

**The Labour Relations Board  
Saskatchewan**

**CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 4973, Applicant v. WELFARE RIGHTS CENTRE, Respondent**

LRB File No. 083-10; July 20, 2010

Chairperson, Kenneth G. Love, Q.C.; Members: Ken Ahl and Gloria Cymbalisky

For the Applicant Union: Ms. Crystal Norbeck

For the Respondent Employer: Ms. Jana Linner

**Interim Relief – Union President and Secretary-Treasurer placed on Administrative Leave by Employer – Union claims employees placed on leave to weaken support for Union. Employer counters that employees’ Criminal Records Checks resulted in those employees not being eligible for insurance coverage.**

**Interim Relief – Board confirms two part test for granting of interim relief – Arguable case found – Labour relations harm favours interim relief being granted.**

**Remedy – Board declines to award full relief sought – Employer brings forward arguable case that placing employees on administrative leave justified – Employee insurability an issue and Employer dealing with issue in accordance with policy regarding Criminal Record Checks.**

***The Trade Union Act, ss. 5.3 & 11(1)(a) & (b).***

**REASONS FOR DECISION**

**Background:**

**[1] Kenneth G. Love, Chairperson:** The Canadian Union of Public Employees (“CUPE”) applied to the Board on June 28, 2010 under Sections 11(1)(a), (b), (c) and (m) as well as s. 32 of *The Trade Union Act* (the “Act”), alleging, *inter alia* that The Welfare Rights Centre (the “Employer” or the “Centre”) had engaged in an unfair labour practice by:

*On June 24, 2010, the Employer put Pam Belanger, Local President and Lea Bage, Local Secretary-Treasurer, on an indefinite administrative leave with pay as a result of alleged insurance concerns regarding their pre-employment criminal records.*

**[2]** On June 29, 2010, pursuant to s. 5.3 of the Act, the Union applied for an interim Order requesting:

*An Order reinstating Pamela Belanger and Lea Bage to the workplace, and*

*An Order requiring the Employer to post a notice at the Welfare Rights Centre that sets out the employee's rights to participate in Union activity without fear of interference by or retaliation from their Employer.*

**[3]** In accordance with the Board's practice in respect of applications for interim relief, the Board reviewed affidavit evidence in the form of Affidavits of Lea Bage and Pamela Belanger filed by the Union and an Affidavit of Marg Friesen on behalf of the Employer. At the close of the hearing, the Board noted to the parties that the Affidavits which had been presented were not strictly in accord with the Board's Practice Directive No. 1. The Board advised the parties that only those portions of the Affidavits which were based on personal knowledge would be considered. Those parts of the Affidavits which are based on "information and belief", are hearsay, or which are argumentative or speculative, would not be considered. The Board has, on several occasions, cautioned Applicants that their Affidavits on applications for interim relief must be based upon personal knowledge as outlined in its practice directive and decided cases. Failure to do so could result in the dismissal of the application.<sup>1</sup>

**Facts:**

**[4]** The Employer is a non-profit corporation funded by the Ministry of Social Services. The Centre provides trusteeship services, advocacy, family support and housing services to low income families. The provision of these services involves employees of the Centre administering funds on behalf of persons receiving income assistance from the Ministry of Social Services. That administration also involves employees handling cash for and on behalf of those persons to whom they provide services as well as maintaining bank accounts for those persons and acting as signatory on those bank accounts.

**[5]** Both Ms. Bage and Ms. Belanger have been employed at the Centre for some years. Ms. Bage since June 2005 and Ms. Belanger since September 1998. Ms. Bage holds the position of Office Administrator. Ms. Belanger is currently in the position of Trustee.

**[6]** Both of the positions occupied by Ms. Bage and Ms. Belanger require them to handle cash on behalf of clients of the Centre. Ms. Bage also had had dual signing authority for

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<sup>1</sup> *Grain Services Union (ILWU-Canada) v. Starteck Canada Services Ltd.*, (2004) Sask. L.R.B.R. 15, LRB File No 032-04.

general account and trustee accounts. On the recommendation of the Centre's auditor, this authority was removed.

**[7]** The Union was certified to represent employees of the Centre on January 29, 2010. The Centre employs nine (9) persons. Only the Executive Director, Ms. Friesen is excluded from the unit of employees.

**[8]** Pursuant to the contract by which the Centre provides services to Ministry of Social Services Clients, the Centre is required to develop, document and follow a policy which "stipulates requirements for staff and volunteers, including board members, to obtain Criminal Record Checks." A policy requiring employees to provide Criminal Record Checks was implemented by the Centre in September, 2008. The staff of the Centre were asked by the current Executive Director to provide a "current Criminal Records Check...on or before August 28, 2009" following a meeting she had with Adella Fox, a Program Consultant from the Ministry of Social Services in June, 2009. Ms. Friesen deposed that at that meeting, Ms. Fox advised her "of the importance of complying with the criminal records check requirements of the Ministry of Social Services."

**[9]** In her Affidavit, Ms. Bage deposed that she disclosed that she had a criminal record to the former Executive Director, Mr. Eagles, when she was hired. In her Affidavit, Ms. Friesen deposed that:

*[I]n or about December, 2009, Ms. Bage notified the Welfare Rights Centre that she had a criminal record but, in contravention of the Criminal Records Check Policy, refused to disclose the nature of her criminal convictions.*

Ms. Friesen also deposed that she had been advised by letter from the Union that Ms. Bage was in the process of applying for a pardon in respect of those convictions.

**[10]** Ms. Belanger also complied with the request for a Criminal Records Check in or about December, 2009. Ms. Friesen deposed that "[M]s. Belanger's criminal record history" indicated that she had been convicted of two criminal offences of a nature which are related to her duties as a trustee.

**[11]** Ms. Friesen deposed that "[O]n June 23, 2010, I was advised by a representative of Galon Insurance that if any employee has committed any fraudulent or dishonest act in the

service of the insured or otherwise, they would not be covered” by employee dishonesty insurance maintained by the Centre. Ms. Friesen deposed that upon receipt of this information, she requested that the representative of Galon Insurance obtain written confirmation of the operation of the insurance policy with respect to the existence of employee criminal records. On June 28, 2010, Ms. Friesen deposed that:

*I was advised in writing, by SGI, the underwriter of the insurance coverage obtained by the Welfare Rights Centre, that they would not provide any coverage for either Ms. Bage or Ms. Belanger, on account of their criminal history. The letter further advised that no coverage would be provided even if the employee were to receive a pardon.*

[12] On June 24, 2010, Ms. Friesen placed both Ms. Bage and Ms. Belanger on paid administrative leave. Her letter to both employees reads as follows:

*We have just been advised by our insurer that it will not provide excess employee dishonesty coverage under our commercial insurance policy for employees who been [sic] convicted of a criminal offence.*

*We are in the process of seeking additional information from our insurer to determine if they will insure our employees who have received a pardon for a criminal conviction.*

*Unfortunately, without insurance, we are not permitted to allow you to continue your duties at Welfare Rights Centre. As a result, we are placing you on an indefinite leave **with pay** until we can receive additional information from our insurer.*

*We will be in touch with you shortly respecting the information we obtain from our insurer.*

[13] The Union then brought this interim application seeking the relief set out above.

#### **Arguments of the Parties:**

[14] The Union argued that the Employer is seeking to intimidate the employees of the Centre by its actions in placing the President and Secretary-Treasurer of the newly created local on administrative leave. The Union further argues that the removal of these employees from the workplace was motivated by anti-union animus and that the actions will have a chilling effect on the workplace. They further argue that the newly created bargaining unit is fragile, and has yet to achieve a first collective agreement.

[15] The Employer argued that its actions were purely administrative and were not motivated by anything other than its concern that its funding from the Ministry of Social Services would be interrupted or cancelled if it failed to maintain proper insurance and comply with the Criminal Records Check procedures mandated by the Ministry. They argued further that they sought to mitigate the impact on the affected employees, during its investigations, by placing those employees on paid leave.

**Relevant Statutory Provisions:**

[16] Sections 5.3 and 11 provide 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.*

...

*11(1) It shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer:*

*(a) in any manner, including by communication, to interfere with, restrain, intimidate, threaten or coerce an employee in the exercise of any right conferred by this Act;*

...

*(b) to discriminate or interfere with the formation or administration of any labour organization or contribute financial or other support to it; but an employer shall not be prohibited from permitting the bargaining committee or officers of a trade union representing his employees in any unit to confer with him for the purposes of bargaining collectively or attending to the business of a trade union without deductions from wages or loss of time so occupied or from agreeing with any trade union for the use of notice boards and of the employer's premises for the purposes of such trade union;*

**Analysis and Decision:**

[17] In interim applications, the Board utilizes a two part test in its analysis<sup>2</sup>. That test requires a determination if (1) 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.

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<sup>2</sup> *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.

**[18]** In this case, the Board is satisfied that there is an arguable case that the Employer is seeking to undermine support for the Union by its actions in placing the two (2) executive members of the Union on administrative leave. Clearly, the Union is in its embryonic stage of its development, having recently been certified and not yet having achieved a first collective agreement. The actions of the Employer in removing the two principal members of the Union from the workplace can, arguably, at least, be seen as an attempt to undermine support for the Union during this critical time before the achievement of a first collective agreement.

**[19]** That having been said, however, that is not, of course, finally determinative of the alleged unfair labour practice allegation. The Employer also makes out an arguable case that the actions taken were strictly administrative and were not aimed at destabilization of the bargaining unit.

**[20]** The second part of the test involves a balance between the labour relations harm that may result if the interim relief is not granted. The Union says that the actions of the Employer will seek to destabilize a fragile workplace. The Employer says that if it did not take these actions that the funding for, and by extension, the existence, of the Centre is placed in jeopardy by virtue of its inability to obtain insurance.

**[21]** The key element in this analysis is the review of labour relations harm. Clearly, the Union is facing labour relations harm, whereas the harm to the Employer is financial and administrative. While the elements of harm are different, they are, nevertheless, of importance, as noted later in the remedy which the Board will grant. However, on a strict analysis of labour relations harm, the Board is satisfied that the labour relations harm to the Union outweighs the labour relations harm to the Employer.

**Remedy:**

**[22]** Notwithstanding its determination that the Union has satisfied the tests for granting of interim relief, the Board is not prepared to fully grant the relief sought by the Union. The Board believes that the response to the insurance concern by the Employer has been measured and is in accord with the Criminal Records Check policy which it has enunciated in accordance with the requirements of the Ministry of Social Services. That is, in placing the

employees on paid administrative leave, it has taken prudent steps to protect the Centre and its potential funding while acting in accordance with its internal policies.

[23] The Criminal Records Check policy promulgated by the Centre provides, in part, as follows:

**Assessing relevance  
of a criminal  
charge/conviction**

*To evaluate the relevance of existing and current criminal charges/convictions regarding suitability for positions of employment, volunteer and membership to the Board of Directors the following guidelines will be considered:*

- *The relationship of the offence to the nature of the position*
- *The frequency of offences and nature of the offence*
- *The length of time that has passed between the offence and application for employment, volunteer or Board Member*
- *A clear indication of resolve to avoid subsequent criminal convictions in the intervening period and future*
- *Willingness to seek immediate qualification of a criminal pardon*

**Statement of  
relevance regarding  
a criminal offence**

*After considering the duties and responsibilities of the position in which the individual occupies, seeks or is appointed to in relation to the conviction, The Welfare Rights Centre will not change employment, volunteer and Board member status or refuse an individual based on convictions and/or offences that do not cause a risk to the operations of the Welfare Rights Centre.*

**Subsequent and  
current charges  
and/or convictions**

*When an employee, volunteer or Board Member becomes aware that they are charged with an offence or has a current offence under:*

- *The Criminal Code of Canada*
- *The Controlled Drugs and Substance Act*
- *Provincial statutes and/or violation of policy and guidelines governing the Welfare Rights Centre*

*The individual shall immediately report such a charge or violation to the Executive Director. Afterward, an assessment will be conducted to evaluate the relevance of the conviction or violation in relation to the position held, applied for or appointed to. if a current offence exists, and it is deemed prudent to continue the volunteer or employment relationship, the individual must seek to qualify*

*for a criminal pardon immediately within a reasonable and mutually agreed upon timeframe.*

**[24]** The policy clearly provides for the steps which the Centre has taken and, in particular, the Centre appears to be following the policy in its investigation of the issue and its attempt to determine what steps need to be taken.

**[25]** Ms. Bage, in particular, does not appear to be willing to co-operate in assisting with the investigation. She has refused to provide details as to the nature of her criminal convictions, in contravention of the policy. We were told at the hearing, although not as sworn evidence, that she has offered to advise the Chairperson of the Centre's Board as to the nature of her convictions, but has refused to provide that information to the Executive Director.

**[26]** Clearly, the issue of criminal records checks and the establishment of a policy and procedure to deal with these issues is a hot topic and one which the Ministry has, by contract with the Centre, made a requirement of their funding. It is, therefore, critical to the proper functioning of the policy and the satisfaction of the Ministry's requirements that employees be forthright in their response to the policy and that the Employer take the steps required under the policy to insure that client's funds and Centre resources are kept safe. Absent co-operation from employees in the process, the Employer's hands are tied in attempting to find resolution to its insurance problem.

**[27]** For this reason, the Board cannot be critical of the Centre's approach to the problem and does not believe that these employees need to be returned to the workplace pending completion of the investigation into the insurance situation. As a result, the Board declines to order reinstatement of Ms. Bage and Ms. Belanger to the workplace as requested.

**Conclusion:**

An Interim Order of the Board will issue as follows:

1. That within twenty-four (24) hours of the receipt of the Board's Order, the Employer shall post a copy of the Board's Order and these Reasons in the workplace in a location where the documents are visible to and may be read by as many employees as possible, such posting to remain until the conclusion of the Union's applications;



2. That along with the materials posted pursuant to point 1 above, the Employer shall post a copy of Sections 3 and 11(1)(a), (b), & (e) of *The Trade Union Act* in the workplace in a location where those provisions are visible to and may be read by as many employees as possible, such posting to remain until the conclusion of the Union's unfair labour practice applications; and
3. This panel will not remain seized of this matter.

**DATED** at Regina, Saskatchewan, this **20th** day of **July, 2010**.

**LABOUR RELATIONS BOARD**

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Kenneth G. Love,  
Chairperson