The Labour Relations Board
Saskatchewan

SASKATCHEWAN GOVERNMENT AND GENERAL EMPLOYEES' UNION, Applicant v. THE GOVERNMENT OF SASKATCHEWAN, Respondent

LRB File No. 005-11; March 18, 2011
Vice-Chairperson, Steven Schiefner; Members: Hugh Wagner and Ken Ahl

For Applicant Union: Ms. Juliana Saxberg
For Respondent Employer: Mr. Curtis Talbot

Reconsideration – Union asks Board to reconsider certain aspects of Board's decision to dismiss Union's application for interim relief – Union arguing that Board erred in making significant policy determinations on an interim application – Union arguing Board erred in means used to determine the magnitude of change necessary to trigger application of technological change provision in *The Trade Union Act* – Union arguing that Board erred in comparing the number of employees affected to whole of Union's bargaining unit – Union alleging breach of natural justice because Board relied on authority not argued by parties during the hearing – Employer arguing application is moot because Union not asking Board to reconsider disposition of interim application only asking Board to retract certain paragraphs - Board hears and dismisses application for reconsideration.

The Trade Union Act, ss. 5(i) and 43.
Saskatchewan Regulations 171/72.

REASONS FOR DECISION

Background:

[1] **Steven D. Schiefner, Vice-Chairperson**: The Saskatchewan Government and General Employees' Union (the "Union") asks the Saskatchewan Labour Relations Board (the "Board") to reconsider certain aspects of its recent decision in *Saskatchewan Government and General Employees' Union v. Government of Saskatchewan*, 2010 CanLII 81339, LRB File No. 150-10 (the "original decision").

[2] The relevant facts as found by the Board are set forth in our original decision and need not be recounted herein. Simply put, the Union filed an interim application with the Board alleging that the Government of Saskatchewan (the "Employer") had implemented a series of changes that collectively amounted to a "*technological change*" within the meaning of Section 43

of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the "*Act*"). The Union took the position that the Employer had violated the *Act* by failing to give the prescribed notice and by failing to bargain collectively with the Union with respect to a workplace adjustment plan prior to implementing the impugned changes. In its application for interim relief, the Union sought, *inter alia*, injunctive relief directing the Employer to cease and desist from implementing further impugned changes in the workplace.

[3] In the Board's original decision, released on December 9, 2010, the Board dismissed the Union's application for interim relief for the reasons stated therein. The Union now asks the Board to reconsider this decision or, rather, to retract certain conclusions made by the Board in arriving at our decision. In its application for reconsideration, the Union was not asking the Board to reconsider (i.e.: to reverse) its decision to dismiss the Union's interim application. Rather, the Union asked the Board to "*retract or reverse only the findings in paragraph 40 through 45 of the original decision."*

[4] The impugned paragraphs of the Board's original decision are as follows:

> **[40]** To invoke the Board's discretion, the Applicant must demonstrate an arguable case that the changes implemented by the Employer were of the "kind" and of the "magnitude" prescribed by the *Act*. While this Board has historically taken a generous approach to the "kind" of change necessary to trigger the application of s. 43, no matter how generous the Board may be, the evidence does not reasonably demonstrate an arguable case that the impugned changes implemented by the Employer were of the "magnitude" necessary to sustain a violation of the *Act*.
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> **[41]** The evidence presented in these proceedings indicates that ninety-one (91) employees were affected by the changes implemented by the Employer on August 31 and September 1, 2010. The Union argued that, for purposes of its interim application, all employees in the Ministry of Government Services directly involved in cleaning, of which there are approximately 224, should be assumed by the Board to be likely to be affected by the impugned changes. In addition, the Union argued that, for purposes of calculating the percent of employees affected, the Board should not consider the size of the whole bargaining unit (i.e.: being approximately 11,000); but rather we should only consider those

employees in that portion of the bargaining unit in the Ministry of Government Services (i.e.: approximately 1024).

[42] In *Saskatchewan Government Employees Union v. Department of Health of the Government of Saskatchewan*, [1987] Sept. Sask. Labour Rep. 41, LRB File No. 146-87, this Board concluded that, for purposes of calculating the magnitude of a technological change implemented by an employer, the number of affected employees is compared to the whole of the bargaining unit. See also: *Westfair Foods Ltd, supra*. Support for this conclusion may be found in the express wording of s. 3(4) of Saskatchewan Regulations 171/72, which reads as follows:

> *2(1) The number of employees deemed to be "significant" for the purpose of section 42 of The Trade Union Act, 1972 shall be:*
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> > *(a) the number specified in writing in the collective bargaining agreement between the trade union representing such employees and the employer of such employees, or*
> >
> > *(b) the number determined by the method of determining the number of employees that shall be deemed to be "significant" as set out in writing in the collective bargaining agreement between the trade union representing such employees and the employer of such employees.*
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> *(2) If a collective agreement between an employer and a trade union does not contain provisions specifying the number of employees or the method of determining the number of employees that shall be deemed significant for the purpose of the employees covered by that collective bargaining agreement, then section 3 of these regulations shall apply.*
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> *18 Aug 72 SR 171/72 s2.*
>
> *3 The number of employees deemed to be "significant" for the purpose of section 42 of The Trade Union Act, 1972 shall be:*
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> *(1) where an employer has from 2 to 9 employees inclusive, 2 employees;*
>
> *(2) where an employer has from 10 to 19 employees inclusive, 3 employees;*
>
> *(3) where an employer has from 20 to 29 employees inclusive, 4 employees; and*
> *(4) where an employer has 30 or more employees, 20 per cent of his total number of employees.*
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> *18 Aug 72 SR 171/72 s3.*

[43] The regulations are not ambiguous. They impose a series of threshold points for determining whether or not the magnitude of a change is sufficient to trigger the application of s. 43 for small, medium and large (i.e.: employers with 30 or more employees).

[44] The Union argued that measuring the impact of a technological change on the whole of their bargaining unit (which involves over 11,000 members) permits the Employer to implement what would be considered massive changes for most workplaces. Rather, the Union argued that the impact of the change should be measured against the number of employees in the direct ministry that was affected by the change. With all due respect, proceeding in the fashion suggested by the Union would remove the clarity intended by the authors of the legislation and would be irreconcilable with the express wording of the regulations. The legislation both permits the parties to negotiate their own procedures dealing with the difficult issue of technological change in the workplace and creates a clear threshold for the application of s. 43 in the event the parties have not addressed this issue. While the parties have the capacity to strike their own balance, including the option of expanding the kind, or reducing the magnitude, of change necessary to trigger the kind of requirements found in s. 43 of the *Act*, the Board has no such latitude as our jurisdiction is defined by the legislation.

[45] The evidence in these proceedings indicated that ninety-one (91) employees were directly affected by the changes implemented by the Employer on August 31 and September 1, 2010, representing an impact on less than one percent (1%) of the bargaining unit. Even making the most generous assumption as to the scope of the impact (i.e.: that all cleaning staff employed by the Ministry of Government Services would be affected by the impugned changes), only 2.03% of the employees in the bargaining unit are likely to be affected by the proposed changes. Either way, the scope of the impact of the changes implemented by the Employer fell well short of the 20% mandated by s. 3(4) of the Saskatchewan Regulations 171/72. Simply put, even assuming that the changes implemented by the Employer were of the kind defined by s. 43, they do not come close to the magnitude necessary to trigger the section. In light of these observations, the Union's allegation that the Employer has violated s. 43 of the *Act* is too remote and tenuous to satisfy the Board as to the existence of an arguable case.

[5] The Union's application for reconsideration was heard by the Board on March 2, 2010. In accordance with the general practice of the Board, the Union's application for reconsideration was heard by the same panel of the Board that rendered the decision under

review. Counsel for both the Union and the Employer filed written submissions, which we have read and for which we are thankful.

Statutory Provisions:

[6] The Board's authority to reconsider its prior decisions finds its genesis in section 5(i) of *The Trade Union Act*, which provides as following:

> *5. The board may make orders:*
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> *(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;*

Analysis and Decision:

[7] While the Board has jurisdiction to reconsider its own decisions under ss. 5(i) of the *Act*, we have resolved to sparingly exercise this jurisdiction for a variety of policy reasons. 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.*

[8] For example, in *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. 454, LRB File No. 003-02, the Board 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 also: *United Food and Commercial Workers, 1400 v. Sobey's Capital Inc., et al.,* [2005] Sask. L.R.B.R. 358, LRB File Nos. 181-04 & 227-04.

[9] 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:*
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> 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.*

[10] In bringing its application for reconsideration, the Union relied upon the second, fourth, fifth and sixth of the *Overwaitea* criteria.

[11] Although the Union advanced a variety of grounds, the common theme of the Union's application for reconsideration was that the Board erred in its December 9, 2010 decision in concluding that, to establish an arguable case that the Employer had implemented a "*technological change*" within the meaning of the *Act*, the magnitude of the subject changes (i.e. the number of employees affected by the changes being implemented by the Employer) must be compared to the whole of the Union's bargaining unit.

[12] In opposing the Union's application for reconsideration, the Employer argued that, absent a request that the Board reverse its disposition of the Union's interim application, the matters which the Union wished the Board to now revisit are moot. The Employer noted that, in its application for reconsideration, the Union was not asking the Board to reverse the Order it issued or the substance of the original decision (i.e. to dismiss the Union's interim application).

Rather, the Union was merely asking the Board to redact its decision by retracting portions of the reasons used by the Board in arriving at one of its conclusions (i.e. that the Union had not demonstrated an arguable case). The Employer argued that such was not a proper application for reconsideration as the Board's disposition of the Union's application for reconsideration would not have the affect of resolving any of the issues in dispute between the parties. While there is compelling logic to the Employer's argument, we believe that it is appropriate and desirable to deal with each of the Union's arguments and will do so in turn.

Crucial evidence was not adduced for good and sufficient reason**:**

[13] The Union took the position that the Board ought not to have made any determination as to the magnitude of changes necessary to trigger the application of s. 43 of the *Act* on an interim application because it was an issue of fundamental importance to the position the Union sought to advance in its main application and not the type of question that ought to be decided on an interim application. The Union relied upon the decisions of this Board in *Saskatchewan Joint Board, Retail, Wholesale and Department Store Union v. MacDonalds Consolidated*, [1991] 2nd Quarter Sask. Labour Rep. 45, LRB File No. 078-91 and *Grain Services Union Canada v. Startek Canada Services Ltd.*, [2004] Sask. L.R.B.R. 128, CanLII 65599, LRB File Nos. 115-04, 116-04 & 117-04, as standing for the proposition that the number of employees affected by the technological change is not the type of question that can be decided on an interim application.

[14] The Union stated that it intended to adduce further evidence during the hearing on the main application as to (1) the number of members of the bargaining unit affected by the alleged technological change; (2) the size and nature of the Union's various bargaining units, including geographic and functional separations therein; and (3) the practice of the Public Service Commission and individual Ministries within the Government of Saskatchewan of negotiating with the Union respecting the terms and conditions of members' employment. The Union argued that it did not tender such evidence during the hearing on the interim application because: (1) it did not have evidence of the entire extent of the alleged technological change being implemented by the Employer; (2) such evidence was not within the personal knowledge of the Union's affiants; and (3) the Union assumed that the Board would not be deciding this type of fundamental issue on an interim application.

[15] Counsel for the Union clarified that the Union did not intend to adduce any additional evidence as part of its application for reconsideration. Rather, the Union took the position that the Board should not decide a fundamental question of policy, such as the magnitude of change necessary to trigger the notice and collective bargaining obligations set forth in s. 43 of the *Act*, based on incomplete evidence; evidence which the Union desired to adduce at the hearing on the main application and not during the interim application. On this basis, the Union asked the Board to retract those portions of its original decision dealing with this issue.

[16] The Employer, on the other hand, argued that the Union's own application seeking interim relief from the Board required the Board to make the very determination that the Union now challenges. The Employer argued that the Union's own application required the Board to make a determination as to the number of members employed by the Government of Saskatchewan that must be affected by a technological change to trigger the operation of s. 43 of the *Act*. The Employer observed that the magnitude of changes is one of a number of statutory thresholds to a claim of a violation of s. 43 and, as such, the issue was placed squarely before the Board by the Union's own application. Furthermore, the Employer argued that the Union had notice the Employer intended to argue the statutory threshold in the material that it filed with the Board in opposing the Union's application for interim relief. As a consequence, the Employer argued that the Union should not now complain that the Board decided a question that the Union did not expect.

[17] The Employer observed that both parties advanced evidence and made argument on the number of employees that must be affected by a technological change to trigger the operation of s. 43 of the *Act*. The Employer argued that, in making its interim application, the onus was on the Union to tender the evidence it deemed appropriate and necessary in support of its application. As such, the Employer argued that the Union is merely seeking to re-litigate an unsuccessful application.

[18] Having considered the argument of the parties, the Board was not satisfied that the second *Overwaitea* ground assists the Union in it application to have the Board reconsider its December 9, 2010 decision.

[19] Firstly, neither *MacDonalds Consolidated, supra*, nor *Startek Canada Services, supra*, stand for the proposition that the Board cannot decide matters on an interim application that go to the merits of the main application. Rather, both of these decisions are merely illustrations of the reality that the Board is typically compelled to determine interim applications 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 does not place too fine a distinction on the relative strength or weakness of an applicant's case and only seeks to assure itself that the applicant is able to demonstrate, at least, an "arguable case".

[20] In its application, the Union bore the burden of demonstrating an arguable case that the Employer had violated s. 43 of the *Act*. To do so, among other things, the Union was required to establish an arguable case that the magnitude of the changes implemented by the Employer satisfied the definition of technological change prescribed pursuant to the *Act*. In dismissing the Union's interim application, we concluded that the Union had failed to do so. In arriving at this conclusion, the Board applied the most generous interpretation to the evidence that the statute and regulations would permit in an effort to avoid pre-determining the main application. Furthermore, we relied upon the past jurisprudence of this Board as to the method of assessing the magnitude of change necessary to trigger a potential violation of the *Act*.

[21] Having considered the arguments of the parties, we are not satisfied that crucial evidence existed that was not adduced at the hearing on the interim application for good and sufficient reason. Simply put, both parties were alive to the statutory thresholds, including the magnitude of change necessary to trigger the application of the *Act*. Both parties tendered evidence and made argument to the Board on this issue during the hearing on the interim application; an issue placed squarely before the Board by the Union's own application. The fact that the Union did not seek to tender any additional evidence on its application for reconsideration was inconsistent with its plea that crucial evidence was not adduced during the hearing of its interim application for good and sufficient reason.

The Board's decision turned on a conclusion of law of general policy which was not properly interpreted by the Board:

[22] The Union argued that the Board departed from its general policy, if not its jurisprudence, by deciding a question of significant public importance on an interim application; namely the magnitude of change necessary to trigger the application of s. 43 of the *Act* in a provincial-wide bargaining unit. As indicated, the Union took the position that the Board's jurisprudence required that complex policy issues, particularly questions that requiring the weighing of evidence, ought not to be decided on an interim application. The Union argued that the Board went too far in deciding that the magnitude of the change implemented by the Employer ought to be measured relative to the size of the Union's whole bargaining unit and thus relied upon the fourth *Overwaitea* ground.

[23] With all due respect, we neither departed from the Board's jurisprudence nor erred in comparing the number of employees that the Union alleged had been affected by the changes implemented by the Employer to the whole of the Union's bargaining unit. Doing so was merely an application of the previous conclusions of this Board in both *Saskatchewan Government Employees Union v. Department of Health of the Government of Saskatchewan*, [1987] Sept. Sask. Labour Rep. 41, LRB File No. 146-87, and *Saskatchewan Joint Board, Retail Wholesale and Department Store Union v. Westfair Foods Ltd*, [1993] 3rd Quarter Sask. Labour Rep. 79, LRB File No. 156-93. Neither of these decisions, nor any other case offered by the Union, including *Westfair Foods Ltd. v. Saskatchewan*, [1992] S.J. 558, 109 Sask. R. 84 (Sask. Court of Appeal), support the assertion that the Board should measure the relative size of the impact of alleged technological changes implemented by an employer against any grouping of employees smaller than the whole of a bargaining unit.

[24] As indicated, the relative size of the changes implemented by the Employer was an essential element of the violation alleged by the Union. The onus was on the Union to demonstrate an arguable case that the Employer had or was about to implement changes of a magnitude approaching the threshold prescribed pursuant to the *Act*. This issue was placed squarely before the Board by the Union's own application. The Board did not make a new determination on this point. Rather, the Board simply applied the prescribed thresholds to the Union's application.

[25] For the Board to have done as the Union now suggests (i.e.: to make no determination as to the number of employees that must be affected to trigger the application of s. 43 of the *Act*) would render meaningless the obligation on the Union to establish an "arguable case" in support of its interim application and would have been contrary to the jurisprudence of this Board. For the foregoing reasons, we are not satisfied that the fourth *Overwaitea, supra,* ground assists the Union in its application for reconsideration.

The Board's decision was tainted by a breach of natural justice:

[26] The Union argued that the Board's December 9, 2010 decision was tainted by a breach of natural justice because the Board determined the threshold issue of whether or not a significant number of employees were affected by the alleged technological change without providing the Union with a full opportunity to lead evidence and argument on the merits of its position. For the reasons already stated, we are not satisfied that the Board's original decision ought to be reconsidered on this basis. We are satisfied that the Union had a fulsome opportunity to present evidence and argument in support of its application. Applications for reconsiderations are not opportunities for unsuccessful litigants to reargue their case.

[27] However, there was one issue raised by the Union on this ground that warrants comment. In the original decision, we relied upon this Board's 1987 decision in *Department of Health, supra*; a decision that had not been addressed by either party in their material or submissions to the Board on the interim application. The Union argued that doing so resulted in breach of natural justice.

[28] In advancing this argument, the Union relied on the decision of the Saskatchewan Court of Queen's Bench in *Canadian Linen and Uniform Service Co. v. Saskatchewan Joint Board, Retail, Wholesale and Department Store Union*, [2005] 7 W.W.R. 492, 2005 SKQB 264 (CanLII), as standing for the proposition that the Board erred in relying on *Department of Health*, supra, because this decision was not addressed by either party in their submissions and the Board did not invite further submissions from the parties prior to rendering the original decision.

[29] With all due respect, the facts in *Canadian Linen and Uniform Service Co., supra*, are clearly distinguishable from the present case. The facts in that case, as found by the Court, were that the Board had reviewed eight (8) Saskatchewan decisions and seven (7) decisions from British Columbia, Alberta and Ontario, none of which had been presented or addressed by

the parties in the hearing before the Board. The aspect of this that the Court found objectionable was that the Board had engaged in a comprehensive review of the approach taken by other labour relation boards in other jurisdictions (and under various other statutory regimes) with a view to establishing or identifying policies to be applied by the Board in Saskatchewan. In other words, the breach of natural justice occurred when the Board relied upon cases from other jurisdictions to formulate new policy without giving the parties an opportunity to make submissions to the Board regarding the appropriate interpretation and application of these cases in Saskatchewan.

[30] Turning to the Board's December 9, 2010 decision, *Department of Health, supra*, was a decision of this Board and it was one of the few cases involving the magnitude of change necessary to trigger the application of s. 43 of the *Act* in a situation involving a provincial-wide bargaining unit. It was not an extra-provincial decision; it was a decision of this Board and it was directly on point. As it was a decision involving the same parties to the interim application, it is a mystery to the Board why it was not argued during the interim application. In any event, we did not rely on this decision to define a new policy or establish a new interpretation of the statutory threshold for the application of s. 43 of the *Act*. Furthermore, we also relied upon the decision of this Board in *Westfair Foods Ltd, supra*; a case which had been argued by the parties. In referencing these two (2) cases, the Board was merely reciting the Board's jurisprudence and, in the context used, both cases stood for the same proposition; being that the smallest denominator used for determining whether or not a sufficient number of employees had been affected to triggering the application of s. 43 of the *Act* was the size of the bargaining unit. For these reasons, we are not satisfied that any breach of natural justice occurred in our reliance on the decision of the Board in *Department of Health, supra*.

[31] The Board routinely cites from its own jurisprudence in rendering its decisions. In doing so, the Board typically cites leading cases on the points in issue in support of the conclusions arrived at by the Board. It would be irrational for the Board to be bound to only consider those decisions of the Board submitted by the counsel, particularly so, when in many cases, the parties may not even be represented by counsel. Simply put, there is nothing preventing this Board from reviewing its own jurisprudence in rendering its reasons for decision.

[32] For the foregoing reasons, we are not satisfied that the fourth *Overwaitea* ground assists the Union in its application for reconsideration.

The Board's decision was precedential and amounted to a significant policy adjudication which the Board may wish to refine, expand upon or otherwise change:

[33] Finally, the Union argued that the magnitude of change necessary to trigger the application of s. 43 of the *Act* in a provincial-wide bargaining unit is a significant policy adjudication which this Board may wish to refine, expand upon or otherwise change. The Union argued that it is open to the Board, as a matter of policy, to restate or redefine the method of calculating the magnitude of change based on a grouping of employees smaller than the whole of the collective agreement; for example, on a Ministry by Ministry basis or by location or by some other subdivision of the bargaining unit as a whole.

[34] The Board dealt with this very issue in para. 44 of the original decisions, which provides as follows:

> **[44]** The Union argued that measuring the impact of a technological change on the whole of their bargaining unit (which involves over 11,000 members) permits the Employer to implement what would be considered massive changes for most workplaces. Rather, the Union argued that the impact of the change should be measured against the number of employees in the direct ministry that was affected by the change. With all due respect, proceeding in the fashion suggested by the Union would remove the clarity intended by the authors of the legislation and would be irreconcilable with the express wording of the regulations. The legislation both permits the parties to negotiate their own procedures dealing with the difficult issue of technological change in the workplace and creates a clear threshold for the application of s. 43 in the event the parties have not addressed this issue. While the parties have the capacity to strike their own balance, including the option of expanding the kind, or reducing the magnitude, of change necessary to trigger the kind of requirements found in s. 43 of the *Act*, the Board has no such latitude as our jurisdiction is defined by the legislation.

[35] Simply put, upon considering the Union's interim application, we were not satisfied that there was an arguable case that the method used by the Board for assessing the magnitude of change necessary to trigger the application of s. 43 of the *Act* in a provincial-wide bargaining unit could be or even should be modified in the fashion suggested by the Union. The

Board's reasoning on this point was clear and transparent. While the parties have the capacity to strike their own balance, including the option of expanding the kind, or reducing the magnitude, of change necessary to trigger the application of s. 43 of the *Act*, the Board does not have that option.

[36] Having considered these same arguments again, we see no compelling reason to refine, expand upon or otherwise change the finding of the Board in this regard. As such, we are not satisfied that the sixth *Overwaitea* ground assists the Union in its application for reconsideration.

Conclusion:

[37] For the foregoing reasons, the Union's application for reconsideration must be dismissed.

DATED at Regina, Saskatchewan, this **18th** day of **March, 2011.**

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson