Editor's Note: Corrigendum released March 31, 2011. The original of the following Reasons for Decision of the Saskatchewan Labour Relations Board was corrected with text of corrigenda appended.

The Labour Relations Board
Saskatchewan

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant, v. WAL-MART CANADA CORP., Respondent

LRB File No. 184-10, December 10, 2010
Vice-Chairperson, Steven Schiefner; Members: Hugh Wagner and Mick Grainger

For Applicant Union: Mr. Drew Plaxton
For Respondent Employer: Mr. John R. Beckman, Q.C. and Ms. Catherine A. Sloan

Unfair Labour Practice - Interim Relief – Board applies two part test for interim relief – Board finds arguable case for potential violation of *The Trade Union Act* – Board finds balance of harm/convenience favours limited intervention prior to hearing main application.

The Trade Union Act, ss. 5.3, 11(1) & 36.

REASONS FOR DECISION – INTERIM RELIEF

[1] **Steven D. Schiefner, Vice-Chairperson:** On November 8, 2010, the United Food and Commercial Workers, Local 1400 (the "Union") filed an application with the Board alleging that Wal-Mart Canada Corp., (the "Employer") violated various provisions of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*"). All of the allegations relate to events that occurred following the decision of the Saskatchewan Court of Appeal dated October 14, 2010[1] reinstating the Board's certification Order of the employees of the Employer's store in Weyburn, Saskatchewan.

[2] In its application, the Union alleges that the Employer contravened both ss. 11(1) and 36(2) of the *Act*. In summary, the Union alleges that the s. 11 violations occurred when the Employer communicated messages to employees in the bargaining unit on or about October 22, 2010; messages the Union alleges were intended to intimidate employees from supporting the Union; and by the Employer failing to recommence collective bargaining when requested to do so by the Union on October 15, 2010; and by the Employer failing to provide sufficient

[1] C.A. 1811 of 2009 (*United Food and Commercial Workers, Local 1400 v. Wal-Mart Canada Corp, et. al.).*

information regarding the names, addresses and means of contacting employees in the bargaining unit when requested to do so by the Union on October 15, 2010; and by the Employer failing to provide requisite information regarding the wages, benefits and the terms and conditions of employment to enable the Union to properly engage in collective bargaining with the Employer. The Union alleges that a violation of s. 36 occurred because the Union has received no membership application forms from the Employer in response to its union security demands.

[3] By way of additional (but necessary) background, on April 19, 2004, the Union applied to the Board seeking to represent a unit of employees of the Employer at its store in Weyburn, Saskatchewan.[2] On December 4, 2008, the Board rendered a decision; determined the appropriate composition of the Statement of Employment; and concluded that the Union enjoyed the support of the majority of employees in the appropriate bargaining unit.[3] In concluding that the Union enjoyed the majority support of affected employees, the Board relied upon the card evidence of support filed by the Union at the time the certification application was filed with the Board. No representative vote within the meaning of s. 6 of the *Act* was conducted by the Board.

[4] At the time the Union filed its application for certification (on April 23, 2007), and at the time of the hearing before the original panel (on June 18, 2007 and August 8, 2007), s. 6 of the *Act* did not mandate that a representative vote be conducted and the Board's practice at the time was to determine whether or not a trade union enjoyed the support of a majority of the employees in a bargaining unit on the basis of card evidence of support (i.e. membership/support cards). At that time, the *Act* only compelled a representative vote in limited circumstances; circumstances not present before the original panel.

[5] On December 15, 2008, the Employer filed an application for reconsideration with the Board alleging the Board erred in certifying the Union. Prior to a hearing on its application for reconsideration, the Employer sought and obtained, by Order of the Board dated December 24, 2008, a partial stay of obligations on the Employer respecting disclosure of employee

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2 LRB File No. 069-04

3 See: *United Food and Commercial Workers, Local 1400 v. Wal-Mart Canada Corp. at Weyburn, Saskatchewan, operating as Wal-Mart, Wal-Mart Canada, Sam's Club and Sam's Club Canada, et al.*, [2008] Sask. L.R.B.R. 951, 2008 CanLII 64399, LRB File Nos. 069-04, 122-04 & 124-04 to 130-04 (inclusive).

information. In addition, the Union sought and obtained an Order of the Board dated January 16, 2009 compelling the parties to meet and bargain collectively.

[6] The Employer and the Union met for purpose of collective bargaining on February 4, 2009 and March 4, 2009.

[7] On March 26, 2009, the Board rejected the Employer's application for reconsideration, concluding that the changes to s. 6 of the *Act* (that became effective on May 14, 2008) did not apply to applications filed with the Board prior to the change in legislation.[4]

[8] On March 27, 2009, the Employer applied to the Saskatchewan Court of Queen's Bench seeking judicial review of this Board's decision to designate the Union as the certified bargaining agent.[5] On March 31, 2009, the Saskatchewan Court of Queen's Bench issued a stay of the Board's certification Order. On June 23, 2009, the Saskatchewan Court of Queen's Bench concluded that the Board erred in relying on membership cards for purposes of determining whether or not the Union enjoyed majority support in certifying the Employer's store in Weyburn. Simply put, the Court concluded that the amendments to s. 6 of the *Act* ought to have been given retroactive application by the Board and, thus, the Board erred in failing to conduct a representative vote. The Board's certification Order dated December 4, 2008 was quashed and the matter was remitted back to the Board.[6]

[9] On July 22, 2009, the Union filed an application with the Saskatchewan Court of Appeal seeking to overturn the decision of the Court of Queen's Bench.[7] On October 14, 2010, the Court of Appeal granted the Union's application, concluding that the changes to s. 6 of the *Act* did not apply to applications filed and argued before the Board prior to the change in legislation.[8] In so doing, the Court of Appeal re-instated the Board's certification Order.

[10] Following the decision of the Court of Appeal, a number of things happened. For example, the Union renewed its demands that the Employer comply with the union security

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4 See: *United Food and Commercial Workers, Local 1400 v. Wal-Mart Canada Corp. et. al.*, 2009 CanLII 13640, LRB File No. 069-04.

5 Q.B.G. No. 387 of 2009.

6 See: Wal-Mart Canada Corp v. *United Food and Commercial Workers, Local 1400, et. al.*, 2009 SKQB 247, (CanLII).

7 C.A. 1811 of 2009 (*United Food and Commercial Workers, Local 1400 v. Wal-Mart Canada Corp, et. al.).*

8 See: *United Food and Commercial Workers, Local 1400 v. Wal-Mart Canada Corp. et. al.*, 2009 CanLII 13640, LRB File No. 069-04.

provisions of the *Act* by letter dated October 15, 2010. On the same date, the Union also sought the employee information that the Board had directed that the Employer collect but that the Union had been enjoined from receiving pursuant to the Order of this Board dated December 24, 2008. The Union also demanded that the Employer return to the bargaining table and sought dates when members of the Employer's bargaining team were available.

[11] In addition, on October 15, 2010, the Union filed an application[9] seeking assistance from the Board toward the conclusion of a first collective agreement pursuant to s. 26.5 of the *Act*. This application has not yet been heard or determined by the Board.

[12] In addition, on October 29, 2010, Mr. Gordon Button, an employee of the Employer and member of the Union's bargaining unit, filed an application with the Board seeking to rescind the certification Order of the Board dated December 4, 2008. Mr. Button's rescission application was filed during what would normally be the open period; being the eleventh (11th) month following this Board's Order (or anniversary thereof) certifying the Union as the bargaining agent for the unit of employees of which he is a member. This application has not yet been heard or determined by the Board.

[13] Finally, on November 9, 2010, the Union filed an application seeking interim relief from the Board pursuant to s. 5.3 of the *Act* with respect the unfair labour practice that it filed on November 8, 2010.[10] In its interim application, the Union sought the following relief from the Board:

> *a) An order employer, its agents and such persons acting on behalf of the employer bargain in good faith with representatives of the union until the terms of a collective bargaining agreement have been agreed to or otherwise ordered by this Honourable Board.*
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> *b) An order that the employer, its agents and such persons acting on its behalf forthwith provide to the union advice as to the identity of members of its collective bargaining team, when these persons are available for bargaining with a view to concluding the terms of a collective bargaining agreement until the unfair labour practice application within has been finally determined or otherwise ordered by this Honourable Board.*
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> *c) An order the employer provide employee information as requested by the union as well as all further information concerning terms and conditions of employment, including benefits, wage progressions, policies and other relevant information and continue to do so on an ongoing basis until the unfair labour practice*

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9 LRB File No. 166-10.
10 LRB File No. 184-10.

application within has been finally determined or otherwise ordered by this Honourable Board.

d) *An order the employer provide to the Union up to date employee information on an ongoing basis including names, addresses, telephone numbers, job classifications, department, rates of pay, and dates of hire, and/or termination of employment.*

e) *An order compelling the employer comply with the Union security provisions of The Trade Union Act and the demand made by the Union concerning same and further obtain and forward membership cards for all employees hired after certification on a continuing basis until the unfair labour practice application within has been finally determined or otherwise ordered by this Honourable Board.*

f) *An order the employer allow union representatives free and reasonable access to members at the workplace on company time without supervision or interference until the unfair labour practice application within has been finally determined or otherwise ordered by this Honourable Board.*

g) *An order the Board's order, reasons and such further or other information as the Board may direct be posted at such conspicuous locations in the workplaces as the Board may direct and be included in employees' pay packets and given to new hired employees for such periods of time as the Board may direct until the unfair labour practice application within has been finally determined or otherwise ordered by this Honourable Board.*

h) *Such further and other orders as may seem just to this Honourable Board.*

[14] In support of its application, the Union filed the Affidavit of Mr. Darren Kurmey dated November 16, 2010.

[15] Finally, it is noted that the Employer filed its Reply to the main application with the Board on November 22, 2010.

Argument of the Parties:

[16] The Board heard submissions on the Union's interim application on November 18, 2010 in Regina.

[17] The Union took the position that, following the decision of the Court of Appeal to re-instate the Board's certification Order, the Employer had failed to comply with the requirements of the *Act*, including the requirement on the Employer to bargain collective with the Union; to provide information regarding terms and conditions of employment, including wages, benefits, wage progressions, policies and other relevant information to enable to the Union to

fulfill its duties and obligations under the *Act*; to provide updated employee information, including the telephone information, job classifications, department, rates of pay and date of hire and/or termination of employment; and to comply with the Union security provisions in the *Act* and to obtain and forward membership cards for all employees hired after certification.

[18] The Union argued that its requests of the Employer were reasonable and consistent with the requirements of the *Act*. The Union also pointed to the affidavit evidence of Mr. Kurmey that the Employer had not yet agreed to return to collective bargaining with the Union following the decision of the Saskatchewan Court of Appeal; that the Employer had only provided limited information (i.e.: names and addresses) as to employees in the bargaining unit; that the Employer had provided no information as the terms and conditions of employment of employees in the bargaining unit; and that the Union had received no membership application forms from the Employer. The Union argued that the actions of the Union demonstrated an arguable case that the Employer was in violation of several provisions of the *Act* and sought interim relief to obtain this information from the Employer. Finally, the Union argued that the existence of a rescission application filed Mr. Gordon Button created a sense of urgency for the Union to obtain the relief it sought by way of its interim application.

[19] In support of its position, the Union relied upon the decisions of this Board in *United Food and Commercial Workers, Local 1400 v. Impact Security Group Inc. et. al.*, [2006] Sask. L.R.B.R. 517, LRB File No. 081-06; *United Food and Commercial Workers, Local 1400 v. F.W. Woolworth Co. Limited, et. al.*, [1994] 1st Quarter Sask. Labour Report 169, LRB File Nos. 148-93, 151-93, 192-93, 193-93 & 194-93; *United Food and Commercial Workers, Local 1400 v. Madison Development Group Inc.*, [1996] Sask. L.R.B.R. 75, LRB File No. 131-95; and *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, v. Loraas Disposal Services Ltd.*, [1997] Sask. L.R.B.R. 517.

[20] The Employer, on the other hand, took the position that the Union's application for interim relief should be denied. The Employer argued that the Union had neither demonstrated an arguable case for a potential violation of the *Act* nor demonstrate that greater labour relations harm will result if the desired interim relief is not granted than if it is.

[21] With respect to collectively bargaining, the Employer argued that the Union was already aware of the identity of the Employer's bargaining team. However, the Employer took

the position that, in light of the Union's application seeking assistance from the Board toward a first collective agreement,[11] scheduling a bargaining session would be futile.

[22] With respect to the Union's request for employee information, the Employer observed that on October 22, 2010 it provided the Union with the names, department/position, and home contact information for all employees in the bargaining unit. The Employer argued that in light of Mr. Button's rescission application (i.e.: and the concomitant potential for decertification) the provision of further personal and private information about its employees was premature and inappropriate.

[23] With respect to s. 36 of the *Act* and the provision of membership application forms, the Employer argued that the Union had hired no new employees during the period of time that the Board's certification Order had been in effect (being December 4, 2009 until March 31, 2009 and after October 14, 2010).

[24] With respect to the Union's request for access to employees on company time in the workplace, the Employer argued that providing such an Order would be disruptive in the workplace and premature under the circumstance. The Employer argued that it provided sufficient information to enable the Union the means on contact members of the bargaining unit.

[25] In support of its position, the Employer relied upon the decision of this Board in *International Brotherhood of Electrical Workers, Local 529 v. Saunders Electric Ltd.*, [2008] Sask. L.R.B.R. 910, LRB File No. 019-05; and *United Food and Commercial Workers, Local 1400 v. The North West Company and Tora Regina (Tower) Limited*, [2009] CanLII 1128, LRB File No. 026-04.

[26] Counsel for the Employer filed written submissions, which we have read and for which we are thankful.

Relevant Statutory Provisions:

[27] The relevant provisions of *The Trade Union Act* are as follows:

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[11] LRB File No. 166-10.

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) to interfere with, restrain, intimidate, threaten, or coerce an employee in the exercise of any right conferred by this Act, but nothing in this Act precludes an employer from communicating facts and its opinions to its employees;*
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> *(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 purpose 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 purpose of such trade union;*
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> *(c) to fail or refuse to bargain collectively with representatives elected or appointed, not necessarily being the employees of the employer, by a trade union representing the majority of the employees in an appropriate unit;*
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> *. . .*
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> *(e) to discriminate in regard to hiring or tenure of employment or any term or condition of employment or to use coercion or intimidation of any kind, including discharge or suspension or threat of discharge or suspension of an employee, with a view to encouraging or discouraging membership in or activity in or for or selection of a labour organization or participation of any kind in an proceeding under this Act, and if an employer or an employer's agent discharges or suspends an employee from his employment and it is shown to the satisfaction of the board that employees of the employer or any of them had exercised or were exercising or attempting to exercise a right under this Act, there shall be a presumption in favour of the employee that he was discharged or suspended contrary to this Act, and the burden of proof that the employee was discharged or suspended for good and sufficient reasons shall be upon the employer; but nothing in this Act precludes an employer from making an agreement with a trade union to require as a condition of employment membership in or maintenance of membership in the trade union or the selection of employees by or with the advice of a trade union or any other condition in regard to employment, if the trade union has been designated or selected by a majority of employees in any such unit as their representative for the purpose of bargaining collectively;*

. . .

36*(1) Upon the request of a trade union representing a majority of employees in any appropriate unit, the following clause shall be included in any collective bargaining agreement entered into between that trade union and the employer concerned, and, whether or not any collective bargaining agreement is for the time being in force, the said clause shall be effective and its terms shall be carried out by that employer with respect to such employees on and after the date of the trade union's request until such time as the*

employer is no longer required by or pursuant to this Act to bargain collectively with that trade union:

> *Every employee who is now or hereafter becomes a member of the union shall maintain his membership in the union as a condition of his employment, and every new employee whose employment commences hereafter shall, within 30 days after the commencement in his employment, apply for and maintain membership in the union, and maintain membership in the union as a condition of his employment, provided that any employee in the appropriate bargaining unit who is not required to maintain his membership or apply for and maintain his membership in the union shall, as a condition of his employment, tender to the union the periodic dues uniformly required to be paid by the members of the union;*

*and the expression "**the union**" in the clause shall mean the trade union making such request.*

(2) Failure on the part of any employer to carry out the provisions of subsection (1) shall be an unfair labour practice.

Analysis and Conclusion:

[28] Interim applications are utilized in exigent circumstances where intervention by the Board is thought to be necessary to prevent harm from occurring before an application pending before the Board can be heard. Because of time constraints, interim applications are typically determined on the basis of evidence filed by way of certified declarations and sworn affidavits without the benefit of oral evidence or cross-examination. As such, the Board is not in a position to make determinations based on disputed facts; nor is the Board able to assess the credibility of witnesses or weigh conflicting evidence. Because of these and other limitations inherent in the kind of expedited procedures used to consider interim applications, the Board utilizes a two-part test to guide in its analysis: (1) whether the main application raises an arguable case of a potential violation under the *Act*; and (2) whether the balance of convenience favours the granting of interim injunctive relief pending a hearing on the merits of the main application. See: *Hotel Employees and Restaurant Employees Union, Local 206 v. Canadian Hotels Income Property Real Estate Investment Trust #19 Operations Ltd. (o/a Regina Inn)*, [1999] Sask. L.R.B.R. 190, LRB File No. 131-99. See also: *Grain Services Union (ILWU – Canada v. StarTek Canada Services Ltd.*, [2004] Sask. L.R.B.R. 128, LRB File Nos. 115-04, 116-04 & 117-04. As with any discretionary authority under the *Act*, the exercise of the Board's authority to grant interim or injunctive relief must be based on a sound labour relations footing in light of both the broad objectives of the *Act* and the specific objectives of the section allegedly offended.

[29] In the first part of the test, the Board is called upon to give consideration to the merits of the main application but, because of the nature of an interim application, we do not place too fine a distinction on the relative strength or weakness of the applicant's case. Rather, the Board seeks only to assure itself that the main application raises, at least, an "*arguable case*". See: *Re: Regina Inn, supra*. See also: *Canadian Union of Public Employees, Local 4973 v. Welfare Rights Centre*, 2010 CanLII 42668, LRB File No. 083-10. The Board has also used terms like "*whether or not the applicant is able to demonstrate that a fair and reasonable question exists"* (which should be determined after a full hearing on the merits) to describe this portion of the two-part test. See: *Re: Macdonalds Consolidated, supra*. Simply put, an applicant seeking interim relief need not demonstrate a probable violation or contravention of the *Act* as long as the main application reasonably demonstrates more than a remote or tenuous possibility.

[30] The second part of the test – balance of convenience - is an adaptation of the civil irreparable harm criteria to the labour relations arena. See: *Hotel Employees and Restaurant Employees Union, Local 206 v. Chelton Suite Hotel (1998) Ltd.*, [2000] Sask. L.R.B.R. 434, LRB File Nos. 091-00, 110-00, 125-00, 139-00, 144-00 & 145-00. In determining whether or not the Board ought to grant interim relief prior to a full hearing on the merits of an application, we are called upon to consider various factors, including whether or not a sufficient sense of urgency exists to justify the desired remedy. See: *Grain Services Union, Local 1450 v. Bear Hills Pork Producers Ltd. Partnership*, [2000] Sask. L.R.B.R. 223, LRB File No. 079-00. The Board will also balance the relative labour relations harm that is anticipated to occur prior to the hearing of the main application without intervention by the Board compared to the harm that could result should a remedy be granted. See: *Saskatchewan Joint Board, Retail Wholesale and Department Store Union v. Regina Exhibition Association Limited, et. al.*, [1997] Sask. L.R.B.R. 667, LRB File No. 266-97; *United Brotherhood of Carpenters and Joiners of America, Local 1985 v. Con-Force Structures Limited*, [1999] Sask. L.R.B.R. 599, LRB File No. 248-99; and *International Association of Fire Fighters, Local 1318 v. South Saskatchewan 911*, [2001] Sask. L.R.B.R. 97, LRB File No. 037-01. In assessing the relative labour relations harm, the Board is particularly sensitive to the potential for irreparable or non-compensable harm. See: *Retail, Wholesale and Department Store Union, Local 455 v. Tai Wan Pork Inc.*, [2000] Sask. L.R.B.R. 219, LRB File No. 076-00.

[31] In addition, the Board had enunciated certain policy restrictions on when interim relief should be granted (or rather should not be granted). For example, the Board has stated that the relief sought may not be granted were doing so would have the practical effect of granting what the applicant might hope to obtain on the main application. See: *Tai Wan Pork Inc.*, *supra.*

[32] Prior to considering the Union's application for interim relief, it is helpful to ruminate on the general goals of the *Act* and the policy objectives of the specific provisions which the Union alleges has been violated. There is no doubt that, during the period immediately following certification, the relationship between a recently certified employer and the representative trade union can be difficult, often strained; and yet, much work must be done. It is not surprising that both management and staff at a newly certified workplace may take some time to become accustomed to their new relationship; a relationship now prescribed by statute. Simply put, both management and employees must adapt to a new legal framework for the labour relations at the workplace; a framework wherein the certified trade union is the exclusive bargaining agent for all included employees. As part of this framework, the *Act* presumes and expects a certain level of acceptance and cooperation from employers as the parties embark upon a process of defining their new relations through collective bargaining. Following certification, a trade union need no longer fight the employer for the right to represent the employees in the bargaining unit as that right has already been determined and granted by the Board.

[33] Section 11 establishes various actions and/or conduct on the part of both employers and trade unions that constitute a violation of the *Act* in the form of an unfair labour practice. Many of the actions enjoined by s. 11 are directed at preserving peace and order between the parties during the vulnerable period following certification. These prohibitions are aimed at encouraging the parties to work towards the difficult task of defining the terms of their new relations through collective bargaining.

[34] Through s. 36, Saskatchewan has adopted union security as a component of the *RAND* formula. This section imposes a level of union security and is the corollary of the Union's exclusive bargaining rights and the principles of majoritarianism and fair representation adopted for certified workplaces under Saskatchewan's *Trade Union Act*. As part of Saskatchewan's model of labour relations, the *Act* imposes a duty of fair representation on trade unions (see: s.

25.1) that, not only requires unions to fairly represent all employees in the bargaining unit with respect to their rights under the collective agreement but, in so doing, obliges the unions not to act arbitrarily or in bad faith or in a discriminatory manner. Unions are bound by this duty regardless of whether the employees in question are union members and regardless of whether the employees provide the financial contribution necessary to support that representation.

[35] Turning to the Union's application for interim relief, while the Union presented the impugned conduct of the Employer as a continuing course of conduct collectively intended to subvert the efforts of the Union to communicate with and represent its members, in our opinion, each of the alleged violation (or category of violations) must be assessed individually within the framework of the legislation and relative to the specific interim relief intended to address the impugned conduct.

Inappropriate Communication by the Employer:

[36] The Union alleged that the Employer violated s. 11(1)(a) in communicating with members of the bargaining unit and pointed to a document dated October 22, 2010. Having considered the arguments of the parties, we are not satisfied that the Union has demonstrated an arguable case that the Employer's impugned comments could reasonably represent a potential violation of the *Act*. The impugned statements of the Employer, while inaccurate in some respects, appears to be the kind of communications excepted by the *Act* as not representing a violation of s. 11(1)(a). The inaccuracies in the information appear innocent and, in any event, of limited significance in terms of a potential violation of s. 11(1). In our opinion, the potential that this communication could represent a violation of the *Act* is too tenuous and remote to reasonably demonstrate an arguable case.

Failure to Commence Collective Bargaining:

[37] The Union alleged that the Employer violated s. 11(1) by failing to recommence collective bargaining when requested to do so by the Union on October 15, 2010. With all due respect to the Union's obvious desire to return to the bargaining table, the Union's application alleging the occurrence of an unfair labour practice was filed with the Board the same date. It is impracticable for the Employer to have violated the *Act* in the few hours between receiving the Union's demand to return to the bargaining table and the time the Union's application was filed with the Board. Having considered the arguments of the parties, we are not satisfied that the

Union has demonstrated an arguable case that the Employer's failure to return to the bargaining table on October 15, 2010 could reasonably represent a potential violation of the *Act*.

Failure to Provide Information Necessary for Collective Bargaining:

[38] The Union alleged that the Employer violated s. 11(1) of the *Act* by failing to provide requisite information regarding the wages, benefits and terms and conditions of employment to enable the Union to properly engage in collective bargaining. Again, with all due respect to the Union's obvious desire to return to the bargaining table, it was not apparent to the Board that the receipt of the desired information demonstrated the requisite sense of urgency to justify intervention by the Board to justify interim relief prior to hearing the application on its merits. See: *Grain Services Union, Local 1450, supra*.

Failure to Provide Information with Respect to Employees:

[39] The Union alleged that the Employer violated s. 11(1) of the *Act* by failing to provide sufficient information regarding the names, addresses and means of contacting employees in the bargaining unit when requested to do so by the Union on October 15, 2010. In December of 2008, following the original certification Order of this Board, the Union demanded similar information. On December 24, 2008, this Board directed the Employer to, among other things, collect this information but not to provide the information to the Union until further Order of this Board. The evidence indicates that the Employer provided the Union with the names and address of employees but no other contact information, including phone numbers or email addresses. Furthermore, many of the address were little more than post office box numbers or incomplete. In our opinion, the information provided would appear to be inadequate.

[40] The Union has a statutory responsibility to fairly represent the employees falling within the scope of the certified bargaining unit. As such, the Union requires up-to-date contact information and a means of communication. The Employer argued that it was merely attempting to protect the private and personal information of its employees. However, in light of the statutory responsibilities on the Union following certification, it is not a stranger to the workplace. Following the reinstatement of this Board's certification Order by the Saskatchewan Court of Appeal, it is again the certified bargaining agent for members of the bargaining unit. The mere filing of a recission application does not alter the Union's status nor detract from its rights and responsibilities under the *Act*. The circumstances in the present case are distinguishable from

the circumstances before the Board in *The North West Company and Tora Regina (Tower) Limited, supra*.

[41] As such, we are satisfied that the Union has demonstrated an arguable case that the Employer has potentially violated s. 11(1) of the *Act* through the provision of inadequate contact information for members of the bargaining unit. In coming to this conclusion, we note that the Employer was unwilling to ask employees to complete membership application forms or to allow the Union access to the workplace to directly communicate with members of the bargaining unit.

[42] With respect to balance of harm/convenience, we find that the contact information requested by the Union is essential for it to properly represent its members. In our opinion, the remote potential for harm from providing this information to the Union (i.e.: the release of private or personal information) prior to a hearing on the merits is outweighed by the probable harm associated with failing to provide this information to the Union (i.e.: the inability of the Union to effectively communicate with the members of the bargaining unit).

Failure to Comply with Union Security Provision:

[43] The Union alleged the Employer has violated s. 36(2) of the *Act* and pointed to the evidence that it has received no membership application forms for any employees included within the bargaining unit and, in particular, has received no membership application forms for any new employees hired following certification. The Employer asserted (and later stated in its Reply) that it had hired no new employees during any period that the Board's certification Order was in effect (from December 4, 2008 until June 23, 2009 and after October 14, 2010). With respect to any employees hired outside of these periods, the Employer argued that it complied with its requirements at law by provide the names and address of all employees, which enables the Union to contact the said employees so that membership application forms may be obtained directly by the Union from the employees. In our opinion, in addition to the defect in the scope of the information already addressed herein, the information provided by the Employer is insufficient absent information as to the date of hire of the employees. Information as to the date of hire of members of the bargaining unit is essential as it can affect the rights and obligations of the employee within the Union. As such, the Union need not be compelled to obtain this information from the employees directly. In our opinion, the Union had demonstrated an arguable case of a potential violation of s. 36(2) of the *Act*.

[44] By way of interim relief, the Union sought both more information from the Employers regarding employees and access to the employees on company time at the workplace. As we have already indicated, following certification, the Union is no longer a stranger to the workplace. It has statutory duties and a fiduciary relationship with the employees within the scope of the bargaining unit. In our opinion, provision of information with respect the date of hire of employees is required for the proper functioning of the Union and the remote potential for harm of providing this additional information to the Union prior to a hearing on the merits is outweighed by the probably harm associated with failing to provide this information. The same can not be said for access to the employees on company time at the workplace. Simply put, the Board was not satisfied that there was a sufficient nexus between this desired relief and the alleged contravention by the Employer (failure to provide adequate information regarding employees).

Potential Defection in the Union's Application:

[45] This Board has cautioned that the relief sought by an applicant seeking intervention by the Board prior to a hearing on the merits may not have the practical effect of granting what the applicant could hope to achieve in the main application. See: *Tail Wan Pork Inc., supra*. The Union's application was potentially in violation of the Board's restriction on the nature of relief available by way of an interim application. However, during the hearing, counsel on behalf of the Union narrowed the scope of the relief being sought by the Union and, in so do, cured a potential defect in the Union's application. In our opinion, it is incumbent upon an applicant seeking interim intervention by the Board to be mindful of this important restriction on interim applications, as a failure to do so could prove fatal to a future application.

Conclusion:

[46] Having considered the arguments of the parties, we are satisfied that the Union has demonstrated an arguable case that a potential violation of the *Act* has occurred and we are satisfied that this is an appropriate case for limited intervention by the Board by way of interim relief prior to a hearing of the Union's application on the merits. Specifically, the Employer shall be directed to provide the following information to the Union:

1. Contact information for all employees falling within the scope of the bargaining unit, including up-to-date civic addresses, home telephone numbers and e-mail addresses; and

2. The date of hire for all employees falling within the scope of the bargaining unit.

[47] Board Member Wagner dissents from these Reasons.

DATED at Regina, Saskatchewan, this **10th** day of **December, 2010.**

LABOUR RELATIONS BOARD

"Original Signed by"
Steven D. Schiefner, Vice-Chairperson

Dissent:

[48] **Dissent of Hugh J. Wagner, Board Member**: I agree with the two directive Orders referenced above. However, I respectfully dissent from the above decision of the majority for the reasons set forth below.

[49] In my opinion, the Employer's October 22, 2010 communication to employees in the Weyburn, Saskatchewan store and the Employer's conduct with respect to bargaining with the applicant Union, when viewed in the overall context of this situation, does not appear on its face to be appropriate nor innocent.

[50] In my estimation the applicant Union has presented a *prima facie* case in support of its allegation that the Employer has violated section 11(1) (a) and (c) of *The Trade Union Act*.

[51] With regard to the information requested by the applicant Union, if it was in my power to do so, in addition to the above Orders of the Board, I would also Order the Employer to provide the applicant Union with the requested information with respect to the terms and conditions of employment applicable to employees in the bargaining unit. This kind of

information is essential to enable the Union to carry out its collective bargaining responsibilities and give meaningful effect to its certification Order.

[52] Furthermore, I would order the Employer to fully comply with section 36(1) of *The Trade Union* Act with respect to all employees in the bargaining unit who were employed on or hired since December 4, 2008. In my opinion, despite the interregnum that occurred as a result of the staying of the applicant Union's certification Order on March 31, 2009 by the Court of Queen's Bench, the language and meaning of section 36(1) are sufficiently broad and clear to support the full invocation of that provision of the *Act* for the period commencing on December 4, 2008 and going forward.

[53] This is a complicated file where there has been much litigation and where there may be more. However, it is my respectful opinion that, if the principles and purposes of *The Trade Union Act* are to have meaning, then now is the occasion to fully enable the applicant Union to carry out its responsibilities and attempt to meet the expectations of the majority wishes of the employees as certified by this Board on December 4, 2008.

Hugh J. Wagner, Board Member

The Labour Relations Board
Saskatchewan

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400, Applicant, v. WAL-MART CANADA CORP., Respondent

LRB File No. 184-10, March 31, 2011
Vice-Chairperson, Steven Schiefner; Members: Hugh Wagner and Mick Grainger

CORRIGENDUM

[54] **Steven D. Schiefner, Vice-Chairperson**: Paragraph 4 of the Reasons for Decision in the within proceedings issued by the Board on December 10, 2010 contained an error. This paragraph should read as follows:

> **[4]** At the time the Union filed its application for certification (on April 19, 2004), and at the time argument on the Union's application before the original panel concluded (on December 13, 2005), s.6 of the *Act* did not mandate that a representative vote be conducted and the Board's practice at the time was to determine whether or not a trade union enjoyed the support of a majority of the employees in a bargaining unit on the basis of card evidence of support (i.e. membership/support cards). At that time, the *Act* only compelled a representative vote in limited circumstances; circumstances not present before the original panel.

DATED at Regina, Saskatchewan, this **31st** day of **March, 2011.**

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson