Labour Relations Board
Saskatchewan

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400 Applicant v. TORA REGINA (TOWER) LIMITED o/a GIANT TIGER, REGINA Respondent, and SHANNON STEVENSON, JOHN WILSON, BRIAN BEASLEY, ASHLEA HUBICK and PEGGY LUMBERJACK, Interested Parties

LRB File No. 026-04; July 4, 2007
Chairperson, James Seibel; Members: Leo Lancaster and John McCormick

For the Applicant: Drew Plaxton
For the Respondent: No one appearing
For the Interested Parties: Gary Semenchuck, Q.C. and Paul Harasen

Certification – Membership – Improper organizing tactics – Interested party employees not led to sign support cards under false pretences – Interested party employees understood significance of and comprehended what they were signing – Obtaining of signatures not contaminated by lack of information, misunderstanding or improper conduct – Union did not use coercive or threatening tactics – Board dismisses requests by interested party employees to nullify or discount their evidence of support.

Certification – Membership – Evidence – Employer improperly interfered with or influenced interested party employees in both seeking to revoke or withdraw evidence of support and in making requests to Board to nullify or discount evidence of support – Employer's manager and agent played important roles in interested party employees seeking to withdraw evidence of support and/or being involved in proceedings before Board.

Evidence – Admissibility – Section 10 of *The Trade Union Act* – Board follows longstanding policy of not considering evidence of revocation or withdrawal of support filed with Board after filing of application for certification.

***The Trade Union Act*, ss. 2(h), 5(a), 5(b), 9 and 10.**

REASONS FOR DECISION

Background:

[1] United Food and Commercial Workers, Local 1400 (the "Union") filed an application with the Board on February 11, 2004, pursuant to ss. 5(a), (b) and (c) of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*") to be designated as the certified

bargaining agent for a unit of employees of Tora Regina (Tower) Limited operating as Giant Tiger, Regina (the "Employer") described as follows:

> "all employees of [the Employer] operating as Giant Tiger in the City of Regina, except the Store Manager."

[2] The Employer operates a department store in Regina offering general merchandise, clothing, housewares, beauty aids and groceries. In its application, the Union estimated there were 58 employees in the proposed bargaining unit. The Employer filed a statement of employment on February 24, 2004 listing 66 persons and taking the stance that the position of "office associate," occupied by Melissa Robbins, ought to be excluded from the bargaining unit pursuant to s. 2(f)(i)(B) of the *Act* on the basis that the office associate regularly acted in a confidential capacity in respect of the Employer's industrial relations. In its reply to the application filed with the Board on February 24, 2004 the Employer did not dispute the appropriateness of the proposed bargaining unit but reiterated that the office associate position ought to be excluded.

[3] By letter dated February 27, 2004, Mr. Semenchuck notified the Board and counsel for each of the Union and the Employer that he represented certain then as yet unidentified employees with concerns about the Union's organizing tactics, alleging that the Union interfered with the decisions of those employees as to whether to support the Union. Mr. Semenchuck requested that the hearing be adjourned to allow time for the collection of evidence to be adduced on behalf of such employees. The Union and Employer had already agreed to an adjournment so it was not necessary to rule on the request.

[4] By letter dated March 4, 2004, counsel for the Union submitted that Mr. Semenchuck's clients ought to apply to the Board for status as parties to the application and file replies in the form of statutory declarations as prescribed by the Regulations to the *Act*. The application was heard by the Executive Officer of the Board on March 12, 2004 pursuant to s. 4(12) of the *Act*. In Reasons for Decision dated March 17, 2004 the Executive Officer of the Board directed the unidentified employees to file replies to the certification application and apply to the panel of the Board hearing the certification application for party status.

[5] Replies by four of the employees – John Wilson, Ashlea Hubick, Brian Beasley and Shannon Stevenson – were filed with the Board on March 31, 2004. A fifth employee, Peggy Lumberjack, was allowed to file a reply after the commencement of the hearing. In each reply, the respective employee declares that the Union "has engaged in unfair and improper organizing tactics, including obtaining signatures on support cards through misrepresentation, undue influence, coercion and intimidation, all of which interfered with [the employee's] ability to make a decision as to whether to support the Union." As relief, each of the four employees requests that the application for certification be dismissed or, alternatively, that a vote be ordered on the representation issue.

[6] The Union took the position at the hearing of the application for certification that the "applications" by the interested employees should be dismissed pursuant to s. 9 of the *Act* as having been made on the advice of or as a result of influence or interference by the Employer or its agent.

[7] At the commencement of the hearing of the certification application by the Board on April 29, 2004 Mr. Plaxton, counsel on behalf of the Union, indicated that the Union agreed to the exclusion of the office associate from the proposed bargaining unit and the deletion of Ms. Robbins from the statement of employment. The Board ordered that the name of Melissa Robbins be removed from the statement of employment. For the purposes of determining the certification application, the number of employees in the proposed bargaining unit is 65. The Union filed purported evidence of support from a majority of the employees in the proposed unit.

[8] The Board heard the certification application and the matters raised by the interested employees on April 29, May 14 and June 3, 2004.

Preliminary Issues:

The Interested Employees as Interested Parties

[9] The employees, Shannon Stevenson, John Wilson, Ashlea Hubick, Brian Beasley and Peggy Lumberjack, were granted status by the Board as Interested Parties to the certification application. The granting of interested party status to persons other

than the original parties to an application is discretionary, but the policy of the Board is to take a liberal, not technical or restrictive, approach to such requests. The granting of interested party status is dependent upon the person requesting same demonstrating that their legal interests may be affected by the outcome of the proceedings. In the present case, such status was granted on the grounds that the requesting employees could be affected in a direct and legally material way by the outcome of the proceedings, even if it might be in a way that is different from that of the original parties.

The Interested Parties as "Applicants"

[10] We have determined that matters raised by the Interested Parties are, in essence, "applications" within the meaning of the *Act* in that they seek to have the Board decline to consider the evidence of support for the Union's application for certification filed by the Union with the application for certification, whether it be their own or that of any other employee, and dismiss the application for certification or alternatively order a vote with respect to the representation issue. Accordingly, the Union is entitled to raise its objection to the "applications" pursuant to s. 9 of the *Act*.

[11] In any event, we are of the opinion that the Board has an overarching responsibility to determine whether the exercise by employees of their rights under s. 3 of the *Act* is tainted by influence or interference by their employer.

Evidence:

[12] With respect to the certification application proper, the Employer did not attend at the hearing and the Union relied upon its application and the purported documentary evidence of employee support filed with the Board. Each of the Interested Parties testified at the hearing on his or her own behalf and Delmar Runns testified at the hearing on behalf of Ms. Stevenson. All testified pursuant to subpoenas issued on April 14, 2004 at the request of their counsel. Four persons testified on behalf of the Union – Greg Eyre, Chris Dennis, Manon Flamon and Brandi Tracksell.

Shannon Stevenson and Delmar Runns

[13] Shannon Stevenson is employed by the Employer in a price look-up position. She testified that she was initially contacted at home by telephone about the

Union's organizing drive by one Manon Flamon, a former employee of the Employer, on February 7, 2004. Ms. Flamon advised Ms. Stevenson that if the Union came in "a lot of things could change for the better for the employees" including work load and hours of work. Ms. Stevenson agreed to meet Ms. Flamon for coffee at a local restaurant later that day.

[14] At the meeting at the restaurant, Ms. Flamon was accompanied by her husband. Ms. Stevenson's father, Delmar Runns, joined the group a little later. Ms. Stevenson explained that her hours had been reduced recently and she had lost her office space that allowed her convenient access to a computer that assisted her in doing her job. She said that Ms. Flamon told her that she believed Ms. Stevenson was the next person that the Employer was looking to fire. Ms. Stevenson said she believed Ms. Flamon. According to Ms. Stevenson, Ms. Flamon's husband told her that if she signed a union card she would be protected by the Union in the event she was fired. When Ms. Flamon then handed Ms. Stevenson a card, Ms. Stevenson said she signed it because she thought that it would protect her from being fired. In her estimation, the meeting lasted perhaps twenty minutes.

[15] Ms. Stevenson said she was upset by the meeting and immediately went to the store, met with the then store manager, Gary Foulkes, and asked him if she was going to be fired. Mr. Foulkes told Ms. Stevenson that he had never heard anything about her work that would be a cause for termination.

[16] Ms. Stevenson explained that her hours had been reduced by eight hours by a Giant Tiger manager from the Winnipeg office, "who assumed [Ms. Stevenson] was not doing [her] job" as a disciplinary measure. However, she said that her hours had since been increased by the new store manager, Kirk Coates, who started approximately at the beginning of April 2004.

[17] In cross-examination, counsel for the Union suggested to Ms. Stevenson that Ms. Flamon had advised her that if the Union came into the workplace management would not be able to punish people as she had been punished, to which Ms. Stevenson replied that Ms. Flamon had said that the matter would be delegated to a union representative who would "go to bat for [her] and represent [her]." Ms. Stevenson

agreed with counsel that the only way for the employees to get that kind of representation was if they supported the Union. However, Ms. Stevenson also maintained that, when she questioned Ms Flamon on the point, Ms. Flamon indicated to Ms. Stevenson that even if she were fired the next day she would be protected if she signed in support of the Union.

[18] Ms. Stevenson agreed with counsel for the Union that she was worried about the Employer learning that she had signed in support of the Union and that she had asked Ms. Flamon about it; Ms. Flamon assured Ms. Stevenson that the fact would remain confidential and that she could not be fired for signing a card. Ms. Stevenson said that she was led to understand that she would be protected from the time that she signed a support card.

[19] Ms. Stevenson testified that sometime after her meeting with Ms. Flamon she and all other employees were required by the Employer to attend a meeting in the employees' lunchroom with one "Cindy" who gave no last name and identified herself as a "professional listener." Cindy asked the group whether they had any problems at work. Some of the persons present told about being contacted by the Union.

[20] Ms. Stevenson took no steps to contact Ms. Flamon and attempt to get her support card back. She said she contacted Mr. Harasen of counsel for the Interested Parties through one Terry Hovanes, a fellow employee who worked in the receiving department. A few days after Ms. Stevenson met with Ms. Flamon, while Ms. Stevenson was standing with a few employees who were talking about revoking support cards, Ms. Hovanes directed Ms. Stevenson to a website that explained the card revocation process but Ms. Stevenson said that by the time she "got around to it" the application for certification had been filed. She said she then went to Ms. Hovanes to see if anything could be done. Ms. Hovanes said she would put Ms. Stevenson in touch with a lawyer representing some of the employees "who signed cards under false pretences." Ms. Hovanes gave Ms. Stevenson Mr. Harasen's business card and Ms. Stevenson assumed that Ms. Hovanes gave Mr. Harasen Ms. Stevenson's name.

[21] When asked in cross-examination whether she asked counsel on behalf of the Interested Parties to act on her behalf in the present proceedings, Ms. Stevenson

stated that she "just assumed they were." She told Mr. Harasen her story over the telephone and he met her on her work break to sign her reply to the application. Ms. Stevenson stated that she had no idea how counsel was being paid but believed that she was not responsible for any part of it.

[22] Mr. Runns is Ms. Stevenson's father. He was present for at least part of the meeting Ms. Stevenson had with Ms. Flamon. However, Mr. Runns had nothing material to add to the evidence having no memory of the matter other the mention of "a union" and "a job."

John Wilson

[23] John Wilson was employed by the Employer as a cashier and in receiving until he voluntarily resigned on April 17, 2004 and moved to Lloydminster.

[24] Mr. Wilson testified that he met with a person named "Chris" (identified at the hearing as Chris Dennis) in the foyer of his apartment building sometime during the last week of January or the first week of February 2004. Mr. Wilson said that Mr. Dennis did not identify himself as being associated with the Union but rather said that he was hired by Giant Tiger to find ways to improve the workplace. Mr. Wilson said he did not believe Mr. Dennis because the Employer did not give out employees' personal contact information. Nonetheless, when Mr. Dennis mentioned the Giant Tiger Winnipeg manager's name, Mr. Wilson decided to cooperate with Mr. Dennis. Mr. Wilson maintained that Mr. Dennis gave him a standard letter-sized sheet of paper and asked him to write out a statement of any concerns he had. Mr. Wilson said he took the sheet upstairs and completed it in the presence of his roommate while Mr. Dennis remained in the building foyer. At the top of the sheet he placed his name, address, telephone number and social insurance number and signed it. When Mr. Wilson gave the sheet back to Mr. Dennis in the foyer, he was told it would be sent to head office in Winnipeg to find ways to change the Regina store.

[25] According to Mr. Wilson, the meeting lasted approximately fifteen minutes. He maintained that he signed no other document. He said he had belonged to a union before and was familiar with a union support card and that the document he

signed was not a union support card. He said he did not intend to sign a union support card at that time. In cross-examination, when shown a standard United Food and Commercial Workers Application for Membership document (which is a recipe-card size) Mr. Wilson said that it was not similar to the document he had signed.

[26] Mr. Wilson said that, when he realized that he may have signed in support of the Union a few days before the statement of employment was taken by the Employer, he felt that he had been misled. He said he then called "someplace to do with labour," although he was unable to say whether it was the Board's office. He said that the female person that he spoke to asked him for his social insurance number and when she confirmed that he had signed a support card for the Union he became angry and hung up.

[27] Mr. Wilson said he then spoke to the store manager, Mr. Foulkes, and told him that the person he had met with had said he was from the Employer's Winnipeg office. Mr. Foulkes said "he could not divulge anything about it," and told Mr. Wilson to talk to "Arlene," a manger from the Winnipeg office or "Pauline," a manager from head office in eastern Canada. When some other employees physically described Mr. Dennis of the Union, Mr. Wilson said he became concerned he had signed a union support card. He then spoke to Ms. Hovanes who told him about the form to take to the Board to get his name "off the list" and offered to see if she could get one for him.

[28] Mr. Wilson confirmed that he had been required to attend a series of three meetings with "Cindy," the "professional listener," who he assumed was from the Employer. The first meeting, which lasted an hour or more, was a few days after he had spoken to Ms. Hovanes. Concerns about the Union were the first matters to come up at the meeting. Mr. Wilson said that the employees present were concerned the store would close if the Union came in. Cindy simply indicated that she would be reporting to management.

[29] After speaking to Ms. Hovanes, Mr. Wilson was contacted by telephone by Mr. Harasen of counsel for the Interested Parties. When he met Mr. Harasen in person for the first time, it was at Mr. Harasen's office and all of the Interested Parties were present. However, Mr. Wilson testified that he did not ask Mr. Harasen's law firm

to act on his behalf nor did he instruct them to bring any application on his behalf. Mr. Wilson did not know who was responsible for paying Mr. Harasen but he did not expect to have to pay anything nor had he been asked to.

Brian Beasley

[30] Brian Beasley is employed by the Employer as morning crew chief. He said Ms. Flamon was a friend of his when she also worked at the store. Mr. Beasley testified that he met with Ms. Flamon and her husband at his apartment on Saturday, February 7, 2004. Although he was in a hurry to take his nephew to a sports session, he said he described his frustrations at work to Ms. Flamon and she told him the Union would be of benefit if it came in. Mr. Beasley claimed that Ms. Flamon told him that the store manager, Mr. Foulkes, had told her that he was going to terminate Mr. Beasley. Mr. Beasley then immediately asked to sign up to support the Union. He said the meeting with Ms. Flamon lasted about an hour.

[31] Mr. Beasley said that he spoke to Mr. Foulkes about the matter the following Monday (February 9, 2004) and that Mr. Foulkes advised Mr. Beasley that he had no intention of letting him go. Mr. Beasley admitted to Mr. Foulkes that he had signed a card in support of the Union and intended to take steps to have it revoked.

[32] In cross-examination, Mr. Beasley maintained that Ms. Flamon misled him into thinking he was about to be fired. However, when asked by counsel for the Union whether he was concerned at the time that he could be fired for signing a support card for the Union, or for no reason at all, Mr. Beasley replied that he liked the protection that he thought the Union could give him against dismissal without cause. He admitted he had had a disagreement with a supervisor in which he felt he had been verbally abused and had asked Ms. Flamon whether the Union could help in such a situation or where the Employer had acted otherwise unjustly or improperly. Mr. Beasley agreed that Ms. Flamon had not “promised” that the Union could do anything but said that it would fight on his behalf.

[33] After speaking to Mr. Foulkes on February 9, 2004 Mr. Beasley attended at the Board’s office the same day to deliver a document purporting to revoke his

support for the Union. However, the document he filed was a "Notification of Cancellation of Membership Card" stating that he "[did] not wish to be represented by or be a member of: Retail, Wholesale and Department Store Union."[1] Mr. Beasley said he received the document from Melissa Robbins after he spoke to her in the employees' lunchroom – she filled it out and he signed it and took it to the Board's office.[2]

[34] Mr. Beasley testified that he met twice with Mr. Semenchuck and Mr. Harasen, counsel for the Interested Parties, who he said were "representing Giant Tiger." He initially got in touch with them through his co-worker Ms. Hovanes. In cross-examination, Mr. Beasley stated that he did not retain or hire Mr. Semenchuck, Mr. Harasen or their law firm to act for him or to bring any application on his behalf. He further stated that he had "no idea how they are being paid, but its not by [him]," and that he had no idea who retained them.

[35] On February 29, 2004, Mr. Beasley was promoted, as a result of which he says he was guaranteed 40 hours of work per week.

Peggy Lumberjack

[36] Peggy Lumberjack has been employed by the Employer since May, 2003 as a head cashier but was on an educational leave of absence from mid-November 2003 to the dates of hearing. She met with Ms. Flamon, who she knew from working at the store, and Brandi Tracksell, a union representative, when they came to her house in early February 2004. The meeting lasted about 30 to 45 minutes.

[37] She said Ms. Tracksell did almost all the talking about the Union. When Ms. Tracksell asked Ms. Lumberjack to sign a union support card Ms. Lumberjack said she told Ms. Tracksell she did not think the Employer needed a union at that time. Nonetheless, Ms. Lumberjack signed a document that she said she did not realize was an application for membership in the Union but rather thought was something "endorsing a vote." Ms. Lumberjack testified that she specifically asked Ms. Tracksell what the

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[1] That union is *not* the applicant Union in this case.

[2] Melissa Robbins is the office associate excluded from the bargaining unit at the request of the Employer and with the agreement of the Union**.** See, *supra***.**

document was before she signed it and that she was told it was “endorsing a vote at the store.” Shown a sample standard blank union membership application document, which is a large recipe card size document printed in duplicate on ordinary quality paper, Ms. Lumberjack, who said she had previously been a member of the Union at another workplace during 2001 and 2002, said she was familiar with the document. Ms. Lumberjack stated that what she signed on February 9, 2004, although somewhat similar, was of cardboard or bristol board, and did not contain some of the same detailed information to be filled in. She maintained that what she signed did not refer to membership in the Union and that if it had she would not have signed it. She said she “probably” read the document then completed it herself, dated it and signed it.

[38] However, in cross-examination, shown such a document, with the title “United Food and Commercial Workers Local 1400 Membership Application” displayed prominently at the top dated February 9, 2004 and purporting to have been signed by her, Ms. Lumberjack admitted her signature and that she was mistaken in her recollection. She said that she did not intend to take membership in the Union. When asked by counsel for the Union whether she knew at the time that it would be used by the Union for an application for certification, Ms. Lumberjack responded that she did but that she thought it would be for a vote. However, in cross-examination, Ms. Lumberjack agreed that some parts of the conversation were “pretty hazy.”

[39] Ms. Lumberjack testified that sometime afterwards she felt like she wanted to withdraw her support for the Union, so she called the present store manager, Mr. Coates, because “she didn’t know who else to call.” Mr. Coates told Ms. Lumberjack he could not discuss it with her, but told her she could talk to the Labour Relations Board. She did not do so because she “was pretty busy,” although she felt the Union had “not been truthful with [her].” She took no steps to attempt to withdraw her signed union support card.

[40] Ms. Lumberjack said that she thought that that was “pretty much the end of [the matter]” until Ms. Hovanes called her and inquired whether she wanted to withdraw her support for the Union. She indicated that she was surprised by the call, because until then Mr. Coates was the only person (outside of the Union) who knew that she had signed a support card. Ms. Hovanes told Ms. Lumberjack to go to the Labour

Relations Board, but to her it was too much trouble, because "it did not matter that much to [her] anymore." Sometime in March, 2004 Ms. Hovanes called her again and left a message with a telephone number for Mr. Harasen, of counsel for the Interested Parties, who Ms. Lumberjack spoke to a couple of times before she was served with a subpoena to attend the hearing.

[41] In cross-examination, asked whether she contacted "the lawyers" or anyone to take action on her behalf, Ms. Lumberjack stated that she did not and confirmed that she did not want to take any action, that she never retained any lawyers, that she never instructed anyone to bring any application for her and that she made no arrangements to pay anyone anything for doing so. Ms. Lumberjack confirmed that "the lawyers" did not mention that they were bringing an application on her behalf or on behalf of anyone else. She said that the meetings with them were more for "information gathering" and that they asked "what [she] could tell them," "whether [she] was happy with [her] membership application," and what had happened in that regard. However, Ms. Lumberjack said she expected those kinds of questions because Ms. Hovanes told her the reason for talking to the lawyers was "because of the Union's application." The second time Ms. Lumberjack spoke with Mr. Harasen was the day before she testified in chief at the hearing. At that time, Mr. Harasen served Ms. Lumberjack with a subpoena to testify in the proceedings before the Board.[3]

[42] Ms. Lumberjack maintained that the lawyers did not explain to her what her role was going to be in the proceedings. She did not learn that they wanted her to sign some documents until the first day of the hearing before the Board. When asked by counsel for the Union whether she understood that she was a party to the proceedings, Ms. Lumberjack responded that she "didn't really know what [she was] doing here." When asked whether she knew what the reply document was that she had signed and that was filed on her behalf with the Board, Ms. Lumberjack responded that she "believed it was more of a statement – just part of being a witness," and that she did not understand that her name would be added to the application. However, she knew that she was "promising" that what was in the document was true.

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[3] Ms. Lumberjack was not among the original three Interested Parties. At the hearing, counsel for the Interested Parties asked for leave to call her to give evidence and agreed to file a reply on her behalf before she would be cross-examined at the reconvening of the hearing.. Her reply was filed the day after the first day of the three day hearing.

[43] Ms. Lumberjack indicated that had Ms. Hovanes not contacted her she would not be involved in the proceedings before the Board.

Ashlea Hubick

[44] Ashlea Hubick is employed by the Employer as a cashier and sometimes in the fashion department and, most recently, in receiving. It is her first job. She testified that two persons from the Union came to see her at her house one afternoon in early February 2004. At the hearing, she positively identified one of the persons as Chris Dennis and thought that the other resembled Brandi Tracksell. Only one person came into the house and the other stood outside the door. The meeting lasted 15 to 20 minutes.

[45] According to Ms. Hubick, they explained to her that they wanted her to sign a card "to get the Union into the store" and that it would be confidential. When she asked them what the Union was for, they said it would bring better pay and time off, a pension plan and would increase productivity. When she asked what would happen if she did not sign, she said she was told she could get fired because the people who want the union would find out and get her into trouble. She said she signed a support card because she did not want to take the chance of being fired. In cross-examination by counsel for the Union, Ms. Hubick agreed that that did not make sense given that they assured her it was confidential but then added that she had forgotten that they said that.

[46] Later that day, Ms. Hubick spoke to her father who she said indicated to her that all the part-time people at the store could be fired, so she was satisfied with her decision to sign a support card.

[47] A few days later, Ms. Hubick was called to the store manager's office regarding a personal matter and was introduced to one Ms. Richards who she understood to be a manager from the Employer's district office. After Ms. Hubick left the office to return to work one of her co-workers (she did not indicate who) said there was a piece of paper in the staff room that she should read in case the Union approached her.

She said the document, which did not indicate who produced it, warned employees about what the Union might do to make employees sign support cards.

[48] Ms. Hubick said she subsequently talked to the head cashier, Dorothy Bilyk, about having signed a union support card and was told that she should speak to Mr. Foulkes. She went back up to the office and told Mr. Foulkes and Ms. Richards that she had signed a card in support of the Union further explaining that she only did so because she was afraid of being fired but no longer wanted "to be part of it." Mr. Foulkes advised Ms. Hubick that he knew "someone who might be able to help [her]," adding that because he was in management he could not give her the name but he would get them to call her. Later Ms. Hubick's aunt, who also works at the store in the receiving department, told Ms. Hubick to call Ms. Hovanes. Ms. Hovanes called Ms. Hubick two days later and Ms. Hubick said to her, "I heard you wanted to talk to me." Ms. Hovanes responded "Yeah, I wanted to make sure you were not threatened," and indicated that she had a form for Ms. Hubick to use if she wanted to withdraw her support for the union. Ms. Hovanes gave Ms. Hubick the form and Ms. Hubick sent it to the Board.

[49] Sometime later, Ms. Hubick said, Ms. Hovanes asked her whether she was interested in talking to a lawyer and gave her Mr. Harasen's telephone number. Ms. Hubick related her story to him over the phone. When asked in cross-examination whether she had ever retained or hired a lawyer for these proceedings Ms. Hubick said "not personally." She confirmed that she had not instructed or authorized a lawyer to bring any application for her or to ask the Board for any order on her behalf. She confirmed that she believed that Ms. Hovanes was "taking care of everything." When asked if she knew what the proceedings were about, Ms. Hubick responded "not really." When asked whether she knew why the Union was at the proceedings or what it was asking for, Ms. Hubick responded "No." When asked whether she was requesting the Board to dismiss any application or order a vote, Ms. Hubick responded "No." Ms. Hubick confirmed that she had not been asked to pay any legal fees nor had she made any arrangements to do so and said that the lawyers and Ms. Hovanes told her that it was "*pro bono* for [her]."

[50] Ms. Hubick testified that in the few weeks before the hearing she was trained for the fashion and receiving departments under Ms. Hovanes.

Greg Eyre

[51] Greg Eyre has been a representative of the Union for 17 years. He co-ordinates organizing activities in the province including the drive at the Giant Tiger store in Regina. Mr. Eyre assists with organizing, as he did in the present case, and the Union's organizers report to Mr. Eyre on a daily basis.

[52] The drive to organize Giant Tiger employees in Regina started in late January 2004 with the compilation of a list of employees. The campaign then slowed temporarily as the Union used most of its resources on a drive to organize the employees of another employer in a different part of the province. Organizing began again in earnest near the end of the first week in February 2004.

[53] In the drive in the present case, the Union employed the services of Chris Dennis, a representative of the national union seconded to the Saskatchewan local for eighteen months and Brandi Tracksell, a special program union representative ("SPUR") associated with a program sponsored by the national and international union to train representatives. In addition, after offering to assist the Union with garnering support, Manon Flamon, a former employee of the Employer, was paid on a per support card basis to sign up employees.

[54] Mr. Eyre testified as to the usual procedure followed by union representatives when conducting calls on employees. There is no formal training or manual on how to organize and new organizers learn on the job by accompanying more experienced organizers. The representative identifies himself or herself and often, but not invariably, offers a business card. He or she then attempts to convince the prospective member of the benefits to be gained by having the Union in the workplace, answers any questions as well they can and asks that the prospect sign an application for membership card to be used to obtain certification of the Union. Usually, this includes an explanation that, if the Union can file support cards from more than fifty per cent of the employees, certification will probably be granted automatically. Mr. Eyre

testified that, as a practical matter, there is no advantage to be gained by a union representative "playing games" or trying to trick, threaten or intimidate prospective members, not only because it is bad for the Union's reputation, but primarily because after certification it is critical that the Union retain the trust and confidence of the employees so that it can bargain a favourable first collective agreement – to employ questionable tactics to obtain initial support would undermine necessary longer-term support.

[55] Mr. Eyre assisted Mr. Dennis for a day and a half as Mr. Dennis was not familiar with Regina; however, other than for one call, Mr. Eyre remained in the car and did not meet the prospective members on the calls that Mr. Dennis made. With respect to Mr. Wilson, Mr. Eyre accompanied Mr. Dennis to Mr. Wilson's apartment building but remained in the car throughout the call, which he estimated lasted approximately ten minutes. Mr. Dennis returned to the car with a completed and signed standard union application for membership card, which is approximately the size of a large recipe card. Mr. Eyre testified that the Union does not presently, nor has it used during his time with the Union, any form resembling a letter-size sheet of paper for employee organizing purposes.

[56] With respect to Ms. Hubick, Mr. Eyre testified that he accompanied Mr. Dennis to Ms. Hubick's residence but remained in the car throughout the call. Ms. Tracksell was not present with them on the call and was actually in North Battleford that day working on a different organizing drive. The meeting lasted ten or fifteen minutes and Mr. Dennis returned with a completed and signed union application for membership card.

Chris Dennis

[57] Chris Dennis is a representative of the national union. Prior to that he was a shop steward for over five years in the workplace of his former employment in Alberta. He has assisted the Union with about ten organizing campaigns, including the one that is the subject of the present case.

[58] The campaign in the present case lasted approximately ten days before the Union applied for certification. The organizers worked from a list of employees with contact information compiled by one of the employees. Additional information was obtained from the telephone directory, internet sources and other employees.

[59] Mr. Dennis said he met Ms. Flamon, a former supervisor at Giant Tiger in Regina, about halfway through the organizing drive. Her name was on the employee list as a terminated employee. She offered to help with the organizing. Mr. Dennis testified that he met with Ms. Flamon and her husband and they spoke about what she could and could not say when speaking to prospective members including specifically that, while she should not make promises about anything, whether an employee signed in support of the Union was kept confidential and that an employee could not be terminated or discriminated against for supporting the Union. Mr. Dennis testified that he rehearsed the latter statement with Ms. Flamon. He said he also explained the benefits that the Union attempts to obtain including job security and said that it was acceptable to state that the Union wanted to obtain wage rates comparable to industry standards. Their meeting lasted approximately two hours.

[60] With respect to Mr. Wilson, Mr. Dennis testified that he met with him on February 9, 2004. Although Mr. Eyre accompanied Mr. Dennis, Mr. Eyre remained in the vehicle. Mr. Wilson admitted Mr. Dennis to the apartment building and they spoke in the foyer. Mr. Dennis testified that he introduced himself to Mr. Wilson and explained the benefits of being a member of the Union. Mr. Wilson stated that he thought the Employer was too small for a union to be of benefit; Mr. Dennis explained that the Union represented many smaller employers and cited examples. He said that Mr. Wilson appeared satisfied. He asked Mr. Wilson to complete and sign a standard union application for membership card. Mr. Wilson took the card from him. Mr. Dennis waited in the foyer while Mr. Wilson went upstairs with the card to ascertain his postal code. Mr. Wilson returned with the completed card. Mr. Dennis accepted the card and left. He estimated the meeting lasted ten minutes. Mr. Dennis was adamant that he gave no other documents to Mr. Wilson and that he did not ask Mr. Wilson to write down any concerns he had about the workplace. Mr. Dennis testified that he specifically recalled the meeting with Mr. Wilson because it took place in the building foyer and because he had had to go back two or three times until he found Mr. Wilson at home.

[61] With respect to Ms. Hubick, Mr. Dennis testified that he met with her at her residence by himself while Mr. Eyre remained in the car. He said he introduced himself and explained that a group of employees at Giant Tiger wanted to have the Union come into the workplace. He explained the benefits of belonging to the Union and asked Ms. Hubick if she had any questions and whether she would sign an application for membership card. Mr. Dennis testified that Ms. Hubick asked him whether she could be fired if she signed and he replied that it was illegal in Saskatchewan for an employer to terminate or discriminate against someone for that; he said that to make a statement to that effect is part of his regular routine when speaking with prospective members. Mr. Dennis said that if Ms. Hubick signed in support of the Union it would be held in strict confidence from the Employer and even from her co-workers and would only be revealed to the Labour Relations Board. Mr. Dennis said that Ms. Hubick appeared to understand what he said. Mr. Dennis was adamant that he said nothing to Ms. Hubick to the effect that she could be fired if she did not sign.

Manon Flamon

[62] Manon Flamon is a former supervisor of the seasonal department at Giant Tiger in Regina and worked until January 19, 2004 when she was terminated. She was previously a member of the Union and a shop steward at a former workplace.

[63] Ms. Flamon testified that she first became aware of the Union's organizing efforts at Giant Tiger in Regina on February 5, 2004 when Chris Dennis called on her. She offered to help with the organizing effort and made an arrangement to be remunerated on a per signed card basis for those support cards she obtained. Mr. Dennis gave her instructions about what she could say to prospective members and she attended on some calls with Ms. Tracksell before conducting any on her own. Some of the topics covered with Ms. Flamon by Mr. Dennis included the benefits of union membership, job security, seniority and what to do if she encountered verbal abuse.

[64] Ms. Flamon testified that she advised prospective members that the signing of the application for membership card meant that they were becoming part of

the Union and that the Union had to obtain the support of fifty-one per cent of the employees before it could make the application to unionize the workplace.

[65] With respect to Ms. Lumberjack, Ms. Flamon testified that she accompanied Ms. Tracksell on the call. She herself talked to Ms. Lumberjack mostly about personal topics, while Ms. Tracksell did the talking about the Union. She said that Ms. Lumberjack asked no questions of Ms. Tracksell, but stated that she was not sure whether she would be returning to work at Giant Tiger after her education leave of absence expired. Ms. Lumberjack completed the support card herself. Ms. Flamon did not recall there being any discussion of any kind about a vote.

[66] With respect to Mr. Beasley, Ms. Flamon testified that she met with him at his home accompanied by her husband; Mr. Beasley's girlfriend was also present. They spoke for approximately 45 minutes. Mr. Beasley described his problems at work including his perception that he was mistreated by his supervisor and subjected to verbal abuse. She said that Mr. Beasley's main concern was whether other people would find out if he signed in support of the Union and whether he could be fired for doing so. Ms. Flamon said they discussed that the information would be confidential. When it was put to her that Mr. Beasley had testified to the effect that she had told him he was going to be fired and that if he signed in support of the Union he would be protected, Ms. Flamon responded that she told Mr. Beasley that if he signed and the Union came into the workplace the Employer would have to have a proper reason to fire him. Ms. Flamon denied that she told Mr. Beasley he was going to be or was about to be fired and said that she had no such knowledge.

[67] When asked whether she had told Mr. Beasley that there would be a vote of the employees as to whether the Union would be allowed in, Ms. Flamon's recollection was that she told him that the employees would vote for a local representative but not with respect to whether the workplace would be unionized. Ms. Flamon testified that Mr. Beasley's girlfriend said that she belonged to a union and she advised Mr. Beasley sign a support card.

[68] With respect to Ms. Stevenson, Ms. Flamon testified that she knew her from work. She arranged to meet with Ms. Stevenson at a local restaurant. Ms. Flamon

was accompanied by her husband and an older gentleman and a child known to Ms. Stevenson arrived sometime later. The meeting lasted 20 to 30 minutes.

[69] Ms. Flamon said that Ms. Stevenson expressed specific concerns about conditions at work including the fact that her hours of work were reduced and she was moved from the supervisor's office to a place in the receiving department. Ms. Flamon said she told Ms. Stevenson she could probably get her hours back if the Union was in the workplace but made no promise to that effect if Ms. Stevenson signed a support card. Ms. Flamon said that Ms. Stevenson was concerned about it being known whether she signed in support of the Union and that she could be fired for doing so. Ms. Flamon said that she explained that the fact was confidential unless Ms. Stevenson chose to disclose it. Ms. Flamon's husband explained that he belonged to a union and described some of the benefits he derived from it. Ms. Flamon said she told Ms. Stevenson that the Union had to have the support of at least fifty-one per cent of the employees before applying for certification; Ms. Stevenson asked no questions about the matter nor did she ask any questions about the support card, which she completed herself. Ms. Flamon denied that she said anything to Ms. Stevenson to the effect that she might be fired and said that Ms. Stevenson did not appear shocked or upset at any time.

Brandi Tracksell

[70] Brandi Tracksell has been on leave from her employment with another employer organized by the Union on a training program through the national union referred to as SPUR. She has taken the Union's shop steward training and attended a course in organizing put on by the Prairie Organizing Institute, which included instruction as to what one could and could not properly say to prospective union members when organizing. She assisted the Union with two other organizing drives before helping with the drive at the Employer. Ms. Tracksell said that her training included the admonition not to promise anything in exchange for the signing of a support card. When she took Ms. Flamon on some calls, she provided her with the same instruction. Ms. Tracksell testified that she tells prospective members that the signing of a support card is absolutely confidential and is used to get the Union into the workplace.

[71] With respect to Ms. Lumberjack, Ms. Tracksell testified that she met with her accompanied by Ms. Flamon. Although the meeting lasted 30 to 40 minutes, Ms. Tracksell estimated that only five to ten minutes was about union matters and the rest of the time Ms. Lumberjack and Ms. Flamon were engaged in personal conversation. Ms. Tracksell said she asked Ms. Lumberjack whether she was supportive of a union in the workplace and she said she would be. When Ms. Tracksell asked Ms. Lumberjack whether she would be willing to sign a membership card, Ms. Lumberjack asked what signing the card meant. Ms. Tracksell said she responded that she would become a member of the Union and would show support for the Union in the workplace. Ms. Tracksell denied that there was any mention of a vote for any purpose. When Ms. Lumberjack expressed concern about union dues, Ms. Tracksell said she explained that they were tax deductible and that they would not be collected until the Union had obtained a first contract.

[72] With respect to Ms. Hubick, Ms. Tracksell testified that she had no contact with her.

Rebuttal Evidence

[73] No rebuttal evidence was called on behalf of the Interested Parties.

Arguments:

The Interested Parties

[74] Mr. Semenchuck, purported counsel on behalf of the Interested Parties, argued that the application for certification should be dismissed because of misconduct on the part of the Union in gathering evidence of support and, as a result, the Board ought not to accept the purported support evidence of the Interested Parties or indeed of any of the employees and the application for certification should be dismissed. The alleged behaviour he complained of was: telling employees that they were about to lose their jobs and that signing with the Union could prevent that happening; telling an employee that failing to sign a support card could lead to retribution by union supporters; and misrepresenting to employees the nature and effect of the document they were signing. He filed a written brief which we have reviewed.

[75] Counsel asserted that the evidence of the Interested Parties was fairly consistent. Specifically, with respect to Ms. Stevenson, he said the Board should prefer her evidence and that of the other Interested Parties because it would be more likely that they would have a true indelible recollection of what took place during the meetings with union representatives, as it was their only meeting, whereas for the representatives it was one of many meetings. Mr. Semenchuck submitted that, by telling Ms. Stevenson that she could get her former work hours back if the Union got in, Ms. Flamon had improperly promised Ms. Stevenson benefits that the Union could not guarantee it would deliver.

[76] With respect to Mr. Wilson, Mr. Semenchuck maintained that he did not sign a union support card but a letter-sized sheet of paper addressing his concerns in the workplace. He submitted that Mr. Dennis had told Mr. Wilson that he was signing a document outlining his concerns with the workplace and that the document would be provided to the Employer. Otherwise, he agreed that the description of their meeting by both Mr. Wilson and Mr. Dennis was relatively consistent.

[77] With respect to Mr. Beasley, Mr. Semenchuck argued that Mr. Beasley's version of the meeting should be preferred over that of Ms. Flamon. The fact that she told Mr. Beasley he was about to be fired was fundamental to his signing a support card and such statements ought not to be countenanced. He said that, with respect to Mr. Beasley and Ms. Hubick, the benefit of any doubt should go to the employee.

[78] With respect to Ms. Lumberjack, Mr. Semenchuck submitted that Ms. Tracksell told her that signing the support card was endorsing a vote on whether the Union would come into the workplace.

[79] Mr. Semenchuck argued that there was no evidence that any of the Interested Parties were interfered with or improperly influenced by the Employer. He submitted that to allege same was tantamount to alleging that they had agreed to lie under oath. While their evidence may have varied from that of union witnesses with respect to some particulars, none of them wavered in their testimony that was critical of

the Union's organizing tactics. Accordingly, the Board ought not to accept the Union's allegation of interference pursuant to s. 9 of the *Act*.

[80] Mr. Semenchuck also submitted that the Interested Parties were not "applicants" per se but were simply testifying and to call into question the evidence of alleged support for the Union.

[81] In support of his arguments on this issue, counsel referred to the decisions of the Board in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Western Automotive Rebuilders Ltd.*, [1993] 1st Quarter Sask. Labour Rep. 156, LRB File Nos. 239-92 & 263-92, and *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Custom Built Ag Industries Ltd*., [1998] Sask. L.R.B.R. 662, LRB File No. 112-98.

The Union

[82] Mr. Plaxton, counsel on behalf of the Union, argued that this was an obvious case of employer interference. While the evidence of same may not be direct, it was nonetheless compelling. Most of the Interested Parties had direct contact with the store manager and engaged him in discussion about their support evidence. Mr. Plaxton submitted that the circumstances under which the Interested Parties came to be at the hearing constituted an abuse of process and that the real so-called interested party was Ms. Hovanes who apparently arranged for the Interested Parties to meet with Mr. Semenchuck's firm. Mr. Plaxton pointed out that each of the Interested Parties testified that they had not retained counsel nor asked for any application to be filed on their behalf. They were "propped up," and Ms. Hovanes, acting on behalf of the Employer, was the one behind their attendance at the Board. Counsel said that the failure to call Ms. Hovanes to testify is "troubling" because she appears to be the orchestrator of the Interested Parties' testifying before the Board. None of the five Interested Parties made any real efforts to withdraw or get their support cards back. Apparently, the store manager was the only person outside of the Union's representatives who knew they had signed cards – that is obviously how and why they were then contacted by Ms. Hovanes.

[83] In addition, the employees were required to attend "captive audience meetings" with a "professional listener" at which the matter of the Union's drive was discussed.

[84] Mr. Plaxton submitted that the Board ought to give a liberal interpretation to the term "application" in s. 9 of the *Act* to encompass the replies filed by the Interested Parties – they in fact constitute applications for relief in the nature of withdrawal of their evidence of support. In any event, counsel argued that the Board's interest in controlling its process and preventing an abuse of that process surmounts the Union's allegation of interference pursuant to s. 9 of the *Act*.

[85] Counsel submitted that the Employer has the real control over the Interested Parties and their evidence – in essence, their applications are applications by the Employer.

[86] With respect to Mr. Wilson, Mr. Plaxton pointed out that Ms. Hovanes directed him to the purported counsel for the Interested Parties. He argued that if the Board finds that Mr. Wilson did sign a application for membership in the Union then his evidence as to what occurred during his meeting with Mr. Dennis is fantastical because it simply does not accord with his actions while Mr. Dennis' version of events is consistent with what Mr. Wilson actually did. In addition, counsel submitted that the Board would not have asked Mr. Wilson for his social insurance number – it is not the practice at the Board.

[87] With respect to Ms. Stevenson, Mr. Plaxton pointed out that she testified that after she spoke to the store manager she was returned to her former working conditions and received a raise later in the month and that Ms. Hovanes directed her to purported counsel for the Interested Parties.

[88] With respect to Mr. Beasley, Mr. Plaxton pointed out that he testified that after he spoke to the store manager he was contacted by Ms. Hovanes and he obtained a revocation form to attempt to withdraw his support for the Union from Ms. Robbins who the parties agree occupies a position excluded from the proposed bargaining unit.

[89] With respect to Ms. Lumberjack, Mr. Plaxton submitted that it was clear that she knew what a union support card looked like and she signed a card despite the fact that she denied doing so or intending to do so – the card clearly says “Membership Application.” Furthermore, after Ms. Lumberjack spoke to the store manager she was then “magically” contacted by Ms. Hovanes who discussed how to get her support card back; however, Ms. Lumberjack made no attempt to do so.

[90] With respect to Ms. Hubick, counsel pointed out that she spoke to both the store manager and his superior, Ms. Richards, and the manager told Ms. Hubick he knew someone who could help her. A short while later Ms. Hovanes contacted Ms. Hubick through her aunt. Counsel suggested that Ms. Hubick was either wrong in her testimony or misunderstood what Mr. Dennis told her. There is no advantage in union representatives making misrepresentations to prospective members because it will weaken the Union’s support later on.

[91] Mr. Plaxton argued that the Interested parties are mere nominal applicants for Ms. Hovanes and the Employer. All of them were directed to Mr. Semenchuck or Mr. Harasen by Ms. Hovanes or were contacted by Mr. Semenchuck or Mr. Harasen after speaking to the store manager. None of them retained said counsel to do anything on their behalf and none of them expects to pay anything for counsel’s services. Indeed, they were subpoenaed to testify with respect to their alleged own proceedings. None of the Interested Parties saw themselves as “making an application” for the Board to do anything for them and they did not seem to really understand the proceedings. Someone arranged for their participation by way of filing replies that they really did not understand. Someone made an indirect arrangement whereby they unwittingly made their applications.

[92] Counsel submitted that the requests by the Interested Parties to negate their evidence of support for the Union should be dismissed on several grounds: the applications were not made or understood by them; they did not ask that the applications be made; the applications were made as a result of interference by the Employer and the Board should exercise its discretion under s. 9 of the *Act*; the applications are an abuse of the Board’s process.

[93] In support of his arguments, counsel referred to the following decisions of the Board, many of which concern employer interference in rescission applications: *Mandziak v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Remai Investment Co. Ltd*., [1987] Dec. Sask. Labour Rep. 35, LRB File No. 162-87; *Rowe v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union and Canadian Linen and Uniform Service Co*., [2001] Sask. L.R.B.R. 760, LRB File No. 104-01; *Gabriel v. United Food and Commercial Workers, Local 1400 and Saskatchewan Science Centre*, [1997] Sask. L.R.B.R. 232, LRB File No. 345-96; *United Food and Commercial Workers, Local 1400 v. Remai Investment Co. Ltd. and Olson*, [1995] 1st Quarter Sask. Labour Rep. 289, LRB File Nos. 171-94 & 177-94; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Remai Investment Co. Ltd., o/a Imperial 400 Motel*, [1997] Sask. L.R.B.R. 303, LRB File Nos. 014-97 & 019-97; *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Western Automotive Rebuilders Ltd.* and *Dudra, et al. v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union*, [1993] 1st Quarter Sask. Labour Rep. 156, LRB File Nos. 239-92 & 263-92; *National Automobile , Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) v. Saskatchewan Indian Gaming Authority Inc.*, [1999] Sask. L.R.B.R. 625, LRB File No. 122-99.

Reply on behalf of the Interested Parties

[94] Mr. Semenchuck argued that the evidence did not support the allegation of interference by the Employer. Ms. Hovanes is an employee and not a member of management. Mr. Semenchuck submitted that no adverse inference should be drawn from her failure to testify because it would have made no difference to the testimony given by the Interested Parties.

Statutory Provisions:

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

> *2 In this Act:*
>
> *(h) "employer's agent" means:*
>
> *(i) a person or association acting on behalf of an employer;*

5 The board may make orders:

(a) determining whether the appropriate unit of employees for the purpose of bargaining collectively shall be an employer unit, craft unit, plant unit or a subdivision thereof or some other unit;

(b) determining what trade union, if any, represents a majority of employees in an appropriate unit of employees, but no order under this clause shall be made in respect of an application made within a period of six months from the date of the dismissal of an application for certification by the same trade union in respect of the same or a substantially similar unit of employees, unless the board, on the application of that trade union, considers it advisable to abridge that period;

9 The board may reject or dismiss any application made to it by an employee or employees where it is satisfied that the application is made in whole or in part on the advice of, or as a result of influence of or interference or intimidation by, the employer or employer's agent.

10 Where an application is made to the board for an order under clause 5(a) or (b), the board may, in its absolute discretion, reject any evidence or information tendered or submitted to it concerning any fact, event, matter or thing transpiring, or occurring after the date on which such application is filed with the board in accordance with the regulations of the board.

Analysis and Decision:

[96] The issue is whether the Union has filed valid evidence of majority support for an application for certification pursuant to ss. 5(a) and (b) of the *Act*. The sub-issues are: (a) whether purported evidence of support for the application obtained from the Interested Parties, or any of them, ought to be rejected at their request because it was obtained by the Union through the alleged use of improper organizing tactics; (b) whether the requests by the Interested Parties, or any of them, to exclude their evidence of support ought to be dismissed because of alleged improper employer interference pursuant to s. 9 of the *Act*; (c) whether the Board should exercise its discretion pursuant to s. 10 of the *Act* to reject evidence of withdrawal or revocation of support for the Union

filed after the date of the filing of the application for certification or for any other reason; and, (d) whether the application for certification should be granted or dismissed.

[97] The following findings of fact, conclusions of law and resolutions regarding credibility are based upon review and consideration of the evidence adduced, observation of the demeanor of the witnesses and consideration of the arguments made and briefs filed by counsel with consideration given for reasonable probability. Where witnesses have testified in contradiction to the findings in these Reasons for Decision, we have discredited their testimony as either being in conflict with credited documentary or testimonial evidence or because it was inherently incredible and unworthy of belief.

(a) Whether purported evidence of support for the application of any of the Interested Parties ought to be rejected because of alleged use of improper organizing tactics

[98] We shall deal with the issue as to whether purported evidence of support for the application of the Interested Parties ought to be rejected because of alleged use of improper organizing tactics, apart from the issues arising under ss. 9 and 10 of the *Act*.

[99] In our opinion, none of the Interested Parties adduced sufficient evidence or any evidence at all of any improper conduct by union organizers sufficient to lead us to reject evidence of support for the certification application of any of the Interested Parties or at all

[100] Pursuant to s. 3 of the *Act* it is a fundamental right of employees to organize in a trade union of their own choosing. The Board has always jealously guarded this right. In *International Union of Operating Engineers, Hoisting, Portable and Stationary v. K.A.C.R. (A Joint Venture)*, [1984] May Sask. Labour Rep. 33, LRB File No. 275-83, the Board observed as follows at 35:

> *The purpose of the Board's certification procedure is to ensure the protection of the fundamental rights of employees to freely organize in and to form, join, or assist trade unions of their own choosing. If the Board believes that the employees' free choice has been affected by interference, restraint, intimidation, threats, coercion or other improprieties on the part of the union seeking*

> *their support, it may disregard the evidence of support, or exercise its discretion under section 6 of The Trade Union Act and order a representation vote.*

[101] In *Western Automotive Rebuilders*, *supra*, certain of the employees filed an unfair labour practice application against the union under s. 11(2)(a) of the *Act* in connection with alleged impropriety during the organizing drive. The Board interpreted the concept of "interference" in that provision as follows, at 161:

> *It is our conclusion that the concept of "interference" in section 11(2)(a) must be broad enough to include conduct on the part of the trade union which, while not coercive or intimidating, is improper in some other way. Willful misrepresentation which is not coercive would, in our view, constitute an illustration of this. . . . The next phrase in section 11(2)(a) – "with a view to encouraging or discouraging membership" – indicates that the intention of the section is to prohibit conduct which is undertaken with a conscious purpose, and does not catch conduct which is innocent of such calculation.*

[102] At 162, the Board commented further with respect to the applicable principle, as follows:

> *It is clearly important for the Board to be alert to the possibility that the signature of an employee which is used to support an application for certification has been obtained under circumstances which impair the ability of that employee to make a truly free choice. On the other hand, it would be unduly intrusive, not to mention impracticable, for the Board to attempt to assess the process by which each employee receives and assesses information prior to signing a card. In our view, <u>for us to nullify the evidence of support provided by any signature, it would have to be established that the obtaining of that signature was so contaminated by lack of information, misunderstanding or improper conduct that it could not be regarded as a genuine signature at all</u>.*
>
> (<u>emphasis added</u>).

[103] Even though the Board in that case dismissed the allegations of unfair labour practices under s. 11(2)(a) made by all three applicant employees, it went on to consider whether, "notwithstanding the fact that there was no unfair labour practice, the

support card signed by Mr. Dudra ought to be regarded as a nullity because it was obtained under false pretences" (at 162); and further, at 165, as follows:

> *This still leaves the question whether the evidence of support on behalf of these employees should be discounted because they did not understand the significance of what they were doing.*
>
> *We accept that under appropriate circumstances the Board should be prepared to reject evidence of this kind when it becomes clear that an employee has provided a signature with absolutely no comprehension of what it was that was being signed. The example in Christian Labour association of Canada v. Sandercock Construction Ltd., (1970), OLRB File No. 16760-69-R, of having employees sign blank cards provides a graphic illustration of this.*

[104] The Board applied these principles to a request by certain employees to nullify evidence of their support in *Saskatchewan Indian Gaming Authority Inc.*, *supra*, where the Board held as follows, at 671:

> *In the present case, the complaints raised by employees do not give rise to concern over voluntariness or genuineness of the support evidence in our opinion. There was no evidence that the Union used coercive or threatening tactics to obtain support cards …*

[105] We have determined that it is appropriate for the Board to apply the same principles in the present case. In our opinion, on the basis of these principles, the evidence in this case does not support a conclusion that the Union acted so improperly as to justify the nullifying or discounting of the evidence of support of any of the Interested Parties. We find that none of the Interested Parties were led to sign support cards under false pretences or did not understand the significance of what they were doing or had absolutely no comprehension of what it was that was being signed or that the obtaining of the signature was so contaminated by lack of information, misunderstanding or improper conduct that it could not be regarded as a genuine signature at all. Nor do we find that the Union in this case used any coercive or threatening tactics.

[106] In each case where the evidence of the particular Interested Party conflicts with that of the Union's representatives, we prefer the evidence of the latter.

[107] With respect to Ms. Stevenson, the evidence of the Union's representative, Ms. Flamon, made more sense and was more believable. Ms. Stevenson testified that she signed a union support card because Ms. Flamon purportedly told Ms. Stevenson that she was going to be next to be fired and she was afraid for her job. Obviously, in an organizing drive the union will laud the merits, advantages, benefits and rights afforded by union membership and unionization. Commonly, recitation of these benefits includes enhanced job security in that an employer may only discharge an employee for just cause in accordance with procedures common to most collective agreements. Indeed, even if we found that Ms. Flamon made the statement (which we do not find), it is preposterous that Ms. Stevenson would believe such a statement made by someone who is a former non-management employee who had not been employed by the Employer for some time yet purported to have such critical inside management information. Furthermore, Ms. Stevenson's father, Mr. Runns, was apparently unconcerned enough about such a prospect that he could not even recall the statement being made. In any event, Ms. Stevenson was not so concerned about the alleged manner in which she was induced to sign the support card that she took any steps to seek to revoke it, even though Ms. Hovanes told her what to do, prior to these proceedings.

[108] With respect to Mr. Wilson, his testimony that he did not sign an application for union membership but signed some other much larger document which he gave to Mr. Dennis whom he alleged had misrepresented himself as working for the Employer is completely unbelievable. The union application and support card is clearly designated as such on its face. That Board administrative personnel would ask Mr. Wilson for his SIN when he allegedly called to inquire whether he had signed a support card is absolutely against longstanding Board policy and we do not believe that it happened. Again, the testimony of Mr. Dennis is much more credible.

[109] With respect to Mr. Beasley again, even if we were to find that Ms. Flamon made the statement attributed to her (which we do not), it is preposterous that he would believe that she was privy to such important information as that the store manager had told her he was going to fire Mr. Beasley. Again, given that Mr. Beasley described his ongoing frustrations at work, it is more likely that Ms. Flamon would have

explained, as she said she did, that the Union could be of benefit in the event that he was to be fired.

[110] With respect to Ms. Lumberjack, the whole of her evidence is somewhat incredible. She denied having signed an application for membership, which she was forced to recant upon being shown the actual document that she did sign. She nonetheless claimed that she did not know she was signing in support of the Union, when she had in fact been a member of this particular union at another workplace and the card she signed clearly states its purpose. She also was not concerned enough to take any steps to revoke her support because she was "pretty busy."

[111] With respect to Ms. Hubick, she admitted that her initial evidence that Mr. Dennis told her that if she did not sign she could end up being fired made no sense. Indeed, after speaking to her father, she was satisfied with her decision.

[112] To reiterate, we find that the Union did or said nothing untoward or improper in the case of any of the Interested Parties in obtaining any evidence of support.

[113] On this basis the requests by the Interested Parties to nullify or discount their evidence of support is dismissed, absent their having filed a valid revocation or withdrawal of support with the Board.

(b) Whether the requests by any of the Interested Parties to reject evidence of their support ought to be dismissed pursuant to s. 9 of the *Act*

[114] The Board has commented on the meaning and purpose of s. 9 of the *Act* in many decisions, mainly in the context of rescission applications, essentially, to ensure that employees may exercise any rights under the *Act* without improper employer interference. Section 9 is applicable to any application involving issues of representation, such as evidence of support for a certification application and an application by an employee to discount the evidence of their support for the application and comments of the Board in this regard are apposite, notwithstanding that they were made in the context of a rescission application.

[115] In *Saskatchewan Science Centre*, *supra*, with respect to the purpose of s. 9, the Board observed as follows at 237 through 239:

> *This Board has commented in the past on the place of s. 9 of the Act in relation to an application for rescission. In Betty L. Wilson v. Remai Investment Corporation and Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, [1990] Fall Sask. Labour Rep. 97, LRB File No. 088-90, the Board made this comment, at 99:*
>
> > *Whenever the representation issue is before the Board, the Board must look through the bitter divisions between management and union and between employee and employee and keep the fundamental object of the Act in view. That object is the right given to all employees by s. 3 of the Act to decide for themselves whether or not they wish to be represented by a union for the purpose of bargaining collectively with their employer. Section 9 of the Act is a necessary adjunct to that right.*
>
> *In Leavitt v. Confederation Flag Inn (1989) Limited and United Food and Commercial Workers, [1990] Summer Sask. Labour Rep. 61, LRB File No. 225-89, the Board made the point in these terms, at 63:*
>
> > *The Board has frequently commented upon the relationship between s. 3 of the Act, which enshrines the employees' right to determine whether or not they wish to be represented by a union, and s. 9 of the Act. These sections are not inconsistent but complimentary. Section 3 of the Act declares the employees' right and s. 9 of the Act attempts to guard that right against applications that in reality reflect the will of the employer instead of the employees.*
>
> *The Board went on to describe the implications of a finding under s. 9 of the Act, at 64:*
>
> > *Generally, where the employer's conduct leads to a decertification application being made or, although not responsible for the filing of the application, compromises the ability of the employees to decide whether or not they wish to be represented by a union to the extent that the Board is of the opinion that the employees' wishes can no longer be determined, the Board will temporarily remove the employees' right to determine the representation question by dismissing the application.*

In Ken Chrunik v. National Electric Ltd. and International Brotherhood of Electrical Workers, [1996] Sask. L.R.B.R. 568, LRB File No. 060-96, the Board made the following comment, at 573:

> *It is clear from the passages which have been quoted here that the Board has always been alert to the possibility that the inherently authoritative position of an employer has been used, in either direct or subtle ways, to interfere in the right guaranteed to employees under s. 3 of the Act to a democratic choice in the matter of whether they wish to be represented by a trade union or not. In making this assessment, the Board has been prepared to draw inferences from aspects of the evidence which suggests that the decision of employees to seek rescission did not have its origins in their own deliberations, or that their views have not been spontaneously and autonomously expressed.*

. . . the Board must be careful that an employer has not, in however subtle a fashion, manipulated or influenced this expression of opinion so that it cannot be relied on to present an accurate assessment of the true wishes of employees.

The interference or influence which an employer may bring to bear on an application for rescission may take a variety of forms, as the Board pointed out in the following comment in Donna Wells v. Remai Investment Corporation (Imperial 400 Motel, Prince Albert) and United Food and Commercial Workers, [1996] Sask. L.R.B.R. 194, LRB File No. 305-95, at 198:

> *This statement makes clear that s. 9 of the Act is directed at a circumstance in which an employer departs from a posture of detachment and neutrality in connection with the issue of trade union representation. There have been cases where an employer has taken a direct role in initiating or assisting an application for rescission of a certification Order, and in these cases, it is fairly easy for the Board to identify the conduct on the part of the employer which constitutes improper interference. On the other hand, as the Board pointed out in [Poberznek v. United Masonry Construction Ltd. and International Union of Bricklayers and Allied Craftsmen, [1984] Oct. Sask. Labour Rep. 35, LRB File No. 245-84], employer interference is rarely of an overt nature, and the Board must be prepared to consider the possibility that subtle or indirect forms of influence may improperly inject the interests or views of the employer in the decision concerning trade union representation.*

> *It goes without saying that the difficulties for the Board in assessing the origins and preparation of an application for rescission are magnified when the interference alleged against the employer is of an indirect nature, and the Board is being asked to draw an inference from circumstances other than those created by overt statements or actions of management representatives.*

[116] The Board specifically considered the effect of employer influence with respect to revocation by an employee of support evidence filed in a certification application in *Remai Investment Corporation and Olson*, *supra*, observing as follows at 292 and 293:

> *The Union obtained a majority and still has one and is entitled to be certified on the basis of that support unless the Board is satisfied that the five employees exercised their right to withdraw their support for the certification application. Whether a revocation will be accepted or rejected involves an inquiry into whether it expresses the independent will of the employee, or whether the views of the employee have been interfered with by the employer. The answer in any case depends on a careful examination of the circumstances which led the employees to change their minds and withdraw their support for the Union's certification application.*

[117] Firstly, we consider the argument by counsel on behalf of the Interested Parties that the requests made by them by way of replies to the application for certification do not constitute "applications" for the purposes of s.9 of the *Act* to be without merit. The purpose of s. 9 is to ensure the free exercise of employee rights reserved under the *Act* as outlined in the section (a) of these Reasons for Decision.

[118] Further and in the alternative to our finding that the requests of the Interested Parties are rejected in section (a) of these Reasons for Decision, we find that the Employer did in fact improperly interfere with or influence the Interested Parties in both seeking to revoke or withdraw evidence of their support and in the making of the present requests (i.e., applications) to nullify or discount that evidence.

[119] By the account of each of the Interested Parties, the store manager, Mr. Foulkes, and Ms. Hovanes played important roles in their seeking to withdraw evidence of support and/or being involved in these proceedings which by ineluctable inference was exercised on behalf of management. We do not propose to reiterate that testimony

here, as it is described *supra*. Neither of these persons was called to testify and explain that this was not so and that Ms. Hovanes' interventions were legitimate when they seemed to coincide closely with discussions between the Interested Parties and the store manager.

[120] Suffice it to say that Ms. Hovanes seems to have unexpectedly and mysteriously appeared shortly afterwards whenever one of the Interested Parties either went to speak to or was summoned by the store manager and discussed their signing of a support card. She was also the person who arranged for the Interested Parties to meet with counsel in order to make their present requests. We find by inference that she is tantamount to an agent of the Employer.

[121] Accordingly, we find that the requests of the interested Parties are so tainted by management interference or influence that we exercise our discretion to dismiss the requests under s. 9 of the *Act*.

(c) Whether evidence of withdrawal or revocation of support of any of the Interested Parties ought to be rejected pursuant to s. 10 of the *Act* or other reason

[122] We have determined that there are no circumstances that should lead us not to exercise our discretion in accordance with longstanding Board policy to not consider evidence of revocation or withdrawal of support filed with the Board after the filing of the application for certification. The evidence does not show that any of the Interested Parties who may have done so intended to file same prior to the filing of the application but were on reasonable grounds delayed in doing so.

[123] Futhermore, and in any event, with respect to one of the Interested parties that did file an untimely revocation, the revocation document makes reference to a completely different trade union.

(d) Additional Matters

[124] We feel compelled to express that we are disturbed with respect to the manner in which the requests by the Interested Parties came before the Board. All of

the Interested Parties testified that they did not retain counsel to act on their behalf to do anything. None of them expect to pay anything for the services of counsel. At least one of them testified that he thought counsel were the Employer's lawyers. Purported counsel on behalf of the Interested Parties made no attempt whatsoever to explain how this startling state of affairs arose. No evidence of retainer was adduced, though the situation veritably cried out for some explanation. Indeed, had it been necessary, we may have found that the applications by the Interested Parties were in fact putative applications by the Employer made by counsel actually acting on the Employer's behalf.

[125] Furthermore, perhaps most disturbingly, all of the Interested Parties testified under subpoena, suggesting that their giving of evidence may not have been voluntary. This is disturbing because the Board jealously guards the identity of employees who provide evidence of support for a trade union from the employer and any revocation or withdrawal thereof from both the employer and union except in extraordinary circumstances. The policy reasons for this confidential protection are set out in numerous rulings of the Board which we will not iterate here. This confidential cloak is only lifted when the employees themselves freely and voluntarily and knowledgably consent to the waiving of their privilege (the privilege is not the union's or the employer's to waive) to keep the matter secret. We are concerned that in the present case the manner in which the requests were brought before the Board has resulted in the unwitting and non-consensual disclosure of this information by one or more of the Interested Parties in violation of their fundamental right to the privilege not to be compelled to disclose it.

Conclusion:

[126] The requests of the Interested Parties are dismissed.

[127] As the Union has filed evidence of the support of a majority of employees in the proposed bargaining unit and the proposed unit is appropriate for collective bargaining, a certification Order will issue.

DATED at Regina, Saskatchewan, this **4th** day of **July, 2007**.

LABOUR RELATIONS BOARD

James Seibel,
Chairperson