Labour Relations Board
Saskatchewan

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCALS 299, 333 & 336, Applicant v. SASKATCHEWAN ASSOCIATION OF HEALTH ORGANIZATIONS, FIVE HILLS REGIONAL HEALTH AUTHORITY, PROVIDENCE PLACE FOR HOLISTIC HEALTH INC. OF MOOSE JAW, ST. JOSEPH'S HOSPITAL (GREY NUNS) OF GRAVELBOURG, SASKATOON REGIONAL HEALTH AUTHORITY, CENTRAL HAVEN SPECIAL CARE HOME INC., JUBILEE RESIDENCES INC., LUTHERAN SUNSET HOME OF SASKATOON, OLIVER LODGE, SASKATOON CONVALESCENT HOME, SHERBROOKE COMMUNITY CENTRE INC., ST. ANN'S SENIOR CITIZENS VILLAGE CORPORATION, UKRAINIAN SISTERS OF ST. JOSEPH OF SASKATOON, ST. PAUL'S HOSPITAL (GREY NUNS) OF SASKATOON, LAKEVIEW PIONEER LODGE INC., OF WAKAW, DUCK LAKE AND DISTRICT NURSING HOME INC., ST. ELIZABETH'S HOSPITAL OF HUMBOLDT, BETHANY PIONEER VILLAGE INC. OF MIDDLE LAKE, HEARTLAND REGIONAL HEALTH AUTHORITY, ST. JOSEPH'S HOSPITAL OF MACKLIN, KINDERSLEY SENIOR CARE INC., and CYPRESS REGIONAL HEALTH AUTHORITY, Respondents

SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicant v. SASKATCHEWAN ASSOCIATION OF HEALTH ORGANIZATIONS, MAMAWETAN CHURCHILL RIVER DISTRICT HEALTH AUTHORITY and KELSEY TRAIL REGIONAL HEALTH AUTHORITY, Respondents

CANADIAN UNION OF PUBLIC EMPLOYEES, Applicant v. SASKATCHEWAN ASSOCIATION OF HEALTH ORGANIZATIONS, PRAIRIE NORTH REGIONAL HEALTH AUTHORITY, PRINCE ALBERT PARKLAND REGIONAL HEALTH AUTHORITY, SUNRISE REGIONAL HEALTH AUTHORITY, MONT ST. JOSEPH HOME OF PRINCE ALBERT, REGINA PIONEER VILLAGE, CUPAR AND DISTRICT NURSING HOME, LUMSDEN AND DISTRICT HERITAGE HOME, ST. ANTHONY'S HOME OF ESTERHAZY, ST. PETER'S HOSPITAL OF MELVILLE, ST. PAUL LUTHERAN HOME OF MELVILLE, REGINA QU'APPELLE REGIONAL HEALTH AUTHORITY, SANTA MARIA SENIOR CITIZENS HOME OF REGINA, REGINA LUTHERAN HOME, and VILLA PASCAL OF NORTH BATTLEFORD, Respondents

LRB File Nos. 119-06, 122-06 & 123-06; October 31, 2006
Chairperson, James Seibel; Members: Donna Ottenson and Ken Ahl

For Service Employees International Union, Locals 299, 333 & 336: Drew Plaxton
For Saskatchewan Government and General Employees' Union: Rick Engel, Q.C.
For Canadian Union of Public Employees: Peter Barnacle
For Saskatchewan Association of Health Organizations and all named employers except, St Joseph's Hospital (Grey Nuns) of Gravelbourg, Villa Pascal of North Battleford, and Regina Lutheran Home: Larry LeBlanc, Q.C. and Kevin Zimmerman
For Saskatoon Regional Health Authority and Associates: Evert Van Olst
No one appearing for: St Joseph's Hospital (Grey Nuns) of Gravelbourg, Villa Pascal of North Battleford, and Regina Lutheran Home

Remedy – Interim order – Delay – Time between employer action and filing of interim applications by unions not so long as to be unreasonable or to demonstrate that matters in issue not sufficiently urgent – Board declines to dismiss interim applications for undue delay.

Remedy – Interim order – Criteria – On application for interim relief, not for Board to decide issues raised by applications proper but, rather, to determine whether Board ought to grant interim relief pending final hearing and determination of applications proper – Interim order must be consonant with preservation and fulfillment of objects of *The Trade Union Act* as a whole and of specific provisions alleged to have been violated – Where applications proper raise serious case and balance of convenience favours granting of interim order, Board exercises discretion to grant interim relief to preserve status quo pending final hearing.

***The Trade Union Act*, ss. 2(b), 2(c), 3, 5(c), 5(d), 5(e), 5.3, 11(1)(a), 11(1)(c), 12, 18(e) and 42.**

REASONS FOR DECISION

Background:

[1] Each of Service Employees International Union, Locals 299, 333 & 336 ("SEIU"), Saskatchewan Government and General Employees' Union ("SGEU"), and Canadian Union of Public Employees ("CUPE"), (collectively referred to as "the Unions"), are respectively certified as the bargaining agents for certain "health service provider" units of employees of provincial regional health authorities and other associated and affiliated employers within those health regions, pursuant to *The Health Labour Relations Reorganization Act*, S.S. 1996, c. H-0.03, as amended, and the regulations thereunder.

[2] Saskatchewan Association of Health Organizations ("SAHO") is the representative employers' organization for the following member regional health authorities and affiliate and associate unionized employers in the health sector: Five Hills Regional Health Authority, Providence Place for Holistic Health Inc. of Moose Jaw, Saskatoon Regional Health Authority, Central Haven Special Care Home Inc., Jubilee Residences Inc., Lutheran Sunset Home of Saskatoon, Oliver Lodge, Saskatoon Convalescent Home, Sherbrooke Community Centre Inc., St. Ann's Senior Citizens

Village Corporation, Ukrainian Sisters of St. Joseph of Saskatoon, St. Paul's Hospital (Grey Nuns) of Saskatoon, Lakeview Pioneer Lodge Inc. of Wakaw, Duck Lake and District Nursing Home Inc., St. Elizabeth's Hospital of Humboldt, Bethany Pioneer Village Inc. of Middle Lake, Heartland Regional Health Authority, St. Joseph's Hospital of Macklin, Kindersley Senior Care Inc., Cypress Regional Health Authority, Mamawetan Churchill River District Health Authority, Kelsey Trail Regional Health Authority, Prairie North Regional Health Authority, Prince Albert Parkland Regional Health Authority, Sunrise Regional Health Authority, Mont St. Joseph Home of Prince Albert, Regina Pioneer Village, Cupar and District Nursing Home, Lumsden and District Heritage Home, St. Anthony's Home of Esterhazy, St. Peter's Hospital of Melville, St. Paul Lutheran Home of Melville, Regina Qu'appelle Regional Health Authority, Santa Maria Senior Citizens Home of Regina and, along with SAHO and St.Joseph's Hospital (Grey Nuns) of Gravelbourg, Regina Lutheran Home and Villa Pascal of North Battleford, these regional health authorities and affiliate and associate unionized employers in the health sector are collectively referred to in these Reasons for Decision as "the Employers."

[3] Collective agreements are currently in place between each of the Unions and the respective Employers whose employees the Unions represent.

[4] Each of the Unions filed an application (SEIU in LRB File No. 119-06, SGEU in LRB File No. 122-06 and CUPE in LRB File No. 123-06) with the Board in late July 2006 alleging that the Employers committed unfair labour practices in violation of ss. 11(1)(a) and (c), 12 and 3, of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*"). The Unions complain that the Employers have negotiated and continue to negotiate directly with employees. The Unions also say that the Employers are unilaterally changing the terms and conditions of employment of employees, without negotiating with the respective Unions, in relation to continuing attempts by the Employers to collect alleged wage overpayments from employees. The Unions also complain that the Employers have failed to negotiate with the Unions regarding several outstanding issues concerning a Joint Job Evaluation Program to standardize the terms and conditions of classifications and positions within the health service provider units in the health care system.

[5] Each of the Unions also filed an application pursuant to s. 5.3 of the *Act* seeking interim relief until the final hearing and determination of the applications, *inter alia*, requiring that the Employers: bargain collectively with the Unions and refrain from negotiating directly with employees respecting the matters complained of; pay to employees all sums that ought to have been paid in relation to negotiated retroactive payments; return to the respective Unions any documents obtained from employees in relation to alleged overpayments; return to employees any monies received by the Employers in relation to the alleged overpayments; refrain from recovering or attempting to recover any alleged overpayments as a result of Joint Job Evaluation reconsideration.

[6] Affidavits from the following individuals were filed in support of the applications for interim relief: Judith Horsman, SEIU vice president; Audrey Yaremy, SGEU health service provider chairperson; Robert Laurie, SEIU national representative; and Michael Keith, CUPE national servicing representative. In reply to the applications for interim relief, affidavits from the following individuals were filed: Francis Schmeichel, SAHO manager of classification and job evaluation; and Seido Tzogoeff, SAHO senior labour relations consultant.

[7] Counsel for each of the represented parties was afforded the opportunity to make oral representations and arguments. We have reviewed all of the applications, affidavits, exhibits, and authorities filed on behalf of the respective parties.

Evidence:

[8] Following is a summary of the essential facts of the situation which are not in serious dispute.

[9] In 1999, the Unions each negotiated a letter of understanding with SAHO (as representative of the Employers) to enter into a Joint Job Evaluation ("JJE") process, which letter of understanding was attached to the then applicable collective agreements. The intent of the process was to standardize the terms and conditions of classifications and positions within the health service provider units in the health care system. The Unions and SAHO set up a steering committee, agreed to terms of reference and struck subcommittees. Then the JJE process began.

[10] In 2002, there was a major reorganization of health care delivery in the province, which included province-wide bargaining by each of the Unions with SAHO. The implementation of the JJE led to the reclassification of many positions within the respective bargaining units represented by the Unions. The Unions and SAHO negotiated a new wage schedule for the new job descriptions, reaching a memorandum of agreement dated October 3, 2003. However, a disagreement arose with respect to the implementation of the agreement, which was not solved until the parties entered into an implementation agreement dated April 5, 2004 (the "Implementation Agreement").

[11] On May 30, 2004, the new rates of pay resulting from the JJE process were initially "rolled out." A reconsideration process had yet to proceed. As a result of reconsideration, the rates of pay of a number of classifications were reduced, while others were increased. For classifications for which rates were reduced, implementation took place on June 25, 2005; for classifications for which rates were increased, implementation occurred on October 2, 2005.

[12] Beginning in June 2005, more or less concurrent with the implementation of the reduced rates for those affected classifications, the Employers began to attempt to reclaim alleged overpayments of salary or wages made to a number of employees. The amount outstanding, according to the Employers is between 4 and 5 million dollars. According to the Unions, the Employers intended to use various methods including deduction from wages otherwise payable to employees and through withholding disability benefits payable to certain employees from the long-term disability plan.

[13] The Employers began meeting with individual employees regarding both the calculation of the alleged overpayments and to obtain memoranda of agreement containing terms for collection of same. Neither advance information respecting these calculations nor notice of the meetings with employees nor copies of the memoranda, was provided to the Unions. It is not disputed that the Unions repeatedly advised SAHO and the Employers that they ought not to communicate directly with employees regarding the alleged overpayments or attempt to recover same without negotiating with the Unions with respect to the amounts that may actually be owing and the method or methods of recovery. The Unions advised the Employers that they disputed the amounts alleged to be owing in many cases. The Unions further advised the Employers

that they ought not to withhold wages payable or disability benefits for recovery of the alleged overpayments. The Unions advised the Employers that they considered such actions by the Employers to be direct negotiation with employees and a failure to recognize the right of employees to bargain through their exclusive bargaining agents and to recognize the Unions as exclusive bargaining agents for their respective members, all in violation of the *Act*.

[14] As a result of complaints from employees, Eric Greene, the director of the Labour Standards Branch of Saskatchewan Labour, sent a letter to the Kelsey Trail Regional Health Authority, copied to SAHO and each of the Unions dated June 23, 2005, suggesting that the deductions may be unlawful. The letter provides, in part, as follows:

> *This is in response to complaints from unionized workers regarding the recovery of wage overpayments as it relates to the recent joint job evaluation and reclassification exercise.*
>
> *I note that under The Labour Standards Act an employer cannot unilaterally deduct overpaid wages from future earnings. Under section 76 of the Act, an employee cannot be required to return to the employer wages that have been paid to him or her.*
> *. . . .*
> *Therefore, by way of a copy of this letter I am inviting the Health Districts (the employers). SAHO and the applicable unions to contact me to discuss the issue. Our initial position is that the agreement to recover wages as proposed may be prohibited by statute regardless of the agreement with the unions.*
> *. . . .*
> *. . .We therefore recommend that no "overpayment" deduction be made until the noted issue is resolved.*

[15] Mr. Greene apparently met with a representative of SAHO a few weeks later and subsequently sent a letter to SAHO dated July 26, 2005, confirming the position of the Labour Standards Branch. The letter provides, in part, as follows:

> *This is further to our meeting of July 20, 2005 and outlines our position on the issue of the deduction of the "over"-payment of wages pursuant to Article 9 of the April 5th 2004 implementation agreement between CUPE, SEIU, SGEU and SAHO.*
>
> *As discussed, it is the position of the Labour Standards Branch that:*

> *1. The overpayment being claimed cannot be unilaterally deducted from the employee's current or future wages. It is irrelevant whether the employee was "entitled" to the payment at the time, because it is the current wage that the employee is being required to return to the employer.*
>
> *2. It is arguable that the "over"-payment can be deducted even with the employee's consent, therefore, if a complaint is filed, the Branch will take the position that a deduction of those monies is not deductible without the issue being resolved judicially.*
> *. . . .*

[16] The Employers suspended further action to collect the alleged overpayments for the balance of 2005 and until approximately May 2006.

[17] In January 2006, the Unions and SAHO concluded provincial negotiations that included agreements to a 2 percent retroactive wage adjustment for the period April 1, 2004 to March 31, 2005 and 2 percent on each of April 1, 2005, April 1, 2006 and April 1, 2007, based on all paid hours. The retroactive pay affected approximately 25,000 employees.

[18] By letter dated May 19, 2006, Mr. Tzogoeff, on behalf of SAHO, advised the Unions once again that it was "the intention of all Saskatchewan Regional Health Authorities and affiliated employers to collect [the JJE] overpayments," and that SAHO had advised them "to develop a uniform method of recovering JJE overpayments." The letter pointed out that the Implementation Agreement provided that overpayments "resulting from incorrect bundling or evaluation would be recovered by employers." The letter also indicated that:

> *As you may be aware the Labour Standards Branch initially had concerns related to recovering the JJE overpayment. However, upon receiving legal advice from the Department of Justice, the Labour Standards Branch has advised SAHO that JJE overpayments can be recovered from employees.*

[19] The letter goes on to state that, to avoid a confrontation with the Labour Standards Branch, recovery would not be made by payroll deduction, but could include other methods. The letter provides, in part, as follows:

> *The Labour Standards Branch has expressed concerns about recovering JJE overpayments from payroll deductions. While SAHO and the Saskatchewan Regional Health Authorities do not necessarily agree with the concerns related to payroll deductions all Saskatchewan Regional Health Authorities and affiliates have agreed that to avoid a dispute with the Labour Standards Branch, the overpayments will not be recovered through payroll deductions. SAHO and the Saskatchewan Regional Health Authorities have identified a number of alternative methods for employees to repay the overpayment including cash, cheques, (lump sum, post dated or a combination thereof) and pre-authorized (automatic withdrawal) payments. Other options such as allowing employees to allocate time in lieu banks or annual vacation credits (provided the employee still receives the minimum annual vacation credits as provided in The Labour Standards Act) towards the debt, may be explored by the employers. If an employer intends to explore or implement options such as the allocation of time in lieu banks or annual vacation credits towards the debt, SAHO has advised that the option must be reviewed and agreed to by SGEU. All of the options referred to in this paragraph also require the written agreement and authorization of the employee affected.*

[20] The letter then describes the calculation that the employers will be using to determine whether there was an overpayment and the amount thereof and the "collection process" that SAHO had recommended the employers use, providing, in part, as follows:

> *1) Send letter to employees advising of overpayment and process for recovery or meet with employees (individual or group meetings) and his/her union rep to discuss the recovery process and provide documentation of the overpayment, including the amount owing and the possible repayment terms and conditions;*
>
> *2) Enter into a written and signed agreement with each individual employee who has agreed to repay the JJE overpayment. The agreement will reference the amount owing and the method(s) of payment;*
>
> *3) Amend T4s based on the Canada Revenue Agency (CRA) advice provided to SAHO, Information System (IS). After the employee files the amended T4s, the employee should receive a refund of the adjusted income tax, CPP and EI. The Canada Revenue Agency has also advised that depending on the length of time to repay, the employees may have to be assessed with a taxable benefit (referencing an interest component) if interest is not paid on the amount owed;*

> *4) For those employees who refuse to enter into a written and signed agreement to repay the JJE overpayments or will not agree to a reasonable payment plan, the [referenced employers] will generate a list of employees refusing to pay. The employer will review and proceed with collection options including grievance/arbitration proceedings.*

[21] Attached to the letter were copies of a memorandum of questions and answers for employees related to the process outlined and template of the letter to be sent to employees. The latter document provides in part that, "based on the above information it has been determined that [the employee has] received an overpayment as a result of incorrect bundling or evaluation."

[22] Mr. Schmeichel, on behalf of SAHO, deposed that, "Reduced reconsidered wage rates were due virtually in every case (if not entirely) to initial bundling or evaluation. . . ."

[23] The Unions met with SAHO on June 19, 2006 and indicated they had a number of outstanding issues that had to be negotiated with respect to the situation, including: whether an overpayment resulted from "incorrect bundling or evaluation" (as per Article 9 of the Implementation Agreement, *supra*); the method of calculation of the alleged overpayments; whether the Employer had lawful authority to withhold a general retroactive wage increase against the alleged overpayments; and, the methods and timing of repayment.

[24] At the meeting, the Unions requested a copy of the alleged opinion of Saskatchewan Justice allowing offsets to be made against payments for retroactive wage increases, but SAHO refused. The Unions also requested information as to the amounts claimed from members. SAHO refused to provide this information, indicating that the Unions required the consent of each employee due to privacy legislation. The Unions demanded that the Employers not withhold retroactive payments. SAHO refused to agree and, according to Ms. Yaremy, made comments suggesting that all retroactive pay or portions thereof might be withheld. The retroactive wage increase payable to employees as a result of economic increases provided for in the respective collective agreements was scheduled to be paid out on July 14, 2006.

[25] Shortly after the meeting, at least the Kelsey Trail Regional Health Authority had sent letters dated June 26, 2006 to certain employees regarding alleged overpayments. The letters unilaterally stipulated the date and time of a meeting to discuss the matter with the particular employee, and stated that a union representative would be in attendance. One example provided to the Board at the hearing attached a draft agreement in the individual employee's name providing for acknowledgment and agreement by both the employee and the union as to the amount owing.

[26] Ms. Yaremy deposed that while SGEU attended at the meetings with the employees, it was solely to be of support to the employee; it was made clear that SGEU did not approve of the process and had not agreed to the Employer approaching employees directly, the contents of the draft agreement, the amounts alleged to be owing or the procedures for repayment.

[27] Following the meeting of June 19, 2006, the Unions sent correspondence to SAHO dated June 27, 2006, indicating their detailed concerns and opposition to the plan developed by SAHO for the Employers. There is no issue that the Unions advised the Employers that they had a number of issues that they asked to negotiate with respect to the situation, including: whether an overpayment resulted from "incorrect bundling or evaluation"; the method of calculation of the alleged overpayments; whether the Employer had lawful authority to withhold a general retroactive wage increase against the alleged overpayments; and, the methods and timing of repayment. According to Ms. Yaremy, SAHO essentially refused to negotiate these matters with the Unions.

[28] By letter to the Unions dated July 4, 2006, SAHO acknowleged that the Unions had raised many issues related to the JJE overpayments recovery, stating, in part, as follows:

> *I can appreciate that there are many questions in the recovery of JJE overpayments, but at the same time I can assure you that the employers will seeking (sic) recovery of owed monies on a case by case basis, depending on the circumstances of the individual employee. Accommodations, where necessary, will be considered and evaluated by each situation.*

[29] The Unions collectively responded by letter of July 5, 2006 requesting a meeting with SAHO to discuss the issues the Unions had identified and specifically ". . . to commence negotiations with respect to the particulars and parameters of the JJE overpayment repayment process."

[30] SAHO responded by letter dated July 10, 2006 stating that its position was that "...all negotiations related to the collection of overpayments were concluded when the parties (The Provider Unions and SAHO) executed the Implementation Agreement dated April 5, 2004."

[31] Ms. Yaremy deposed that the Kelsey Trail Regional Health Authority had unilaterally withheld a portion of the retroactive pay due to certain employees.

[32] As a result of a complaint by the Unions, Mr. Greene of the Labour Standards Branch provided a letter to CUPE, dated July 7, 2006, stating, with respect to the withholding of retroactive pay, that "...if an employee is entitled to a 2% retroactive wage increase and such is withheld from some employees to offset the JJE overpayment, the Branch will consider that to be an unlawful deduction."

[33] Ms. Horsman and Mr. Laurie, on behalf of SEIU, Local 333, deposed that at least the Saskatoon Regional Health Authority and the Heartland Regional Health Authority had also, by the time of the making of the present application, contacted certain employees directly by letter -- the Saskatoon Regional Health Authority sent out some 119 letters. Mr. Laurie deposed that certain of the Employers have alleged that some employees owe amounts in excess of $22,000. The letters to employees sought to have them sign a promissory note with an acceleration clause, an authorization to deduct monies from wages owing and an undertaking to pay legal fees on a solicitor and client basis if the Employer commenced legal action. Saskatoon Regional Health Authority scheduled meetings with individual employees between July 3 and July 14, 2006. Ms. Horsman, who attended the meetings, deposed that the purpose of the meetings was for the Employer to obtain the agreement of the employee concerning the repayment of alleged overpayments.

[34] Mr. Tzogoeff, on behalf of SAHO deposed that, it is "...preferable for health care employers to first explore options for an agreed settlement of an employee's repayment obligation before issuing legal process," but added that, "An order [of the Board] curtailing all communication with employees on the subject of overpayments would, however, have the effect of compelling direct and immediate resort to legal process.…"

[35] Mr. Tzogoeff also deposed to the position of SAHO and the Employers that they have no obligation to negotiate with the Unions in respect to this matter, stating, in part, as follows:

> *Union advice and representation is encouraged if not required throughout the collection process. ...specific terms and conditions relating to the recovery of overpayments are to be discussed and agreed to by employer, employee and union, with any disagreement being referred to grievance arbitration (or potentially court) for resolution.*

Arguments:

[36] Mr. Plaxton, counsel on behalf of SEIU, argued that the Employers have rejected and ignored the right of employees to negotiate with the Employers through their exclusive bargaining agent, and have negotiated or threatened to negotiate directly with individual employees regarding the matters in issue and have unilaterally changed terms and conditions of employment without negotiating with the Union. Counsel submitted that the definitions of "bargaining collectively" and "collective bargaining agreement" in ss. 2(b) and 2(c) of the *Act* are expansive and include the ongoing duty to negotiate at any time "...for the settlement of disputes and grievances of employees covered by the [collective bargaining] agreement," which includes all collateral and subordinate agreements and letters of understanding negotiated between the Employer and the Union "...setting forth the terms and conditions of employment or containing provisions in regard to rates of pay, hours of work or other working conditions of employees." This includes the Implementation Agreement.

[37] Mr. Plaxton asserted that the phrase in Article 9 of the Implementation Agreement with respect to overpayments as a result of "incorrect bundling or evaluation" is contentious, and whether any particular overpayment results from same is open to be

disputed as the Unions have indicated to the Employers. Counsel submitted that the apparent contention of the Employers that the Implementation Agreement gives them the right to make this determination unilaterally and enter into direct negotiations with employees for repayment thereof is untenable and is disputed by the Unions. Matters that may be in issue with respect to any particular employee may include whether the overpayment results from "incorrect bundling or evaluation" or some other reason, the amount owing, the methods of recovery (including unilateral withholding of retroactive pay or disability payments) and terms of repayment. Counsel asserted that JJE reconsideration reduced the wage rates for reasons other than "incorrect bundling or evaluation," as, for example, as a result of a change to a job description.

[38] Counsel submitted that the draft repayment agreements unilaterally prepared by the Employers do not address such matters, for example, as to what happens if an employee leaves employment or dies or becomes disabled before repayment is made in full; as to what happens if an employee defaults on the agreement; what funds the Employers may set off against the amount owing; *force majeure* and the impossibility of repayment.

[39] Mr. Plaxton pointed out that the Unions have sought to negotiate with the Employers with respect to these disputed issues, but their entreaties have been consistently ignored. These issues should properly be addressed through negotiation or, failing success of same, grievance arbitration. Notice to the respective Unions that the Employers intended to proceed in the manner described and an invitation for the Unions to attend the meetings with individual employees is not "negotiation" of a dispute in accordance with the requirements of the *Act*. Instead the Employers communicated directly with employees with respect to obtaining the employees' acknowledgment of the amount owing (which the Employers have unilaterally determined), and have negotiated with employees regarding repayment of the amount. The draft promissory note provided to employees is indicative of the attempt to make a contract directly with the employee. The Employers unilaterally declared the dates and times for meetings with employees without consideration of an employee's days off or vacation and simply hoped that a representative of the appropriate Union might attend. The Employers' refusal to cooperate with the Unions extended even to the point of refusing to provide the Unions

with a copy of the legal opinion which SAHO said it had obtained that allowed it to deduct amounts alleged to be owing from retroactive payments.

[40] Mr. Plaxton submitted that approximately 620 of the 25,000 employees represented by the Unions are affected and are alleged to owe as much as $22,000 or more in any particular case – a significant portion of an employee's annual income. He asserted that the Employers have already "clawed back" $0.5 million of the approximately $4.5 million alleged by them to be owing.

[41] Counsel submitted that the Board ought to issue an interim order restraining the Employers from continuing to communicate or negotiate with employees regarding JJE overpayment recovery, return to the Unions any documents evidencing any agreement or promise to pay obtained from any employee and repay to employees any amounts withheld or offset against retroactive wage payments

[42] In support of these arguments, Mr. Plaxton referred to the following decisions of the Board: *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Dairy Producers Co-operative Ltd.*, (1990), 87 Sask. R. 241 (Sk. C.A.); *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. WaterGroup Companies Inc.*, [1992] 1st Quarter Sask. Labour Rep. 68, LRB File No. 011-92; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Temple Gardens Mineral Spa Inc.*, [2001] Sask. L.R.B.R. 40, LRB File No. 303-00; *Canadian Union of Public Employees v. Del Enterprises Ltd. o/a St. Anne's Christian Centre*, [2004] Sask. L.R.B.R. 156, LRB File Nos. 087-04 to 092-04; *United Food and Commercial Workers, Local 1400 v. D & G Taxi Ltd. o/a Capital Cab 2000*, [2004] Sask. L.R.B.R. 347, LRB File Nos. 244-04, 245-04 & 246-04; *Grain Services Union (ILWU – Canada) v. Saskatchewan Wheat Pool, et al*., [2002] Sask. L.R.B.R. 47, LRB File No. 003-02; *Health Sciences Association of Saskatchewan v. Saskatchewan Association of Health Organizations*, [2002] Sask. L.R.B.R. 378, LRB File Nos. 081-02 & 137-02; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Northern Steel Industries Ltd.*, [2002] Sask. L.R.B.R. 304, LRB File No. 114-02; *Canadian Union of Public Employees, Local 59 v. City of Saskatoon*, [1990] Fall Sask. Labour Rep. 40, LRB File No. 253-89; *United Food and Commercial Workers, Local 1400 v. Saskatoon Co-operative Association Ltd.*, [1990] Winter Sask. Labour Rep. 118, LRB File No. 042-

90; *Service Employees International Union, Local 333 v. St. Joseph's Home*, [1991] Sask. Labour Rep. 64, LRB File No. 005-91; *Saskatoon City Police Association v. Saskatoon Board of Police Commissioners*, [1993] 4th Quarter Sask. Labour Rep. 158, LRB File No. 240-93; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. McGavin Foods Limited*, [1997] Sask L.R.B.R. 210, LRB File No. 173-96; *Saskatoon City Police Association v. Saskatoon Board of Police Commissioners*, [2000] Sask. L.R.B.R. 372, LRB File No. 086-99.

[43] Mr. Barnacle, counsel on behalf of CUPE, made submissions mainly directed to the test applied by the Board with respect to granting interim relief — whether there is an arguable case and the consideration of labour relations harm that will result if the interim relief is not granted compared to the harm that will result if it is granted. He asserted that both arms of the test were satisfied in the present case. He submitted that the status quo to be preserved is that which existed prior to July 14, 2006 when no employees had yet agreed to any deductions and the Employers had not withheld any retroactive wage payments.

[44] Mr. Barnacle also argued that in *Ainscough*, *infra*, the Supreme Court of Canada established that, where employees are represented by a certified bargaining agent and a collective bargaining agreement is in place, there is no room for direct bargaining by an employer with employees concerning terms and conditions of employment and matters negotiated between the employer and the union dealt with in the collective agreement. In that case, speaking for the majority, Laskin, J., stated as follows:

> *I do not think that in the face of the labour relations legislation such as existed at the material time in British Columbia, in the face of the certification of the union, of which the plaintiffs were members, as bargaining agent of a specified unit of employees of the company and in the face of the collective agreement in force between the union and the appellant company, it is possible to speak of individual contracts of employment and to treat the collective agreement as a mere appendage of individual relationships. The majority of this Court, speaking through Judson, J. in Syndicat catholique des employes de magasins de Quebec Inc. v. Compagnie Paquet Ltee., [[1959] S.C.R. 206], at p. 212, said this in a situation where a union was certified for collective bargaining under Quebec labour relations legislation:*

> *There is no room left for private negotiation between employer and employee. Certainly to the extent of the matters covered by the collective agreement, freedom of contract between master and individual servant is abrogated. The collective agreement tells th employer on what terms he must in future conduct his master and servant relations*

[45] In support of his arguments, Mr. Barnacle referred to the following decisions: *Hotel Employees and Restaurant Employees Union, Local 206 v. Chelton Suites Hotel*, [2000] Sask. L.R.B.R. 434, LRB File Nos. 091-00, 110-00, 125-00, 144-00 & 145-00; *Canadian Union of Public Employees v. Del Enterprises Ltd. o/a St. Anne's Christian Centre,* [2004] Sask. L.R.B.R. 156, 087-04, 088-04 090-04, 091-04 & 092-04; *Ainscough v. McGavin Toastmaster Ltd*., [1976] 1 S.C.R. 718; Saskatchewan *Joint Board, Retail, Wholesale and Department Store Union v. O.K. Economy Stores (a Division of Westfair Foods Ltd.)*, [1994] 2nd Quarter Sask. Labour Rep. 131, LRB File No. 039-94.

[46] Mr. Engel, counsel on behalf of SGEU, filed a written brief and copies of certain case authorities which we have reviewed. He limited his submissions to addressing the opinions provided by Mr. Greene of the Labour Standards Branch asserting that any attempt to offset an alleged JJE overpayment against wages, present or retroactive, is unlawful. That point, counsel submitted, is at least arguable. He also addressed the aspect of the balance of labour relations harm.

[47] Mr. Engel argued that all of the issues raised by the Unions with SAHO and the Employers in regard to JJE overpayment recovery are included within the notion of matters that are subject to collective bargaining with the employees' exclusive bargaining agents. Indeed, he said, the Employers claim that their authority to proceed as they have, and as they have said they intend to, arises from an agreement negotiated with the Unions in the first place, the interpretation, meaning and application of which are the subject of a dispute between the parties.

[48] With respect to the balance of labour relations harm, Mr. Engel submitted that the situation was urgent enough and the balance of harm favoured the Unions such that the Board ought to intervene to preserve the status quo. He submitted that the

harm to the Unions and the represented employees was of at least four kinds: employees were being unilaterally forced to cede the right to negotiate disputes with the Employers or access the grievance and arbitration procedure through their bargaining representatives; the Unions are unfairly subject to the misplaced blame of the employees for the Employers' violation of labour standards and wages recovery legislation; when an employer is allowed to ignore its duty to bargain collectively, it has the effect of undermining the status of the union both presently and in future bargaining; and, the employees affected are not high wage earners and will suffer economic hardship from any abrupt undue disruption in cash flow.

[49] In support of his arguments, counsel referred to the following case authorities: *Canadian Union of Public Employees, Local 4617 v. Heinze Institute of Applied Computer Technology Inc*., [2003] Sask. L.R.B.R. 374, LRB File Nos. 122-03, 123-03 & 124-03; *Del Enterprises Ltd*., *supra*; *Graphic Communication Workers of America Union, Local 657 v. Printco Graphics Inc*., [1995] 1st Quarter Sask. Labour Rep. 275, LRB File No. 233-94.

[50] Mr. LeBlanc, counsel on behalf the Employers (limited to those indicated above), filed a written submission and copies of case authorities, which we have reviewed.

[51] Mr. LeBlanc reviewed the contents of the affidavits of Mr. Schmeichel and Mr. Tzogoeff in detail. He submitted that Article 9 of the Implementation Agreement, *supra*, demonstrated that the Unions had committed to allowing the Employers to recover wage overpayments as a result of certain errors in the JJE process. He asserted that Mr. Schmeichel had deposed that he knew of no instance where the overpayment to an employee had occurred for a reason other than as a result of improper bundling or evaluation as referred to in Article 9.

[52] While acknowledging the test used by the Board to determine whether to exercise its discretion to grant interim relief, counsel argued that the Unions had not demonstrated that there was an arguable case. The Employer was not negotiating terms and conditions of employment with employees, but, rather, reasonable terms of a repayment scheme for each employee and it was not mandatory that an employee meet

with his or her employer. Counsel submitted that the burden of proof in an application for interim relief is upon the applicant and, because it is a discretionary remedy, the right to relief must be clearly established. Counsel referred to the decision of the Board in *Athabasca Catering limited Partnership v. United Steelworkers of America, Local 8914*, [1999] Sask. L.R.B.R. 430, LRB File No. 116-99 at 437. Counsel also submitted that the Board has demonstrated that such discretionary power is intended to be preservative as opposed to remedial, citing the decision in *Chelton Suites Hotel*, *supra*.

[53] Mr. LeBlanc asserted that there was no "direct unrepresented interaction" with employees by the Employers and the Employers had encouraged affected employees to seek the advice of the Unions in the letters sent to them. He submitted that the case law supports the argument that an employer is not "bargaining" with an employee regarding terms and conditions of employment when it deals directly with the employee to have the provisions of the collective agreement applied to the employee in a particular way. Counsel referred to the following authorities in support of this argument: *Communications, Energy and Paperworkers Union v. Bell Canada*, [2003] CIRBD No. 1 (C.I.R.B.); *United Food and Commercial Workers, Local 1900 v. Primo Foods Ltd*., [1993] OLRD No. 810 (O.L.R.B.); *Re Progressive Packaging Limited*, [1990] OLRB Rep. May 592 (O.L.R.B.).

[54] Mr. LeBlanc further argued that the matters in issue are within the exclusive jurisdiction of an arbitrator under the collective agreement. Counsel submitted that if the Unions in the present case wish to dispute the amount claimed or the right of recovery regarding any employee they may avail themselves of the grievance and arbitration procedure. Counsel further argued that the Board has no jurisdiction whatsoever to hear a dispute as to the retroactivity calculation by the Employers and submitted that the Board should defer to the arbitration procedure. In support of this argument counsel referred to the following arbitration awards and case authorities: *Service Employees International Union v. Saskatoon District Health Board,* (July 4, 2002, Campbell); *School District No. 39 and International Union of Operating Engineers, Local 963* (2000), 92 L.A.C. (4th) 182 (Dorsey*); United Food and Commercial Workers, Local 1400 v. Western Grocers, a Division of Westfair Foods Ltd*., [1993] 1st Quarter Sask. Labour Rep. 195, LRB File No. 010-93; *Canadian Union of Public Employees, Local 1975 v. University of Regina*, [1994] 3rd Quarter Sask. Labour Rep. 194, LRB File

No. 145-94; *Administrative and Supervisory Personnel Association v. University of Saskatchewan*, [2005] Sask. L.R.B.R. 541, LRB File No.070-05.

[55] Mr. LeBlanc also made an analysis of several cases from the English Courts in the early part of the last century regarding the distinction between the making of a deduction from wages payable to an employee and a recovery, allowance or deduction taken into account as a factor in ascertaining those wages.

[56] Mr. LeBlanc also submitted that the application should be dismissed on account of undue delay between the Employer's advice in May 2006 of its intention to proceed and the making of the applications by the Unions.

[57] Counsel also submitted that the labour relations harm if the interim relief as requested by the Unions were granted favoured the Employers: the Employers would be put in the position of having to pay out further retroactive monies; the grievance and arbitration procedure is the preferred method of resolving the dispute; it would prevent the Employers from at all communicating with the employees; an order directing the Employers to bargain collectively with the Unions would suspend the ability to access the grievance and arbitration procedure or the courts and would alter the position of the Employers at the bargaining table; it would create confusion and false expectations in employees; the government funding for JJE overpayments has already been clawed back.

[58] In reply, Mr. Plaxton argued that, while the issues of whether and how much is owing in particular case are arbitrable, if the Employers would disclose how much is owing and by whom, then the Unions could file grievances if necessary. In the present case the Unions are not asking the Board to open the Implementation Agreement for further negotiation or to adjudicate the terms of repayment, but to require negotiation of the dispute prior to accessing such procedure if that becomes necessary. Counsel submitted that the dispute also includes matters that are not addressed in the Implementation Agreement such as, for example, the terms of repayment, whether interest can be charged, whether solicitor-client costs can be recovered or whether retroactive pay can be withheld. With respect to the assertion of undue delay, Mr. Plaxton submitted that the applications were filed within days of the Employers actually

sending letters out to the employees. With respect to the assertion that the Board lacked jurisdiction to entertain the applications and should defer to collective agreement arbitration, Mr. Plaxton submitted that it is within the jurisdiction of the Board to determine whether the facts constitute an unfair labour practice by the Employers and to determine the remedy therefor. The Unions are not asking the Board to enforce the collective agreement, but rather to enforce the rights of the employees under the *Act* to negotiate disputes with the Employers through their exclusive bargaining agents.

[59] In reply, Mr. Barnacle argued that the Employers had established a particular process for recovery and stated that they would take the matter to arbitration if necessary, but have declined to do so. He asserted that the real issue in the present case is not whether the Employers may recover *bona fide* overpayments, but rather by what process; that is, this is not an attempt by the Unions to renegotiate the Implementation Agreement with respect to the right of recovery, but simply an assertion of the employees' statutory right to negotiate the process of recovery, which is not covered by the Implementation Agreement (which is part of the collective agreement).

[60] In reply, with respect to the issue of Board jurisdiction and deference to arbitration, Mr. Engel submitted that there is a difference between matters relating to the administration or application of a collective agreement — such as the right to recover overpayments -- and the right to negotiate matters in dispute between the parties that are not covered by the collective agreement -- such as the process of that recovery. The recovery of wages is a matter very much more complex than simple debt and the issues surrounding same are simply not covered in the Implementation Agreement. Counsel submitted that the real issue is whether the consensual mid-term bargaining by the parties with respect to the issues involved in the JJE process, including the Implementation Agreement, was complete.

Relevant Statutory Provisions:

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

> *2. In this Act:*
>
> *(b) "bargaining collectively" means negotiating in good faith with a view to the conclusion of a collective bargaining agreement,*

or a renewal or revision of a bargaining agreement, the embodiment in writing or writings of the terms of agreement arrived at in negotiations or required to be inserted in a collective bargaining agreement by this Act, the execution by or on behalf of the parties of such agreement, and the negotiating from time to time for the settlement of disputes and grievances of employees covered by the agreement or represented by a trade union representing the majority of employees in an appropriate unit;

(c) "board" means the Labour Relations Board mentioned in section 4;

. . .

3. Employees have the right to organize in and to form, join or assist trade unions and to bargain collectively through a trade union of their own choosing; and the trade union designated or selected for the purpose of bargaining collectively by the majority of the employees in a unit appropriate for that purpose shall be the exclusive representative of all employees in that unit for the purpose of bargaining collectively.

. . .

5 The board may make orders:

(c) requiring an employer or a trade union representing the majority of employees in an appropriate unit to bargain collectively;

(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) to 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;

. . .

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;

. . .

(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;

. . .

12 No person shall take part in, aid, abet, counsel or procure any unfair labour practice or any violation of this Act.

. . .

18 The board has, for any matter before it, the power:

(e) to receive and accept any evidence and information on oath, affidavit or otherwise that the board in its decision sees fit, whether admissible in a court of law or not;

. . .

42 The board shall exercise such powers and perform such duties as are conferred or imposed on it by this Act, or as may be incidental to the attainment of the objects of this Act including, without limiting the generality of the foregoing, the making of orders requiring compliance with the provisions of this Act, with any regulations made under this Act or with any decision in respect of any matter before the board.

Analysis and Decision:

[62] We have considered the preliminary proposition made by counsel for the Employers that the applications for interim relief ought to be dismissed for undue delay, and have determined that they should not: the time between the Employers' notices to employees and the filing of the applications, as referred to in argument above, is not so long as to be unreasonable or to demonstrate that the matters in issue are not sufficiently urgent.

[63] For the reasons that follow, we have determined that the Board does have the jurisdiction to hear the applications proper. We do not agree that the issues raised by the applicants on the applications proper are within the exclusive purview of a collective agreement arbitrator and it is not for the Board on this application for interim relief to determine whether we ought to defer to the arbitration process. On such complex applications, it is advisable and preferred to make that determination after the presentation of evidence specifically directed to that issue as the parties may deem advisable. This can be done as part of the evidence adduced on the applications proper.

[64] On the present applications for interim relief, it is also not for the Board to decide the issues raised by the applications proper, that is, whether the Employers or any of them have committed an unfair labour practice or practices. The reason for considering detailed affidavit evidence and submissions of counsel is to determine whether the Board ought to grant interim relief pending final hearing and determination of the applications.

[65] The test applied by the Board to make this interim determination has been clearly enunciated and explained by the Board in several decisions over the past ten years or so, since the discretion and power to grant interim relief was added to the *Act* in 1994. In *Hotel Employees and Restaurant Employees Union, Local 206 v. Canadian Hotels Income Properties Real Estate Investment Trust #19 Operations Ltd. (o/a Regina Inn)*, [1999] Sask. L.R.B.R. 190, LRB File No. 131-99, the Board described the test 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.*

[66] Some cases where the Board has since reiterated and confirmed this test include the following: *Chelton Suites Hotel*, *supra*; *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, 291-00 & 292-00; *Saskatchewan Government and General Employees' Union v. Saskatoon Group Home Inc.*, [2000] Sask. L.R.B.R. 22, LRB File Nos. 011-99 to 029-99; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Universal Reel & Recycling Inc*., [2001] Sask. L.R.B.R. 809, LRB File Nos. 226-01, 227-01 & 228-01; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Northern Steel Industries Ltd.*, [2002] Sask. L.R.B.R. 304, LRB File No. 114-02; *Heinze Institute*, *supra*; *Del Enterprises, o/a St. Anne's Christian Centre*, *supra*; *United Food and Commercial Workers, Local 1400 v. D & G Taxi Ltd*., [2004] Sask. L.R.B.R. 347, LRB File Nos. 244-04, 245-04 & 246-04; *Saskatchewan Joint Board, Retail, Wholesale and Department store Union v. Starbucks Coffee Canada*, [2005] Sask. L.R.B.R. 593, LRB File Nos. 183-05, 184-05 & 185-05.

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

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

[68] In our opinion the test for the granting of interim relief has been satisfied by the applicants, that is, they have established that there is a serious case to be tried

and that the balance of labour relations harm that might occur if an order is not granted outweighs the harm that might occur if an order is granted.

[69] We are in agreement with the applicants that the present applications proper raise a serious case. As pointed out, the applications proper do not seek to have the Board determine calculations or issues covered by the Implementation Agreement, but rather to have the Board determine whether the Employers have committed an unfair labour practice or practices by negotiating directly with employees respecting matters not covered by the collective agreement and by failing to negotiate such matters with the employees' exclusive bargaining representatives.

[70] This may include a determination whether, as counsel for the Employers contends, the matters in dispute are simply instances of direct interaction between the Employers and individual employees respecting the administration or application of a collective agreement or, as counsel for the Unions contend, are matters that are not dealt with in the collective agreement and ought to be negotiated before the collective agreement may properly be administered or applied. The serious issues raised with respect to the alleged duty to bargain collectively pursuant to s. 11(1)(c) of the *Act* also include as part of the assertion of the violation of that duty, *inter alia*, whether the matters in dispute, including the method of recovery of overpayments or the legality of collecting solicitor-client costs, come within the ambit of s. 2(b) of the *Act* as "the negotiating from time to time for the settlement of disputes and grievances of employees covered by the [collective] agreement"; and whether the matters in dispute relate to "terms and conditions of employment … or other working conditions of employees."

[71] Accordingly, we are not determining on this application for interim relief whether the Employers ought to be restrained from communicating directly with employees regarding the matter of alleged JJE overpayments and/or ought to be directed to bargain collectively with the Unions, but whether the status quo ought to be preserved as far as possible pending the final hearing and determination of the applications proper.

[72] In our opinion the balance of labour relations harm favours the granting of an order for interim relief. Preservation of the status quo, as far as is presently possible,

will, if the applicants are successful on the final applications, substantially render unnecessary a re-evaluation of the issues that arise in relation to a reassessment by the CCRA (and any other third-party issues that arise as a result) if alleged repayments are collected and then have to be repaid. It is preferable to have to deal with such income tax reassessment and third-party problems only once. And, in the meantime, the individual employees may well have suffered undue and unnecessary economic hardship. The publicly funded or subsidized Employers are in a far better position to weather any negative economic consequences in the interim than are the individual employees. The fact that the Employers may also intend to collect at this time interest on the amounts alleged to be owing and/or solicitor-client costs for recovery only serves to illustrate that the individual employees are less well-equipped to weather negative economic conditions that may occur as a result of not granting interim relief to preserve the status quo than are the Employers if such relief is granted.

[73] We have determined to exercise our discretion to grant interim relief to preserve the status quo pending the final hearing of what are legally and factually complex issues. However, to grant an interim order requiring SAHO and the Employers to bargain collectively with respect to the issues identified in the main applications would be to essentially finally determine those applications: See, *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Tai Wan Pork Inc.*, [2000] Sask. L.R.B.R. 219, LRB File No. 076-00. Accordingly, while we do not intend to so order SAHO and the Employers, they are strongly encouraged to do so.

[74] Accordingly, an Order will issue in accordance with the following concepts:

1. That SAHO and the Employers shall immediately cease all activities and efforts directed to or in relation to the collection of alleged overpayments as a result of the JJE process pursuant to the Implementation Agreement between the Employers and the Unions dated April 5, 2004 including, without limiting the generality of the foregoing, communicating or negotiating with individual employees respecting any matters relating to same;

2. That SAHO and the Employers are prohibited forthwith from acting upon or taking any further steps in relation to any instruments, memoranda or agreements made with or obtained from individual employees in relation to alleged overpayment as a result of the JJE process or collection of same pursuant to the Implementation Agreement including, without limiting the generality of the foregoing, any acknowledgments, memoranda, agreements, promissory notes or other documents or instruments obtained from individual employees and SAHO and the Employers are ordered to return all such documents and instruments to the employees from whom they were obtained, pending the final hearing and determination of the within applications or until further order of the Board;

3. That SAHO and the Employers shall forthwith return or repay to all employees any amounts or other valuable consideration collected from such employees or otherwise obtained by them by any process or method, inclusive of interest and costs in relation to alleged JJE overpayments and including, without limiting the generality of the foregoing, deduction from, set off or withholding against wages, salaries, retroactive wages, salaries or other monies payable to employees pursuant to the collective agreements between the parties, payments or monies payable to employees pursuant to the DIP Plan, or any other monies or benefits payable to such employees for any reason, pending the final hearing and determination of the within applications or until further order of the Board;

4. That SAHO and the Employers shall forthwith advise the Unions of the identity of any and all employees from whom monies have been received or obtained in relation to alleged JJE overpayment or who have provided any acknowledgement, memorandum of agreement or other instrument or document in relation thereto;

5. That should SAHO and the Employers voluntarily and in good faith negotiate with the Unions with respect to the matters identified as being in issue on the within applications, SAHO and the Employers may apply to the Board to amend or vacate this Order before final hearing or determination of the within applications by the Board;

6. That the Board shall remain seized of this matter for the purposes of determining any issues associated with the implementation or interpretation of this Order.

DATED at Regina, Saskatchewan, this **31st** day of **October, 2006**.

LABOUR RELATIONS BOARD

James Seibel,
Chairperson