The Labour Relations Board
Saskatchewan

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKS INTERNATIONAL UNION (UNITED STEELWORKERS), LOCAL 5917, Applicant v. INVESTIGATION SERVICES LTD, Respondent

LRB File No. 034-11; March 18, 2011
Vice-Chairperson, Steven Schiefner; Members: Ken Ahl and Hugh Wagner

For the Applicant Union: Mr. Peter J. Barnacle
For the Respondent Employer: Mr. Roman Bari

Unfair Labour Practice - Interim Order – Union seeks reinstatement of employee who led organizing drive in workplace – Employer argues that termination unrelated to organizing activities and decision to terminate employee was made prior to Employer's knowledge of organizing drive – Board notes affidavit evidence conflicting on date employee was terminated – Board concludes potential existed that Employer knew of organizing activity at time decision was being made to terminate employee - Board satisfied that Union demonstrated arguable case of a potential violation of Trade Union Act – Board also satisfied that balance of labour relations harm favoured granting the requested relief - Board orders reinstatement of employee pending hearing of main application.

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

REASONS FOR DECISION

Background:

[1] Steven D. Schiefner, Vice-Chairperson: The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Works International Union (United Steelworkers), Local 5917 (the "Union") applied to the Saskatchewan Labour Relations Board (the "Board") on February 25, 2011 alleging that Investigation Services Ltd. (the "Employer) had contravened sections 11(1)(a) and (e) of *The Trade Union Act*, R.S.S. 1878, c.T-17 (the "*Act*") [1]. The alleged conduct of the Employer giving rise to the Union's application was described as follows:

> *The Employer terminated the employment of Abir Siddiqui, an employee who had been attempting to exercise his right to organize under The Trade Union Act, with a view [to] discouraging membership in a labour organization and has*

[1] Application bearing LRB File No. 033-11.

> *thereby interfered with, restrained, intimidated, threatened and/or coerced Abir Siddiqui in the exercise of this right to organize.*

[2] On February 25, 2011, the Union also applied to the Board for interim relief pursuant to s. 5.3 of the *Act*. The specific relief sought by the Union was an Order of the Board directing the reinstatement of Mr. Siddiqui by the Employer pending a hearing and determination on the Union's main application and direction that the Employer make Mr. Siddiqui whole with respect to any pay or other benefits he may have lost as a result of his termination by the Employer.

[3] The Union's application for interim relief was heard by the Board on March 3, 2011. In accordance with the Board's practice in respect of applications for interim relief, the Board reviewed affidavit evidence in the form of the Affidavits of Abir Siddiqui and Sonny Rioux, filed by the Union and the Affidavits of Roman Bari and Rohan Herat, filed on behalf of the Employer. Mr. Siddiqui is the subject of the Union's interim application. Mr. Rioux is a service representative for the Union. Mr. Bari is the Vice-President of Operations for the Employer. Mr. Herat is the Employer's Operations Manager for Western Canada.

[4] At the close of the hearing, having heard submissions from the parties, the Board granted the Union's interim application and gave brief oral reasons for doing so. These Reasons for Decision supplement the oral reasons provided by the Board on March 3, 2011.

Facts:

[5] The Employer is a security company retained by Loblaws Canada to provide security services at a large new warehousing and distribution centre located on the western edge of the City of Regina (the "Regina Distribution Centre"). The Employer was retained to provide twenty-four (24) hour security services, seven (7) days a week, for this new facility. The Employer began providing security services at the Regina Distribution Centre on December 1, 2010.

[6] Mr. Siddiqui was hired by the Employer as a security guard to work at the Regina Distribution Centre. Mr. Siddiqui commenced employment on December 1, 2010. As a security guard, Mr. Siddiqui was responsible for monitoring and controlling access to the Regina Distribution Centre and providing general security for the facility. Mr. Siddiqui was one (1) of

approximately twelve (12) security guards hired by the Employer to work at the Regina Distribution Centre, together with concomitant supervisory personal.

[7] Mr. Siddiqui's Affidavit indicates that, on February 15, 2011, he contacted the Board's office in Regina to enquire as to the process of organizing and joining a union. At that time, the Board's Registrar provided Mr. Siddiqui with contact information for the Union. Mr. Siddiqui contacted the Union on February 17, 2011 and spoke with Mr. Sonny Rioux, a staff representative. On February 18, 2011, Mr. Siddiqui and another security guard met with representatives of the Union; they obtained information as to the process of the Union becoming certified at Mr. Siddiqui's workplace; and they obtained a number of blank Union support cards. After this meeting, Mr. Siddiqui and his colleague met with a number of their fellow security guards regarding the potential of joining the Union. On February 19, 2011, Mr. Siddiqui returned to the Union's office and provided the Union with the support cards that had been signed by the security guards employed by the Employer.

[8] On February 22, 2011, the Union filed an application for certification[2] with the Board, together with the support cards the Union received from Mr. Siddiqui, as evidence of support for the Union's application. The Union's application of certification indicates that there are approximately twelve (12) security guards employed by the Employer at the Regina Distribution Centre. In accordance with the Board's usual practice and having been satisfied that a sufficient number of employees supported the Union's application for certification and that the Union's certification application otherwise appeared to be in order, the Board issued a Direction for Vote on March 7, 2011.

[9] The affidavit evidence was conflicting as to certain other events relevant to these proceedings. For example, while the parties agreed that Mr. Siddiqui had been terminated by the Employer, the Affidavits were conflicting as to when Mr. Siddiqui was notified of his termination. Mr. Herat deposed that, on or about February 18, 2011, he contacted Mr. Siddiqui and advised him that his employment had been terminated "*due to insufficient performance during his probationary period and that his last day would be Sunday, February 20, 2011*." In his Affidavit, Mr. Siddiqui denied being terminated until the afternoon of February 23, 2011. Mr. Siddiqui indicated that on February 20, 2011, he had a telephone conversation with his supervisor, Mr. Bill Blanshard, but denied being advised of his termination during that

[2] Application bearing LRB File No. 032-11.

conversation. Although not indicating the purpose of his conversation with Mr. Blanchard on February 20, 2011, Mr. Siddiqui deposed that he asked Mr. Blanchard during this conversation whether or not he was interested in signing a Union support card.

[10] Mr. Siddiqui deposed that he worked on both the 19th and 20th of February, 2011 and denied being advised by anyone of being terminated on these dates. Mr. Siddiqui also deposed that, although he had the 21st and 22nd of February, 2011 off, he stopped by the workplace on February 22nd, 2011 and spoke with his supervisor, Mr. Blanchard, and that nothing was said about him being terminated at that time. Rather, Mr. Siddiqui deposed that he reported for work as usual on February 23, 2011 at 7:00 am and was not informed that he was terminated until approximately 1:00 pm in the afternoon, when he received a phone call from Mr. Herat.

[11] In opposition to the Union's application, Mr. Bari deposed that Mr. Siddiqui's termination related to events that occurred prior to Mr. Siddiqui's efforts to organize and join a trade union. Mr. Bari deposed that the Employer had received a complaint on or about February 14, 2011 from their client, Loblaws Canada, regarding the conduct of a security guard. In response to this complaint, an investigation was conducted by Mr. Blanchard, the onsite supervisor. Mr. Blanchard's investigation revealed that, on or about February 10, 2011, a woman came to the site for an interview and was greeted with words to the effect of "*Hey beautiful*" followed by either "*what are you doing here?*" or "*where are you going?*". The woman replied that she was there for an interview and the security guard directed her to the appropriate location. During the woman's interview, she related the comments made by the security guard to her interviewers. The interviewers were concerned that the comments made to the woman were inappropriate and, as a result, Loblaws Canada asked the Employer to investigate the situation. Mr. Blanchard's investigation concluded that Mr. Siddiqui had been the security guard who made the comments to the woman.

[12] Mr. Blanchard's investigation concluded on or about February 16, 2011, resulting in an Incident/Occurrence Report, which was summarized as follows:

> ***16 February 2011*** *– I interviewed Abir at length on this matter. He readily admitted to uttering the phrase, "Hi beautiful" to a lady who arrived at the gate about 3:45PM. He indicated it was the 10th of February and it was the day the guards were in the guard shack with Rohan training on gate procedures. He described the day as: a woman drove slightly past the guard house and he*

> *leaned out the window as she came to a stop and said, "hi beautiful" and words to the effect "where are you going." The lady was just opening her driver's window and told him she was there for an interview with Angela. Abir then directed her to the parking area. This was the only contact he had with this person and he recalls being teased by Rohan about speaking to a lady this way as what would his wife say. Abir indicated it was taken lightly by all present. He clearly stated he did not intend to offend and there was no thought in his mind other than the inquiry where this person wished to go and due to the position of the window and car he did not make eye contact with her. He further indicated he did not see this person exit the site.*
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> *I spoke on the telephone with Ms Galen at 1600 hours and for all intense and purpose she related the same series of activities as Abir and confirmed it was Thursday February 10 as she recalls having the interview with Angela and Trevor and then being back on Friday for a follow up interview. She confirms she had mentioned the matter to Angela and Trevor casually on Thursday and cannot recall what prompted the disclosure. Apparently Angela and Trevor took more issue with this than herself. She clearly said she did not feel creped out or weird due to this and actually thought the man was "just being friendly." She was not concerned and if she was successful gaining employment she would have no issue working near the security people. She further recalled she would not be able to identify the person who spoke to her as there were five or six people in the building at the time and looking back into the sun did not allow a clear view.*
>
> *I did not see Abir as being evasive and he clearly recalled the matter without any attempt to disguise the facts. Ms GALEN was candid in her account and clearly did not see any issue with the manner this matter took place.*
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> *I am satisfied the incident took place Thursday February 10th and not the following day as reported by transportation staff. What may seem curious is Abir recalls seeing Rohan speaking with Angela after this lady arrived at the site; the guards were at the gate until 1900 hours, across from the transportation offices and no attempt was made to disclose to them the nature of Ms Galen's statement.*

[13] Mr. Bari deposed that, while the woman involved might not have been upset by the comments made by Mr. Siddiqui, the Employer's client (Loblaws Canada) was. Mr. Bari deposed that, on February 14, 2011, the client's representative, Mr. Diederichs, expressed his desire to not have any security guards on site that would make inappropriate comments to women. Mr. Bari deposed that he advised Mr. Diederich that he would investigate the incident and "*would make the necessary changes once the employee was identified*."

[14] Mr. Bari deposed that on February 17, 2011 he was informed that the security guard who had made the impugned comments was Mr. Siddiqui. Mr. Bari further deposed that he informed Loblaws Canada and agreed to "*make the needed changes*" but needed some time so as not to affect operations. Mr. Bari deposed that on February 18, 2011 he contacted Mr. Herat and informed him to "*prepare for Mr. Siddiqui's immediate departure*."

[15] Mr. Herat deposed that he, in turn, contacted Mr. Siddiqui's supervisor, Mr. Blanshard, and advised him to find someone to cover for Mr. Siddique's shift and to give him a "*letter of termination the next time he saw him*." Nonetheless, Mr. Herat deposed that he contact Mr. Siddiqui on Sunday, February 20, 2011 and advised him that he was terminated. The Employer did not file an Affidavit on behalf of Mr. Blanchard.

Arguments of the Parties:

[16] The Union took the position that the evidence was sufficient to demonstrate an arguable case of a potential violation of the *Act*. In this regard, counsel noted there was conflicting evidence as to when Mr. Siddiqui was terminated; a conflict which the Union argued was within the capacity of the Employer to help resolve through the provision of an Affidavit of Mr. Blanchard. The Union asked the Board to give favourable consideration to Mr. Siddiqui's Affidavit, wherein he deposed that he was terminated on February 23, 2011.

[17] The Union noted that Mr. Siddiqui deposed that he asked Mr. Blanchard if he was interested in signing a Union support card on February 20, 2011 and argued that Mr. Blanchard was someone who would naturally be allied with management because of his supervisory responsibilities. As a consequence, the Union argued that management could reasonably been assumed by the Board to have knowledge of Mr. Siddiqui's organizing drive several days before he was terminated, giving rise to the reverse onus provided for in s.11(1)(e) of the *Act*. Simply put, the Union argued that Mr. Siddiqui's termination was, at the very least, suspiciously coincident with the Union's organizing drive.

[18] With respect to harm, the Union relied upon the decision of this Board in *Hotel Employees and Restaurant Employees Union, Local 206 v. Chelton Suites Hotel (1998) Ltd.*, [2000] Sask. L.R.B.R. 434, LRB File Nos. 091-00, 110-00, 135-00, 139-00, 144-00 & 145-00, and *Grain Services Union (ILWU – Canada) v. Startek Canada Services Ltd.*, [2004] Sask. L.R.B.R. 128, 102 C.L.R.B.R. (2nd) 306, CanLII 65599, LRB File Nos. 115-04, 116-04 & 117-04, as examples where this Board has acknowledge the fragility of a trade union's status prior to certification and the vulnerability of its supporters to pressure that may be exerted by an employer.

[19] The Union also relied upon the decision of this Board in *Canadian Union of Public Employees v. Del Enterprises Ltd.*, [2004] Sask. L.R.B.R. 156, 109 C.L.R.B.R. (2d) 80, CanLII 65597, LRB File Nos. 087-04, 088-04, 089-04, 090-04, 091-04 & 092-04, and *Canadian Union of Public Employees, Local 4973 v. Welfare Rights Centre*, [2010] CanLII 42668, LRB No. 083-10.

[20] The Union asked the Board to order Mr. Siddiqui's reinstatement, together with monetary loss, pending determination of the Union's main application.

[21] On the other hand, the Employer argued that Mr. Siddiqui was discharged for good and sufficient reasons and that its actions were wholly unrelated to Mr. Siddiqui's efforts to organize and join a trade union. The Employer argued that it didn't even know that an organizing campaign was underway in the workplace at the time it made the decision to terminate Mr. Siddiqui's employment. The Employer argued that Mr. Siddiqui's termination related to events that occurred on February 10, 2011 when Mr. Siddiqui made what the Employer believed to be inappropriate comments to a woman at the workplace, five (5) days before he began his efforts to organize and join a trade union. The Employer argued that its decision to terminate, while maybe not implemented until later, was made on February 14, 2011 even before the Employer knew who it was going to terminate. The Employer argued that all of its employees at that point in time were on probation and the client, Loblaws Canada, did not want any security guards on site that would make inappropriate comments to a woman at their workplace. As such, the Employer argued that singular motivation in terminating Mr. Siddiqui's employment was the desire to be responsive to the concerns of its new client.

[22] With respect to harm, the Employer argued that returning Mr. Siddiqui to the workplace would be problematic for the Employer because it had already informed the client that the employee who had made the impugned comments had been terminated. To which end, the Employer expressed the concern that, even if the Board were to order Mr. Siddiqui's reinstatement, the client may not allow Mr. Siddiqui to return to the workplace. Finally, the Employer argued that it would be unfair to the Employer if Mr. Siddiqui was reinstated and then the Board subsequently determined on the main application that the Employer had good and sufficient reason for the action it took.

[23] The Employer argued that the most probable explanation of the chronology of the events that occurred was that Mr. Siddiqui sought out the Union and began his organizing campaign only after he realized he was in trouble with his employer for his inappropriate conduct. Simply put, the Employer asked that the Union's interim application be dismissed.

[24] In rebuttal, counsel for the Union cautioned the Board that, although the Employer argued that its actions were at the behest of its client, there was no evidence before the Board from the Loblaws Canada to that effect. Furthermore, the Union argued that a plain reading of Mr. Blanchard's Incident/Occurrence Report would not have led Mr. Siddiqui to believe that he was in trouble with the Employer.

Relevant Statutory Provisions:

[25] Sections 5.3 and 11(1)(a) and (e) 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.*
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> . . .
>
> *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;*
> >
> > *. . .*
> >
> > *(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;*

Analysis and Decision:

[26] The Board's practice and jurisprudence on interim applications was summarized by the Board in *Saskatchewan Government and General Employees' Union v. Government of Saskatchewan*, 2010 CanLII 81339, LRB File No. 150-10:

> ***[30]*** *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: Canadian Union of Public Employees, Local 4973 v. Welfare Rights Centre, 2010 CanLII 42668, LRB File No. 083-10. 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.*
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> ***[31]*** *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.*
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> ***[32]*** *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.*

[27] As indicated, having heard from the parties on March 3, 2011, the Board orally granted the Union's interim application and ordered that Mr. Siddiqui be reinstated pending determination of the Union's main application. In doing so, the Board noted that, on an interim application, we are not tasked with determining whether or not a violation has occurred. Rather, the Board's only seeks to assure itself that the main application demonstrates an arguable case of a possible violation of the nature alleged by the Union.

[28] In this case, there was conflicting evidence as to when Mr. Siddiqui was terminated. Mr. Bari deposed that the decision to terminate Mr. Siddiqui began as early as February 14, 2011 and culminated on or about February 18, 2011, before the Employer had any knowledge that Mr. Siddiqui was involved in an organizing campaign. Mr. Herat deposed that he advised Mr. Siddiqui that he was terminated on or about February 18, 2011. On the other hand, Mr. Siddiqui deposed that he was not terminated until February 23, 2011, the day after the Union's application for certification was filed with the Board and three (3) days after Mr. Siddiqui informed his supervisor, Mr. Blanchard, that he was attempting to organize the workplace by asking Mr. Blanchard if he was interested in signing a support card for the Union.

[29] While it is entirely possible that the Employer had good and sufficient reason for terminating Mr. Siddiqui (reasons wholly unrelated to Mr. Siddiqui's efforts to organize the workplace), because of the conflicting evidence as to when Mr. Siddiqui was terminated, the Board is left with the potential that the Employer had knowledge of the organizing campaign at

the time the decision was being made to terminate Mr. Siddiqui and that this information may have been a factor in the Employer's actions. As this Board has noted on many occasions, such is not the kind of factual determination that can be easily made on an interim application, where the Board does not have the benefits of *viva voce* evidence and the parties do not have the right to cross-examine witnesses. In the Board's opinion, the potential that the Employer had knowledge of Mr. Siddiqui's organizing efforts at the time it was making its decision to terminate his employment is neither too remote nor too tenuous to be disregarded by the Board.

[30] The potential that the Employer had knowledge of the organizing campaign coupled with the severity of the discipline imposed by the Employer (termination) relative to the nature of Mr. Siddiqui's conduct (as documented in Mr. Blanchard's Incident/Occurrence Report), together with the lack of evidence of any prior warnings or of progressive discipline or that the security staff were trained or otherwise cautioned as to appropriate and inappropriate conduct, collectively tend to raise, at least, a reasonable suspicion that the Employer's conduct may have been contrary to the *Act* (i.e. Mr. Siddiqui's termination may not have been for good and sufficient reason). For these reasons, the Board was satisfied that the Union's application demonstrated an arguable case.

[31] With respect to the second branch of the test, the Board has acknowledged in numerous cases that firing an employee closely associated with a trade union's organizing campaign can have a chilling or dampening effect on a trade union's organizing drive. See: *Chelton Suites Hotel, supra*, and *Startek Canada Services, supra*. See also: *Hotel Employees and Restaurant Employees Union, Local 206 v. Regina Inn Hotel and Convention Centre*, [1999] Sask. L.R.B.R. 190, LRB File No.131-99; *United Steelworkers of America, Local 5917, v. Superior Hard Chrome Inc.*, [1999] Sask. L.R.B.R. 721, LRB File Nos. 321-99 to 323-99; and *United Food and Commercial Workers Union, Local 1400 v. Heritage Inn*, [2001] Sask. L.R.B.R. 125, LRB File No. 056-01, 057-01 & 058-01. The Board is particular sensitive to this concern in the period prior to the conduct of a representative vote as now required by the *Act*. Prior to the conduct of the representative vote, the Union's support within the workplace is vulnerable to influence and, if the allegations are founded, the damage to the Union's reputation and the potential coercive effect on the Union's support prior to the vote could result in irreparable harm to the Union by the time a full hearing on the merits could be conducted by the Board.

[32] While the Employer argued that it would be unfair to it, if Mr. Siddiqui was reinstated and if the Union's allegations were later determined to be unfounded (as the Employer alleged), with all due respect, the balance of labour relations harm favoured reinstating Mr. Siddiqui pending the hearing on the main application. In our opinion, the potential harm to the Union of not reinstating Mr. Siddiqui was greater than the potential harm to the Employer's business resulting from having to reinstate Mr. Siddiqui on an interim basis.

Conclusion:

[33] For the foregoing reasons, the Board ordered the interim reinstatement of Mr. Siddiqui pending the final determination of the Union's application.

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

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson