

**The Labour Relations Board
Saskatchewan**

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL No. 1400, Applicant v. IMPACT SECURITY GROUP INC., Respondent

LRB File Nos. 106-10 & 059-11; May 10, 2011

Chairperson, Kenneth G. Love, Q.C.; Members: John McCormick and Mick Grainger

For the Applicant Union:

Ms. Heather Jensen

For the Respondent Employer:

Mr. Chris McCoy

Failure to remit dues – Employer deducts union dues from employees, but does not remit them to Union – Employer previously found guilty of unfair labour practice – Employer agrees to “catch up” arrears of dues payments, but fails to do so – Union applies for Order quantifying amount due – Section 32 of *The Trade Union Act*.

Costs – Union seeks Order for solicitor-client costs related to necessity to enforce Board’s previous Order that Employer remit dues deducted from employees’ pay to Union.

Pre-judgment Interest – Union seeks payment of pre-judgment interest on monies due from Employer for union dues deducted from employees, but not remitted to Union.

REASONS FOR DECISION

Facts:

[1] United Food and Commercial Workers Union, Local No. 1400, (the “Union”) is certified as the bargaining agent for a unit of employees of Impact Security Group Inc. (the “Employer”). By Order dated October 18, 2010, the Employer was found guilty of an unfair labour practice by the Board related to its failure to remit union dues deducted from the wages of its employees.¹

[2] The Board’s Order made October 18, 2010 provided as follows:

ORDER

***THE LABOUR RELATIONS BOARD* having found the Employer has engaged in an unfair labour practice pursuant to Section 5(e) of *The Trade Union Act*,
HEREBY ORDERS:**

¹ LRB File No. 106-10

(a) *that the Employer cease and desist from further violations of the Act, and, in particular, that the Employer refrain from any further withholding of dues and assessments which the Union is entitled;*

(b) *that the Employer provide the Applicant with past and ongoing information in order to properly calculate union fees as required by the Act;*

(c) *that the Employer pay all dues owed to the Applicant;*

(d) *that F. W. Bayer, Board Registrar, or his designate, be appointed Board Agent to assist in any discussions regarding the quantum of monetary loss suffered by the Applicant as a result of violations of the Act by the Employer; and*

(e) *that the Board reserves jurisdiction to adjudicate any issues arising out of the calculation and implementation of this Order.*

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[3] Following this Order from the Board, the Employer continued to fail to remit dues deducted from Employees wages. Furthermore, the Employer failed to provide disclosure of payroll records to the Union to permit the Union to know what amount of dues were outstanding.

[4] On November 16, 2010, the Employer communicated with the Union advising that it was unable to make payments to the Union of \$3,000 bi-weekly in respect of arrears of dues which it failed to remit, in addition to remitting the amounts currently deducted from employee's wages. The Employer says, "[A]t best I can stay current with everything and send you payments for previous periods totaling about \$1500 along with each current remittance."

[5] The commitment made by the Employer in its November 16, 2010 correspondence was not kept. Some current payments were made, but the Employer continued to fail to remit dues as deducted from employees.

[6] On April 20, 2011, the Union finally received payroll records from the Employer which permitted it to calculate the amounts due from the Employer on account of dues deducted from employees, but not remitted to the Union. That amount was calculated by the Union to be \$17,034.10 to the end of pay period 7 of 2011. At the hearing of this matter, the Employer agreed with this calculation.

[7] By way of reply to the Union's application, the Employer filed an Affidavit of Reterio Sela, the payroll administrator for the Employer. In that Affidavit, the Employer, through

Reterio Sela, deposed that it was unable to “repay all the debts at this moment in time, however, the financial health of the company is improving due to cuts being made”. The affiant deposed that “[I] believe that the company is able to remain current starting in May, 2011 and able to repay \$1,000 on the opposite weeks towards the arrears.

[8] As noted above, the Employer did not challenge the Union’s calculation of the amounts due to the Union. It attached to the Affidavit of Reterio Sela a (3) three month (January through March, 2011) profit and loss statement which disclosed an operating loss for that period.

Relevant statutory provision:

[9] Relevant statutory provisions of the Act provide as follows:

15(1) Any person who takes part in, aids, abets, counsels or procures any unfair labour practice or contravenes any provision of this Act is, in addition to any other penalty imposed on him pursuant to this Act, guilty of an offence and liable on summary conviction:

(a) for a first offence:

(i) in the case of an individual, to a fine of not less than \$50 and not more than \$1,000;

(ii) in the case of a corporation or trade union, to a fine of not less than \$1,000 and not more than \$10,000;

(b) for a second or subsequent offence, to a fine in the amount set out in clause (a) and to imprisonment for a term of not longer than one year.

(2) Any person who fails to comply with any order of the board, whether made prior to or after the coming into force of this section, is, in addition to any other penalty imposed on him under this Act, guilty of an offence and liable on summary conviction:

(a) in the case of an individual, to a fine of \$50;

(b) in the case of a corporation or trade union, to a fine of \$250;

for each day or part of a day during which the non-compliance continues.

...

32(1) Upon the request in writing of an employee, and upon request of a trade union representing the majority of employees in any bargaining unit of his employees, the employer shall deduct and pay in periodic payments out of the wages due to the employee, to the person designated by the trade union to

receive the same, the union dues, assessments and initiation fees of the employee, and the employer shall furnish to that trade union the names of the employees who have given such authority.

(2) Failure to make payments and furnish information required by subsection (1) is an unfair labour practice.

...

42. The board shall exercise such powers and perform such duties as are conferred or imposed on it by this Act, or as may be incidental to the attainment of the objects of this Act including, without limiting the generality of the foregoing, the making of orders requiring compliance with the provisions of this Act, with any regulations made under this Act or with any decision in respect of any matter before the board.

Analysis and Decision:

[10] At the conclusion of the hearing on May 6, 2011, the Board issued an oral decision that the amount of the agreed arrears was due and payable by the Employer to the Union. An Order for payment of that amount was issued by the Board on that date. That Order provided that the Board would also remain seized of the matter and that the Board may make additional Orders following its consideration of the submissions by the parties at the hearing on May 6, 2011.

[11] Since the quantum of the amount of arrears due to the Union to the end of pay period 7 in 2011 has been agreed and an Order issued for the payment of that amount, the Board wished to consider the Union's requests that the Board order both pre-judgment interest on the amount of the arrears and that the Board order the Employer to pay solicitor-client costs of this application.

[12] The awarding of pre-judgment interest is governed by *The Pre-judgment Interest Act*². In that Act, s. 5 provides as follows:

5(1) The court shall award interest on a judgment for damages or for the recovery of a debt calculated in accordance with this Act.

(2) The court shall not award interest:

- (a) on that part of a judgment that represents pecuniary loss arising after the day of judgment and that is identified by the court;*
- (b) on interest awarded under this Act;*
- (c) on exemplary or punitive damages;*

² R.S.S. 1978 c. P-22.2

- (d) on an award of costs in the action;
- (e) on money, and interest on that money, borrowed by a party in respect of damages described in subsection 6(2);
- (f) on money that is paid into court and accepted in satisfaction of a claim;
- (g) on a judgment given on consent, unless agreed to by the parties;
- (h) if there is an agreement between the parties respecting interest; or
- (i) if the payment of interest is otherwise provided by law.

(3) If it is proven to the satisfaction of the court that it is just to do so having regard to the circumstances, the court may, with respect to the whole or any part of the amount for which judgment is given, refuse to award interest under this Act or award interest under this Act at a rate or for a period, or both, other than a rate or period determined pursuant to section 6.

(4) In a jury trial, the judge shall exercise the powers of the court under this Act.

(5) In the case of a default judgment, the local registrar or clerk of the court shall award interest calculated in accordance with this Act, but shall not exercise any discretion granted to the court under subsection (3).

[13] Nothing in this provision provides authority to the Board to award pre-judgment interest. That authority resides in the Court, or, by delegation in subsection 5(5) to the Local Registrar. Therefore, if the Union wishes to invoke the provisions of *The Pre-judgment Interest Act*, it must, upon the Board's decision being filed by the Board Registrar with the Local Registrar of the Court of Queen's Bench, in accordance with Section 13 of the *Act*, then take the steps necessary pursuant to subsection 5(5) of *The Pre-judgment Interest Act* have the Local Registrar calculate the amount due for pre-judgment interest.

[14] This reasoning may, on its face, appear to be at odds with the Board's award of pre-judgment interest in its decision in *Jason Meroniuk v. Rural Municipality of Preeceville No. 334*³ wherein the Board at paragraph [19] awarded the Applicant interest on his monetary loss "calculated in accordance with *The Pre-judgment Interest Act*." However, this direction is correct insofar as the amount of interest to be paid will, of necessity, have to be calculated by the Local Registrar in accordance with *The Pre-judgment Interest Act*, which amount, when calculated, will then form a part of the Board's Order in accordance with s. 7 of *The Pre-judgment Interest Act*. An Order for calculation and payment of pre-judgment interest shall be issued.

³ [2003] CanLII 62873, LRB File Nos. 063-02, 064-02 & 065-02

[15] Also in *Meroniuk, supra*, the Board considered and awarded the Applicant its solicitor-client costs pursuant to s. 42 of the *Act*. In that case, as in this case, the Respondent had failed to comply with an earlier Board Order which, in the Board's determination, "made the Applicant's return to work more complicated than was necessary." In this case, the Employer also failed to comply with the Board's Order of October 18, 2010. The Employer also failed to live up to its promise to repay the arrears and keep current with amounts deducted in the future as outlined in its November 16, 2010 correspondence.

[16] On the other hand, the Employer did not dispute the amounts owed, and it admitted that it had failed to make the payments alleged, pleading cash flow problems.

[17] Nevertheless, the Union was put to unnecessary expense to bring this application when the obligations of the Employer were clearly established. As was the case in *Meroniuk, supra*, the Board is satisfied that the Union should be compensated, in part, for its costs in bringing this application. The Union shall be reimbursed for its legal fees and expenses incurred in relation to the hearing of this matter on May 6, 2011. However, those fees shall relate solely to the cost incurred by the Union in having Ms. Jensen appear before the Board on that day, including her necessary out of pocket travel expenses to attend the hearing in Regina. An Order directing payment of those fees and expenses for the day of the hearing shall issue.

DATED at Regina, Saskatchewan, this **10th** day of **May, 2011**.

LABOUR RELATIONS BOARD

Kenneth G. Love, Q.C.
Chairperson