The Labour Relations Board
Saskatchewan

DON EASON and RYAN BABCOCK, Applicants v. CONSTRUCTION AND GENERAL WORKERS UNION, LOCAL NO. 180, and TAURUS SITE SERVICES INC., Respondents

LRB File No. 058-10 & 078-10; April 14, 2011
Vice-Chairperson, Steven D. Schiefner, sitting alone.

Mr. Don Eason:	Appearing for himself.
Mr. Ryan Babcock:	Appearing for himself.
For the Respondent Union:	Mr. James E. Seibel.
For the Respondent Employer:	No one appearing.

Duty of Fair Representation – Arbitrariness – Employees allege trade union failed to fairly represent them in failing to prosecute grievances related to their termination – Employees allege Union's investigation was deficient – Board concludes Union's investigation was appropriate and thorough - Board concludes Union's decision to not prosecute grievances was made with reasonable care.

Duty of Fair Representation – Bad Faith – Employees allege trade union failed to fairly represent them in failing to prosecute grievances related to their termination – Employees allege Union's decision to not prosecute grievances was motivated by improper considerations – Board concludes Union's desire to not injury its relationship with new certified employer was reasonable consideration in not advancing questionable grievances.

The Trade Union Act, s. 25.1

REASONS FOR DECISION

Background:

[1] Steven D. Schiefner, Vice-Chairperson: By Order of the Saskatchewan Labour Relations Board dated April 13, 2010, the Construction and General Workers Union, Local 180, (the "Union") was certified to represent all labourers (and labour foreman) employed by Taurus Site Services Inc. (the "Employer"). The Employer is a subcontractor providing general labour services at a large industrial site in Regina, Saskatchewan. The Applicants, Mr. Don Eason and Mr. Ryan Babcock, were employed by the Employer as general labourers and thus were each members of the unit of employees represented by the Union until their termination by the Employer in May of 2010.

[2] The Applicants, together with a third employee, applied to the Board alleging that the Union violated s. 25.1 of *The Trade Union Act*, R.S.S. 1978, c. T-17 (the *"Act*") in failing to fairly represent them by failing to prosecute grievance proceedings with respect to their respective terminations, which they each alleged was wrongful. Mr. Eason's application was filed with the Board on May 31, 2010[1]; and Mr. Babcock's application was filed on June 24, 2010[2]. A third employee, being Mr. AK, filed a similar application with the Board on June 21, 2010[3].

[3] By Order of the Board dated October 20, 2010, the three (3) applications were joined for the purposes of evidence and argument.

[4] A hearing with respect to the three (3) applications commenced on December 14, 2010 in Regina, Saskatchewan, and continuing on December 15, 2010 and was adjourned on December 16, 2010. On or about January 14, 2011, Mr. AK withdrew his application and did not participate in the proceedings when they continued on March 4, 2011. The hearing concluded on March 4, 2011.

[5] The Applicants, together with Mr. AK, each testified on their own behalf. They also called Mr. John Earl (Jack) Hodder, who was employed by the Employer (at times relevant to these proceedings) as a general foreman. The Union called Ms. Lori Sali, the Union's Business Manager. The Union also called Mr. Matthew Heisler, Mr. Leslie (Tobias) Russell and Mr. William Russell. Mr. Heisler and Mr. Tobias Russell were labourers and Mr. William Russell was employed by the Employer as a foreman (in-scope). All employees who testified were members of the bargaining unit (at the relevant times).

[6] The Employer elected not to participate in the proceedings.

Facts:

[7] Following the decision of Mr. AK to withdraw his application, the proceedings now only relate to the termination of Mr. Don Eason and Mr. Ryan Babcock. These two (2) employees began working for the Employer, Taurus Site Services, on or about January 20, 2010; both

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1 Bearing LRB File No. 058-10.
2 Bearing LRB File No. 078-10.
3 Bearing LRB File No. 073-10.

having been dispatched by the Union. Both employees were terminated by the Employer approximately three (3) months later as a result of an incident that occurred at the workplace on or about April 30, 2010.

[8] By way of background, the Employer was hired by Colt Worley Parsons ("Colt") to provide a range of site services at a large industrial site operated by the Consumers' Co-operative Refineries Limited (the "CCRL"). The industrial site is located in Regina, Saskatchewan, and is commonly known as the "Coop Upgrader". Not only is the Coop Upgrader a large industrial site but it was (and continues to be) undergoing a large expansion. As a result, numerous sub-contractors, such as the Employer, were hired by various larger general contractors, such as Colt, to provide a broad range of industrial and construction services to and at the Upgrader. All of this construction activity resulted in a very busy workplace.

[9] To maintain safety and security, access at all points of entry to the site of the Upgrader was regulated by security staff at a variety of "gates" (points of access and egress from the Upgrader). Personal vehicles were not permitted on the worksite. Rather, various parking lots were located at each gate. The comings and goings of all employees through the gates were monitored by security staff and recorded in logs. While the precision of this system was called into question during the hearing, little doubt existed that CCRL's goal was to control and monitor the comings and goings of all employees working at the Upgrader, including the employees of contractors and subcontractors, and to maintain a roster that could be used to determine, at any given point in time, who was and who was not on the site.

[10] CCRL also mandated that all new employees working at the Upgrader receive orientation and training before commencing work. In addition, CCRL also imposes a number of "safety absolutes"; being, impugned conduct by employees (i.e.: typically safety violations) that would not be tolerated by CCRL. Contractors, such as Colt, and subcontractors, such as the Employer, were expected to strictly enforce CCRL's safety absolutes. One such safety absolute was a prohibition against "falsification of reports, statements or records" by anyone working at the Upgrader.

[11] The services provided by the Employer at the Coop Upgrader were primarily general labour, such as the removal of construction debris and other garbage from the workplaces, repairing broken and fallen signs, and the removal of snow from the parking lot.

Although it was not unionized at the time, in January of 2010, the Employer approached the Union and indicated that it required additional employees and sought the Union's help in procuring more workers. The Union posted a notice on its "automated dispatch line", to which both the applicant employees responded by contacting the Union. Following the Employer's initial request in January of 2010, a number of employers were dispatched by the Union to the Employer's workplace. Following the dispatch of employees to the Employer, the Union applied to the Board and was certified to represent all labourers and labour foreman employed by the Employer on April 13, 2010.

[12] Upon being dispatched to the workplace, the Applicants participated in orientation and training provided by the Employer. During their training, employees were provided information regarding the Employer's "rules and discipline processes"; the Employer's "Health, Safety and Environmental" policies; "hours of work", including lunch and coffee breaks; and the "emergency evacuation" plans for the workplace. The orientation and training also included instruction on CCRL's safety absolutes. Both Applicants acknowledged that they participated in this training and were aware of, among other things, CCRL's safety absolutes, including the prohibition against falsification of reports.

[13] The Applicants were both terminated on May 3, 2010 as a result of events that occurred on April 30, 2010 involving an alleged breach of one (1) of CCRL's safety absolutes. The evidence regarding the events that occurred on this date was conflicting. The findings of fact set forth in these Reasons for Decision are based upon the evidence, both oral and documentary, tendered by the parties. Where a witness has testified or tendered documentary evidence in contradiction to the findings of fact set forth herein, I have discredited that aspect of his/her testimony and/or documentary evidence because it was in conflict with other credible (more credible, in my opinion) evidence.

[14] All witnesses agreed that it was raining on April 30, 2010. Although some employees had left early that day (having been given the opportunity to do so by the Employer), both Mr. Eason and Mr. Babcock had elected to stay and were at work that day. As appeared to be the regular practice, at approximately 3:00 p.m., the employees and management took an afternoon coffee break; with the employees taking their break in a coffee/lunch trailer and with supervisors and managers taking their break in a trailer reserved for foreman.

[15] Both Mr. Eason and Mr. Babcock testified that they arrived at the coffee/lunch trailer at approximately 3:00 p.m. and had coffee with other employees.

[16] As evident by the termination letters provided to the discharged employees[4], the Employer believed that Mr. Babcock and Mr. Eason (together with others) left work early that day and falsified a report to indicate that they remained at the workplace well after their actual departure from the workplace. The relevant portion of the letters provided by the Employer to the discharged employees reads as follows:

> *It has been brought to our attention that on Friday April 30, 2010 at 3:10pm Taurus Management was trying to pass on scope of work needing to be completed as requested by the client Colt Worley Parsons. Taurus supervision could not locate you and while supervision was in the lunchroom they looked at the sign in/out sheet and noticed that you were signed out at 4:00 pm when in actually it was 3:10 pm and you were nowhere to be found.*
>
> *As per the CCRL Project – Safety Absolutes, "Falsification of reports" will not be tolerated. By signing the sign in/out sheet with an incorrect time, you have been found in violation of company policies. These attendance sheets are used for evacuation, payroll and safety purposes.*
>
> *At this time, as per Taurus Handbook, you have violated the following "safety absolutes ignored or not followed" (falsification of reports) and "use of misleading or untrue statements to the company or client." Buy falsifying the sign in/out sheet, it is evident there is theft of time from the company as well as the client.*
>
> *This letter is to act as your official notification to you that this type of behaviour is unacceptable and effective immediately your employment has been terminated.*
>
> *A copy of this letter will be forwarded to your hall. We at Taurus Site Services take pride in ourselves, our co-workers as well as our clients.*
>
> *If you have any further questions, please do not hesitate to contact myself.*
>
> *Regards,*
>
> *Dave Zubko*
> *Project Manager*
> *Taurus Site Service*

[4] In addition to Mr. Babcock and Mr. Eason, three (3) other employees were terminated by the Employer on May 3, 2010 for the events that occurred on April 30, 2010. The other employees were Mr. AK, Mr. Tyson Englot and Mr. Cameron St. Laurent.

[17] In the Employer's opinion, the Applicants had falsified a report by signing out for 4:00 but leaving well before that time. The Employer described this as being a violation of CCRL's safety absolutes and summarily terminated the employees involved in the infraction.

[18] Upon being terminated, a number of the discharged employees contacted the Union and asked for assistance. Those that did were asked to prepare a written statement of what happened to them. Both Applicants went to the Union's office and met with the Union's Business Manager, Ms. Lori Sali. They provided Ms. Sali with a copy of their termination letters, together with their respective written statements as to what happened on April 30, 2010.

[19] Mr. Eason, Mr. Babcock and Mr. AK each testified (and provided written statements to the Union indicating) that, during their coffee break, they and two (2) other employees (Mr. Englot and Mr. St. Laurent) decided to leave early on April 30, 2010. They testified that, as it was a "rain day"; there was little work to perform; and that other employees had left early that day. In addition, Mr. Babcock testified that he believed that he had permission to leave early from his foreman, Mr. Hodder.

[20] According to the Applicants, while in the coffee/lunch trailer, the employees who decided to leave early all "dressed down" (i.e.: removed their protective overalls) and waited in the coffee/lunch trailer, playing cards, until 3:38 p.m. and then left the trailer. Prior to leaving for the day, all the departing employees signed themselves out on the Employer's daily labour record indicating a departure time of "4:00".

[21] The Applicants testified that it was common practice to leave up to twenty (20) minutes prior to an employee's sign out time because of the time it took to get to one's vehicle (which would be in one of the parking lots near one of the gates). Mr. Babcock, Mr. AK, Mr. St Laurent and Mr. Englot were driven to the nearest departure gate by Mr. Tobias Russell, while Mr. Eason got a ride to the same gate with Mr. Sean Daly. According to the testimony of Mr. Babcock, Mr. Eason and Mr. AK, the employees departed the workplace sometime after 3:40 p.m.

[22] In response to the termination of a number of its members, the Union did a number of things. Firstly, the Union's Business Manager, Ms. Sali, phoned both Mr. Don Leader, the Union's shop steward at the workplace, and Mr. Alvin Hunter, a long time member of the

Union, to find out what they knew about the circumstances of the terminations. Secondly, Ms. Sali phoned the Employer's superintendent to see if she could get the employees put back into the workplace. She also met with the Employer's Project Manager, Mr. Dave Zubko, to pursue the potential of a last chance agreement for the affected employees. In both case, the Employer declined the Union's requests. Thirdly, Ms. Sali asked Mr. Alvin Hunter to obtain statements from the other employees who were present in the coffee/lunch trailer and/or who had knowledge of what happened on April 30th in an attempt to verify, if possible, the Applicants' version of events. In response to this request, Mr. Hunter provided his own statement and obtained statements from Mr. Tobias Russell, Mr. Matt Heisler, Mr. William Russell, Mr. Sean Daly, Mr. St. Laurent (who was also terminated) and Mr. Ismail Muhamed.

[23] Following the Union's investigation, Ms. Sali met with the Applicants and advised that the Union would not be pursuing grievance proceedings against the Employer. Ms. Sali told the Applicants that she had met with the Employer and attempted to get the employees back into the workplace; but had been unsuccessful. She also advised Mr. Eason, Mr. Babcock and Mr. AK that, based on her investigation, she did not think the Union would be successful in obtaining a satisfactory outcome for the employees if the matter proceeded to arbitration. Ms. Sali told the employees that her investigation did not wholly corroborate their version of events. While Mr. Sean Daly and St. Laurent gave statements consistent with their version of events, statements from Mr. Tobias Russell, Mr. Matt Heisler, Mr. William Russell confirmed that the employees left the lunch trailer at about the time the Employer alleged. Furthermore, Ms. Sali testified that she had reason to believe that Mr. St. Laurent would not be a credible witness and that she didn't know how much weight to give to Mr. Daly's evidence because he was not a member of the Union and she did not know him. Ms. Sali indicated that most of the evidence gathered by the Union did not support proceeding with formal grievance proceedings (i.e.: to proceed to arbitration) because it did not support their version of events; to the contrary, it tended to support the Employer's version of the events that occurred on April 30th.

[24] Ms. Sali advised the Applicants that the Union did not want to incur the cost of going to arbitration unless it had a strong case and gave a number of reasons why she did not think the Union had a strong case. Firstly, it was not clear from the evidence that the employees were in the lunch/coffee room when they said they were. Secondly, even if the Union could establish that the Employer was wrong as to the time the employees left for the day, the Union would be defending their dismissal by arguing that the employees were sitting in the lunch/coffee

trailer playing cards instead of working. Ms. Sali told the employees that "*she did not want to look foolish*" by proceeding to arbitration with a weak case. Ms. Sali also told the applicant employee that doing so could injure the Union's reputation and its working relations with the Employer. At that time, the Union had only been certified to the Employer for a few weeks; an employer who had previously operated on a non-union basis and whom had approached the Union looking for workers.

[25] Simply put, the Union had been unsuccessful in having the Employer voluntarily agree to some lesser penalty and it did not believe that it would be successful in arbitration in getting the employees reinstated. Faced with this information, the Union did not want to incur the cost of proceeding to arbitration and/or to injure its new relationship with the Employer by advancing a weak case. As a consequence, the Union declined to file or prosecute grievance proceedings related to the dismissal of any of the affected employees and advised the Applicants of the Union's decision.

[26] Mr. Matthew (Matt) Heisler testified that he was employed by the Employer as a labourer on April 30, 2010. Mr. Heisler testified that on April 30, 2010 he was dropped off at the lunch/coffee trailer by Mr. William Russell for afternoon coffee at approximately 3:10 p.m. He testified that he went in the trailer and noticed that the Applicants were present, but that they were both dressed-down and ready to go for the day. Mr. Heisler then stepped outside the trailer to have a smoke and when he went back in the trailer approximately five (5) or ten (10) minutes later, the applicant employees were gone.

[27] Mr. William Russell testified that on April 30, 2010, he was employed by the Employer as a foreman. As a foreman, Mr. Russell was an in-scope supervisor and continued to be a member of the Union. Mr. Russell testified that on April 30, 2010, he was assigned a task by Colt that was anticipated to require a number of men to complete. After his coffee break (which he took in the foreman's trailer), Mr. Russell went to the coffee/lunch trailer to gather workers to complete his assignment. In doing so, he anticipated that the Applicants would be present. However, Mr. Russell testified that, when he went to the trailer at approximately 3:15 to gather the men, neither Mr. Babcock nor Mr. Eason were present. He was informed that the Applicants, together with a number of other employees, had left early for the day.

[28] Mr. Tobias Russell testified that he was employed as a labourer by the Employer on April 30, 2010. Mr. Tobias Russell testified that he drove Mr. Babcock, Mr. AK, Mr. St. Laurent and Mr. Englot to gate #6 at approximately 3:10 p.m. Mr. Tobias Russell estimated that it was approximately a 5-10 minute drive from the lunch/coffee trailer to gate #6. Finally, Mr. Russell testified that on his return from dropping the men of at the parking lot adjacent to gate #6, he saw Mr. Eason being driven in a vehicle to gate #6 at approximately 3:20 p.m.

[29] Mr. Jack Hodder testified that he was employed by the Employer as a general foreman on April 30, 2010. Mr. Hodder confirmed that it was common practice for employees to complete the Employer's log out sheet for the time they anticipated to leave work for the day. Mr. Hodder also confirmed that it was also common practice for employees to round up their departure time and to leave work up to fifteen (15) minutes before their scheduled departure time to allow for travel time to get through a gate and to the parking lots. Mr. Hodder indicated that this practice started when a bus was used to transport employees from the worksite to the gates and the bus would leave approximately twenty (20) minutes early.

[30] While Mr. Hodder recalled Mr. Babcock talking to him about wanting to leave early on April 30, 2010, he did not testify that he had given permission for Mr. Babcock to leave early. Mr. Hodder also testified that, in his experience (having worked in one or more of the security gates), the security logs at the gates were imprecise, with security staff routinely rounding the departure time of employees up or down. Mr. Hodder also testified that, upon hearing of the terminations, he checked the security gate control logs. In cross-examination by Counsel for the Union, Mr. Hodder admitted that, while he checked into the security logs for April 30^{th,} he did not give this information to the Union. Mr. Hodder also admitted that, while there appeared to be some irregularities with the control logs for that day, they recorded that Mr. Babcock left at 3:00 p.m. on April 30, 2010.

[31] Also, in cross-examination, Mr. Hodder admitted that he left work in the morning on April 30, 2010 and that he had no direct knowledge of when the Applicant's left work on that day.

[32] Finally, the Board heard evidence that Mr. Englot was allowed to return to the workplace but not the conditions of his return other than it was not as a result of grievance proceedings advanced by the Union.

Argument of the Parties:

[33] The Applicants took the position that the Union failed to fairly represent them by failing to prosecute grievance proceedings with respect to their respective terminations.

[34] The Applicants argued that the Employer's termination letters were in error because they stated that the discharged employees were not in the lunch/coffee trailer at 3:10 p.m. when there was good evidence that they were, in fact, in the lunch/coffee trailer at that time. In addition, the Applicants also argued that there was some evidence, including the evidence of Mr. Sean Daily and Mr. St. Laurent, that supported their position that they remained in the lunch/coffee trailer (playing cards) until approximately 3:38 p.m. when they say they left for the day. They argued that it was common practice to complete the sign out sheet for an employee's estimated departure time. In addition, there was also a common practice for employees to leave up to twenty (20) minutes early. As a consequence, the Applicants argued there was at least an arguable case that they had done nothing wrong; that they had not violated one of CCRL's safety absolutes.

[35] The Applicants argued that the Union's decision not to prosecute grievances on their behalf was arbitrary and the reasons they were given by the Union were insufficient. They argued that, if the Union did not believe their version of events, the Union should have conducted more investigations and should have interviewed more witnesses. Furthermore, the Applicants argued that Ms. Sali exercised bad faith by choosing which evidence to accept and which evidence to discount. Similarly, they argued that Ms. Sali was more concerned about the Union's reputation or about her looking "stupid" in front of the Employer (if she took their grievance to arbitration) than representing them in grievance proceedings.

[36] By way of remedy, the Applicants sought an order of the Board directing the Union to file and prosecute grievances on their behalf.

[37] Counsel on behalf of the Union argued that the Union conducted itself entirely appropriately in representing all of the employees who were dismissed by the Employer, including the Applicants. Counsel pointed to the evidence that the Union promptly conducted an investigation upon learning of the dismissals. The Union argued that its investigation was

reasonable and thorough; that the relevant witnesses were interviewed and statements were taken. Counsel observed that the problem for the Applicants was not that the Union's investigation was inadequate but that the Union's findings did not support their version of events.

[38] The Union argued that it came to a reasonable conclusion in deciding to not prosecute grievances on behalf of the terminated employees. The Union noted that it tried to convince the Employer to allow the employees to come back to work and/or to reduce the penalty imposed but that the Employer would not modify its position. The Union argued that it was entirely appropriate for the Union to decline to advance what it deemed to be a weak case simply because of the cost of doing so. The Union also argued that it was reasonable and appropriate for the Union not to want to injure it new relationship with the Employer by prosecuting weak grievances.

[39] The Union argued that, even if errors occurred in its representing the Applicants, they were honest mistakes reasonably made and no where close to the kind of conduct on the part of the Union necessary to trigger the application of s. 25.1 of the *Act*. The Union asked that the applications be dismissed.

Relevant statutory provisions:

[40] Section 25.1 provides as follows:

> ***25.1*** *Every employee has the right to be fairly represented in grievance or rights arbitration proceedings under a collective bargaining agreement by the trade union certified to represent his bargaining unit in a manner that is not arbitrary, discriminatory or in bad faith.*

Analysis and Decision:

[41] This Board's general approach to applications alleging a violation of s. 25.1 of the *Act* was well summarized in *Laurence Berry v. Saskatchewan Government Employees' Union*, [1993] 4th Quarter Sask. Labour Rep 65, LRB File No. 134-93, at 71-72:

> *This Board has discussed on a number of occasions the obligation which rests on a trade union to represent fairly those employees for whom it enjoys exclusive status as a bargaining representative. As a general description of the elements of the duty, the Board has indicated that it can do no better than to quote the principles outlined by the Supreme Court of Canada in the case of Canadian Merchant Services Guild v. Gagnon, [1984] 84 CLLC 12,181:*

> *The following principles, concerning a union's duty of representation in respect of a grievance, emerge from the case law and academic opinion consulted.*
>
> *1. The exclusive power conferred on a union to act as a spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.*
>
> *2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.*
>
> *3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.*
>
> *4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.*
>
> *5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employees.*

The terms "arbitrary," "discriminatory," and "in bad faith," which are used in the legislative description of the kind of conduct on the part of a trade union which is to be prevented, have been held to address slightly different aspects of the duty. The Supreme Court in Gagnon used the following comments from the decision of the British Columbia Labour Relations Board in Rayonier Canada (B.C.) Ltd. (1975), 2 CLRBR 196, at 201, to convey the distinct attributes of the duty of fair representation:

> *... The union must not be actuated by bad faith, in the sense of personal hostility, political revenge, or dishonesty. There can be no discrimination, treatment of particular employees unequally whether on account of such factors as race and sex (which are illegal under the Human Rights Code) or simple, personal favoritism. Finally, a union cannot act arbitrarily, disregarding the interests of one of the employees in a perfunctory manner. Instead, it must take a reasonable view of the problem before it and arrive at a thoughtful judgment about what to do after considering the various relevant and conflicting considerations.*

This Board has also commented on the distinctive meanings of these three concepts. In Glynna Ward v. Saskatchewan Union of Nurses, LRB File No. 031-88, they were described in these terms:

> *Section 25.1 of The Trade Union Act obligated the union to act "in a manner that is not arbitrary, discriminatory, or in bad faith". The union's obligation to refrain from acting in bad faith means that it must act honestly and free from personal animosity towards the employee it represents. The requirement that it refrain from acting in a manner that is discriminatory means that it must not discriminate for or against particular employees based on factors such as race, sex or personal favoritism. The requirement that it avoid acting arbitrarily means that it must not act in a capricious or cursory manner or without reasonable care. In other words, the union must take a reasonable view of the problem and make a thoughtful decision about what to do.*

[42] The Applicants did not allege, and this Board saw no evidence of, discrimination on the part of the Union. Rather, the Applicants alleged that the Union's conduct was 'arbitrary', in that the Union's investigation into the circumstances of their dismissal was inadequate and that the Union's conduct in representing them was seriously negligent. The Applicants also alleged that the Union exercised 'bad faith', in that its decision to not prosecute grievances on their behalf was motivated by improper considerations. Having carefully considered the evidence in these proceedings, I am not satisfied that the evidence supports either allegation.

[43] Firstly, in my opinion, the evidence did not support the Applicants' assertion that the Union's conduct was arbitration. I agree with the position advanced by the Union that its investigation was appropriate, timely and thorough.

[44] As a general rule, a trade union has good reason to doubt exculpatory statements given by recently terminated employees fearful of losing their jobs. When a discharged member is seeking assistance from his/her union, it has a duty to investigate the circumstances to determine whether or not the employer's actions were reasonable and appropriate and/or in violation of the collective agreement. The knowledge gained from such investigations provides a basis from which trade unions may challenge both the appropriateness and severity of the discipline imposed by the employer and opens the doors to voluntary arrangement, including "last change" and other agreements intended to return discharged employees to the workplace. Finally, the knowledge gained through such investigations provides the basis from which a trade union must decide whether or not it has any reasonable potential for obtaining a favourable outcome through grievance proceedings.

[45] In the present case, the onus on the Union was to promptly conduct a thorough investigation and to determine whether or not the Employer's decision to terminate the employee was reasonable and/or in violation of the collective agreement. The problem for the Applicants was not that the Union's investigation was inadequate; the problem was that it did not provide a clear basis for the Union to prosecute grievances on their behalf. If anything, the evidence from the Union's investigation tended to support the Employer's version of events, as did the evidence before this Board. The evidence of Mr. William Russell, Mr. Matthew Heisler and Mr. Tobias Russell was clear, cogent and compelling and left little doubt that the Applicants left the workplace well before their recorded departure time.

[46] This Board has held that it is not a breach of the duty of fair representation for a trade union to decline to file or to withdraw a grievance, if it took a reasonable view of the circumstances and if it made a "thoughtful decision" not to advance the grievance. See: *I.R. v. Canadian Union of Public Employees, Local 1975-01, et al.,* [2006] Sask. L.R.B.R. 344, LRB File No. 139-03; and *Dave Leblanc v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 555, et al.,* [2007] Sask. L.R.B.R. 648, LRB File No. 028-07.

[47] After reviewing the evidence presented in these proceedings, I am satisfied that the Union conducted an appropriate investigation into the circumstances of Mr. Babcock and Mr. Eason's termination; that the Union explored various options, including last chance agreements, with the Employer in an effort to get the employees voluntarily returned to the workplace; and that the Union used reasonable care in its evaluation of the potential for obtaining a favourable outcome for the discharged employees through grievance proceedings.

[48] In my opinion, the evidence did not support the Applicants' assertion that the Union's conduct was indicative of bad faith on the part of the Union. This Board has acknowledged that many factors must be taken into consideration by a trade union in deciding whether or not to advance a grievance, including the significance of the grievance for the griever and the likelihood of obtaining a favourable outcome. But there are other factors that may also legitimately influence a trade union's decision, the most obvious being the cost of proceeding to arbitration. By way of further example, this Board has also held that it is not inappropriate for a trade union to consider the injury to its credibility and relationship with an employer by advancing a questionable grievance. See: *Edward Datchko v. Deer Park Employees' Association*, [2006] Sask. L.R.B.R. 354, LRB File Nos. 262-03 & 263-03.

[49] Having considered the evidence in these proceedings, I am satisfied that the factors taken into consideration by the Union, including the limited evidence in support of the Applicants' version of events, the not-insignificant evidence corroborating the Employer's reasons for terminating the employees, the cost of proceeding to arbitration, and the Union's desire to not injury its new relationship with the Employer (by advancing a series of questionable grievances so soon after being certified), were all appropriate considerations to be weight by the Union. Furthermore, the Board saw no evidence that the Union's weighing of these factors was influenced by anything other than objectively.

[50] For the foregoing reasons, I am also satisfied that the Union's decision to not prosecute grievance proceedings on behalf of the Applicants was not influenced by improper considerations or otherwise in bad faith. Simply put, the findings from the Union's investigation neither corroborated the Applicants' version of events nor provided a basis for proceeding to arbitration. The Union was entirely within its rights to weight both the cost of arbitration and the injury to its reputation and relationship with the Employer in its decision to not advance what it deemed to be questionable grievances.

[51] For the foregoing reasons, the applications of the Applicants must be dismissed.

DATED at Regina, Saskatchewan, this 14th day of **April, 2011.**

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson