performance evaluations, disciplinary records and other highly personal information. The employees are informed when they apply for employment, or are supposed to be, that they must join the Union as a condition of employment. This knowledge, tends to undercut any need to keep this information private from the very organization which the employees have a statutory obligation to join and which has a statutory duty to represent them.

Considering this scheme, access by the Union to the names, addresses and telephone numbers of new employees would appear to be compatible with the attainment of these statutory obligations. Furthermore, given that membership in the Union is a condition of employment, it seems more reasonable to facilitate the Union's ability to solicit and secure compliance from the employees, than to force the Union to get the employees' attention by serving the Employer with a demand that they be dismissed.

In the final analysis, considering the intent of Section 36(1), and the general objectives of the Act to legitimize and to require employers to accept a regime of collective bargaining, we cannot see any reason to sanction a practice which fails to serve any legitimate interest of the employer and is designed merely to frustrate and obstruct the union's access to rights clearly accorded to it by Section 36(1). There was absolutely no attempt by the Employer to explain or defend its conduct on the basis of its legitimate interests. Its sole purpose was to frustrate and interfere with the administration of the Union and the rights of employees. This part of the application is accordingly granted under Sections 11(1)(a) and 11(1)(b) of the Act

[49] In the circumstances of the present case, we find that the Employer committed an unfair labour practice in failing to comply with s. 36(1) of the *Act* upon the request of the Union. Furthermore, as in *F. W. Woolworth, supra*, the Employer in the present case "made no attempt to explain its conduct on the basis of its legitimate interests." Its claim that it failed to provide the Union with current information regarding new employees because of high employee turnover, is inadequate and specious. Based upon the whole of the evidence and as pointed out earlier in these reasons, we find that the Employer's actions or omissions in this regard are just one more instance of an attempt to frustrate and undermine the Union in its representation of the employees. We find that the Employer committed and continues to commit unfair labour practices in violation of ss. 11(1)(a) and (b) of the *Act*.

[50] We further find that there is not sufficient evidence to support the allegation of an unfair labour practice by the Employer under s. 11(1)(m) of *the Act*, and that part of the application is dismissed. At the hearing of the application, the Union withdrew its allegation that the Employer had committed an unfair labour practice under s. 11(1)(e).

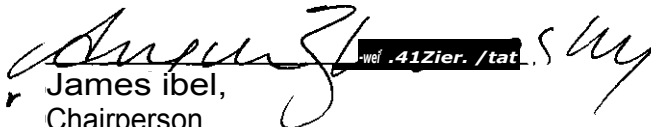

[51] An Order will be issued including the following provisions:

- (1) finding that the Employer has committed and continues to commit unfair labour practices within the meaning of ss. 11(1)(a), (b), and (c) and 36(1) and (2) of *The Trade Union Act*,
- (2) ordering the Employer to immediately cease committing the unfair labour practices;
- (3) ordering the Employer to bargain collectively with the Union and ordering that, within three (3) days of the date of the order, the Employer shall provide the Union with at least three dates for bargaining meetings when the Union is available, such meetings to take place within the thirty (30) days following the date of the Order;
- (4) ordering *the* Employer to provide the following information to the Union within seven (7) days of the date of the Order: the names, addresses, and telephone numbers of all current employees in the bargaining units; the occupational classification, wage rate and date of hire of each employee; any wage progressions currently in place; any other information relevant to the terms and conditions of employment of the employees;
- (5) ordering the Employer to forthwith comply and continue to comply with s. 36(1) of *The Trade Union Act*, and to provide the Union with the names, addresses and telephone numbers of all employees as they are hired in a timely fashion and on an ongoing basis for as long as the Employer has a duty to bargain collectively with the Union;
- (6) directing the Employer to forthwith post copies of the Order and these Reasons for Decision for a period of thirty (30) days in a prominent location in each of Regina and Saskatoon where they will be seen and may be read by as many employees as possible;

- (7) stating that the Board retains jurisdiction to deal with any issues arising out of the implementation of the Order.

DATED at Regina, Saskatchewan, this **30th** day of **November, 2006**.

LABOUR RELATIONS BOARD

for   *my*
James ibel,
Chairperson