The Labour Relations Board
Saskatchewan

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL NO. 1400, Applicant, and WAL-MART CANADA CORP., operating as WAL-MART, WAL-MART CANADA, SAM'S CLUB AND SAM'S CLUB CANADA, Respondent

LRB File No. 038-05; March 17, 2009
Vice-Chairperson, Steven Schiefner; Members: Mike Wainwright and John McCormick

For the Union:	Mr. Drew Plaxton
For the Employer:	Ms. Catherine Sloan, Mr. John Beckman, Q.C. and Mr. Dean Dolan

Reconsideration – Criteria – Board discuss criteria to be used on applications for reconsideration involving preliminary matters – Board reluctant to entertain reconsideration applications of its preliminary decisions except in the clearest and most compelling of cases.

Reconsideration – Criteria – Board reviews grounds on which application for reconsideration may be granted – Board concludes no solid grounds to support reconsideration – Board dismisses application for consideration.

***The Trade Union Act*, ss. 5(i) and 13.**

REASONS FOR DECISION

Background:

[1] **Steven Schiefner, Vice-Chairperson**: The United Food and Commercial Workers, Local 1400 (the "Union") filed an application with the Labour Relations Board (the "Board") on February 28, 2005 pursuant to Sections 5(d) and (e) of *The Trade Union Act*, R.S.S. 1978, c.T-17 (the "*Act*") alleging that Wal-Mart Canada Corp., operating as Wal-Mart, Wal-Mart Canada, Sam's Club and Sam's Club Canada, (the "Employer") committed unfair labour practices contrary to ss. 11(1)(a), (b), (e), (g) and (i) of the *Act* and/or otherwise violated s. 12 of the *Act* (the "Union's application"). The Union's allegations related to the threatened closure, and then actual closure, of the Employer's store in Jonquiere, Quebec, after it became unionized in August of 2004.

[2] In their application, the Union alleged that the Employer's action in closing its store in Jonquiere was intended, *inter alia*, to intimidate employees at any of its stores that were attempting to organize at that time, including the Employer's stores in Saskatchewan at Weyburn, North Battleford and Moose Jaw. At the time of the impugned conduct of the

Employer (February to May of 2005), the Union had applications pending before the Board, including applications for certification of employees at the Employer's stores in North Battleford (LRB File No. 055-04, filed with the Board on March 22, 2004) and Weyburn (LRB File No. 069-04, filed with the Board on April 19, 2004) and an application for successorship at the Employer's store in Moose Jaw (LRB File No. 194-04, filed with the Board on July 20, 2004).

[3] Prior to filing a reply to the Union's application, the Employer made a preliminary application asking the Board to summarily dismiss the Union's application on the following grounds:

1. *The Board has no jurisdiction over acts or conduct occurring in Quebec.*
2. *The Employer is not responsible for the acts, statements and conclusions of persons beyond their control, such as newspaper editorials and/or the Union's own statements.*
3. *Quebec is the forum conveniens for the Union's compliant.*
4. *The Union's application offends the rule against multiplicity of actions.*
5. *The Union's application offends the rule against forum shopping.*
6. *The Union's application is frivolous and vexatious.*
7. *The Union's application is an abuse of process.*

[4] The Employer's preliminary application was heard by the Board on May 3, 2005 by a panel comprised of Chairperson James Seibel (as he then was) and Board members John McCormick and Ken Ahl (the "original panel"). By decision dated October 24, 2008, the original panel examined and dismissed each ground advanced by the Employer in its preliminary application.

[5] On December 5, 2008, the Employer applied, pursuant to s. 5(j) of *Act,* for reconsideration of the Board's decision dismissing its preliminary application. The Employer's application for reconsideration was heard by the Board on February 2, 2009. Counsel for both the Employer and the Union filed Briefs of Law and written argument, for which the Board is thankful.

Preliminary Applications:

[6] At the commencement of the hearing, the Union took the position that the Employer's application for reconsideration should be summarily dismissed on the basis that the

Employer had not filed a reply in the proceedings. In the alternative, the Union took the position that the Employer should be prevented from tendering new evidence, such as paragraphs 20, 25, 27, 29, 30 and 31 of the Employer's Brief filed with the Board. In taking this position, the Union relied on the caution expressed by this Board in similar circumstances in *The Newspaper Guild Canada/Communication Workers of America v. Sterling Newspapers Group, a Division of Hollinger Inc., operating the Leader-Post and Leader-Star News Services*, [2000] Sask. L.R.B.R. 558, LRB File Nos. 272-98 & 003-00.

[7] During the hearing, the Board ruled that it was satisfied that the Employer had the right to bring an application for reconsideration of the preliminary matters previously adjudicated by the Board notwithstanding that it had thus far not filed a reply in the proceedings. In the Board's opinion, the Employer's right to bring a reconsideration application flows as a natural consequence of the discretion exercised by the original panel allowing the Employer to challenge the jurisdiction of the Board by way of preliminary application without filing a reply. To the extent (and in the event) that leave of the Board was required by the Employer to bring its application for reconsideration, the Board was prepared to grant such leave.

[8] Given the disposition of the within application, the Board declines to rule on the status of the disputed paragraphs of the Employer's brief.

Statutory Provisions:

[9] The relevant provisions of the *Act* include the following:

> *5 The board may make orders:*
>
> *(i) rescinding or amending an order or decision of the board made under clause (d), (e), (f), (g) or (h), or amending an order or decision of the board made under clause (a), (b) or (c) in the circumstances set out in clause (j) or (k), notwithstanding that a motion, application, appeal or other proceeding in respect of or arising out of the order or decision is pending in any court;*
>
> *. . .*
>
> *13 A certified copy of any order or decision of the board shall be filed in the office of a local registrar of the Court of Queen's Bench and shall thereupon be enforceable as a judgment or order of the court, and in the same manner as any other judgment or order of the court, but the board may nevertheless rescind or vary any such order.*

Analysis and Decision:

[10] The Board recognizes that in every application for reconsideration there is a need to achieve a balance between the Board's authority to reconsider its own decisions and the general importance of finality in its decision-making in promoting stability in labour relations. To which end, the Board has resolved to sparingly exercise its jurisdiction to review its decisions under ss. 5(i) and s. 13. This 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.*

[11] For example, the Board has clarified that a request for reconsideration is neither an appeal nor an opportunity to re-argue or re-litigate an unsuccessful application before the Board. See: *Grain Services Union (ILWU – Canada) v. Saskatchewan Wheat Pool, Heartland Livestock Services (324007 Alberta Ltd.) and GVIC Communications Inc.*, [2003] Sask. L.R.B.R. 52, LRB File No. 003-02.

[12] As to the circumstances under which the Board will examine its prior decisions, 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 identified six (6) criteria (or grounds) in which it would give favourable consideration to an application for reconsideration. The criteria were set out as follows:

> *In Western Cash Register v. International Brotherhood of Electrical Workers, [1978] 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.*

[13] This Board utilizes a two (2) step approach for applications for reconsideration, which process requires the applicant to first establish solid grounds for reconsideration before a decision is made as to whether reconsideration or some other disposition of the matter is appropriate. The reason why such a stringent test is applied by the Board was set out in *City of North Battleford v. Canadian Union of Public Employees*, Local 287, [2003] Sask. L.R.B.R. 288, LRB File No. 054-01.

[14] The Employer's application for reconsideration was taken under the fourth and sixth ground as adopted by this Board in *Overwaitea*. Counsel on behalf of the Employer advanced four arguments (or what Counsel described as fundamental flaws in the original panel's decision) in support of the Employer's application for reconsideration:

> 1. *The Board has no jurisdiction over conduct or acts occurring in another province.*
>
> 2. *The Employer cannot be held responsible for the statements of others.*
>
> 3. *The Union's application is an abuse of process.*
>
> 4. *The panel of the Board that rendered the original decision was not properly constituted.*

[15] The Board has dealt with a number of reconsideration applications over the years and has consistently applied the same stringent test in determining whether or not a reconsideration application should be allowed. See: *Overwaitea Foods, supra, City of North Battleford, supra*, *Grain Services Union v. Saskatchewan Wheat Pool., supra, Jason Rattray v. Saskatchewan Government General Employee's Union*, [2003] Sask. L.R.B.R. 528, LRB File No. 011-03, *United Brotherhood of Carpenters and Joiners of America, Local 1985, et al v. Graham Construction and Engineering Ltd. et al*, [2004] Sask. L.R.B.R. 142, LRB File Nos. 014-98 & 227-

00, *Barbara Metz v. Saskatchewan Government and General Employees' Union*, [2003] Sask. L.R.B.R. 323, LRB File No. 164-00, *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, and *North West Company and Tora Regina (Tower) o/a Giant Tiger v. United Food and Commercial Workers, Local 1400*, 2008 CanLII 47050, LRB File Nos. 026-04 & 041-08.

[16] However, most of these reconsideration applications have dealt with final determinations. Applications seeking reconsideration of preliminary rulings by the Board have been uncommon. In this regard, the Board is mindful of the conclusion of Justice Ottenbreit in *United Food and Commercial Workers, Local 1400 v. North West Company LP Tora Regina (Tower) Limited*, 2008 SK QB 285, Q.B.G. 858/08 that reviewing courts should discourage the interruption of labour relations matters by (in the case of superior courts) declining to hear judicial review applications of interim decisions except where the tribunal never had jurisdiction or irretrievably lost it. In so holding, Ottenbreit J. quoted with approval from Justice Vancise of the Saskatchewan Court of Appeal in *Saskatchewan Union of Nurses v. Sherbrooke Community Centre* (1996), 144 Sask. R. 15:

> *In general we agree with the principles set out in University of Toronto v. Canadian Union of Education Workers, Local 2 (1988), 28 O.A.C. (Div. Ct.) which was confirmed in Placer Dome Inc. Dona Lake Mine v. United Steelworkers of America, Local 8533 et al. (1994), 69 O.A.C. 399 (Div. Ct.), that courts should discourage the interruption of labour relations matters, in particular discipline hearings by declining to hear judicial review applications of interim decisions. The overriding principle is that the matters should be heard with as little delay as possible. This case is proof positive the fragmentation of proceedings is a sure recipe for delay and potentially for the denial or defeat of the rights of the parties. Reviewing courts should be slow to accede to requests to review interim decisions of administrative tribunals.*

[17] The Board agrees that applications before it should be heard with as little delay as possible (*lex dilationes abhorret* to use the latin phrase) and that this Board should be reluctant to entertain reconsideration applications of its preliminary decisions except in the clearest and most compelling of cases.

[18] With this caution in mind, the Board will deal with each of the Employer's arguments in turn.

The Board Has No Jurisdiction Over Conduct Occurring in other Provinces

[19] In its preliminary ruling, the original panel determined that the Board had jurisdiction to inquire into, hear and determine the Union's application alleging contraventions of the *Act* by the Employer. The original panel's reasons for coming to this conclusion were as follows:

> ***Analysis and Decision:***
>
> *[13] In our opinion, the Board has the jurisdiction to inquire into, hear and determine the application. The application does not seek to have the Board determine whether Wal-Mart committed a violation of Quebec labour legislation, but rather, asserts that actions by Wal-Mart fulfill the criteria for finding, inter alia, that its actions intimidated employees in Saskatchewan in the exercise of rights under the Act, i.e., to organize and be represented by a bargaining agent of their choosing.*
>
> *[14] The fact that the actions of Wal-Mart upon which the allegations are based were committed outside the geographic confines of Saskatchewan does not mean that they cannot constitute violation of the restriction on intimidation of its employees in the province. It is not tenable to say that an employer with its head office elsewhere cannot by acts committed at or by that office, intimidate its employees in a different province. Particularly in construction, employers located in another province and with no administrative or working office in Saskatchewan, often bid on jobs in and have employees hired locally working jobs in Saskatchewan – indeed, they sometimes have no management personnel in the province at all, but accomplish day-to-day work direction with a working foreman who communicates with the employer's office in the other province.*
>
> *[15] In the present case, the alleged unfair labour practice is not the Jonquiere closure per se, but, inter alia, the intimidation of the employees in Saskatchewan as a result – the closure in Quebec is merely the means by which intimidation was achieved. Accordingly, the act of closure is not the violation, but the act of intimidation is. (It should be noted that a violation of s. 11(1)(a) does not require that an employer have the intention to intimidate, but merely that its acts would likely have such an effect on an employee of "reasonable fortitude"). Whether the Union can prove that it meets the necessary requirements of the specific provisions of s. 11 of the Act is quite a different matter and remains to be seen.*
>
> *[16] While the Board may not be able to make a cease and desist order to reverse the Jonquiere closure, there is certainly other relief available that the Board could award.*

[20] The Employer's position was that the original panel's decision turned on an error of law by departing from the legal principle that the proper forum or jurisdiction for a proceeding is based primarily on where the facts underlying the claim arose and not where the effects of those facts are felt. In taking this position the Employer relied on the decision of the Saskatchewan Court of Queen's Bench in *Blood Tribe v. Canada*, 2005 SKQB 105, wherein that court was called upon to review the provisions of *The Court Jurisdiction and Proceedings*

Transfer Act, S.S. 1997, c.C-41.1, in deciding whether or not to dismiss two (2) statements of claim brought by plaintiffs on the basis their claims did not arise in Saskatchewan. In that case, the court determined that, because none of the alleged facts emanated from Saskatchewan, there was no "real and substantial connection" with the province for the court to accept jurisdiction.

[21] The Employer argued that the Board must be careful to differentiate between the impugned actions or conduct of the Employer (*ie.* of closing its store in Jonquiere) and the alleged effects of those actions (*ie.* alleged intimidation of workers in Saskatchewan). The Employer argued that the only allegations from the Union's application that relate to Saskatchewan are the alleged effects of the Employer's conduct and not the conduct itself. As a consequence, the Employer argued that the Board had no jurisdiction to inquire into, hear or determine the Union's application alleging contraventions of the *Act* in Saskatchewan arising out of conduct of the Employer occurring in the province of Quebec.

[22] In addition (or possibly in the alternative), the Employer argued that, if the Board does have discretion to accept jurisdiction in this case, the Board should decline to accept jurisdiction over conduct occurring in another province because it can not impose an effective remedy with respect to that conduct. In this regard, the Employer relied upon the case of *O'hara v. Chapman Estate*, [1987] S.J. No. 874, wherein the Saskatchewan Court of Appeal quoted from *Dicey's Conflict of Laws* (4TH Ed.) at p.393:

> *This rule is merely an application of a more general principle that no court ought to give a judgment the enforcement whereof lied beyond the court's power, and especially if it would bring the court into conflict with the admitted authority of a foreign sovereign, or what is the same thing, the jurisdiction of a foreign court.*

[23] Finally, the Employer argued that its action in closing its store in Jonquiere, Quebec, was lawful in that province and that any remedial Order that this Board may attempt to impose associated with this action would bring this Board into conflict with the authority of the Quebec Labour Commission and the courts of that province.

[24] Simply put, the Employer took the position that the Board has no jurisdiction to impose penalties in Saskatchewan for activities occurring in Quebec, particularly so, if the impugned conduct of the Employer was legal in Quebec. The Employer argued that, not only did the Board commit an error of law in accepting jurisdiction over the allegations set forth in the

Union's application, but that this decision represents a significant precedent and a marked departure from the Board's existing policies of confining its jurisdiction to conduct occurring within Saskatchewan. In this regard, the Employer argued that this new precedent could open the floodgates to complaints in Saskatchewan for conduct occurring throughout North America and perhaps the world.

[25] The Union's position was that the Board did not error in concluding that it had jurisdiction to look at both the impugned conduct of the Employer, as well as the alleged effects of that conduct. The Union's position was that the alleged effects (*ie.* intimidation of workers at the Employer's stores in Saskatchewan) occurred within the provincial boundaries and, as such, fall within the jurisdiction of the Board. In taking this position, the Union pointed to examples were *ex-juris* activities were taken into account by the Board. See: *City of Lloydminster and Canadian Union of Public Employees, Local 1015*, [1985] Jan. Sask. Labour Rep. 33, *IBEW v. Pyramid Electric,* [1997] Sask. LR.B.R. 391, LRB File No. 376-96.

[26] The Union argued the fact that the impugned conduct of the Employer may be or have been lawful in another jurisdiction (*ie.* Quebec) is a defence available to be argued by the Employer during the hearing; but it does not represent a bar to the Union's allegation that a violation of the *Act* may nonetheless have occurred in Saskatchewan.

[27] With all due respect, the decision of the Justice Laing in *Blood Tribe, supra,* is of little assistance to the Employer in its application for reconsideration. *The Court Jurisdiction and Proceedings Transfer Act* established specific criteria for determining when Saskatchewan courts have territorial competence over certain proceeding and, in so doing, established specific criteria for doing so; namely that the "facts" on which the proceeding are based must have a "real and substantial connection" with Saskatchewan. Firstly, *The Court Jurisdiction and Proceedings Transfer Act* does not apply to applications pursuant to the *Act* and, as such, the criteria enumerated therein for determining territorial competence is not applicable to the Board. Secondly, even if that Act did apply, the original panel, in effect, concluded that the allegations in the Union's application had a real and substantial connection with Saskatchewan.

[28] The Board is not satisfied that the original panel committed an error of law in concluding that it had jurisdiction to inquire into, hear and determine the Union's application alleging contraventions of the *Act* by the Employer related to closure of the Employer's store in

Jonquiere, Quebec. The Employer has ongoing operations in Saskatchewan, including stores that were the subject of organizing drives at the time of the closure of the Jonquiere store. The Board has in other cases examined events transpiring in other jurisdictions to determine the significance of those events, if any, for the purposes of the *Act* in Saskatchewan. See: *Re: Pyramid Electric, supra*. The original panel correctly observed that the Board may not have authority to grant all of the remedies sought by the Union but that the Board does have authority to grant remedial relief should a violation of the *Act* be sustained. The original panel also correctly observed that it is not possible for the Union to bring an application alleging a violation of the *Act* and seeking remedial relief thereunder associated with the Employer's operations within Saskatchewan in any other jurisdiction. As a consequence, the Board is not satisfied that the original panel's decision represented a marked departure from the Board's existing policies and practices nor that it erred in law.

The Employer Can Not Be Held Responsible for the Statements of Others

[29] Concomitant with the Employer's argument that the Board has no jurisdiction to impose penalties in Saskatchewan for activities occurring in Quebec, the Employer argued that it could not be held responsible for the conduct of others (which conduct did occur in Saskatchewan); namely, the press reports related to the closure of the Employer's store in Quebec and the editorial speculation as to the Employer's motivations therefore.

[30] The Employer advanced a similar argument before the original panel, who made the following determination:

> *[17] Furthermore, the actions of the media in reporting on the closure are not the unfair labour practice. While Wal-Mart certainly does not have control over what the media reports, it is disingenuous for it to intimate that it could not reasonably have known that the closure of Jonquiere following closely on unionization would be reported across the country, and particularly in the business press. Objection (b) above is without merit, and is no basis on which the Board should not have jurisdiction.*

[31] The Employer argued that the original panel's decision represented a marked change from the Board's past practice that it would only find breaches of the *Act* and impose penalties for conduct that were directly attributable to the offender. In support of its position, the Employer advanced the Board's decision in *Grain Services Union Canada v. Startek Canada Services Ltd.* 2005 CanLii 63089, LRB File Nos. 115-04, 116-4, 117-04 & 193-04. In this case, the Board declined to hold an employer responsible for the threatened closures of a business

because the threat, so to speak (the potential that the Employer may close the business should the union become certified), was contained in an internal memo that was improperly leaked without the employer's authorization and contrary to its express instructions.

[32] Simply put, the Employer's position was that it can not be held responsible for the content of newspaper editorials and statements of other and that there is no authority in the *Act* to make orders against the Employer or to hold the Employer responsible for the action, including public statements and/or editorial comments of others.

[33] The Union took the position that the press reports and public statements of others made within the province were the natural (and potentially desired) consequence of the Employer's actions in closing the Jonquiere store. The Union argues that it is irrelevant that the statements and press reports were not made directly by the Employer, if such statements and reports were the reasonably foreseeable consequence of its actions. The Union argued that, in light of the Union's high profile organizing drives in Saskatchewan that were ongoing at the time of the Employer's decision to close its Jonquiere store, the public statements and press reports were not only the reasonably foreseeable consequence of the Employer's action, but that they were the intended consequence of the Employer's action. All of which, the Union argued, had the effect that it alleges in its application; namely, the effect of intimidating workers at the Employer's other stores in Saskatchewan from becoming unionized.

[34] The Board is not satisfied that the original panel erred in law or that its decision to dismiss this aspect of the Employer's objection to the Union's application was precedential and/or represents a marked department from the Board's existing practices. Furthermore, even if it were otherwise, the Board is loath to interfere in a preliminary ruling of the Board except in the clearest and most compelling of cases, which this is not. The Employer will have a full and arguably better opportunity (*ie.* with the benefit of evidence) to defend the Union's allegations. As the original panel observed, whether or not the Union can prove its allegations and/or whether or not a violation of the *Act* in Saskatchewan has occurred is quite a different matter from a determination as to whether or not an application should be summarily dismissed without a formal hearing.

The Union's Application is an Abuse of the Board's Processes

[35] The Employer (both before the original panel and in its reconsideration application) argued that the Union's application alleging a violation of the *Act* in Saskatchewan was an abuse of process and should be summarily dismissed. In support of its position, the Employer observed that following the announcement by Winners Apparel (a retailer with multiple stores in Saskatchewan as well as in other jurisdictions) to close its store on Circle Drive in Saskatoon, Saskatchewan (which at the time was the only unionized Winners store in Saskatchewan), the Union in that case (which was also UFCW, Local 1400) did not file an unfair labour practice with the Board nor otherwise allege a violation of the *Act*. The Employer argued that the Union, in bring the within application against the Employer in the present case, is simply trying to harass and annoy the Employer in circumstances where it has declined to bring a similar application against another employer in similar circumstances.

[36] The original panel concluded that the Union had an arguable case and, as such, the Employer's objection was without merit. In this respect, the Board concurs. Certainly, it is not the clearest and most compelling case that the original panel erred in dismissing this aspect of the Employer's preliminary objection.

The Original Panel was not Properly Constituted

[37] The Employer's fourth and final ground in bringing its application for reconsideration was that the original panel was not properly constituted at the time it rendered its decision. The Employer argued that the composition of the original panel was not valid at the time it rendered it decision because former Chairperson Seibel's appointment to the Board had been terminated by the Lieutenant Governor in Council prior to the original panel rendering its decision. The Employer took the position that, because the former Chairperson's appointment was "terminated" or "cancelled" and did not "expire" in the ordinary course, his decision-making authority pursuant to the *Act* was not continued by s. 4(1.2). As such, the Employer argued that the original panel was not properly constituted at the time it rendered it decision. In the alternative, the Employer argued that the early dismissal of the former Chairperson gave rise to a reasonable apprehension of bias.

[38] Council on behalf of the Employer indicated that, while it was not prepared to abandon this ground, it did not wish to press either of these arguments before the Board.

[39] The Union's position was that the status of the original panel (specifically, the status of the former Chairperson Seibel) is out of this Board's hands. In this respect, we concur with the position stated by the Union.

[40] The Board is not prepared to inquire into nor comment on the constitution of the original panel other than to state the presumption that the original panel was properly constituted and authorized to act in accordance with the authority granted pursuant to the *Act* and that this presumption arose *ipso facto* upon the original panel accepting jurisdiction and rendering a decision.

Conclusion:

[41] In our opinion, the Employer has not adduced sufficient grounds to persuade us to exercise our discretion to embark upon reconsideration of the original panel's decision in the within proceeding. For the reasons stated herein, the Employer's application for reconsideration must be dismissed.

DATED at Regina, Saskatchewan, this **17th** day of **March, 2008.**

LABOUR RELATIONS BOARD

Steven Schiefner,
Vice-Chairperson