The Labour Relations Board
Saskatchewan

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 529 v. SAUNDERS ELECTRIC LTD.

LRB File No. 019-05; November 27, 2008
Chairperson, Kenneth G. Love, Q.C.; Members: Bruce McDonald and Brenda Cuthbert

For the Applicant: Larry F. Seiferling, Q.C
For the Respondent: Drew S. Plaxton

Remedy – Interim order – Criteria – Board reviews test for granting of interim relief– Board concludes that application reflects arguable case under *The Trade Union Act* – Board finds that the balance of Labour Relations harm to the parties favours a stay being granted - Board allows interim application.

Board discusses requirements that Affidavits in interim applications be based on the deponent's own personal knowledge.

***The Trade Union Act*, ss. 5.3**

REASONS FOR DECISION

Background:

[1] International Brotherhood of Electrical Workers, Local 529 (the "Union") was designated as the certified bargaining agent for an appropriate unit of "journeymen, helpers and apprentices" in the electrical trade that are employees of Saunders Electric Ltd. (the "Employer") based in Prince Albert. The Employer was incorporated in 1959. The original certification Order was issued to the Union's Local 1717 on January 30, 1962. The Order was amended on April 6, 1972 (LRB File No. 198-71) to reflect the merger of Local 1717 with Local 529. That certification Order has not been rescinded.

[2] On January 20, 2005 the Union filed an application with the Board alleging that the Employer committed unfair labour practices in violation of Sections 11(1)(a), (c) and 36 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act* "), in refusing to bargain collectively with the Union and in refusing to comply with the union security provisions of the *Act* to require that new employees join the Union within thirty days as a condition of maintaining employment.

[3] At the commencement of the hearing, counsel for the parties agreed to the amendment of the Union's application to include reference to an alleged violation of s. 32 of the *Act*, in failing to deduct and remit union dues, assessments and initiation fees on behalf of the employees to the Union.

[4] The Employer did not deny that it refused to recognize the Union as the bargaining agent for its employees in the appropriate unit. In its reply, the Employer took the position that, because it operated from 1984 to 1998 "without requests from the Union to bargain or to comply with collective agreements or any grievance or complaint from the Union" it committed no unfair labour practices because it felt that the Union had "abandoned" its bargaining rights granted by the Board's certification Order.

[5] The Board issued its decision with respect to the Union's application on the September 23, 2008. In its decision, the Board found the Employer to be guilty of the unfair labour practice alleged in the Union's application. The Board also found the Employer to be in violation of ss. 32 and 36 of the *Act*. The Board's Order provides as follows:

> 1. *DETERMINES that the Respondent committed an unfair labour practice within the meaning of s. 11(1)(c) of The Trade Union Act by failing or refusing to bargain in good faith;*
>
> 2. *ORDERS THAT the Employer is guilty of unfair labour practices within the meaning of each of sections 11(1)(c), 32 and 36 of the Act;*
>
> 3. *ORDERS THAT the Employer shall forthwith cease and desist from any further violations of The Trade Union Act, and shall fulfill the duties imposed by the certification Order and the Act, including, but not limited to, the duty to bargain collectively, and recognition of union security and dues check-off pursuant to sections 32 and 36 of the Act;*
>
> 4. *ORDERS THAT the Employer shall forthwith advise the Union of the identity of and contact information for all existing employees*

within the description of the appropriate bargaining unit; and, THAT within five (5) days of the date of this Order, the Employer shall advise all such employees that they must join the Union within a period of 30 (thirty) days as a condition of maintaining employment and must provide the Employer with written authority to deduct and remit union dues on their behalf;

5. *ORDERS THAT within sixty (60) days of the date of this Order the Employer shall pay to the Union a sum equal to the dues, assessments and initiation fees that it ought to have deducted from its employees in the appropriate bargaining unit and remitted to the Union from and after 2 March 1984; in the event that the parties are unable to agree upon the amount due within a period of fifteen (15) days from the date of this Order, either party may request the Senior Labour Relations Officer/Investigating Officer of the Board to ascertain the amount due, and the Senior Labour Relations Officer/Investigating Officer of the Board is empowered to make any and all inquiries, enter into any premises, and inspect and make copies of any and all documents and records as may required to make the determination;*

6. *ORDERS THAT the Employer shall forthwith post a copy of this Order, the Reasons for Decision, the certification Order, and sections 32 and 36 of the Trade Union Act, in a conspicuous location in the workplace where it is likely to be seen by a majority of the employees in the bargaining unit for a period of sixty (60) days, and shall send a copy of this Order, the Reasons for Decision, the certification Order, and sections 32 and 36 of the Trade Union Act to each of the employees by ordinary mail to their last known address.*

[6] On October 15, 2008, the Employer filed an application for reconsideration of the Board's September 23, 2008 decision. On October 27, 2008, the Employer applied under s. 5.3 of the *Act* for an interim order of the Board staying the effect of the Order made by the Board on September 23, 2008. A hearing with respect to the application for

interim relief was heard by the Board on October 31, 2008. At the conclusion of that hearing, the Board issued an Order staying the effect of its September 23, 2008 Order until 5:00 pm on November 24, 2008, or until further Order of the Board. A hearing of the application for reconsideration was set for November 24, 2008 at the Board's offices in Saskatoon. These are the Reasons for the issuance of the Board's Order staying the effect of the September 23, 2008 Order.

[7] These Reasons for Decision relate only to the interim application.

Evidence:

[8] The Employer filed an Affidavit of Don Saunders with its application for interim relief. The Union filed an Affidavit of Gregory Gaudet at the hearing on October 31, 2008.

[9] The Affidavit of Gregory Gaudet attests that the Employer has failed to honour the Order granted by the Board on September 23, 2008. In his Affidavit, Mr. Gaudet, on behalf of the Union advises that "the union is willing to forgo enforcement of past dues that should have been paid up to the date of the Order… until the reconsideration matter has been dealt with or the Board should order otherwise." At the hearing, however, the union confirmed that they were not prepared to forgo compliance with the Order after September 23, 2008.

[10] The Affidavit of Don Saunders contains little new factual material. It does, however, contain considerable material which is not based upon his personal knowledge, but is either based on information or belief or is argumentative. In *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. Loraas Disposal Services Ltd.*, [1997] Sask. L.R.B.R. 517, LRB File No. 208-97, at 523, the Board described its policy and practice respecting the form of admissible affidavit evidence in interim applications as follows:

> *It has been the practice of this Board to require that affidavits filed in an application for interim relief be based on personal knowledge. The Board does not permit cross-examination of witnesses on their affidavits as there is not sufficient time on an interim application to hear viva voce evidence. If viva voce evidence is necessary, the*

> *applicant or respondent should request an expedited hearing, which the Board can generally accommodate.*

[11] A number of recent applications to the Board seem to have forgotten this requirement. Applicants for interim relief must be mindful of this requirement, since, failing to do so, may, in appropriate circumstances, result in their application being dismissed, such as that which occurred in *Grain Services Union (ILWU-Canada) v. Startek Canada Services Ltd.*, [2004] Sask. L.R.B.R. 15, LRB File No. 032-04.

Preliminary Objections

[12] Mr. Plaxton, on behalf of the Union raised six preliminary objections to the application. These were:

1. *The Application was not brought in accordance with the Board's procedures insofar as the application was not a sworn document.*

2. *The Application was not brought in accordance with the Board's Practice Directive #1.*

3. *The Board has no jurisdiction to order the requested stay.*

4. *The Application constituted "forum shopping".*

5. *The Affidavit of Don Saunders has defects insofar as it contains argument and should be struck.*

6. *That the application was for a stay of a certification Order when the underlying application was with respect to an Unfair Labour Practice.*

[13] The first two preliminary applications have no merit. There is no prescribed form in the Regulations to the *Act* for an application for interim relief. Nor is Practice Directive #1 offended by the means whereby the application was brought. That Practice Directive contains the following requirements:

> *(a) as in any other case an application alleging a violation of the Act must be filed;*
>
> *(b) in that application, or in an accompanying application, the interim order must be requested and described with reasonable particularity; the Section of the Act which authorizes the order must be identified and the grounds upon which the applicant will rely must be stated.*

[14] Furthermore, s. 19 of the *Act* provides that " [N]o proceedings before or by the Board shall be invalidated by reason of any irregularity or technical objection…" Therefore, even if the application had not been in proper form, the Board could have relieved against any irregularity or non compliance.

[15] While Mr. Plaxton raised this issue as an objection, he did not, in his argument, provide any reasons or basis for the objection. However, with regard to this point, the Board notes that there is nothing in s. 5.3 which restricts the nature of the interim Order that the Board may make. Furthermore, in keeping with the Board's jurisprudence with respect to the preservative nature of orders under s. 5.3, an order staying the implementation of an Order of this Board pending review is completely appropriate.

[16] Mr. Plaxton also argued that this application amounted to "forum shopping" by the Applicant. He argued that the Applicant was making this application based on his view that the Board would provide a more favourable forum for review than the courts. Again, this objection is not well taken. The Board will review its own decisions only in the circumstances as outlined by the Board's jurisprudence as set out below. There is no automatic or right of appeal of a Board decision. While there may be concurrent jurisdiction in the Board reviewing its own decision and an application for *certiorari*, that does not, in and of itself, amount to "forum shopping" as there is concurrent jurisdiction.

[17] As noted in paragraphs 10 & 11 above, Mr. Plaxton's objection to the Affidavit of Mr. Saunders is well taken. Mr. Saunders' Affidavit contains numerous statements which are not based on his own personal knowledge. Many of the comments

are argumentative or speculative. Examples are statements such as: “I am concerned that compelling my present work force to join the Union and pay dues to them will cause them to leave my employment…” Other statements are based on information and belief such as: “I have been advised by my lawyer that this is the first case where any Labour Relations Board in Canada has found there is no jurisdiction to grant and Order for abandonment in the construction industry…”

[18] However, even if the offending materials in the Affidavit is struck, there remains an arguable case that the decision should be reviewed.

[19] The final objection was that the application is for a stay of the certification Order granted by this Board and which was the focus of the allegation of abandonment, when the decision of the Board was with respect to an unfair labour practice allegations. However, the application is clear as to what it is requesting the Board to reconsider and the grounds for that reconsideration. According to the application, the Board is being asked to reconsider the application on a number of the criteria which the Board has established in its jurisprudence regarding reconsideration of decisions. Again, in accordance with s. 19 of the *Act*, substance must prevail over form.

Relevant statutory provisions:

[20] Relevant provisions of the *Act* are as follows:

> *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.*

Analysis & Decision:

[21] It is the Board’s decision that the application for interim relief should be allowed.

[22] The test to be met on applications for interim relief has been well established by the Board. A recent statement of the test is found in *StarTek*, *supra*, where the Board stated as follows at 135 through 139:

[31] The test for the granting of interim relief was enunciated by the Board in Regina Inn, supra, [Hotel Employees and Restaurant Employees Union, Local 206 v. Canadian Hotels Income Properties Real Estate Investment Trust #19 Operations Ltd. (o/a Regina Inn), [1999] Sask. L.R.B.R. 190, LRB File No. 131-99] as follows, at 194:

> *The Board is empowered under ss. 5.3 and 42 of the Act to issue interim orders. The general rules relating to the granting of interim relief have been set down in the cases cited above. Generally, we are concerned with determining (1) whether the main application reflects an arguable case under the Act, and (2) what labour relations harm will result if the interim order is not granted compared to the harm that will result if it is granted. (see Tropical Inn, supra, at 229). This test restates the test set out by the Courts in decisions such as Potash Corporation of Saskatchewan v. Todd et al., [1987] 2 W.W.R. 481 (Sask. C.A.) and by the Board in its subsequent decisions. In our view, the modified test, which we are adopting from the Ontario Labour Relations Board's decision in Loeb Highland, supra, focuses the Board's attention on the labour relations impact of granting or not granting an interim order. The Board's power to grant interim relief is discretionary and interim relief can be refused for other practical considerations.*

[32] As explained above, the test is adapted from that set out by the Ontario Labour Relations Board in Loeb Highland, [1993] OLRB Rep. March 197. With respect to the [first of the] *two parts of the test – that is, whether the main application raises an arguable case – the Ontario Board stated as follows, at 202:*

> *Turning first to the idea of a threshold test with respect to the merits of the main application, we have some concern about applying a high level of scrutiny to that application at the time of a request for an interim order. To the extent that such scrutiny may imply a form of prejudgment of the final disposition of the main matter, it is not particularly compatible with the scheme for interim relief set out in the Act and the Board's Rules of Procedure. More specifically, the procedure for interim relief contemplated by the Board's Rules reflects the inherent necessity for expedition in these matters. To that end, evidence is filed by way of certified declarations which are not subject to cross-examination. Indeed, s. 104(14) of the Act*

> *and Rules 92 and 93 indicate the Board may not hold an oral hearing at all, but may receive the parties' arguments in writing as well.*
>
> *This means that the Board is not in a position to make determinations based on disputed facts. In these circumstances, it would normally be unfair for an interim order to be predicated to any significant extent on a decision with respect to the strength or weakness of the main case. That should await the hearing of the main application when the Board hears oral evidence and can make decisions with respect to credibility based on the usual indicia, in a context where the parties have a full right of cross-examination. This is particularly important in cases such as the section 91 complaint to which this application relates, where decisions are often based on inferences and the various nuances of credibility play a key role. In other words, the granting of interim relief in this context should usually be based on criteria which minimize prejudging the merits of the main application.*

[33] With respect to the second part of the test – consideration of the respective labour relations harm – as the Board explained in Hotel Employees and Restaurant Employees Union, Local 206 v. Chelton Suites Hotel (1998) Ltd., [2000] Sask. L.R.B.R. 434, LRB File Nos. 091-00, 110-00,125-00,139-00,144-00 &3 145-00, at 444, it is an adaptation of the civil irreparable harm criterion to the industrial relations arena.

. . .

[37] On an application for interim relief we are not charged with determining whether the allegations have been proven, but rather with whether the status quo should be maintained pending the final determination of the main application: an interim order is intended to be preservative rather than remedial. As the Board observed in 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.*

> *[38] Accordingly, and as iterated in Chelton Suites Hotel, supra, at 446, each application for interim relief is determined according to its specific facts. Certain types of applications have particular factors that the Board takes into account in assessing the application according to the test. The factors considered are driven by the specific objectives of the particular statutory provisions alleged to have been violated. In applications such as the present one, where it is alleged that an employee was terminated for activity in support of the union, or in attempted intimidation of union supporters, the Board has considered the potential for a negative effect on the status of the union and the potential for loss of support and confidence, as well as the impact on the individual employee who was terminated. The fragility of the union's status and strength of support, and the vulnerability of its supporters to pressure exerted by the employer prior to certification, is generally accepted and not seriously disputed.*

[23] In applying the first part of the test, that is, whether the application reflects an arguable case such that the Board may wish to reconsider this decision. The Board finds that it does.

[24] The criteria upon which the Board will reconsider its own decisions was recently discussed by the Board in two decisions. These are *United Food and Commercial Workers, Local 1400 v. Tora Regina (Tower) Limited (Giant Tiger, Regina),* [2008] SKCA 38 (CanLII), LRB File No. 026-04 and *Service Employees International Union, Local* 333 *v. Bethany Pioneer Village Inc. (c.o.b. Birch Manor)*, [2007] Sask. L.R.B.R. No. 25, LRB File No. 036-06.

[25] The Board exercises its jurisdiction with respect to review of its own decisions under ss. 5(i) and 13 sparingly. That view was expressed by the Board in *Remai Investment Corporation v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union* [1993], 3rd Quarter Sask. Labour Rep. 103, LRB File No. 132-93 at 107:

> *Though the Board has the power under Section 5(i) to reopen its decisions it has arrived at, this power must be exercised sparingly, in our view, and in a way which will not undermine the coherence and stability of the relationships which the Board seeks to foster.*

[26] The Board recognizes that there is a balance to be achieved between a request for reconsideration and the value of finality and stability in decision making. As a result, the Board has adopted a two step approach which requires that the applicant first establish grounds for reconsideration before a decision is made as to whether reconsideration or some other disposition of the matter is appropriate.

[27] The Board has adopted the reasoning in *Overwaitea Foods v. United Food and Commercial Workers No. C86/90,* a decision of the British Columbia Industrial Relations Council. In that case, the British Columbia Industrial Relations Council adopted six criteria in which it would give favourable consideration to an application for reconsideration. Those criteria were set out as follows:

> *In Western Cash Register v. International Brotherhood of Electrical Workers, [1972] 2 CLRBR 532, the Board articulated four criteria in which it would give favourable consideration to an application for reconsideration. Subsequent decisions (Construction Labour Relations Association of British Columbia, BCLRB No. 315/84, and Commonwealth Construction Co. Ltd., BCLRD No. 61/79, [1979] 3 Can LRBR 153, added a fifth and a sixth ground:*
>
> 1. *If there was no hearing in the first instance and a party subsequently finds that the decision turns on a finding of fact which is in controversy and on which the party wishes to adduce evidence; or,*
>
> 2. *if a hearing was held, but certain crucial evidence was not adduced for good and sufficient reasons; or,*
>
> 3. *if the order made by the Board in the first instance has operated in an unanticipated way, that is, has had an unintended effect on its particular application; or,*
>
> 4. *if the original decision turned on a conclusion of law of [sic] general policy under the code which law or policy was not properly interpreted by the original panel; or,*
>
> 5. *if the original decision is tainted by a breach of natural justice; or,*
>
> 6. *if the original decision is precedential and amounts to a significant policy adjudication which the Council may wish to refine, expand upon, or otherwise change.*

[28] In the Employer's submissions to the Board, counsel relied upon the following criteria as the grounds for reconsideration by the Board:

> *a) The Board's order has operated in an unanticipated way, that is, has had an unintended effect on its particular application; or*
>
> *c) The original decision turned on a conclusion of law or general policy under the Code which law or policy was not properly interpreted by the original panel; or*
>
> *d) The Original decision was precedential and amounts to a significant policy adjudication which the Board may wish to refine, expand upon or otherwise change.*

[29] Counsel for the Employer argued that the decision in this case "marks a reversal in Saskatchewan and Canada relating to the doctrine of abandonment". He argued that the decision had improperly interpreted the law related to abandonment of union certification in Saskatchewan as espoused by the Court of Appeal for Saskatchewan in its decision in *United Brotherhood or Carpenters and Joiners of America, Local 1985 v. Graham Construction and Engineering Ltd.,* 2008 SKCA 67, LRB File No. 227-00 (the "*Graham*" decision).

[30] In particular, the Employer argued that the Board erred in its statement at para. 77 of its decision where the Board says:

> *It is now clear that the Board does not have the jurisdiction to declare that a trade union has abandoned its collective bargaining rights in the context of a statutory regime of sectoral bargaining in the construction industry. The arguments asserted by the counsel for the Employer in this case, are essentially the same as those mounted in Graham LRB, supra, and are as incorrect and unreasonable.*

[31] The Employer also argued that "[U]ntil this decision was rendered all Saskatchewan case authority, as well as authority outside of Saskatchewan held that abandonment was a principle that could be followed in Saskatchewan."

They also argued that rather than supporting the Board's comments at para. 77 of Graham, that the Court of Appeal's decision, in fact, found that abandonment as a principle could be applied by the Labour Relations Board in construction cases, but to do so, in this case, where the Employer had had no employees and hence there was no-one for the union to bargain for, that it was unreasonable to apply the doctrine in the *Graham* case, *supra*.

[32] The Employer argued as well that there was an inconsistency in the Board's decision with respect a crucial fact, that being whether or not the Employer had employees on whose behalf the Union could have bargained during the periods in question, and which was an important element in the Board's jurisprudence with respect to the doctrine of abandonment.

[33] The Employer also argued that the decision was unreasonable and had an unexpected and unintended effect when the Board ordered the Employer to pay to the Union the amounts of "unpaid dues, assessments and initiation fees which it ought to have deducted from its employees…and remitted to the Union from and after 2 March 1984." This Order was, they argued, unreasonable since the employees derived no benefit from the Union as it had not represented them, nor did it take into consideration any limitation on such claims under *The Limitations Act,* S.S. 2004 c. L-16.1.

[34] The Employer argued that the Board's decision with respect to the issue of abandonment and the requirement that the Employer pay dues, assessments and initiation fees back to March, 1984 was precedential and amount to a significant policy adjudication which the Board may wish to refine, expand upon or otherwise change.

[35] This Board has on numerous occasions recognized a principle of abandonment of rights granted to a Union under a certification Order. A similar principle has been adopted in virtually every jurisdiction in Canada. Prior to the decision in Graham and the decision in question, the strongest statement by this Board concerning the issue of abandonment was contained in its decision in *Cineplex Galaxy Limited Partnership v. International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Trades of the United*

States and Canada, Local 295, [2006] CanLII 62952, LRB File No. 132-05 (the "Cineplex" decision).

[36] At para. 25, the Board seems to confirm that a doctrine of abandonment is available to be used in Saskatchewan, notwithstanding the lack of any statutory authority for the principle:

> *The Board has had occasion to consider the doctrine of abandonment and to apply it in limited circumstances, although the doctrine is not supported by any statutory authority. It is considered to be an equitable remedy and it is typically one that is claimed by an employer when faced with an application by a union which attempts to assert the union's rights vis a vis the employer's employees.*

[37] The Board then went on to provide a detailed history of the doctrine as it has evolved in Saskatchewan. At para. 41, the Board concluded that "[B]ased on our review of the above authorities, it appears that the Board can apply the doctrine of abandonment even though it is not prescribed by statute."

[38] These decisions were made prior to the Court of Appeal's ruling in *Graham*, *supra*, but the *Cineplex, supra,* decision was referenced to by the Court in its decision.

[39] The comments in *Cineplex, supra,* (and other previous cases decided by the Board) are diametrically opposed to the comment at para. 77 of the decision for which review is sought. As a result, the Board finds that the first test with respect to granting interim relief, that there be an arguable case, has been met. That is particularly true when one considers the comments of Madam Justice Jackson in the *Graham* case, *supra,* and in particular her comments concerning the *Graham* case, *supra*, and the *Cineplex* case, *supra*.

[40] The next element to be addressed is the labour relations harm that will result if the requested relief is not granted. In addressing this issue, the Board is cognizant that any interim orders should be preservative in nature.

[41] The Employer argued that the balance of labour relations harm favours a stay being granted. This case, in essence, they argue, is about

employees rights to choose their bargaining representative and to join or not to join a union. They argue that, to allow the decision to stand, will require employees, who have not had representation for many years, to be forced to join the union.

[42] The Union, on the other hand, argues that it would be harmful to the union to issue a stay insofar as the Union has, for many years, been fighting to be permitted to properly represent the Employer's employees and that their efforts in that regard have been ignored or thwarted in the past. To issue a stay at this time, they argue, would be to continue to deny those employees the representation that this Board awarded them in 1962.

[43] The Board is of the view that the balance of labour relations harm, in this case, impacts each party adversely to some extent. There has been uncertainty concerning the doctrine of abandonment for many years. That uncertainty has been compounded as a result in the delay in obtaining a decision of the Board in this case, the cause of which was a delay in the issuance of a decision by the Court of Appeal in the *Graham* case, *supra*. The Employer, and its employees, have been operating in a non-union environment. If the Employer is successful in its application for reconsideration, and the September 23, 2008 Order is not stayed, the disruption which would result, notwithstanding the Union's agreement not to enforce the requirement for back payments pending resolution, would, we find, be greater than if the requested stay were not granted.

[44] At the hearing of this application, counsel for the Employer was asked if he was aware that there may well be an economic downside if the ultimate application for reconsideration was unsuccessful. Counsel acknowledged that possibility and was aware that in the event the application ultimately fails that the Employer could be responsible for additional dues, assessments and initiation fees which would be payable to the Union. The Union therefore has no economic disadvantage to the stay being granted, albeit its rights to enforce and rely upon the certification Order are abridged in the interim.

[45] The Board therefore orders that pursuant to s. 5.3 of the *Act* that the Order of the Board dated September 23, 2008 in this matter is hereby stayed until 5:00 pm on November 24, 2008 or until further Order of the Board.

[46] Prior to the issuance of this decision, the parties agreed that the hearing of the matter set for November 24, 2008 would be adjourned to December 24, 2008. The parties were unable to agree that the order of the Board referenced above would be continued until the final determination of the matter. A panel of the Board comprised of Chairperson Love, and members Bruce McDonald and Joan White considered whether to extend the Order made by the Board on October 31, 2008 staying the Board's order of September 23, 2008. That panel agreed that the stay order should be continued. The Board therefore ordered that the order of the Board dated October 31, 2008, which order stayed the effect of the order of the Board dated September 23, 2008 in this matter, is hereby further stayed until the final determination by the Board of the application for reconsideration of the order of the Board dated September 23, 2008, or until further order of the Board.

DATED at Regina, Saskatchewan, this **27th** day of **November, 2008.**

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.,
Chairperson